

CITY OF BURNABY

ENVIRONMENT AND WASTE MANAGEMENT COMMITTEE

HIS WORSHIP, THE MAYOR
AND COUNCILLORS

RE: REGULATING COSMETIC HERBICIDE USAGE ON PRIVATE PROPERTIES

RECOMMENDATIONS:

1. **THAT** Council approve the principle of restricting cosmetic herbicide use on private properties.
2. **THAT** Council authorize staff to initiate a multi-stage work plan that works towards restricting cosmetic herbicide use as outlined in Section 4.0 of this report.
3. **THAT** a copy of this report be forwarded to the Parks, Recreation and Culture Commission.

R E P O R T

The Environment and Waste Management Committee, at its Open meeting held on 2002 October 08, received and adopted the *attached* report proposing a work plan for regulating cosmetic herbicide usage on private properties. The workplan includes undertaking a stakeholders consultation process and hosting public information meeting(s). It also includes the development of a strong education component providing information on the effects of herbicide usage and identifying alternatives to herbicide use.

Respectfully submitted,

Councillor D. Johnston
Chair

Councillor C. Redman
Vice Chair

Councillor B. Der
Member

COPY: - CITY MANAGER
- DIR. PLNG. & BLDG.
- DIR. PARKS, REC. & CULT SERV.
- CITY SOLICITOR

TO: CHAIRPERSON & MEMBERS
ENVIRONMENT & WASTE
MANAGEMENT COMMITTEE

DATE: 2002 10 08

FROM: DIRECTOR PLANNING AND BUILDING
DIRECTOR ENGINEERING
DIRECTOR PARKS, RECREATION
& CULTURAL SERVICES

FILE: 60-05-01

SUBJECT: REGULATING COSMETIC HERBICIDE USAGE ON PRIVATE PROPERTIES

PURPOSE: To propose a work plan for regulating cosmetic herbicide usage on private properties.

RECOMMENDATION:

1. **THAT** the Committee recommend to Council that:
 - a) the principle of restricting cosmetic herbicide use on private properties be approved;
 - b) staff be authorized to initiate a multi-stage work plan that works towards restricting cosmetic herbicide use as outlined in Section 4.0 of this report;
 - c) a copy of this report be forwarded to the Parks, Recreation and Culture Commission.

REPORT

1.0 INTRODUCTION

At the September 10, 2002 Environment and Waste Management Committee meeting, the Committee received a memorandum from the Director Parks, Recreation and Cultural Services regarding a correspondence received on the usage of pesticides and herbicides in lawns and gardens. Arising from the discussion, the Committee requested staff to prepare a report on the advisability and feasibility of banning cosmetic use of herbicides and pesticides on private properties.

The following report provides background information on current pesticide management practices in other Canadian cities and presents a possible course of action for Council's consideration.

2.0 BACKGROUND

The use of pesticides and chemical fertilizers has been growing over recent years and there are a greater number of studies that link pesticide use with health problems as well as with a detrimental effect on our natural environment. In one survey conducted by Statistics Canada, it was estimated that 31% of Canadian households report the use of chemical pesticides and 47% use chemical fertilizers. It should also be noted that only 5% of the total pesticides used in Canada are for domestic purposes such as lawn care and this occurs primarily in more urban areas.

The term "pesticide" is very broad and can be described as a material that is used to prevent, destroy, repel, attract or reduce pest organisms. The most common types of pesticides include insecticides (affecting insects), herbicides (affecting weeds), fungicides (affecting fungi), and rodenticides (affecting rodents). Less common types include growth regulators, plant defoliants and surface disinfectants.¹

For the purposes of this report, the focus is primarily on the outdoor use of aesthetic herbicides: those used to keep control of weeds and unwanted vegetation in lawns, gardens and other areas. These are defined as "ornamental" or "cosmetic" herbicides.

3.0 PESTICIDE MANAGEMENT: A REGULATORY CONTEXT

The governance of pesticide use in Canada is as follows:

Government of Canada

All pesticides sold or used must be approved under the federal Pest Control Products Act and Regulations administered by Health Canada's Pest Management Regulatory Agency (PMRA). Earlier this year, Health Canada introduced a new Pest Control Products Act (PCPA) which focuses primarily on establishing a comprehensive public registry of pesticides, labelling of products, vendor education and evaluating pesticides on a regular basis. They have also developed an Action Plan for Urban Usage of Pesticides that is a partnership with provincial governments that address the combining of standards and legislation with integrated pest management programs (IPM).

¹ Pesticide Applicator's & Dispensers Handbook, B.C. Ministry of Environment

Province of British Columbia

Under the Pesticide Control Act and Pesticide Control Act Regulation, the B.C. Ministry of Water, Land and Air Protection regulates the transportation, sale, use, storage and disposal of all pesticides sold or used in the province through:

- ▶ Setting standards for training and certifying people who use or sell pesticides;
- ▶ licensing pesticide applicators and those who sell pesticides;
- ▶ issuing permits and pest management plan approvals; and
- ▶ investigating pesticide misuse.

In addition, an important part of the provincial work is providing information and training on IPM to industry and the public.

Bylaws / Policies in other Canadian Cities

Attached is a synopsis of bylaws from some municipalities in Quebec and Nova Scotia enacted to regulate pesticide usage on public and private lands (see Attachment #1). It is noted that it is not the intention of these bylaws to prohibit the use of pesticide but rather regulate their use by permit. By using a permit system, these bylaws have effectively prevented or restricted the "cosmetic use" of pesticides such as weed control on lawns. These bylaws and other information regarding recent initiatives to reduce cosmetic pesticide use in Canadian Municipalities is available from the website www.pestinfo.ca sponsored by the Federation of Canadian Municipalities and Environment Canada.

Local and Regional Governments in British Columbia

Currently there are no bylaws regulating the use of pesticides in B.C., although the issue is being investigated by a number of municipalities, using different approaches as follows:

a) District of West Vancouver

District staff have proposed that landscape companies and pesticide vendors voluntarily submit to a "Registration Program" that would annually report their pesticide use and sales to the District of West Vancouver. Companies in the Program would have promotional advertising on the District website and would assist with an educational brochure on pesticide use.

b) District of North Vancouver

The District, on May 27, 2002, voted to proceed with a public education program on pesticide use for Council's review, explore a voluntary registration program as proposed in

the District of West Vancouver, and that the issues of "general welfare" powers for municipalities, similar to those given to local governments in the Province of Quebec, as they relate to pesticides be forwarded to the UBCM for discussion at their 2002 Convention.

c) City of Port Moody

The City of Port Moody is proceeding with a phased-in implementation program for a ban on cosmetic pesticides with a strong educational program that provides information on the affects of pesticide usage, and identifying alternatives to pesticide usage.

d) City of Vancouver

The City of Vancouver is engaging in a consultation process with stakeholders to address options for responsible pest management on private lands, and to work with the GVRD, municipalities and regional health authorities in formulating a coordinated regional approach to pesticide use restrictions.

e) City of North Vancouver

The City of North Vancouver is proceeding with the preparation of a new cosmetic pesticide and herbicide restriction bylaw in principle subject to a staff report on the feasibility and legal implications of such a bylaw.

f) City of Surrey

Has recently adopted pesticide management policy on public lands as a first step to control pesticide use in their Parks.

g) City of Victoria and Capitol Regional District

The City of Victoria and the Capital Regional District are in the preliminary stages of addressing this issue.

4.0 PROPOSED WORK PLAN TO REGULATE COSMETIC HERBICIDE USAGE ON PRIVATE LANDS

The City is strongly committed to a comprehensive, ecological approach to pest management. In 1988, the City discontinued the use of 2,4-D pesticide and followed with a ban of all pesticides except on golf courses, lawn bowling greens, in the greenhouse and nursery, the rose garden and for wasp and hornet nests in emergency situations.

In 1990, the City enacted a Pesticide Notification Bylaw requiring placement of a warning notice when pesticides are used on public lands or on the grounds of a multiple dwelling or in common areas within such a dwelling at least 72 hours before the pesticide is applied and keep the notice posted for at least 72 hours after the pesticide is applied.

In 1992, the City implemented a comprehensive Integrated Pest Management Policy and Program aimed at:

- ▶ removing the City's dependency on pesticides and reducing long term maintenance costs;
- ▶ requiring Council to approve pesticide use in public areas, excluding golf courses and green houses;
- ▶ monitoring the IPM program through the Environment and Waste Management Committee; and
- ▶ exploring ways to encourage Burnaby residents to minimize the use of pesticides.

In addition, the City has undertaken public education initiatives on minimizing pesticide usage through: display booths at festivals, garden shows and special events, distribution of information pamphlets to all Burnaby households and IPM information articles in the Info Burnaby newsletter.

In reviewing the various approaches and options undertaken by various local governments regionally and across Canada with respect to regulating cosmetic pesticide usage on private property, staff propose that the City:

- a) **Undertake a stakeholders consultation process and host public information meeting(s) on restricting cosmetic herbicide usage on private lands.**

It is recognized that there would be a significant impact on restricting cosmetic herbicide usage not only on the owners of single family and multi-family dwellings but on commercial entities, industrial businesses and professional landscapers that work in the City. As such, it would be prudent to undertake a stakeholder consultation process and host public information meeting(s) to gauge the level of public support for herbicide reduction. Staff propose that a stakeholder consultation process be initiated in early 2003.

- b) **Develop a strong education program that provides information on the effects of herbicide usage and identifies alternatives to herbicide use.**

The education program should be targeted towards residential, commercial, vendor, landscape and industrial herbicide users. The education program could be highlighted through brochures, City web site, inserts in utility and tax notices, video tapes in public libraries, inclusion on annual garbage schedules and articles in the Info Burnaby newsletter. Partnering opportunities may exist with schools and stewardship groups.

The City could look at the education programs established at other municipalities. For example, the City of Toronto has developed a strong education program entitled "The Green Guide to HealthyLawn". Although they do not have a bylaw in this regard, the City focuses on and supports a pesticide reduction approach to dealing with lawns and gardens.

c) Add a new category to the Annual Environmental Award recognizing support for herbicide free lawns and gardens.

Rewarding those in the community that have demonstrated and undertaken herbicide-free approaches to landscaping through a new category in the annual environmental award would provide a strong showcase for alternative approaches to cosmetic herbicide use in the City.

d) Work towards a restriction of cosmetic herbicide use on private lands based on the feedback from the stakeholder consultation process and the public information meeting.

Concurrent with the implementation of an education program, the City would work towards a restriction of cosmetic herbicide use on private lands (i.e single family dwellings, multi-family dwellings, commercial entities, industrial businesses and professional landscapers that work in the City) based on the feedback from the stakeholder consultation process and the public information meeting. Time lines for implementation and associated financial cost estimates would be prepared during this time as well.

Development of a bylaw to restrict cosmetic herbicide on private lands would have to give due consideration to legal issues. The Local Government Act has no direct environmental provisions and as such, any proposed environmental bylaw would have to be enacted under the health provisions which requires Ministerial approval. While the proposed Community Charter will provide more rights (e.g. through health and/or environmental provisions), any proposed bylaw would also require Ministerial approval. Also, it is to be noted that by virtue of Section 3 of the Pesticide Control Act, a pesticide bylaw (even if it was granted some form of approval) could not contradict or be repugnant to the Provincial Pesticide Act / Regulation, which is not the case in the Quebec regulation. Section 3 reads as follows "A bylaw or regulation of a municipality or regional district that conflicts with, is inconsistent with or repugnant to this Act or regulations is of no effect to the extent of the conflict, inconsistency or repugnancy."

While the Supreme Court's decision regarding the Hudson bylaw (see page 2 of Attachment) will have influence throughout Canada, neither the current Local Government Act or the proposed Charter will have a "general welfare" power in order to make bylaws to regulate the use of pesticides without ministerial approval - in the Hudson case, the challenge made by the local landscape companies was based on the argument that the local government

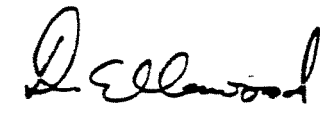
did not have the legal authority to make such a bylaw in Quebec. The Supreme Court Ruling upheld the Hudson Bylaw because the "*Cities and Towns Act*" in Quebec gives the authority to all municipalities in that province to make bylaws without ministerial approval "*to secure peace, order and good government, health and general welfare...*" referred as "general welfare".

5.0 CONCLUSION

The City has demonstrated a leadership role in pesticide management through adoption of an IPM program to guide the healthy and responsible management of public lands. The development of a work plan to restrict cosmetic herbicide use on private lands is a natural extension to further reduce the dependency on pesticides which are detrimental to our natural environment.


DIRECTOR PLANNING
AND BUILDING


DIRECTOR
ENGINEERING


DIRECTOR PARKS,
RECREATION AND
CULTURAL SERVICES

DD:dh
Attachment

cc: City Manager
Director Planning and Building
Director Parks, Recreation and Cultural Services
City Solicitor

Municipality	Bylaw Name/No.	Scope	Pesticide Type Regulated	Exemptions	Enforcement Type	Comments
Halifax Regional Municipality, NS	<p>- <i>Respecting the Regulation of Pesticides, Herbicides and Insecticides</i> (Bylaw P-800)</p> <p>- commencement date: Apr. 1, 2001</p>	<p>- All municipal properties (year 1);</p> <p>- All properties within 50 meters of a property containing a school, licensed day care centre, park, playground, licensed senior citizen's residence, university, church or hospital;</p> <p>- All properties within 50 meters of a registered property in which a "highly persensitive" individual resides (years 2 & 3);</p> <p>- A general ban on all properties (year 4).</p>	<p>- Non-"permitted" pesticides, insecticides and herbicides used outdoors for the maintenance of trees, shrubs, flowers, and other ornamental plants and turf.</p>	<p>- Pesticides that are required to combat or destroy plants or insects that constitute a danger to human beings, or insects which infest a property, may be granted approval.</p> <p>- With respect to the above, there are certain conditions that restrict the <i>time</i> of application (e.g. wind velocity exceeding 18km/h).</p> <p>- "Permitted" pesticides, as identified in an Administrative Order enacted by the Halifax Regional Council, are exempted from the provisions of the bylaw.</p> <p>- Permitted pesticides are: insecticidal soaps, herbicidal soaps, Bt, nematodes, other biological control agents, animal repellants, rodenticides, injected tree treatments, sticky media, borax, dormant oils, horticultural oils, Bordeaux mixture and other sulphur compounds, lime sulphur, ferric phosphate, pruning paint, pheromone traps, pyrethrin, and diatomaceous earth (19 total).</p>	<p>- Permits must be obtained from the city Inspector to allow pesticide application for infestations etc.</p> <p>- Required notification of affected properties.</p> <p>- Optional registration of properties with sensitive residents.</p>	<p>- Phased-in approach allowed for immediate protection of special population groups, while allowing the community and industry to adapt over a two-year transition period.</p> <p>- Maintenance of a registry and mail-outs of updated registry lists to commercial applicators may be resource-intensive.</p> <p>- Bylaw makes extensive use of a buffering system to control application.</p>

Municipality	Bylaw Name/No.	Scope	Pesticide Type Regulated	Exemptions	Enforcement Type	Comments
Town of Hudson, QJF	<p>- <i>Concerning Pesticides</i> (Bylaw No. 270)</p> <p>- adoption date: May 6, 1991</p>	<p>- The entire territory of the town.</p>	<p>- Any substance, matter or invertebrate organism intended to directly or indirectly control, destroy, mitigate, attract or repel any organism that is injurious to, noxious or troublesome for, humans, animal life, vegetation, crops or any other object, or intended for use as a plant growth regulator, except a medication, vaccine or fertilizer.</p>	<p>- Pesticides are permitted in the case of (a) public or private swimming pools, (b) to purify drinking water, (c) for interior building application, (d) & (e) to control or destroy animals or plants that are a danger to human beings, (f) to control or destroy insects that have infested a property, or (g) for use as a wood preservative.</p> <p>- For purposes of (d), (e) and (g), there can be no application of pesticides within 5 meters of any open watercourses, or when wind velocity exceeds 15 km/hr.</p> <p>- Pesticides are permitted (with certain restrictions) on golf courses and agricultural areas.</p> <p>- Biological pesticides are permitted to control or destroy insects which constitute a danger or inconvenience to human beings.</p>	<p>- Permits must be obtained through the town Engineer for cases (c), (d), (e), and (g).</p>	<p>- Pesticide application is restricted on the basis of intended use, and to some extent, proximity to sensitive locations rather than pesticide type.</p> <p>- Municipality's authority to enforce bylaw upheld by Supreme Court of Canada ruling.</p>

Municipality	Bylaw Name/No.	Scope	Pesticide Type Regulated	Exemptions	Enforcement Type	Comments
Baie d'Urfe, Q.E.	<p>- <i>By-law Regulating the Use of Pesticides in the Town of Baie d'Urfe.</i></p> <p>- Bylaw No. 958-4</p> <p>- initially adopted May 12, 1992.</p>	<p>- Throughout Baie d'Urfe.</p>	<p>- Any substance which is included in the classes 1, 2, 3, 4, and 5 (2) of Schedule 1 of the Regulation Respecting Pesticides (Quebec), R.R.Q. C.P.-9, r. 1.</p> <p>- Class 1 pesticides are those composed of a mixture which includes one or more of the following ingredients: aldrin, aldicarb, chlordane, dieldrin, endrin, heptachlor, as well as all pesticides used for experimental purposes.</p> <p>- Class 2 pesticides include those considered to be for restricted use by the federal <i>Pest Control Products Act</i>.</p> <p>- Class 3 pesticides are those which are considered to be for commercial, agricultural or industrial use as identified by the <i>Act</i>.</p> <p>- Class 4 pesticides are those which are considered to be for domestic use by the <i>Act</i>, or which are pesticide-fertilizer mixtures</p>	<p>- (Note: Class 5(1) and 5(3) pesticides do not appear to be regulated under the bylaw. Class 5(1) includes all domestic pesticides which are sold in a ready-to-use preparation with a weight less than or equal to 1 kg, and which are intended for one or more of the following uses: protection of fabric composed of paradichlorobenzene or naphthalene, ant or cockroach bait, animal repellent, flea repellent collars for cats or dogs, insect repellent to be applied to humans, and herbicides for local treatment - 6 total.</p> <p>Class 5(3) pesticides are composed of a mixture containing one or more of the following active ingredients: <i>Bacillus thuringiensis Berliner var Kurstaki</i>, diatomaceous earth, and soap - 3 total).</p>	<p>- Fines only?</p>	<p>- The current bylaw represents the fourth revision of a bylaw (No. 958) which had required notification and the limited use of permits.</p>

Municipality	Bylaw Name/No.	Scope	Pesticide Type Regulated	Exemptions	Enforcement Type	Comments
Beaconsfield, QE	<ul style="list-style-type: none"> - <i>By-law Concerning the Application of Pesticides</i> - ((Consolidated) Bylaw No. 783 - adopted Aug. 14, 2000 	<ul style="list-style-type: none"> - Exterior landscaped areas of both private and public properties. 	<ul style="list-style-type: none"> - Any substance, matter or microorganism intended to directly or indirectly control, destroy, mitigate, attract or repel any organism that is injurious to, noxious or troublesome for, humans, animal life, vegetation, crops or any other object, or intended for use as a plant growth regulator, except a medication, vaccine or fertilizer. 	<ul style="list-style-type: none"> - The "restricted" application of a pesticide is permitted (e.g. when a landscaped area is less than 10m², or a tree, bush or hedge is less than 30 cm in height), unless otherwise stated. - Pesticide application is also permitted when: <ol style="list-style-type: none"> 1) there is an infestation of the landscaped area by destructive agents that cannot be effectively treated by restricted application; 2) there is need to control spiders; 3) dormant oil is used preventatively for ornamental trees; 4) it occurs in the interior of a building. - With respect to all pesticide applications, weather conditions and proximity to watercourses etc. may cause prohibitions. - With respect to general pesticide applications, prohibitions exist on the grounds of hospitals, nursing homes, schools, day care centers, senior citizens' residences, religious institutions and parks, except with permit. 	<ul style="list-style-type: none"> - Permits are required for all general (e.g. non-restricted) applications of pesticide, and for restricted applications of pesticides on lawns. - Required notification of affected properties. - Optional registration of sensitive individuals to prohibit application of pesticide on adjoining properties. 	<ul style="list-style-type: none"> - Pesticide application is regulated on the basis of treatment size and proximity to sensitive locations.

Municipality	Bylaw Name/No.	Scope	Pesticide Type Regulated	Exemptions	Enforcement Type	Comments
Westmount, QE	<p>- <i>By-law to Further Amend By-law 1155 Concerning the Application of Pesticides</i></p> <p>- Bylaw No. 1256</p> <p>- adopted Apr. 1994</p>	<p>- Exterior areas of both private and public properties.</p>	<p>- Any substance, matter or microorganism intended to directly or indirectly control, destroy, mitigate, attract or repel any organism that is injurious to, 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.</p> <p>(Note: fertilizers are not mentioned in the definition).</p>	<p>- The "restricted" application of pesticides is permitted (e.g. if on an ornamental or vegetable garden of 5m² or less in area, or on any tree of 1.5 meters or less in height.)</p> <p>- Pesticide application in the case of an infestation by destructive agents may also be permitted.</p> <p>- With respect to all pesticide applications, time of year, weather conditions, proximity to schools and day cares, and time of day etc. may cause prohibitions.</p> <p>- Further prohibitions exist on the grounds of hospitals, nursing homes, schools, day care centers, senior citizens' residences, religious institutions and parks, except with permit.</p> <p>- The bylaw does not apply: 1) to the interior of buildings; 2) on the lawn bowling green of the city; 3) in the case of the preventative application of dormant oil on ornamental trees.</p>	<p>- Permits are required for general (or non-restrictive) applications of pesticides or restrictive applications of pesticides carried out by contractors.</p> <p>- (Note: a permit for the restrictive application of pesticides in sensitive areas may be required, even if a contractor does not carry out the work).</p> <p>- Notification is required for all general applications of pesticides.</p>	<p>- Similar to the City of Beauconsfield's bylaw, but more restrictive.</p> <p>- Pesticide application is regulated on the basis of treatment size, time of day/year, and proximity to sensitive locations, rather than pesticide type.</p>

Municipality	Bylaw Name/No.	Scope	Pesticide Type Regulated	Exemptions	Enforcement Type	Comments
Chelsea, QE	<p>- <i>By-law Concerning Pesticides</i></p> <p>- Bylaw No. 488-98</p> <p>- adopted Dec. 7, 1998</p>	<p>- Exterior areas of private and public properties.</p>	<p>- Substances included in classes 1, 2, 3, 4 and 5 in subsections 2 through 7 inclusive of Division II of the Regulations Respecting Permits and Certificates for the Sale and Use of Pesticides (G.O.Q. II 129 1997 1252).</p> <p>- Refer to class descriptions used in the Baie d'Urté, QE summary.</p>	<p>- This bylaw does not regulate the application of pesticides:</p> <ol style="list-style-type: none"> 1) in the interior of buildings; 2) as a wood preservative; 3) in the form of mechanical or physical mechanisms (e.g. traps or paper strips); 4) in the case of a farmer who applies a pesticide on an immovable for purposes of agriculture or horticulture. <p>- The application of pesticides is also permitted in the case of:</p> <ol style="list-style-type: none"> 1) dormant oil on fruit trees as a preventative measure only; 2) pesticides from class 5 of the regulation which are "permitted"; 3) a golf course, with certain restrictions (within the first five years of the bylaw only); 4) an infestation (positive confirmation by an inspector and restricted application is not required if a class 5 pesticide is used). <p>- With respect to all permitted pesticide applications, proximity to a neighbour's property line, bus stop, school yard, park, surface well, artesian well, watercourse, enclosed depression, and wetland may cause prohibitions.</p> <p>- Pesticide applications is also restricted on the basis of plant height, method of application, weather conditions etc.</p>	<p>- Within the first 5 years, golf course operators are required to submit a written report of all measures taken to control and limit the application of pesticides, including a pesticide inventory, and the dates and times in which a pesticide has been applied, or will be applied in the future.</p> <p>- Permits are required for all non-class 5 pesticide applications.</p> <p>- Notification of pesticide application is required.</p>	<p>- Following the initial 5 year commencement period, the bylaw is intended to apply to golf courses the same as it would to any other property within the municipality.</p> <p>- Pesticide application is regulated on the basis of pesticide type, intended use, and proximity to sensitive locations.</p>