

#6

Frequently Asked Environmental Law Questions

PESTICIDES

Q:

How is it that municipalities and utility companies can apply pesticides to ditches, public areas, and around utility lines? Are there procedures they must follow and who gives them permission to do this? Is there anything I can do about it?

A:

Any landowner has the right to apply pesticide¹ to his or her land provided that they do it in compliance with the law. Unless specifically authorized by law, they cannot apply pesticides to someone else's property without the owner's permission. Utility companies usually have the right to use pesticides on their rights of way by virtue of the terms contained in the rights of way documents.

There are, however, statutes and regulations that dictate how pesticides may be used. Pesticide application in Alberta is covered by Part 8 of the *Environmental Protection and Enhancement Act*. Anyone using or handling pesticides must do so in accordance with the Act. They must also follow the *Pesticide Sales, Handling, Use and Application Regulations* or the label on the pesticide, whichever is the most stringent.

The Act and the regulations require that those using pesticides be certified to ensure that they have been trained in using them. Any use of pesticides must be carried out in a manner or at a time or place that does not cause, or is not likely to cause, an adverse effect defined as "impairment of or damage to the environment, human health or safety or property." The Department of Environmental Protection has broad powers to control or prohibit pesticide application if harmful contamination is possible.

There are strict rules regarding labeling and disposing of pesticide containers. Federal

regulations also apply and if there is a conflict between provincial and federal regulations, provincial law dictates that the most stringent standards apply.

The Act and the regulations contain many other precautionary measures to ensure that pesticides are used in a safe manner. They include:

- precautions to be taken near water,
- rules for aerial application,
- required use of the *Environmental Code of Practice for Pesticides*, and
- required insurance.

In addition, if someone wants to apply pesticides "in, on or within 30 horizontal metres of an open body of water" they may be required to obtain an approval from the Department of Environmental Protection.

If an approval is required, notice of the application for it must be published and any directly affected persons may file with the Department a Statement of Concern, which must be considered by the Department in making its decision.

If the approval is granted and provided that you filed a statement of concern and are directly affected, you may appeal the decision to the Environmental Appeal Board. The Board makes a recommendation to the Minister. The Minister must respond to the recommendation within 30

days. The Minister is not required to accept the recommendation of the Board.

¹Section 1 (uu) of the Alberta *Environmental Protection and Enhancement Act* defines pesticide as:

“pesticide” means

- (i) a substance that is intended, sold or represented for use in preventing, destroying, repelling or mitigating any insect, nematode, rodent, predatory animal, parasite, bacteria, fungus, weed or any other form of plant or animal life or virus, except a virus, parasite, bacteria or fungus in living people or animals,
- (ii) any substance that is a pest control product within the meaning of the *Pest Control Products Act* (Canada) or is intended for use as such a pest control product,

- (iii) any substance that is a plant growth regulator, a defoliant or a plant desiccant,
- (iv) a fertilizer within the meaning of the *Fertilizers Act* (Canada) that contains a substance referred to in subclause (i),(ii) or (iii), and
- (v) any other substance designated as a pesticide in the regulations,

but does not include a substance that is intended, sold or represented for use in potable water to prevent or destroy bacteria, parasites or viruses if the substance is not a pest control product within the meaning of the *Pest Control Products Act* (Canada);



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Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- NONCHEMICAL ROADSIDE MANAGEMENT -- An issue of the Journal of Pesticide Reform, V.6, No.4, Winter 1987.
- HOW HERBICIDES WORK : MECHANISMS OF ACTION / Hall, Linda. -- Edmonton: Alberta Agriculture, Food and Rural Development, 1996.
- TOWN OF HUDSON : BY-LAW NO. 270 : CONCERNING PESTICIDES; [PRESS RELEASES PERTAINING TO TOWN OF HUDSON DECISION] -- Baie d'Urfe, Quebec: Citizens for Alternatives to Pesticides (CAP) 1994.
- PESTICIDES AND HUMAN HEALTH / Hallenbeck, William H.; Cunningham-Burns, Kathleen M. -- New York: Springer-Verlag, 1985.
- INDUSTRY STANDARDS AND GOOD PRACTICES FOR VEGETATION MANAGEMENT / Industrial Vegetation Management Association of Alberta; Campbell & Associates. --3^d.ed. -- Calgary: Industrial Vegetation Management Association of Alberta, 1995.
- RISK, SCIENCE, AND POLITICS : REGULATING TOXIC SUBSTANCES IN CANADA AND THE UNITED STATES / Harrison, Kathryn; Hoberg, George. -- Montreal: McGill-Queen's University Press, c1994.

Websites:

- <http://www.gov.ab.ca/env/dept/facts/pesticid.html> *Pesticide (Ministerial) Regulation (AR 127/93); Pesticide Sales, Handling, Use and Application Regulation (AR 126/93)* by Alberta Environmental Protection. Fact sheet that describes sections of EPEA that relates to pesticides.
- <http://www.ncf.carleton.ca/~bf250/ontlaw.html> *Banning Cosmetic Pesticide Use in the Urban Environment: A consideration of why a ban is necessary and the possibility of enacting a municipal by-law in Ontario banning the use of pesticides for cosmetic purposes in the urban environment* by Melissa McDonald. This paper was submitted to fulfil the major paper requirement for the author's LLB at the University of Ottawa, December 18, 1997.
- <http://www.sierraclub.ca/national/pest/index.html> *Pesticides Campaign* by the Sierra Club of Canada. Links to issues about and campaigns against the use of pesticides for cosmetic purposes.
- <http://www.goforgreen.ca/temp/resources/factsheets/quebec.htm> *Chemical Free: A City-Wide Pesticide By-Law* by Go-For-Green, the Active Living & Environment Program. Describes the City of Westmount's policy and by-laws to curb pesticide use as a success story.
- <http://www.hc-sc.gc.ca/pmra-arla/qcont-e.html> *PMRA Pest Management Regulatory Agency* home page.

Contacts:

- The *Environmental Code of Practice for Pesticides* is available at the Queen's Printer Bookstore
11510 Kingsway Avenue
Edmonton, AB T5G 2Y5
Phone: 780-427-4952
Fax: 780-452-0668
E-mail: qp@gov.ab.ca
URL: <http://www.gov.ab.ca/qp>
- The Regional Offices of Alberta Environmental Protection grant required Approvals. There are 6 regions:
Prairie Region, Lethbridge, Phone: 403-381-5512 Fax: 403-382-4428
Bow Region, Calgary, Phone: 403-297-7948 Fax: 403 297-6069
Parkland Region, Red Deer, Phone: 403-340-7744 Fax: 403-340-5173
Northern East Slopes Region, Edson, Phone: 780-723-8357 Fax: 780-723-8386
Northwest Boreal Region, Peace River, Phone: 780-624-6167 Fax: 780-624-6542
Northeast Boreal Region, Edmonton, Phone: 780-427-7617 Fax :780-422-4192
- Pesticides are registered in Canada by the:
Pest Management Regulatory Agency
2250 Riverside Drive
Ottawa, ON K1A 0K9
Phone: 613-763-3401
Fax: 613-736-3666
Pesticides Information: 1-800-267-6315
- Commercial Chemicals Evaluation Branch,
Toxics Pollution Prevention Directorate
Environmental Protection Service, Environment Canada
Place Vincent-Massey, 351, boul St-Joseph
Hull, PQ K1A 0H3
Phone: 819-997-1499
Fax: 819-953-4936
URL: <http://www.doe.ca/ccebl/eng/biohome.html>
- Alberta Environmental Appeal Board
400, 9925-109 Street
Edmonton, AB T5K 2J8
Phone: 780-427-6207
Fax: 780-427-4693
URL: <http://www.gov.ab.ca/~eab/>
- Industrial Vegetation Management Association of Alberta
2424-4th Street SW, Suite 410
Calgary, AB T2S 2T4
Phone: 403-541-9600
Fax: 403-244-4621



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The information provided is current to December 31, 1998. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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