



**Ontario Federation of Agriculture**

**Ontario AgriCentre**

100 Stone Road West, Suite 206, Guelph, Ontario N1G 5L3  
Tel: (519) 821-8883 • Fax: (519) 821-8810 • www.ofa.on.ca

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Public Consultation  
ONTARIO POLLINATOR HEALTH  
Ministry of the Environment and Climate Change  
Climate Change and Environmental Policy Division  
Strategic Policy Branch  
77 Wellesley Street West, Floor 11  
Ferguson Block  
Toronto, ON  
M7A 2T5

**Re: Posted Amendments to O. Reg. 63/09 (General)**

In January 2015, the Ontario Federation of Agriculture (OFA) submitted comments on an Ontario Discussion Paper released in November 2014 entitled *Pollinator Health – A Proposal for Enhancing Pollinator Health and Reducing the Use of Neonicotinoid Pesticides in Ontario*. In March 2015, a Regulation Proposal Notice was posted on the Environmental Registry entitled *Regulatory Amendments to O. Reg. 63/09 under the **Pesticides Act** to reduce the Use of Neonicotinoid Insecticides*. The purpose of this letter is to provide OFA's comments on proposed amendments to O. Reg. 63/09.

Recall that OFA took a lead role in developing the Agriculture and Agri-Food Business Sector Strategy of Ontario's Open for Business Initiative in 2010. OFA took that responsibility very seriously and continues to believe that our industry can benefit greatly from the prudent and consistent application of sound regulatory principles. Thus, our comments on the proposed amendments to O. Reg. 63/09 are provided through the lens of sound regulatory principles.

The first priority articulated by OFA in the Open for Business document is germane to the proposed regulation:

- Mandatory, early consultative process for new or developing regulations that include **Regulatory Impact Analysis [emphasis ours]**.

The relevant response from the Government of Ontario to that priority states:

- Through a phased implementation, Ontario will introduce a mandatory regulatory economic impact assessment tool across all ministries that will enhance stakeholder input and ensure consistent and reliable analyses.

Regulatory Impact Analysis (RIA) is recognized globally as a key instrument for improving regulatory quality. Indeed, at a national level, virtually all OECD countries, including Canada, have adopted the use of RIA when introducing new regulations, or regulatory amendments. RIA's, when properly conducted:

- Systematically and consistently examine potential impacts associated with proposed government regulation (e.g. reveal and avoid unintended consequences);
- Promote meaningful dialogue between government, affected businesses and citizens;
- Results in regulations that are relevant and appropriate over a reasonable length of time.

OFA was encouraged in 2011 when the Government of Ontario signaled their commitment to the development and implementation of an RIA process. Unfortunately, during the ensuing years there has been little evidence that an **effective** RIA process was ever developed, yet alone implemented.

OFA strongly believes that had the proposed amendments to O. Reg. 63/09 been subject to an effective and efficient RIA, the outcome would have been quite different. In fact, we believe that had the consultation process associated with RIA been properly undertaken, and had Cost-Benefit Analysis been applied with the benefit of prior consultation, it is unlikely a regulatory approach to managing treated seed would have been selected.

This is because the industry has determined the proposed regulatory process is simply unworkable. This was made clear by industry in our initial analysis of the proposal to regulate a sudden decrease in the use of neonicotinoid treated seed and has been reinforced, in our view, after having sat through the technical briefings with numerous unanswered questions.

The affected growers, through representation by Grain Farmers of Ontario have made a strong case for the regulations being unworkable. The affected service industries including those who sell seed to farmers and those who provide technical agronomic advice to farmers have also expressed sound reasoning as to why this regulatory process will likely damage the industry, potentially in irreparable ways.

OFA shares the concerns of the growers and service industry representatives and simply emphasize the following concerns with the proposed amendments to O. Reg. 63/09:

- The absence of a publicly disclosed RIA means that stakeholders affected by the proposed regulatory amendments are unclear on the options considered and dismissed prior to deciding on a regulatory amendment approach, and what MOECC believes will be the outcome of the regulation for the corn and soybean industries.

Industry studies suggest significant economic damage will result from the regulation.

This impact arises from a regulatory process without a strong basis to suggest it will be effective in reducing bee mortality to a significant degree. OFA, in its response to the Government of Ontario's pollinator health document, identified the list of nine pollinator stressors, those being:

- Bee habitat loss
- Bee nutrition
- Exposure of bees to pesticides used in crop production
- Exposure of bees to pesticides used in hive management

- Climate change impacts on bees
- Weather-related impacts on bees
- Bee diseases
- Insects, and fungi that attack bees
- Bee genetics

Given this list of stressors, it comes as no surprise that no single contributing factor to bee deaths has been identified, and that bee deaths result from a complex set of stressors.

OFA believes a sound RIA would have identified significant negative economic impact and uncertain positive outcomes associated with the proposed amendments to O. Reg. 63/09, in light of the complexity of pollinator health issues.

- The term ‘treated seed’ is defined acceptably in the prescribed amendments as:

*“...a seed that, as a result of being treated, is coated with or contains one or more pesticides”.*

Yet, sub-section 8.1 of the amended O. Reg. 63/09 indicates that all treated corn and soybean seed is a Class 12 pesticide.

OFA believes that the regulatory amendment could easily have been drafted to indicate that pesticides, or pest control products, having imidacloprid, clothianidin, or thiamethoxam as the active ingredient will be described as Class 12 pesticides if they are applied as a seed treatment to either corn or soybean. The decision to describe a treated seed as a pesticide in sub-section 8.1 of O. Reg. 63/09 and therefore regulate the seed is unacceptable.

Canada’s *Seeds Act* defines the term seed as:

*“any plant part of any species belonging to the plant kingdom, represented, sold or used to grow a plant”.*

Neonicotinoid pesticides are not species belonging to the plant kingdom.

The term ‘pesticide’, as defined in Ontario’s *Pesticide Act* means any:

*“organism, substance or thing that is manufactured, represented, sold or used as a means of directly or indirectly controlling, preventing, destroying, mitigating, attracting or repelling any pest or of altering the growth, development or characteristics of any plant life that is not a pest and includes any organism, substance or thing registered under the Pest Control Products Act (Canada)”.*

Neonicotinoids are registered under Canada’s *Pest Control Products Act*, corn and soybean are not.

Treated seed is seed with pesticide applied. Any pest control aspects of a treated seed are a function of a registered pest control product having been applied. It is the registered pest control product that is regulated, not the seed. It is unnecessary and inappropriate to characterize a treated seed as a pesticide.

- The *Pesticides Act* views any contravention of the Act or associated regulation as an offence. Individuals convicted of an offence can be fined up to \$20,000 for a first offence, and up to \$50,000 for subsequent convictions. For corporations (of which many farms are), the corresponding fines are \$100,000 and \$200,000.

A key element of RIAs is to describe: how compliance with the proposed regulation will be ensured; what means will be used to detect non-compliance; and, what are the penalties for an offence. With respect to penalties RIA and jurisprudence emphasizes that sanctions and penalties be proportionate to the seriousness of the violation.

Because the regulations are precautionary in nature and the targets aspirational, OFA submits the penalties that may be imposed for non-compliance are extreme and unwarranted. Is it reasonable to impose any penalty, let alone a crippling one, for a violation of the government's aspirations, when the violation itself cannot be scientifically proven to have caused damage?

- The pest assessment aspects are not based on information developed by OMAFRA and the UofG. The MOECC document *Conducting a Pest Assessment for Class 12 Pesticides* is lacking and unlikely to be sufficient to develop and enact a workable Integrated Pest Management program (IPM)

OFA is a strong supporter of the concept of Integrated Pest Management, and believes that IPM will play an important role in a Pollinator Health Strategy. In our January submission to the Pollinator Health discussion paper, OFA supported the development of practical and effective IPMs over a reasonable period of time. We remain of the view that the development and testing of a practical IPM system is the best way to achieve the desired outcome of reducing pesticide usage.

We believe that OMAFRA's *Guide to Early Season Field Crop Pests* is a worthwhile guide for farmers wanting to explore IPM in field crops. However, guidance from the latter document is rudimentary given that IPM techniques for field crops need to be supported by data from well-designed, longitudinal studies.

- The number of qualified agronomic consultants [as per sub-section 8.2 (4)] in Ontario will be severely limited and certainly not sufficient to conduct the pest assessments required by the proposed regulatory amendments. The current contingent of over 500 CCAs is likely insufficient to address the complex requirements of the proposed regulations. However, the regulatory disqualification, enabling only 100 to be qualified to act under the regulations ensures a shortage of qualified people to do the job.

With regards sub-section 8.2 (4), OFA questions the basis upon which MOECC questions the integrity of consulting agronomists. Many engineers, accountants, dentists, lawyers and other certified professionals provide advice to clients, despite being employed by or affiliated with a larger firm. Although we have no reason to question the integrity of CCAs, a statement of integrity would be a straightforward remedy if Ontario feels it necessary.

A well known example is the Singapore Statement on Research Integrity, an international effort to encourage the development of unified policies, guidelines and

codes of conduct, with the long-range goal of fostering greater integrity in research worldwide.

- The proposed regulations will require a large number of farmers to be trained in the regulation requirements and in the details and implementation of Integrated Pest management solutions in lieu of the use of NNI. OFA questions if training approximately 27,000 growers is physically possible by 2017 given the performance record for the pesticide application training suggests only 5,000 per year can be trained. Reliance on web-based training to process this many is overly optimistic. Imposing regulation and potentially penalties without realistic opportunity for training is impractical and unethical.
- The federal agency (PMRA) charged with reviewing and approving the pest control products that MOECC schedules under the *Pesticides Act*, has recently (November 2014) stated:

“...the contribution of pesticides (i.e. NNI-treated seed) to later season...effects (on honey bees) other than mortality is not clear, and is still under assessment”.

The need for further assessment identified by PMRA emphasizes the OFA position that there is insufficient evidence at this time to warrant the proposed amendments to O. Reg 63/09.

- Attendees at the MOECC briefing on O. Reg 63/09 report that a precautionary approach, versus a scientific approach to regulation was emphasized as the basis for the proposed regulations. OFA would like to direct MOECC to a document prepared by the Government of Canada, entitled *A Framework for the Application of Precaution in Science-Based Decision Making About Risk*. This document emphatically states that:
  - Sound scientific information and its evaluation must be the basis for applying precaution; the scientific information base and responsibility for producing it may shift as knowledge evolves.
  - Scientific data relevant to the risk must be evaluated through a sound, credible, transparent and inclusive mechanism leading to a conclusion that expresses the probability of occurrence of harm, and the magnitude of that harm (e.g. extent of damage, persistency, reversibility and delayed effect).
  - Available scientific information must be evaluated with emphasis on securing high quality (not high quantity) scientific evidence.

MOECC's reliance on a precautionary approach rather than a scientific approach is a gross misunderstanding of the decision making process given that a decision to apply precaution must be based on scientific evidence.

OFA believes there is insufficient evidence at this time to support proposed amendments to O. Reg. 63/09 or, in fact, to support the regulation of treated seed for corn and soybeans at this time. We concur with industry colleagues who conclude the proposed regulations are unworkable and will irrevocably damage the industry without clear evidence of any offsetting benefit.

Because of this OFA reiterates its recommendations from our January, 2015 submission on the issues of Pollinator Health. We strongly suggest the Government of Ontario invoke the fundamental principles captured by its own Open for Business initiative and reconsider its regulatory approach with regards O. Reg 63/09.

We again respectfully recommend that:

- 1. Ontario industry and government immediately work to develop a comprehensive Pollinator Health Strategy addressing each of the nine identified pollinator health stressors which will include:**
  - a. Determination of the relative contributions of, and mitigation strategies for, different stressors leading to species declines including exposure to pesticides, poor nutrition, parasites and other pests, toxins, loss of habitat and reduced natural forage, pathogens, and unsustainable management practices;**
  - b. Expansion of the collection and sharing of data related to pollinator losses, technologies for continuous monitoring of honey bee hive health, and use of public-private partnerships, as appropriate, to provide information on the status and trends of managed hive losses**
  - c. Assessment of the status of native pollinators, and modeling of native pollinator populations and habitats;**
  - d. Development of affordable seed mixes, including pollinator-friendly plants, for maintenance of honey bees and other pollinators, and guidelines for and evaluations of the effectiveness of using pollinator-friendly seed mixes for restoration and reclamation projects;**
  - e. Identification of existing and new methods and best practices to reduce pollinator exposure to pesticides, and new cost-effective ways to control bee pests and diseases;**
  - f. Targeting of resources to areas of high risk and restoration potential; and,**
  - g. Prioritization of plans for restoration of pollinator habitat, based on those areas that will yield the greatest expected net benefits.**
- 2. Given that fugitive dust from vacuum planters is associated with acute bee mortalities at the time of seeding NNI-treated seed, additional technological changes to reduce the risk associated with fugitive dust must be pursued, including:**
  - a. Better adhesion of pest control products applied to seed and optimization of the application rate of pest control product to seed**
  - b. Modification of seed drilling technology through installation of effective air deflectors with a goal of reducing dust by as much as 99%**
  - c. Regulation and stewardship of seed quality standards. (In the Netherlands it is 0.75g of dust per 100,000 seeds; in France it is 4g per 100 kg of seed.)**
  - d. Managing seed bags and totes**
- 3. Industry, universities and government must collaboratively develop and test IPM systems for corn and soybean production, and concurrently develop IPM training modules for incorporation into the Grower Pesticide Certification Program. IPM system use should be phased in over the course of several years with NNI reduction usage measured and monitored. The voluntary IPM approach would replace the proposed regulated reduction approach.**

- 4. OMAFRA and Agricorp needs to develop an NNI reduction risk management program, in collaboration with Certified Crop Advisors. The program would provide a compensation vehicle for growers suffering undue losses on implementation of a verified IPM system. The program would be available for a period of five years.**

OFA appreciates the opportunity to comment of the proposed regulation and trust our concerns and the concerns of the corn and soybean industries will be fully taken into account.

Sincerely,



Don McCabe  
President

cc: Hon. Glenn Murray, Minister of Environment and Climate Change  
Hon. Jeff Leal, Minister of Agriculture, Food and Rural Affairs  
Ontario Commodity Organization Presidents