

PESTICIDE CONTROL ACT [RSBC 1996] CHAPTER 360

[Updated to October 31, 1997]

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Definitions

1 In this Act:

"administrator" means the administrator appointed under this Act;

"adverse effect" means an effect that results in damage to humans or the environment;

"animal" includes vertebrates and invertebrates, whether living or dead, but does not include humans;

"appeal board" means the Environmental Appeal Board established under the *Environment Management Act*;

"apply" used with respect to the application of a pesticide, includes possess for the purpose of applying a pesticide;

"body of water" means land covered by water, and includes navigable water as defined in the *Navigable Waters Protection Act* (Canada);

"certificate" means a certificate issued under this Act;

"committee" means the Pesticide Control Committee;

"food" includes anything manufactured, sold or represented for use as food or drink for humans or animals, and also includes an ingredient that is mixed, or intended to be mixed, with food;

"integrated pest management" means a decision making process that uses a combination of techniques to suppress pests and that must include but is not limited to the following elements:

- (a) planning and managing ecosystems to prevent organisms from becoming pests;
- (b) identifying potential pest problems;
- (c) monitoring populations of pests and beneficial organisms, pest damage and environmental conditions;
- (d) using injury thresholds in making treatment decisions;
- (e) reducing pest populations to acceptable levels using strategies that may include a combination of biological, physical, cultural, mechanical, behavioural and chemical controls;
- (f) evaluating the effectiveness of treatments;

"licence" means a licence issued under this Act;

"permit" means a permit issued under this Act;

"pest" means an injurious, noxious or troublesome living organism but does not include a virus, bacteria, fungus or internal parasite that exists on humans or animals;

"pest management plan" means a plan that describes

- (a) a program for controlling pests or reducing pest damage using integrated pest management, and
- (b) the methods of handling, preparing, mixing, applying and otherwise using pesticides within the program;

"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 under the *Pest Control Products Act* (Canada), other than a device that is a control product, 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.

Application of Act

2 The Lieutenant Governor in Council may declare that an emergency exists and if a declaration is made, may suspend or limit the application of this Act for a period of time.

Application of other enactments

3 A bylaw or regulation of a municipality or regional district that conflicts with, is inconsistent with or repugnant to this Act or the regulations is of no effect to the extent of the conflict, inconsistency or repugnancy.

Licence required to sell pesticides

4 (1) Except as provided in the regulations, a person who does not hold a licence must not

- (a) carry on, or represent that the person is available to carry on, the business of selling pesticides, applying pesticides or providing any service respecting pesticides, or
- (b) purchase, directly or indirectly, a pesticide for the purpose of selling it to any other person.

(2) An application for a licence must

- (a) be made to the administrator,
- (b) be in the form required by the administrator,
- (c) contain the information prescribed by regulation and any other information required by the administrator, and
- (d) be accompanied by the applicable fee established by regulation.

(3) The administrator may

- (a) issue a licence if satisfied that the applicant meets the prescribed requirements, and
- (b) include requirements, restrictions and conditions as terms of the licence.

Certificate required to sell or apply pesticide

5 (1) Except as provided in the regulations, a person who does not hold a certificate must not sell or apply a pesticide.

(2) An application for a certificate must

- (a) be made to the administrator or a person authorized under subsection (4),
- (b) be in the form required by the administrator,
- (c) contain the information prescribed by regulation and any other information required by the administrator, and
- (d) be accompanied by the applicable fee established by regulation.

(3) The administrator or a person authorized under subsection (4) may

- (a) issue a certificate if satisfied that the applicant meets the prescribed requirements, and

(b) include requirements, restrictions and conditions as terms of the certificate.

(4) The administrator may authorize persons to issue certificates and to establish terms for those certificates, subject to the requirements, restrictions and conditions relating to this authority established by the administrator.

Pesticide must be applied in accordance with permit or approved plan

6 (1) Except as provided in the regulations, a person must not apply a pesticide to a body of water or an area of land unless the person

(a) holds a permit or approved pest management plan, and

(b) applies the pesticide in accordance with the terms of the permit or approved pest management plan.

(2) An application for a permit or the approval of a pest management plan must

(a) be made to the administrator,

(b) be in the form required by the administrator,

(c) contain the information prescribed by regulation and any other information required by the administrator, and

(d) be accompanied by the applicable fee established by regulation.

(3) The administrator

(a) may issue a permit or approve a pest management plan if satisfied that

(i) the applicant meets the prescribed requirements, and

(ii) the pesticide application authorized by the permit or plan will not cause an unreasonable adverse effect, and

(b) may include requirements, restrictions and conditions as terms of the permit or pest management plan.

Additional terms for licences, certificates, permits and plans

6.1 A licence, certificate, permit or approved pest management plan is subject to its terms and to those terms prescribed by regulation.

Restrictions

7 (1) A person must not apply, store, transport or possess a pesticide

(a) for a purpose other than that for which it is sold,

(b) in a manner other than that prescribed, or

(c) if the manner of handling the pesticide is not prescribed, in a manner other than that recommended in the instructions that accompany the pesticide, or in a publication, authorized by the minister, with instructions that have not been superseded.

(2) A person must not do any of the following:

- (a) dispose of a pesticide other than under the regulations or the *Waste Management Act*;
- (b) wash or submerge in a body of water equipment or a container used to prepare, mix or apply a pesticide;
- (c) draw water into a container used to contain, prepare, mix or apply a pesticide, directly from a body of water or from an irrigation system by means of equipment unless an air gap is maintained between the equipment and the liquid in the container to avoid back siphonage and the equipment meets prescribed conditions.

Section Repealed

8 [Repealed 1997-18-7.]

Inspection

9 A person authorized in writing by the minister or the administrator, for a purpose relating to the administration or enforcement of this Act or the regulations, may enter land or premises at any reasonable time to do any of the following:

- (a) inspect, analyze, sample or test a pesticide or any equipment or container used, or believed by that person to be used, to contain, prepare, mix or apply a pesticide;
- (b) inspect the manner of applying, selling, storing, transporting or disposing of a pesticide;
- (c) inspect the place of sale of a pesticide;
- (d) inspect records that relate to, or are believed by that person to relate to, the storage, sale, preparation, transportation, disposal or application of a pesticide;
- (e) inspect, analyze, sample or test anything that the person believes is, or could reasonably be expected to be, contaminated by an application or other use of a pesticide;
- (f) carry out other duties required by the minister or administrator.

Seizure and prevention order

10 If a person authorized under section 9 considers that this Act, the regulations or a provision in a licence, permit, certificate or approved pest management plan is being contravened, the person may

- (a) seize any pesticide, equipment or record that is the subject matter of the contravention, and
- (b) serve on the person who is responsible for the contravention a written notice of the contravention ordering that person to do the things the authorized person recommends to prevent a similar or further contravention.

Evidence

11 A certificate, of an analyst designated by the minister under this Act, stating that the analyst has analyzed or examined a substance and stating the result of the analysis or examination is admissible in evidence in a proceeding under this Act and is proof, in the absence of evidence to the contrary, of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

Powers of administrator

12 (1) An administrator may be appointed under the *Public Service Act*, to be responsible to the minister for the administration of this Act and the regulations.

(2) The administrator has the powers necessary to carry out this Act and the regulations and, without limiting those powers, may do any of the following:

- (a) determine in a particular instance what constitutes an unreasonable adverse effect;
- (b) suspend, amend, revoke or refuse to grant a licence, permit or certificate;
- (b.1) suspend, amend, revoke or refuse to approve a pest management plan;
- (c) order a person to repair, clean or decontaminate premises, equipment, a body of water or part of the environment if the repairing, cleaning or decontamination is necessary as a result of that person's contravention of this Act or the regulations;
- (d) perform other duties the minister requires.

Suspension and revocation

13 (1) The administrator may revoke, or suspend for the time the administrator considers appropriate, a licence, permit, certificate or approved pest management plan if the administrator considers

- (a) that this Act, a regulation or a term of the licence, permit, certificate or pest management plan is not being complied with, or
- (b) that the holder is applying, has applied or is handling a pesticide in a manner that is likely to cause or has caused an unreasonable adverse effect.

(2) If the administrator revokes or suspends a licence, permit, certificate or approved pest management plan, the administrator may restrict, for the time the administrator considers appropriate, the holder's right to apply for another licence, permit or certificate or to apply for approval of another pest management plan.

(3) If a licence, permit, certificate or approved pest management plan is revoked or suspended, the holder must deliver it immediately to the administrator.

Section Repealed

14 [Repealed 1997-18-11.]

Appeals to Environmental Appeal Board

15 (1) For the purpose of this section, "**decision**" means an action, decision or order.

(2) Any person may appeal a decision of the administrator under this Act, or of any other person under this Act, to the appeal board.

(3) The time limit for commencing an appeal is the time limit prescribed by regulation.

(4) An appeal under this section

- (a) must be commenced by notice of appeal in accordance with the practice, procedure and forms prescribed by regulation under the *Environment Management Act*, and

(b) subject to this Act, must be conducted in accordance with the *Environment Management Act* and the regulations under that Act.

(5) For the purposes of an appeal under this section, if a notice under this Act is sent by registered mail to the last known address of a person, the notice is conclusively deemed to be served on the person to whom it is addressed on

(a) the 14th day after the notice was deposited with Canada Post, or

(b) the date on which the notice was actually received by the person, whether by mail or otherwise, whichever is earlier.

(6) The appeal board may conduct an appeal by way of a new hearing.

(7) On an appeal, the appeal board may

(a) send the matter back to the person who made the decision being appealed, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

(8) An appeal does not act as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

Minister's orders

16 If the minister is satisfied that an unreasonable adverse effect has resulted or may result from a pesticide use or the manner in which it is applied, stored, sold, transported or disposed of, and even though this Act and the regulations are being complied with, the minister may do either or both of the following:

(a) order the restriction or prohibition of the pesticide's sale, application, transportation, storage or disposal on terms the minister considers appropriate;

(b) order the seizure of contaminated food, equipment, animals or anything the minister considers necessary to safeguard human and animal health or the environment or to prevent an unreasonable adverse effect, and may order the things seized to be destroyed, detained or treated in a manner that they will not cause an unreasonable adverse effect to human or animal health or to the environment.

Pesticide Control Committee

17 (1) The minister must appoint a Pesticide Control Committee.

(2) The members of the committee

(a) must be appointed for a stated term, and

(b) must not be members of the appeal board.

(3) The committee consists of the following:

(a) the administrator, who is the chair;

(b) one representative from each of the government ministries responsible for the administration of agriculture, environment, forests and health;

(c) other persons the minister considers appropriate.

(4) The committee must review applications for permits referred to it by the administrator and perform other duties the minister requires.

Confidentiality

18 (1) A person must not disclose information obtained from a record seized under this Act to a person not legally entitled to it.

(2) A person is not required to give evidence in court about information obtained from a record seized under this Act, except

(a) in a prosecution for contravention of this Act or the regulations, or

(b) with the consent of the person in respect of whom the information was obtained.

Return of things seized

19 (1) Anything seized under this Act must be returned to the person entitled to it within a reasonable time.

(2) If the thing seized is contaminated by the application or other use of a pesticide it must not be returned unless it is decontaminated at the expense of the person entitled to it.

No compensation

20 Compensation is not payable for the lawful seizure, detention, treatment or destruction of anything under this Act.

Protection from proceedings

21 Proceedings may not be brought against the administrator, appeal board, committee, minister or any other person for anything done or not done in good faith in the performance or intended performance of a power or duty under this Act or the regulations.

Offence

22 (1) A person commits an offence if the person does any of the following:

(a) contravenes section 4 (1), 5 (1), 6 (1), 7 or 18 (1);

(b) intentionally obstructs, hinders or resists the administrator, the appeal board or another person in the exercise of powers or duties under this Act;

(c) refuses or intentionally fails to comply with a lawful requirement of the administrator, appeal board or another person under this Act;

(d) intentionally makes a false statement to or misleads or attempts to mislead the administrator, appeal board or another person in the exercise of powers or duties under this Act.

(2) A person convicted of an offence under this Act is liable to a fine of not more than \$2 000, or imprisonment for 6 months, or to both, and for a subsequent similar offence, to a fine of not less than \$1

000 or more than \$2 000, or imprisonment for 6 months, or to both.

(3) An owner or manager of a place of business from which a pesticide is advertised, sold, supplied, distributed or applied under a licence, permit or certificate is liable for an offence committed under this Act or the regulations by an employee, unless the owner or manager proves that the offence was committed without the owner's or manager's consent or approval.

(4) If a corporation commits an offence under this Act or the regulations, an officer, director, employee or agent of the corporation who directed, authorized, assented to, acquiesced or participated in the commission of the offence is, whether or not the corporation is prosecuted for the offence, a party to and guilty of the offence unless the person proves that the offence was committed without the person's consent or approval.

Limitation period

23 Proceedings must not be instituted for an offence under this Act or the regulations more than one year after the time when the subject matter of the proceedings arose.

Power to make regulations

24 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) classifying substances as pesticides;
- (b) specifying and defining what constitutes an unreasonable adverse effect in particular or general circumstances;
- (c) respecting the manner in which a pesticide is to be contained, transported, stored, prepared, mixed, applied or sold;
- (d) prescribing the conditions for the disposal of a pesticide and equipment or a container used to store, prepare, mix or apply a pesticide;
- (e) prescribing the records to be maintained by a person or class of persons who stores, prepares, mixes, applies, transports, sells or disposes of a pesticide;
- (f) requiring that a person or class of persons referred to in paragraph (e) be bonded under the *Bonding Act* subject to terms the Lieutenant Governor in Council considers appropriate;
- (g) establishing requirements and standards of competence for a person to obtain a licence, certificate, permit or approval of a pest management plan;
- (h) respecting criteria for granting licences, certificates and permits and for approving pest management plans;
- (i) respecting the terms of licences, certificates, permits and approved pest management plans;
- (j) prescribing requirements, standards and practices for pesticide monitoring;
- (k) establishing requirements and standards of competence for a person training others in the application of pesticides;

- (l) exempting a person, class of persons, body of water or land area from this Act if the application of the Act may be unnecessarily restrictive;
- (m) establishing the time limit for commencing an appeal under section 15;
- (n) prescribing fees for applications, examinations and training programs required by or under the Act;
- (o) prescribing fees to be paid in respect of services provided by the government relating to the assessment of an application for a permit or approval of a pest management plan;
- (p) requiring those persons who hold licences to sell pesticides to participate in a program for the management of residual pesticides and, in relation to this,
 - (i) establishing requirements for the program, and
 - (ii) prohibiting persons from selling pesticides unless they comply with the regulations relating to the program;
- (q) for any other purpose for which regulations are contemplated by this Act.

(3) Regulations under subsection (2) may be different for different classes of pesticide as established by the regulations.

(4) Regulations under subsection (2) (p) may be different for different areas of British Columbia.

(5) A regulation under subsection (2) may delegate to the administrator those powers and functions that the Lieutenant Governor in Council considers desirable, including authorizing the administrator to determine matters that are otherwise contemplated by this Act to be established by regulation.