

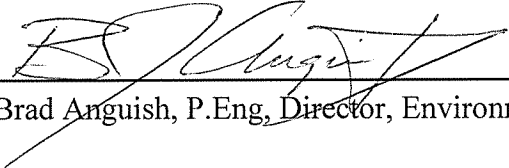


PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

8.

Halifax Regional Council  
May 8, 2007

**TO:** Mayor Kelly and Members of Halifax Regional Council

**SUBMITTED BY:**   
Brad Anguish, P.Eng, Director, Environmental Management Services

**DATE:** April 26, 2007

**SUBJECT:** Pesticide By-Law - Response to Council Questions

## INFORMATION REPORT

### ORIGIN

At the April 17<sup>th</sup> meeting of Halifax Regional Council, Councillor Harvey asked if there was a provision in the by-law where there is some doubt as to whether illegal pesticides have been used on a residential property that we do soil testing.

Councillor Adams requested a report be provided on how many charges and convictions there have been under the by-law.

### BACKGROUND

Regional Council, approved the staff recommendation regarding the tender award for the RFP Call for the pesticide permit program at the April 17<sup>th</sup> meeting of Regional Council.

The two questions noted in the Origin section of this report were brought forward at that time by members of Council and staff is providing further information to each of these questions.

### **Councillor Adams' Question**

Councillor Adams requested a report on how many charges and convictions there have been under the By-Law.

This information was reported in Section 3 (sub-section 3.1 By-Law Enforcement) of the 2006 Pesticide Overview Report.

A copy of this section of the 2006 Pesticide By-Law Overview Report is attached (Attachment 1). The full report is available on-line at [www.halifax.ca/environment](http://www.halifax.ca/environment).

### **Councillor Harvey's Question**

Councillor Harvey asked if there was a provision in the By-Law where there is some doubt as to whether illegal pesticides have been used on a residential property that we do soil testing.

### **DISCUSSION**

Since the inception of the By-Law in 2000, staff has been following a Regional Council approved Pesticide By-law Enforcement Policy. This policy is reactive to complaints and does not include samples be taken and tested for pesticide residuals. Staff believe this policy has been effective.

A copy of this policy is attached (Attachment 2).

### **Legal Perspective - Soil Sampling - Pesticide Residuals**

There does not appear to be anything specific in the Pesticide By-Law which would confer a right to inspect.

With regard to the powers of officers to obtain samples, the only provision that seems to apply would be from the Municipal Government Act Part XXI, Sect. 503 (3): "Where an inspection is required or conducted pursuant to a by-law... (a) the inspector may enter in or upon land or premises at a reasonable time without a warrant".

HRM Legal staff also noted that if a sampling procedure is introduced, a higher degree of litigation by defendants could be expected. These cases would likely not focus on the use or non-use of these substances, but rather on specific aspects of the process, looking for flaws in technique, consistency, recording, etc. in short, this could open up a new set of concerns and risks for HRM. These comments are germane when you read the City of Toronto situation which follows.

### **City of Toronto - Soil Sampling - Pesticide Residuals**

The City of Toronto, which based its Pesticide By-Law somewhat on HRM's, includes soil sampling and testing for pesticide residuals if charges are imminent. It is not routine.

In discussions with the Team Leader, Pesticide By-Law, Public Health Inspections, samples are taken from within the City's legal street right-of-way. A court warrant is required to go on to private property. Sampling is carried out by a By-Law Health Inspector (40 in total) who have received additional training in this area.

### **Effectiveness**

In 2005, Toronto had 3 prosecutions. In comparison, and keeping in mind that Toronto has approximately ten times the population of HRM, there were 3 prosecutions in HRM in 2005. Toronto had no prosecutions in 2006, HRM had 3.

The City of Toronto staff noted that the 2006 results may have been related to the fact that the soil laboratory doing their testing was not properly accredited. Toronto has since engaged a new certified laboratory.

It was difficult to ascertain the exact costs of carrying out the soil sampling as different agencies carried out different parts of the process. Actual testing costs landed at the laboratory were around \$100 - \$125 per each sample, however there also appeared to be several hundreds of dollars in collection and delivery costs per property. This also does not include any court or testimony costs.

### **Sampling for Pesticide Residuals - Potential Costs - HRM**

In discussions with professional soil scientists and others, the number of samples required depends on a number of factors, i.e. how much of the property was treated; when; type of application/formulation; etc. Other considerations include weather conditions, rain fall, i.e. did the substance get dispersed, etc. This may mean more samples.

If the results of sampling are to stand up in court, more rigorous and stringent protocols would need to be conducted. For example this may require statistical tests/ procedures as outlined by the US EPA rather than simply collecting 10-20 samples from random locations on the site. Toronto learned this as noted above.

There are laboratories in Atlantic Canada that can test for certain pesticide residuals and costs per sample, landed at the lab range from about \$115 - \$150 per sample. A number of samples (i.e. 10-15) could be required from a standard size lot and when you include collection, handling, reporting, chain of custody forms, etc., the total cost could easily be in the starting range of \$1,500 - \$2,500 per property or lot sampled.

### **Conclusion**

Based on the reasonable successes to date with the present Pesticide By-Law Enforcement Policy; benchmarking with others who do carry out some soil sampling as part of their By-Law Enforcement practices; potential additional risks and costs, etc.; staff believe the present Pesticide By-Law Enforcement Policy is meeting the needs.

### **BUDGET IMPLICATIONS**

There are no funds budgeted or available in the 2007/08 operating budget to carry out soil sampling for pesticide residuals.

Potential costs could be in the starting range of \$1,500 - \$2,500 per property or lot sampled.

**FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

**ATTACHMENTS**

1. Section 3 - 3.1 By-Law Enforcement - 2006 Pesticide By-Law Overview Report
2. Enforcement Policy - Pesticide By-Law

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Stephen King, Manager, Sustainable Environment Management Office, 490-6188

Report Approved by:   
Brad Anguish, P.Eng., Director, Environmental Management Services, 490-4825

## Section 3

### Program Components

#### 3.1 By-Law Enforcement

Pesticide By-Law enforcement is carried out by the HRM By-Law Enforcement Section of the Halifax Regional Police Services.

#### Enforcement Strategy

The enforcement strategy for the pesticide by-law has been in accordance with the Regional Council approved Pesticide By-Law Enforcement Policy. This policy provided the strategic direction that:

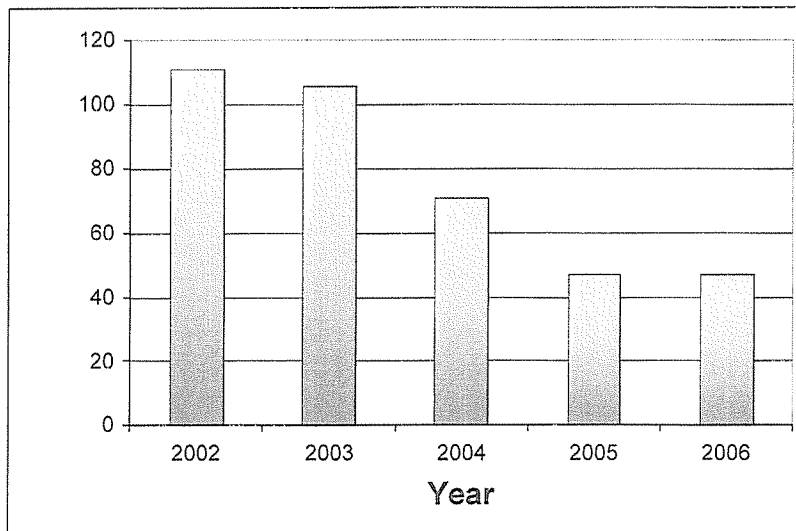
- Enforcement of the by-law will be reactive to complaints received and preventative enforcement patrols seeking violations will not be undertaken;
- Response times to complaints will depend upon location of the alleged violation and resources available. It is anticipated that given the staffing levels and the size of the municipality, staff will typically arrive after the alleged application has been applied;
- Investigation into alleged violations will rely primarily upon eyewitness testimony and physical evidence such as product containers;
- General Environment Canada weather reports will be utilized to determine alleged violations of the by-law's weather restriction. As a result micro-climate information will only be available through eye witness testimony.

For alleged violations, Council direction provided that:

- The first approach to achieving compliance with the by-law will be through attempted education, mediation and persuasion of alleged violators;
- Repeat violations will be ticketed and/or prosecuted where sufficient evidence is available to support such action.

#### By-Law Enforcement Operational Activity

The number of By-Law Enforcement complaints received between April 1, 2006 and October 1, 2006 was 47. In comparison, 47 complaints were received in 2005, 71 in 2004, 106 complaints were received in 2003, 111 in 2002 and approximately 400 in 2001.



All complaints were fully investigated and of the 47 complaints:

- 37 were regarding suspected use of pesticides, and
- 10 were regarding signage issues.

The case outcomes were as follows:

- in 3 cases, there was sufficient evidence to support a charge under the Pesticide By-Law.
- in the remaining cases, the investigating officer did not believe they had sufficient evidence to support a charge. These case files have been closed.

Response to complaints

- 85% of complaints were responded to within three business days. An officer was assigned to follow up on the complaint, taking statements from the complainant, property owner and, if applicable, the pesticide applicator.

## Attachment 2

*Supplementary Report #5  
Regional Council*

*Pesticide By-law August 15, 2000*

### Appendix "A2"

## **Enforcement Policy for HRM By-Law Respecting the Regulation of Pesticides, Herbicides and Insecticides**

**Purpose:** To provide a policy of the Halifax Regional Municipality regarding enforcement of the HRM By-Law Respecting the Regulation of Pesticides, Herbicides and Insecticides.

**Policy:**

- Enforcement of the by-law will be reactive to complaints received and preventative enforcement patrols seeking violations will not be undertaken;
- Response time to complaints will depend upon location of the alleged violation and resources available. It is anticipated that given the staffing levels and the size of the Municipality, staff will typically arrive after the alleged application has been completed;
- Investigation into alleged violations will rely primarily upon eye witness testimony and physical evidence such as product containers;
- General Environment Canada weather reports will be utilized to determine alleged violations of the bylaw's weather condition restrictions. As a result micro-climate information will only be available through eye witness testimony, not be available;
- Plant samples will not be taken at the scene of an alleged violation and tested for pesticide residues;

**Violations:**

- The first approach to achieving compliance with the By-law will be through attempted education and mediation and persuasion of alleged violators.
- Repeat violations will be ticketed and/ or prosecuted where sufficient evidence is available to support such action.