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MEMORANDUM

Via E-Mail

DATE: November 13, 2008

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: Ontario Proposes Regulations to Ban the Use and Sale of Pesticides for Cosmetic Purposes

On November 7, 2008, the Ontario Ministry of the Environment released a proposed regulation that would ban the use and sale of pesticides that may be used for cosmetic purposes, as required under the June 2008 Cosmetic Pesticides Ban Act. The Act provides exceptions for agriculture, forestry, health or safety, and golf courses, provided certain conditions are met. The provincial ban supersedes local municipal pesticide by-laws and is intended to create one clear, transparent, and understandable set of rules across the province. Comments are on the proposed regulations are due **December 22, 2008**. More information is available at <http://www.ene.gov.on.ca/en/land/pesticides/index.php>.

The draft regulation includes the following lists:

- Pesticides (ingredients in pesticide products) to be banned for cosmetic use;
- Pesticide products to be banned for sale; and
- Domestic pesticide products to be restricted for sale. Restricted sale products include those with cosmetic and non-cosmetic uses, and would not be available self-serve.

The proposed regulations do not include any exceptions for pest infestations (insects, fungi, or weeds) on lawns, gardens, parks, school yards, cemeteries, and other outdoor areas to which the ban applies, because, according to the Ministry, “lower risk alternatives currently exist.” Under the proposed regulations, only the following uses of banned pesticides would be allowed:



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- Public health or safety exception: Applies to the control of plants that are poisonous to touch (*e.g.*, poison ivy), animals that bite, sting, are venomous or are disease carrying (*e.g.*, mosquitoes) and animals or plants that may cause significant damage to a structure or infrastructure (*e.g.*, termites).
- The use of banned pesticides would be allowed to maintain safe conditions and emergency access to public works, which include highways, railways, power works, gas works, water works, and other utilities.
- Golf courses are excepted from the ban provided they follow “tough new rules” --
 - Golf course maintains Integrated Pest Management (IPM) accreditation by an approved accreditation body;
 - Accredited golf course has a pesticide report prepared annually which documents how IPM accreditation minimizes pesticide use; and
 - Accredited golf course displays a copy of the pesticide report in a prominent place at the golf course accessible to the public and holds a public meeting annually to present the report.
- Sports fields: This exception provides a limited exception to fields that host national or international level sports competitions. Many municipal bylaws do not contain exceptions for sports fields.
- Specialty turf: Banned pesticides could be used to maintain specialty turf used for lawn bowling, cricket, lawn tennis, and croquet if certain conditions are met.
- Trees: Homeowners would be able to buy and use lower risk products only. Licensed exterminators would be able to use conventional pesticides under certain conditions.



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- Protection of natural resources: The Ministry of Natural Resources would identify specific circumstances where the use of banned pesticides is appropriate to protect and manage natural resources, which includes activities such as controlling and eradicating invasive species.
- Exception for uses required by other acts would allow the use of banned pesticides for the purpose of complying with a requirement under a provincial or federal act. Such uses would include the control of noxious weeds under the Weed Control Act and plant diseases under the Plant Diseases Act.
- Agriculture: Exception applies to a broad range of agricultural operations similar to the definitions in the Nutrient Management Act and the Farming and Food Production Protection Act. Exception does not apply to household vegetable gardens.
- Forestry: Exception applies to a broad range of forestry activities (*e.g.*, harvest and reforestation).

The proposed regulation would allow for the use of new ‘notice’ signs intended to make the public aware when low risk alternatives to conventional pesticides are used by licensed exterminators. The Ministry states that an example would be the use of corn gluten meal to suppress weed germination in lawns. In response to a recent fire in a facility that packages pesticides, the Ministry proposes to extend storage and fire department notification requirements for pesticide manufacturers to harmonize these requirements with those that exist for operators and vendors. According to the Ministry, these requirements “would ensure local fire departments know where pesticides are stored, and that they are stored in a manner that protects public health and the environment.” Other provisions in the proposed regulations would clarify existing provisions, update technical information, correct drafting errors and omissions, and make changes of an editorial or technical nature intended to improve clarity and understanding.

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We hope this information is helpful. As always, please call if you have any questions.