HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

The Statutory Review of the *Pest Control Products Act*, 2015

Report of the Standing Committee on Health

Ben Lobb
Chair

APRIL 2015

41st PARLIAMENT, SECOND SESSION

The Statutory Review of the *Pest Control Products Act*, 2015

Report of the Standing Committee on Health

Ben Lobb
Chair

APRIL 2015

41st PARLIAMENT, FIRST SESSION

STANDING COMMITTEE ON HEALTH

CHAIR

Ben Lobb

VICE-CHAIRS

Murray Rankin
Hon. Hedy Fry

MEMBERS

Matthew Kellway
Wladyslaw Lizon
James Lunney
Cathy McLeod
Christine Moore
David Wilks
Terence Young

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

Eve Adams
Libby Davies
Claude Gravelle

CLERK OF THE COMMITTEE

Andrew Bartholomew Chaplin

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Marlisa Tiedemann
Havi Echenberg

THE STANDING COMMITTEE ON HEALTH

has the honour to present its

TENTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has reviewed the statutory *Pest Control Products Act* and has agreed to report the following:

TABLE OF CONTENTS

THE STATUTORY REVIEW OF THE *PEST CONTROL PRODUCTS ACT*, 2015

BACKGROUND

On 9 December 2014, the House of Commons Standing Committee on Health (Committee) adopted the following motion:

> That the Committee undertake a statutory review of the Pest Control Products Act as required under section 80.1 of the Act; that its first meeting in 2015 include a presentation by departmental officials; that not more than two further full meetings be dedicated to this purpose, and that the Committee report its findings to the House of Commons.

The *Pest Control Products Act* (PCPA) received Royal Assent on 12 December 2002, but did not come into force until 28 June 2006.

Section 80.1 of the PCPA requires that a designated committee of the House of Commons, the Senate, or of both Houses of Parliament review the administration of the Act every seven years. That committee shall

> as soon as practicable, undertake a comprehensive review of the provisions and operation of this Act and shall, within one year after the review is undertaken or within such further time as the House of Commons, the Senate or both Houses of Parliament, as the case may be, may authorize, submit a report thereon, including a statement of any changes to this Act or its administration that the committee would recommend (section 80.1(2)).

The Committee commenced its review with a briefing by the Pest Management Regulatory Agency (PMRA), which is the Health Canada branch responsible for regulating pest control products. The PMRA's mandate is described in its Annual Report:

> Our mandate is to prevent unacceptable risks to people and the environment from the use of these products. We also encourage the development and application of sustainable pest management strategies and facilitate access to lower risk pest control products. We use modern scientific assessment techniques to assess human and environmental health risks when evaluating and re-evaluating pest control products. PMRA endeavours to address public and stakeholder concerns, as well as to develop mechanisms to facilitate access to newer and safer products.[1]

The Committee then held two more meetings at which it heard from a variety of witnesses, including groups representing the agricultural sector, consumer products groups and environmental organizations. The Committee also received a number of written submissions.

For the most part, the witnesses that appeared before the Committee suggested that the PCPA is solid. With a few exceptions, any PCPA-related issues that were

1 Health Canada, *Pest Management Regulatory Agency Annual Report 2013-14*, January 2015.

mentioned in testimony or in written submissions pertained to the way the PCPA is being interpreted or applied by the PMRA. The issues raised included ones related to human and environmental health; communication, consultation and transparency; funding for the PMRA; harmonization of maximum residue limits (MRLs); and access to lower-cost generic pesticides.

In a few instances, witnesses recommended amendments to the PCPA; otherwise, recommendations related to the administration of the PCPA by the PMRA.

ISSUES RAISED RELATING TO HUMAN AND ENVIRONMENTAL HEALTH

The manner in which the "unacceptable risk" threshold that is contained in the PCPA is interpreted and the use of the "precautionary principle" with respect to the review and approval of pest control products was a topic referred to by several witnesses. Another frequently-raised subject was the registration of pest control products with conditions as provided for under section 12(2) of the PCPA, particularly in the context of neonicotinoids, which have been linked to bee deaths. Other issues raised include the protection of farm workers from the use of pest control products, and the use of viral pesticides. Testimony relating to each of these topics is summarized below.

A. "Acceptable risk" and the "precautionary principle"

A number of witnesses[2] pointed out that the primary objective of the PCPA is "to prevent unacceptable risks to people and the environment from the use of pest control products."[3] S. 2(2) of the PCPA states that

> For the purposes of this Act, the health or environmental risks of a pest control product are acceptable if there is reasonable certainty that no harm to human health, future generations or the environment will result from exposure to or use of the product, taking into account its conditions or proposed conditions of registration.

Richard Aucoin, Executive Director of the PMRA, referred to unacceptable risk when he appeared before the Committee:

> Pesticides can be inherently hazardous substances, so we must take particular care in how we do our scientific reviews to ensure that there are no unacceptable risks. For example, we are required by the Pest Control Products Act to take into account potential pesticide exposure from all sources, including food, air, and water. This gives us the most accurate picture of the potential risks associated with the use of pesticides.
>
> Some Canadians, such as children, pregnant women, and the elderly, may be more sensitive to the effects of pesticide exposure. As such, the Pest Control Products Act requires that additional margins of safety be applied to protect these potentially vulnerable populations.

2 See, for example, HESA, 2nd Session, 41st Parliament, *Evidence*, 3 February 2015, 1535 (Pierre Petelle, Vice-President, Chemistry, CropLife Canada); 5 February 2015, 1445 (Lara Tessaro, Staff Lawyer, Ecojustice Canada).

3 S. 4(1), *Pest Control Products Act*, S.C. 2002, c. 28.

> Science is continually evolving, and new risk assessment methods are being developed all the time. It's important that we keep up to date on these new approaches so that we can ensure the highest degree of protection for Canadians. While the act is very prescriptive in its approach to health and environmental protection, it also provides for some flexibility to incorporate new science and new processes in a rapidly changing regulatory environment.[4]

Maggie MacDonald from Environmental Defence pointed out that "acceptable risk" is also referred to in the PCPA's preamble:

> In the preamble to the act it states that "pest control products of acceptable risk be registered for use only if it is shown that their use would be efficacious and if conditions of registration can be established to prevent adverse health impact or pollution of the environment". A lack of evidence of risk is not the same thing as evidence of no risk.[5]

One witness felt that the PMRA is properly assessing the risk of pest control products before registering them, whether with or without conditions and that "a greater use of precaution" was unwarranted:[6]

> Scientists around the world are raising red flags about the misuse of this precautionary principle. It is being used by some as an excuse to block all progress and innovation. In fact, if we were to apply some groups' interpretation of precaution, there would be no tools available to growers. We must not allow this distorted view to get a foothold in Canada.[7]

Section 20(2) of the PCPA states that "[w]here 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 adverse health impact or environmental degradation."

A number of witnesses, however, held the view that the PMRA is not taking a sufficiently precautionary approach when evaluating pest control products. One witness stated that the precautionary principle

> says to us that if there's any possibility that something could go wrong if we allow this on the market, then we shouldn't do it. But that's not what happens with our Pest Management Regulatory Agency. It says we're not sure about a whole bunch of stuff, so we'll give you a conditional licence. […] We should really have a system in place where the precaution and the onus is on the manufacturers to prove it absolutely isn't a problem — not on the public to prove that it is a problem after something bad has happened.[8]

---

4 HESA, *Evidence*, 27 January 2015, 1630 (Richard Aucoin, Executive Director, Pest Management Regulatory Agency, Health Canada).

5 HESA, *Evidence,* 5 February 2015, 1655 (Maggie MacDonald, Toxic Program Manager, Environmental Defence Canada).

6 HESA, *Evidence*, 3 February 2015, 1535 (P. Petelle, CropLife Canada).

7 Ibid.

8 HESA, *Evidence*, 5 February 2015, 1535 (John Bennett, National Program Director, Sierra Club Canada Foundation).

When asked to provide an example of a model jurisdiction that is regulating pest control products, Lara Tessaro from Ecojustice Canada referred to the European Union:

> When it's making a decision about whether or not to register, for example, a herbicide for use in agriculture, the European Union effectively asks, under their plant protection legislation, "Do you have the information that demonstrates this product's safety?" If the registrant says they don't have that study, or they don't have the information proving safety, the European Union's response is that the product will then not be registered there.
>
> That's the definition of the precautionary approach: if you can't demonstrate that something is safe, you can't rely on scientific ambiguity. The EU does that very well.[9]

With respect to the precautionary principle and the PCPA, witnesses noted that the principle is referenced in section 20(2).[10] One witness stated "the precautionary principle should be in the act,"[11] while yet another witness explained to the Committee that the PMRA is already bound by the precautionary principle:

> The precautionary principle only applies as a matter of law where a certain threshold is reached. This is codified in numerous international conventions. It's where there's a risk of serious irreparable harm; it's not every single time if every scrap of data isn't there or we can't act. In the context of neonics and admitted critical data gaps about toxicity impacts on bees, we would say that threshold was reached.
>
> […] in our view, the agency is already legally required to make its registration decisions consistent with the precautionary principle. We say that's the case as a result of the Supreme Court of Canada's decision in the Hudson and Spraytech case a decade ago.
>
> While we don't disagree that maybe including an umbrella reference to the precautionary principle in the act would be appropriate, we would view that simply as a codification of the existing state of affairs.[12]

In its brief to the Committee, the Ontario Beekeepers' Association stated that "[w]e believe that this [precautionary principle] should be extended to all pesticides and that the precautionary principle, in itself, is sufficient grounds for decline or suspension."[13]

In the context of the precautionary principle, Meg Sears stated that "responsible risk management would include demonstrating the need for a product and its superiority in terms of health and environmental impacts, over other means to achieve the end."[14]

---

9 HESA, *Evidence*, 5 February 2015, 1510 (L. Tessaro, Ecojustice Canada).

10 Section 20(2) of the *Pest Control Products Act*, S.C. 2002, c. 28 states, "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 adverse health impact or environmental degradation".

11 HESA, *Evidence*, 5 February 2015, 1535 (J. Bennett, Sierra Club Canada Foundation).

12 HESA, *Evidenc*e, 5 February 2015, 1730 (L. Tessaro, Ecojustice Canada).

13 Ontario Beekeepers' Association, Letter to the Chair, 5 February 2015.

14 Meg Sears, Ph.D., "To the Standing Committee on Health, regarding the Statutory Review of the *Pest Control Products Act*," 5 February 2015.

Two other witnesses stated that pest control products should be registered only if the registrant could demonstrate that the product is needed.[15]

Pesticides used for non-agricultural purposes were raised in two briefs submitted to the Committee in the context of pest control products used for bedbugs. One indicated the need for more research on the effects of bedbugs, and the chemicals used to treat them, on Canadians.[16] The other emphasized the need for continued attention to the bedbug problem.[17]

Given the comments heard by the Committee on the impact of bed bugs, the Committee recommends

RECOMMENDATION 1

That the PMRA work with relevant stakeholders, including manufacturers, to encourage research on the development of new products and alternative strategies to safely control bed bugs, and review any applications received on a priority basis.

B. Conditions of registration

Under s. 12(1) of the PCPA, the Minister of Health (Minister) may require a registrant of a pest control product

a) to compile information, conduct tests and monitor experience with the pest control product for the purpose of obtaining additional information with respect to its effects on human health and safety or the environment or with respect to its value; and

b) to report the additional information to the Minister within the time and in the form specified in the notice.

Registrations for which the Minister requires additional information to be reported are often referred to as “conditional registrations.”

One witness explained his understanding of “conditional registrations”:

> …[I]t's very clear when that can be used. The data to conduct a risk assessment, both for human health and for the environment, has to be sufficient for the PMRA to be able to conduct their full risk assessment without those data that are conditional. It's not that there is missing data that they're guessing at on the risk elements. It's that they have enough data to make their risk assessment decision from both a health and an environmental perspective.

15 HESA, *Evidence*, 1535 (J. Bennett, Sierra Club Canada Foundation); Ontario Beekeepers’ Association, Letter to the Chair, 5 February 2015.

16 ACORN Canada, “Submission to the Health Committee from ACORN Canada, in regards to the review of the Statutory Review of the Pest Control Products Act”.

17 Janet Davis, “Re: Statutory Review of the Pest Control Products Act,” 26 February 2015.

> What the conditional registration often does is give them the ability to request additional data. Maybe it's confirmatory data or maybe it's on a bigger scale than what was submitted during the evaluation. It's to confirm that the assumptions and the risk assessment they've made are indeed what it is. This has been used for a number of products.
>
> […] It's a fairly common practice, and it should not be perceived as a data gap. It is confirmatory data, and I think the PMRA has explained that to the Senate committee on pollinator health in good detail.[18]

In its brief to the Committee, Ecojustice Canada expressed concerns with respect to the use of conditional registrations. It noted that:

> It is not just environmental organizations that are concerned with the Agency's practice of conditional registration. The Commissioner of Environment and Sustainable Development has audited the Agency's conditional (temporary) registration practices, in 2003 and again in 2008. The 2008 audit found that the Agency had made unsatisfactory progress in addressing its heavy use of temporary conditional registrations.[19]

Lara Tessaro explained that the Environmental Protection Agency in the U.S. publicly tracks conditional registrations online, and she recommended that s. 42 of the PCPA, which requires the Minister to establish and maintain a pest control products register, be amended "to require that the electronic public registry include the same information about conditionally registered pesticides that is publicly accessible in the United States."[20]

One witness noted that "[i]t is important for the PMRA to have the ability to apply conditions to registration. The concern is not with conditional registration in general, but rather with the renewal of registration when the conditions originally applied are not met within the allotted time."[21]

Witnesses who disagreed with the manner in which product registrations with conditions are handled by the PMRA were particularly concerned about the use of conditional registrations for neonicotinoids.[22]

C. Protection of farm workers

One health-related concern that was raised involved farm workers' protection from pesticides. Andrew Gage from the West Coast Environmental Law Association explained to the Committee that "PMRA relies very heavily on pesticide labels as a means of

---

18 HESA, *Evidence*, 3 February 2015, 1700 (P. Petelle, CropLife Canada).

19 Ecojustice Canada, "Brief to the Standing Committee on Health in its Statutory Review of the *Pest Control Products Act*", Lara Tessaro and Tanya Naylor.

20 HESA, *Evidence*, 5 February 2015, 1650 (L. Tessaro, Ecojustice Canada).

21 HESA, *Evidence*, 5 February 2015, 1655 (M. MacDonald, Environmental Defence Canada).

22 HESA, *Evidence*, 5 February 2015, 1535 (J. Bennett, Sierra Club Canada Foundation); HESA, *Evidence*, 5 February 2015, 1730 (L. Tessaro, Ecojustice Canada); 1655 (M. MacDonald, Environmental Defence Canada).

controlling exposure to otherwise dangerous products."[23] However, it is not clear what level of compliance with labels occurs in the field.[24] Another concern relating to the health of farm workers is that, even when health risks are identified and a re-evaluation of a pest control product is undertaken, interim measures to protect farm workers can take a long time to be implemented, leaving farm workers potentially exposed.[25]

Mr. Gage suggested that the PMRA could better protect farm workers by considering the workplace exposure of workers to pest control products in combination with non-workplace exposure.[26]

D. Viral pesticides

The Committee heard that certain viruses (such as baculoviruses that infect insects and bacteriophages that infect bacteria) and biological organisms are approved for use as pesticides. Richard Aucoin stated that "[t]hey are subject to a very specific kind of risk assessment."[27]

Given the concerns about human and environmental health expressed by a number of witnesses in testimony and in briefs submitted to the Committee, the Committee recommends

RECOMMENDATION 2:

That the PMRA review the use of conditions of registration to ensure that they are being used in a manner that protects the health of Canadians and their environment.

COMMUNICATION, CONSULTATION AND TRANSPARENCY

Richard Aucoin explained to the Committee that one of the PMRA's biggest challenges is communication with the public:

> I have to say, to be very frank and candid, that at worst, communications with the Canadian public are a challenge. We're a scientific organization. The data and information we use to make our pesticide decisions are very complicated. They really are. I think one of my biggest challenges over the next couple of years is going to be to try to enhance communications with the public.
>
> As I explained earlier, it's one thing to be transparent and open with the public. You also have to pay attention to whether you are reaching them. Are you truly communicating with Canadians? For us to put out a lot of scientific information is one thing, but we want

23 HESA, *Evidence*, 5 February 2015, 1635 (Andrew Gage, Staff Counsel, West Coast Environmental Law Association).

24 Ibid.

25 Ibid., 1440.

26 Ibid.

27 HESA, *Evidence*, 27 January 2015, 1725 (R. Aucoin, Pest Management Regulatory Agency).

> to make sure Canadians actually understand better the basis for our decision-making. That's both a challenge and a priority for the next year or two.[28]

Some witnesses supported the idea that the PMRA needs to improve its communication with Canadians in a broad sense. Pierre Petelle of CropLife Canada stated that encouraging public awareness in relation to pesticides is "an area that the government can and should improve upon"[29]; and that the government should "stand up for the regulatory system and help educate Canadians about the safety of the products farmers are using to produce their food."[30] Shannon Coombs from the Canadian Consumer Specialty Products Association noted that "when Canadians know about Health Canada's role in the regulatory process, they have confidence in the regulatory process. Health Canada should be doing more to communicate the work that it is doing to protect the health and the environment of Canadians as it relates to pest control products."[31]

Other witnesses focussed on the need for greater transparency in the approval process, as well as on improving opportunities to provide input relating to products that are being considered for registration. When Richard Aucoin appeared before the Committee, he stated that "[v]ery specific provisions of the act mean that our regulatory activities at PMRA within the department are very accessible to the public."[32] In addition, he explained that

> before [PMRA] make[s] a major regulatory decision on a new pesticide, we post for consultation the outcome of our scientific reviews and consult with the public to see if they have concerns, comments, or additions. As well, the public can inspect the scientific test data and the information on which we base those decisions. Through these mechanisms, Canadians have the opportunity to voice their opinions and concerns regarding proposed regulatory decisions.[33]

Some witnesses expressed the opinion, however, that the PMRA consultation process is flawed. For example, John Bennett from the Sierra Club Canada Foundation stated that:

> [the PMRA] consultations don't come until after the decisions are made, and you aren't allowed to see what kind of scientific basis those decisions were made from. When you're offered an opportunity to comment, you can't really comment effectively because you can't review the science that the PMRA reviewed in order to come to its decision.
>
> It's not real consultation in any sense of the word. It's a public relations exercise in order to put a check mark on the box the end of the day that, well, we had comments.[34]

---

28 Ibid., 1720.

29 HESA, *Evidence*, 3 February 2015, 1540 (P. Petelle, CropLife Canada).

30 Ibid.

31 HESA, *Evidence*, 5 February 2015, 1600 (Shannon Coombs, President, Canadian Consumer Specialty Products Association).

32 HESA, *Evidence*, 27 February 2015, 1630 (R. Aucoin, Pest Management Regulatory Agency).

33 Ibid.

34 HESA, *Evidence*, 5 February 2015, 1535 (J. Bennett, Sierra Club Canada Foundation).

He recommended that the PCPA be amended to establish a citizen review committee "with some experts to review PMRA decisions, policies, and practices" to advise the Minister.[35]

Lara Tessaro noted that part of the concern relating to public consultations (which are required under section 28 of the PCPA) is that

> the agency excludes the vast majority of registrations and the vast majority of amendments to registrations from any public notice or consultation […] [because] sections 14, 15, and 16 of the pest control product regulations […] purport to exempt most conditional registrations and most amendments to conditional registrations from three things: public notice and consultation, the right of the public to file any objection, and certain transparency obligations.[36]

She recommended repealing sections 14 through 16 of the *Pest Control Product Regulations*.

Some witnesses also stated that it is difficult to obtain the information relating to registered pest control products and the information that the PMRA uses to make its decisions, noting that documents can be viewed only in the PMRA reading room, and that "you're not allowed to see the most important documents, which are what they call data evaluation records."[37] As Lara Tessaro noted, the electronic public registry that is required by s. 42 of the PCPA does not always contain the information that it should, and is "a very difficult tool for the public to use".[38] She recommended that the PCPA be amended to require the PMRA "to audit the accessibility and completeness of its electronic public registry."[39]

With respect to improving transparency about pesticide use and sales, Andrew Gage noted that the reporting regulations under the PCPA require registrants to report how much of each pesticide has been sold in each province, and that disclosing this information (as it is done in several U.S. states) to Canadians would help in informing and protecting farm workers and other vulnerable groups.[40]

Given the concerns about communications, consultation and transparency expressed by a number of witnesses in testimony and in briefs submitted to the Committee, the Committee recommends

RECOMMENDATION 3

That the PMRA review the openness and transparency of its processes to register pest control products with a view to ensuring that

35 Ibid.

36 HESA, *Evidence*, 5 February 2015, 1650 (L. Tessaro, Ecojustice Canada).

37 HESA, *Evidence*, 5 February 2015, 1535 (J. Bennett, Sierra Club Canada Foundation).

38 HESA, *Evidence*, 5 February 2015, 1645 (L. Tessaro, Ecojustice).

39 Ibid.

40 HESA, *Evidence*, 5 February 2015, 1640 (A. Gage, West Coast Environmental Law Association).

Canadians are able to provide meaningful and informed input into the decision-making process and clearly understand decisions once they are made.

FUNDING FOR THE PMRA

Two witnesses and one written submission mentioned the importance of appropriate funding for the PMRA. One witness pointed to the ongoing PMRA cost-recovery consultations and expressed support for the proposed increase in user fees: "more funds are needed to ensure PMRA can continue to operate its current suite of programs, and meet its objectives and established performance measures."[41] In a written submission, the Grain Growers of Canada also supported an increase in user fees.[42] Gord Kurbis noted that "even the PMAC committee of PMRA has noted that funding levels at PMRA to support [leadership activities in international discussions relating to international tolerances] are not adequate."[43] He recommended that "instead of going into the general treasury, [increased fees from industry to support registrations applications at the PMRA] be funded back into PMRA to help with their resource constraints."[44]

Given the importance of the work carried out by the PMRA, the Committee recommends

RECOMMENDATION 4

That Health Canada move forward with a cost-recovery proposal for pesticides to modernize user fees.

HARMONIZATION OF MAXIMUM RESIDUE LIMITS (MRLs)

"Maximum residue limits" (MRLs) refers to "the maximum amount of pesticide residues that can legally be allowed to be found on a food commodity."[45] A few witnesses emphasized the continued need for the PMRA to actively participate in joint reviews and regulatory harmonization relating to establishing harmonized MRLs to ensure that Canadian agricultural products can be safely exported.[46] As Corey Loessin from Pulse Canada explained,

> [U]nharmonized assessment systems between Canada and importing countries are making it difficult for farmers like me to be sure that the grain we grow can comply with a multiplicity of different regulatory systems on MRLs. The risks are high.

41 HESA, *Evidence*, 3 February 2015, 1535 (Jan Dyer, Canadian Canola Growers Association)

42 Grain Growers of Canada, Letter to the Chair, 19 February 2015.

43 HESA, *Evidence*, 3 February 2015, 1600 (Gord Kurbis, Pulse Canada).

44 Ibid.

45 HESA, *Evidence*, 27 January 2015, 1700 (R. Aucoin, Pest Management Regulatory Agency).

46 HESA, *Evidence*, 3 February 2015, 1530 (J. Dyer, Canadian Canola Growers Association); 1540 (P. Petelle, CropLife Canada); 1545 (Corey Loessin, Vice-Chair, Board of Directors, Saskatchewan Pulse Growers, Pulse Canada).

[…]

> The risks are getting higher each year as testing gets more sensitive, into parts per trillion, and as more countries are moving toward their own custom systems. The leadership that Canada has shown in this area globally, through Health Canada's Pest Management Regulatory Agency, needs to continue. Canada's leadership in this area will need to increase to keep up with mounting challenges, and the PCP Act review needs to ensure that the act is not a future barrier to harmonization.[47]

ACCESS TO LOWER-COST GENERIC CROP PROTECTION PRODUCTS

Bob Friesen from Farmers of North America focussed his presentation on the importance of gaining access to lower-cost generic crop protection products.[48] He stated that

> The current regulation within the act has resulted, unfortunately, in basic registrants delaying the process and in some cases preventing generic companies from registering lower-cost generics.
>
> […] Currently, Canada is one of the most difficult countries in the world to register a generic product. As a result, some generic companies have pulled out their applications and in some cases have revisited their business plan for Canada.
>
> Only about 15% of our crop protection products in Canada are generic. That compares to approximately 50% in the U.S.[49]

Mr. Friesen identified some of the potential barriers in the PCPA with respect to accessing generic pest control products but indicated that "PMRA is finally engaged in trying to come up with some solutions for the regulatory challenges we have within the framework. I would simply implore the minister and this committee to keep an eye on it to make sure that we don't lose momentum."[50]

Given the importance of the ability of agricultural producers to be confident that their products will be accepted internationally, the Committee recommends

> **RECOMMENDATION 5:**
>
> **That the PMRA continue its leadership to reduce trade irritants through international regulatory cooperation efforts such as the harmonization of MRLs and work to address other non-tariff barriers.**

47 Ibid., 1545 (C. Loessin, Pulse Canada).

48 HESA, *Evidence*, 5 February 2015, 1540 (Bob Friesen, Vice-President, Government Affairs, Chief Executive Officer, Farmers of North America Strategic Agriculture Institute, Farmers of North America).

49 Ibid., 1545.

50 Ibid., 1550.

LIST OF RECOMMENDATIONS

APPENDIX A
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Health	2015/01/27	47
Richard Aucoin, Executive Director, Pest Management Regulatory Agency		
Jason Flint, Director, Pest Management Regulatory Agency, Director, Policy, Communications and Regulatory Affairs Directorate		
Connie Moase, Director, Pest Management Regulatory Agency, Health Evaluation Directorate		
Canadian Canola Growers Association	2015/02/03	48
Jan Dyer, Director, Government Relations		
CropLife Canada		
Pierre Petelle, Vice-President, Chemistry		
Pulse Canada		
Gord Kurbis, Director, Market Access and Trade Policy		
Corey Loessin, Vice-Chair, Board of Directors, Saskatchewan Pulse Growers		
Canadian Consumer Specialty Products Association	2015/02/05	49
Shannon Coombs, President		
Ecojustice Canada		
Tanya Nayler, Staff lawyer		
Lara Tessaro, Staff lawyer		
Environmental Defence Canada		
Maggie MacDonald, Toxic Program Manager		
Farmers of North America		
Bob Friesen, Vice-President, Government Affairs, Chief Executive Officer, Farmers of North America Strategic Agriculture Institute		
Sierra Club Canada Foundation		
John Bennett, National Program Director		
West Coast Environmental Law Association		
Andrew Gage, Staff Counsel		

APPENDIX B
LIST OF BRIEFS

Organizations and Individuals

ACORN Canada

City of Toronto Working Group on Immigration and Refugee Issues (Janet Davis)

Ecojustice Canada

Environmental Defence Canada

Farmers of North America

Grain Growers of Canada

Ontario Beekeepers' Association

Sears, Meg (Children's Hospital of Eastern Ontario Research Institute)

West Coast Environmental Law Association

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 47, 48, 49, 55 and 56) is tabled.

Respectfully submitted,

Ben Lobb

Chair

Supplementary Opinion of the New Democratic Party of Canada

Murray Rankin, NDP, Victoria; Matthew Kellway, NDP, Beaches-East York; Christine Moore, NDP, Abitibi-Témiscamingue

The New Democrat Members of the Standing Committee on Health are concerned that the final report on 'The Statutory Review of the *Pest Control Products Act'*, does not reflect the depth of the concerns and recommendations shared by witnesses who testified before the Committee.

Under section 80.1 of the Pest Control Products Act (" the Act" or "the PCPA"), a statutory review of the administration of the Act must be undertaken every seven years. The Act was last amended in June 2006, and previous to that in 2002, before which it had not been substantially amended for some 35 years. Accordingly, to discharge our responsibility to the Canadian public, we do not believe that the 7 hours dedicated to the review is sufficient. We wished to hear more witnesses from provincial officials, from the workers who apply pesticides, and from those concerned with urban infestation of bedbugs.

More specifically, we believe that the failure to hear from provincial officials is a particularly serious deficiency. In general terms the PCPA provides authority for the licensing of those past control products available for sale and application in Canada, but the application of pesticides is primarily a matter of provincial responsibility. Although we asked for provincial officials to be invited, this did not occur. Other witnesses could have substantially enhanced our understanding of this complex area of regulation and better enabled us to discharge our statutory obligation to provide a comprehensive review of this legislation.

Generally speaking, we believe that the majority report is long on generalities in its calls for reviews to be undertaken by the Pest Management Regulatory Agency (the "PMRA") and Health Canada but short on specific actions and specific timetables for action. Moreover, the self-congratulatory tone in places seems inconsistent with some of the disturbing testimony presented to the Committee.

Conditional Registrations

We do not believe that the recommendations in the primary report go far enough to address concerns raised about conditional registration of pesticide ingredients. The Committee heard that conditional registrations are being granted for up to three years.

The PMRA's process for the approval of a class of pesticides containing neonicotinoids ("neonics") perhaps best illustrates this concern. Neonics can dramatically affect bee and pollinator populations. The Committee heard evidence that some 35 of the 88 pest

control products conditionally registered as of 2014 contained neonics. Moreover, many of these products were conditionally registered on the condition that the registrants provided data on toxicity impacts on bees. Yet these data gaps were not always filled. Some products have been conditionally registered since 2003 with chronic toxicity studies still outstanding. In one case, conditional registrations were extended three times. Despite this deficiency, the Agency has typically extended the conditional registration.

We note that on March 23, the Ontario Government released draft neonic regulations. Virtually all of the nearly 50,000 comments received during the public consultation period are in favor of the Ontario government restricting the use and sale of neonic-treated seeds. Similarly, many European countries have already acted to protect bees and other important pollinators by restricting neonics.

> We recommend that the PCPA be amended to cancel registration for noncompliance after a single extension is granted, with permission to reapply in a narrow set of circumstances, to be defined in the Regulations.

Pesticide Resistance Management

We note that in 1999 the PMRA introduced a voluntary pesticide resistance-management labelling initiative for certain pesticides. It was updated in 2013. Pesticide resistance has become a significant issue in Canada and across the world.

> We recommend that producers and users of pesticides be required to advise the PMRA of any resistance to particular pesticides that is encountered.
>
> We further recommend that the PMRA establish a comprehensive plan to manage pesticide resistance, to be undertaken in consultation with relevant stakeholders.

Workplace Exposures

The Committee heard that farm workers are particularly vulnerable to workplace exposure of pest control products applied in combination with non-workplace exposures.

> We recommend that the PMRA be required to consider the workplace exposures of pest control products in combination with non-workplace exposures.
>
> We further recommend that the Regulations under the PCPA be amended to require the PMRA report to the public on the quantity of each pesticide sold in each province, as is done routinely in several US states, to help inform and protect farm workers and other vulnerable communities.

Bedbug Infestations

While the Report refers to the bedbug issue, it makes no recommendations. It makes reference to the briefs indicating the need for more research and continued attention but does not consider whether there is any role for the PMRA in addressing this menace. In the face of a widespread social and health issue such as this, we believe that the agency should have a proactive role. Such a rule is consistent with the text of the Preamble to the Act.

> We recommend that the PMRA, in conjunction with Health Canada, develop a strategy to encourage the development and use of alternative, non-toxic, ecological pest control approaches, strategies and products to address the bedbug issue.
>
> We further recommend that the PMRA work with relevant stakeholders, including manufacturers, to encourage research on the development of new products and replacement strategies to safely control bed bugs. Particular attention must be given to the potential effects of such products and strategies upon vulnerable populations such as infants and the elderly, and the PRMA should expedite the review of any applications received.

Transparency

The Committee heard evidence that the public does not have adequate access to documents that the Agency uses to evaluate pesticides. So-called "data evaluation records" are not always provided, with no justification offered. The Committee heard that access is given too late in the process, sometimes six weeks after a decision is made. Still others told us that it is impossible to know what independent scientific literature the Agency may have examined in particular registration decisions.

> We recommend, that subject only to the legitimate need to protect confidential business information, the Agency must consult with the public before decisions are made and the public be given complete access to a record of all material that the Agency has examined in a particular registration decision.
>
> We further recommend that section 42(6) of the Act be amended to specify that within 30 days of receipt of registration that information be made available to the public in the Register in as convenient a manner as practicable.
>
> We further recommend that sections 14, 15 and 16 of the Pest Control Product Regulations pertaining to conditional registration be amended to enhance public consultation and improve transparency.

We further recommend that the PCPA be amended to establish a citizen review committee consisting of interested representatives of the public and relevant experts to review decisions, policies and practices of the PMRA and make recommendations to the Minister when warranted.

Electronic Public Registry

Under section 42(7) of the Act, an Electronic Public Registry must be established. The Committee heard testimony that the Agency is not meeting the requirements of the Act, and that certain information, particularly relating to conditionally registered pesticides, is unavailable, despite the fact that the same information is often publicly accessible in the United States. The United States Environmental Protection Agency ("EPA") has a more robust electronic registry that can serve as a model.

We recommend that s. 42 (7) of the Act be amended to require the PMRA to audit the accessibility and completeness of its electronic public registry with the goal of harmonization with the US EPA registry.

Supplementary Report from the Liberal Party of Canada on The Statutory Review of the *Pest Control Products Act*.

Submitted by Hon. Dr. Hedy Fry, P.C., M.P., Federal Liberal Health Critic

On 9 December 2014, the House of Commons Standing Committee on Health (Committee) adopted the following motion:

> That the Committee undertake a statutory review of the *Pest Control Products Act* as required under section 80.1 of the Act; that its first meeting in 2015 include a presentation by departmental officials; that not more than two further full meetings be dedicated to this purpose, and that the Committee report its findings to the House of Commons.

The Committee heard from a wide-range of witnesses from departmental officials, industry, scientific experts and environmental groups in its review. We heard contradictory testimony regarding the transparency of the Pest Management Regulatory Agency and its effectiveness in enforcing the PCPA. The Liberal Party of Canada believed it was necessary to add a supplementary report to ensure recommendations that were not in the Committee's report were reflected here.

PRECAUTIONARY PRINCIPLE:

Concerns were raised with respect to the application of the precautionary principle in reviewing new pesticide applications. As noted by Maggie MacDonald of Environmental Defence Canada, "a lack of evidence of risk is not the same thing as evidence of no risk." The onus must be on the manufacturer to prove there are no health risks. As noted by Lara Tessaro of Ecojustice Canada the European Union achieves this balance. If proof of the product's safety is not supplied, then it will not be registered there.

Recommendation 1: The precautionary principle must be applied to any application for a new pesticide registration, requiring the manufacturer to provide the scientific evidence proving there are no unacceptable risks to public health and/or the environment.

Corey Loessin of Pulse Canada noted that technology is constantly changing and certain pesticides are no longer simply applied by spraying, but to decrease airborne risk, some new pesticides are injected directly into the soil. This could give rise to concerns about whether these pesticides could seep into ground water supply and affect animal and human health.

Recommendation 2: PMRA conduct regular surveillance of ground water quality and run-off where any pesticide is being deposited directly in the ground and monitor safety for animal and human consumption.

CONDITIONAL REGISTRATION:

Witnesses explained there were misuses of the conditional registration of pesticides process. The PMRA must be able to conduct its risk assessment of a pesticide in order to issue a registration. However the PMRA may authorize a conditional registration if they are able to conduct the full assessment, but require more data from the manufacturer within an allotted time.

Maggie MacDonald of Environmental Defence Canada noted that conditional registrations are often renewed even after conditions originally applied are not met within the allotted time. This was particularly concerning regarding the conditional registrations of neonicotinoids which has been linked to bee deaths.

The United States publicly tracks conditional registrations online and witnesses suggested the PCPA be amended to establish an electronic public registry of conditional registrations of pesticides in Canada.

In a brief provided to the Committee the Ontario Beekeeper's Association expressed concerns about conditional registration of neonicotinoids and their necessity. They explained that the PMRA should consider the need of any new pesticide as a condition for its registration. If it is not needed, or could not replace or improve on a previously used pesticide, then it should not be approved.

Recommendation 3: The PMRA include evidence on the need and safety of any new pesticide as a condition in the approval process and that this evidence is based on sound, independent research, without the bias of conflict of interest.

Recommendation 4: S. 42 of the PCPA be amended to require that the electronic public registry include the same information about conditionally registered pesticides that is publicly accessible in the United States.

The Committee's report discusses the protection of farm workers, in particular the exposure to pesticides that are only conditionally registered and in need of re-evaluation. Farm workers' exposure to pesticides is different than the average consumer. They are exposed to these products for sustained periods of time. Further concerns were raised regarding compliance with label conditions, particularly for those farm workers that are temporary foreign workers and may not speak English or French.

Recommendation 5: PMRA ensure farmers have full knowledge of proper use of pesticides.

Recommendation 6: PMRA take into account evidence of short-term and long-term sustained and aggregate exposure of farm workers to pesticides.

Recommendation 7: PMRA require studies examining cumulative exposure of pesticides, particularly in children to monitor the aggregate toxicity of chlorophenal herbicides

COMMUNICATION, CONSULTATION AND TRANSPARENCY:

A number of witnesses expressed concerns about the lack of transparency in the approvals of new pesticides and conditional registrations. It was noted by the Canadian Consumer Specialty Products Association that Health Canada could do a better job of communicating with Canadians about the regulatory process.

John Bennett of the Sierra Club of Canada Foundation and Lara Tessario of Ecojustice Canada expressed concerns regarding public consultations and public access to scientific data used for registrations and conditional registrations. Lara Tessario explained that sections 14, 15, and 16 of the pest control products regulations "exempt most conditional registrations and most amendments to conditional registrations from three things: public notice and consultation, the right of the public to file any objection, and certain transparency obligations." John Bennett further explained that PMRA consultations come after decisions have already been made and the public does not have access to scientific data, preventing people from commenting effectively.

Recommendation 8: PMRA review the accessibility of documents, including scientific evidence, it uses to register pest control products with a view to ensuring that Canadians are able to provide meaningful and informed input into the decision-making process.

Recommendation 9: Sections 14 through 16 of *The Pest Control Products Regulations* be repealed.

Recommendation 10: PCPA be amended to establish a citizen review committee with experts to review PMRA decisions, policies, and practices to advise the Minister.

HARMONIZATION OF MAXIMUM RESIDUE LIMITS (MRLs):

The Committee heard about the importance of harmonization of MRLs, which is the maximum amount of pesticide residues that can legally be allowed to be found on a food commodity. By harmonizing MRLs we can ensure that Canadian agricultural products can be safely exported. When harmonizing MRLs Health Canada must ensure that we do not lower the threshold that may exist in other jurisdictions. This must also be done with regard to international regulations of toxic substances in pesticides.

Recommendation 11: PMRA conduct regular reviews of international regulations of toxic substances in pesticides to ensure Canada's regulations of these substances is not substandard to other jurisdictions.

CONCLUSION:

While the Committee heard evidence that the PCPA was working well concerns were raised in a number of areas including the use of the precautionary principle in approving new pesticides or authorizing conditional registrations; public consultation and transparency; assessing risks of new technology in pesticides; health impacts on farm workers; and citizen review.

The Liberal Party of Canada believes the PCPA can be improved by implementing these recommendations, in addition to those recommendations in the Committee's report.