



Environmental Appeal Board

Citation: *MKY Holdings Ltd. v. Administrator, Integrated Pest Management Act*,
2024 BCEAB 26

Decision No.: EAB-IPM-23-A001(a)

Decision Date: 2024-08-01

Method of Hearing: Conducted by way of written submissions concluding on 2024-03-22

Decision Type: Final Decision

Panel: David Bird, Panel Chair

Appealed Under: *Integrated Pest Management Act*, SBC 2003, c. 58

Between:

MKY Holdings Ltd.

Appellant

And:

Administrator

Respondent

Appearing on Behalf of the Parties:

For the Appellant: Ian Kerwin, Representative

For the Respondent: Micah Weintraub, Counsel

FINAL DECISION

INTRODUCTION

[1] This appeal is about whether a common laundry detergent is a pesticide as defined in the *Integrated Pest Management Act*, SBC 2003, c. 58 (the “*IPMA*”), and whether its use to remove moss from the roofs of a strata complex contravened the *IPMA*.

BACKGROUND

[2] Michael Lapham, for the administrator¹ of the *IPMA* (the “Respondent”), issued a determination of administrative penalty on February 15, 2023, (the “Determination”) to MKY Holdings Ltd. (the “Appellant”). The Respondent issued an \$8,900 administrative penalty against the Appellant for contravening section 3(2)(b) of the *IPMA*. The Appellant is a sole proprietorship with Mark Van Rumpt listed as the proprietor.

[3] The Respondent issued the Determination after investigating a complaint received on April 27, 2021, by the Ministry of Environment and Climate Change Strategy (the “Ministry”), that the Appellant had used a common laundry detergent (the “Detergent”) to remove moss growing on the roofs of a strata complex in Abbotsford, B.C. (the “Property”) on April 23 and 26, 2021.

[4] It is not disputed between the parties that the use of the Detergent to remove moss from the roofs of the Property resulted in the runoff of detergent residue into the nearby Clayburn Creek (the “Creek”) following a heavy rainfall. The Ministry conducted a site investigation on May 4, 2021, where Detergent residue was observed on the roofs and perimeter drain system of the Property and bubbles, or foam residue, were observed within the Creek. The Ministry noted the Property’s perimeter drain system led directly to the Creek. Detergent residue was observed in sump stations within the Property’s drainage system and a dam within the Creek.

[5] Mr. Van Rumpt confirmed, during a telephone interview with the Ministry on May 20, 2021, he had applied approximately 290 kilograms of granular Detergent to the roofs of the Property on April 23 and 26, 2021. He expected a rain event shortly afterward, which would activate the Detergent to kill the root system of the moss.

[6] On May 1 and 2, 2021, Mr. Van Rumpt attempted to mitigate the release of Detergent residue into the Creek. He tried to remove the Detergent residue from the

¹ Mr. Lapham is delegated the powers and duties of administrator under specific sections of the *IPMA* by the Deputy Administrator under the authority of section 10 of the *IPMA*.

Property and hired a septic tank service vehicle to hydro vacuum the residue from the Property's perimeter catch-basins and storm sewer drain system.

[7] On November 7, 2022, the Ministry issued a "Notice Prior to Determination of Administrative Penalty" and a penalty assessment notice to the Respondent, which outlined the Appellant's alleged contravention of the *IPMA* and the results of the Ministry's investigation. This penalty assessment recommended a \$9,200 administrative penalty to be levied against the Appellant.

[8] The notice identified the maximum possible administrative penalty that could be levied and attached the "Administrative Penalty Fact Sheet and Penalty Assessment Form" used to reach this preliminary conclusion. The supporting documents from the Ministry's investigation were also disclosed.

[9] An opportunity to be heard was held by teleconference on January 25, 2023, to provide the Appellant an opportunity to respond to the penalty assessment prior to the Determination being issued. As part of the opportunity to be heard, the Appellant provided the Respondent with an End of Spill Report on January 30, 2023, which outlined the measures the Appellant took to mitigate the impact of the release of Detergent residue into the Creek.

[10] Following the opportunity to be heard, the Respondent found the Appellant had used an unregistered pesticide to treat moss contrary to section 3(2)(b) of the *IPMA*, resulting in a potential risk to fish, plants, and other organisms in the Creek. When determining the amount of the administrative penalty, the Respondent considered the factors outlined in the *Administrative Penalties Handbook – Environmental Management Act and Integrated Pest Management Act*.

[11] This appeal was heard by written submissions. After the close of the written submission schedule, I wrote the parties on February 2, 2024, inviting them to provide submissions on the question of whether the use of the Detergent by the Appellant in the manner which led to the issuance of the Determination constituted the use of a pesticide. I asked the parties to speak to the definition of "pesticide" in the *IPMA* and how Schedule 2 of the *Integrated Pest Management Regulation*, B.C. Reg. 604/2004 (the "*Regulation*"), should be interpreted in the context of this appeal.

[12] On March 15, 2024, the Respondent provided a further submission responsive to the questions I raised. The Appellant did not provide a response.

ISSUES

[13] The issues in this appeal are:

- (a) Is the Detergent a pesticide as defined in the *IPMA*?
- (b) Did the Appellant contravene section 3(2)(b) of the *IPMA*?

(c) Should the Determination be confirmed, varied, or reversed?

DISCUSSION

[14] To begin my analysis, I must first determine whether the Detergent, as used by the Appellant to remove moss from the roofs of the Property, is a pesticide as defined in the *IPMA*. However, my analysis also requires that I consider whether the Detergent is a pest control product as defined by the *Pest Control Products Act*, S.C. 2002, c. 28. (the “*PCPA*”) because the definition of a pesticide under the *IPMA* includes reference to whether a substance is a pest control product as defined by the *PCPA*.

[15] The appeal is from a finding of contravention of section 3(2)(b) of the *IPMA* and an administrative penalty imposed as a result. Section 3(2)(b) provides that:

(2) Without limiting any other provision of this Act or the regulations, a person must not use

(b) a pesticide not registered under the [*PCPA*](Canada), unless the pesticide is used in a manner and for a purpose expressly allowed under that Act,

[16] I must decide whether the Detergent qualifies as a pesticide for the purposes of this section. This involves interpretation of the *IPMA*, which regulates pesticide use in British Columbia. The *IPMA* is intended to work in conjunction with the *PCPA*, which requires the registration of all pest control products.

Is the Detergent a pesticide as defined in the *IPMA*?

[17] Pesticides are regulated by both the Federal and Provincial governments in Canada. Definitions, labelling requirements, storage and transportation requirements, and standards for the sale and use of pesticides (both regulated and unregulated) are set out in the *PCPA*. In British Columbia, pesticides were regulated under the *Pesticide Control Act*, R.S.B.C. 1996, c. 360 until it was replaced by the *IPMA* on December 31, 2004.

[18] The leading authority on statutory interpretation, *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), 1 S.C.R. 27, requires me to read and interpret the *IPMA* and the *Regulation* in their entire contexts, and to consider the relevant provisions in their ordinary and grammatical sense, consistent with the objectives and scheme of the *IPMA* and the Legislature’s intent when passing the law. I note that section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, also requires that I read the *IPMA* and the *Regulation* in “...as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.”

[19] I note that one purpose of the *IPMA*, and its subsidiary *Regulation*, is to help protect the environment and human health. In a plain reading of the *PCPA*, this is also one purpose of the federal legislation. While any interpretation of the *PCPA* is not binding on a

reading of the *IPMA*, these acts are designed to complement each other, and a proper understanding of the *IPMA* should not frustrate the intent of the *PCPA*, if at all possible.

[20] When interpreting the *IPMA* and its *Regulation*, I accept the undisputed facts that the Appellant applied the Detergent to the roofs of the Property for the intended purpose of removing moss growing on the roofs. This subsequently resulted in the discharge of bubbles, foam, and/or residue into the Creek. The Appellant did not dispute these facts but argued the Property's Strata Corporation was responsible for the contravention because it instructed the Appellant to use the Detergent in this manner. What I must determine is if these facts resulted in a contravention of section 3(2)(b) *IPMA*.

[21] In determining whether the Detergent meets the definition of a "pesticide" under the *IPMA*, I begin my analysis with the broad definition of this term that is provided by the *IPMA*. Section 1 of the *IPMA* defines a pesticide as:

... 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 as defined in the [*PCPA*] (Canada), and
- (c) a substance that is classified as a pesticide by regulation,

but does not include micro-organisms, materials, substances or control products excluded from this definition by regulation;

[22] This definition includes "micro-organisms" and "materials," indicating a significant range of possible substances that can be captured by the definition.

[23] Before beginning my analysis of whether the Detergent is a pesticide, I accept the uncontested argument of the Respondent that moss falls into the definition of a "pest" under the *IPMA* because it may be injurious to roofing systems, because moss is a living organism that may be troublesome on some structures, and that moss is neither a virus, bacteria, fungus, or internal parasite. I also agree with the Respondent that the definition of a "pest" in the *IPMA* is similar to the description of the effects of pests described in the definition of a "pest control product" under the *PCPA*.

Is the Detergent represented or sold to prevent, destroy, repel or mitigate a pest?

Position of the Parties

[24] The Appellant did not provide submissions or evidence responsive to whether the Detergent is represented or sold to prevent, destroy, repel, or mitigate a pest. However, the Appellant heard from others that the Detergent could be used to remove moss from roofs and had previously used the Detergent for this purpose.

[25] The Respondent submits that the Detergent falls into the definition of a pesticide under the *IPMA* because it is a material “used or intended to be used to prevent, destroy, repel, or mitigate a pest.”

[26] The Respondent did not specifically address the question of whether the Detergent is represented or sold to prevent, destroy, repel, or mitigate a pest, except to submit that it is not registered by the federal government as a pest control product.

Panel's Findings

[27] I find that insufficient evidence or submissions were presented to support on a balance of probabilities that the Detergent is represented or sold for the purpose of preventing, destroying, repelling, or mitigating a pest.

[28] I find that the Detergent is a laundry detergent. It is common knowledge that the Detergent is manufactured for the purpose of laundering textiles, as it has been marketed to the public for this purpose. Insufficient evidence was presented to demonstrate that the Detergent is represented or sold as a pest control product. I find that simply because the Detergent can potentially be used, in mass quantities, to remove moss does not support the conclusion that the Detergent is represented or sold for the purpose of preventing, destroying, repelling, or mitigating a pest as defined in the *IPMA*.

[29] I find it is more likely than not that the Detergent is a widely distributed product that is advertised for use as a laundry detergent and there is insufficient evidence to show that it is marketed or sold as a pesticide or pest control product. For that reason, I conclude that the Detergent is not captured by the first branch of the definition of a pesticide under the *IPMA*.

Is the Detergent used or intended to be used to prevent, destroy, repel or mitigate a pest?

Position of the Parties

[30] As discussed above, I understood the position of the parties to be that the Detergent, in sufficient quantities, may result in some efficacy in removing moss from roofs. The only evidence provided by the parties that the Detergent is used to prevent, destroy, repel or mitigate a pest is the Appellant’s statement that he used the Detergent for this purpose in the past and again related to the circumstances of this appeal.

[31] I also understand the Respondent’s position is that because the Detergent was used to prevent, destroy, repel or mitigate moss of the roofs of the Property, this is sufficient to bring this material into the scope of the definition of a pesticide under the *IPMA*.

Panel's Findings

[32] I am not persuaded by the Respondent’s submission that how a substance or material is used, not its intended use or the purpose for which it was manufactured and sold, brings it into the regulation of the *IPMA* on the basis that it might have some properties capable of dealing with a pest: in this case, moss.

[33] In considering the definition of a pesticide in the *IPMA*, I find that this cannot be what the Legislature intended. The *IPMA*, in the context of the overall scheme of the regime, is intended to regulate substances which have unacceptable potential risks to the environment or human health. In this respect, not every substance or material that may directly or indirectly control a pest immediately falls into this regime. As is discussed below, the Legislature has the ability to, and has, explicitly classified substances as pesticides to bring them under the jurisdiction of the *IPMA* or classified them as substances which are not pesticides because their use is not expected to pose an unreasonable risk to human health or the environment.

[34] It is my interpretation of the *IPMA* that it is the potential risks of a substance or material that is the essential consideration into whether it falls into the broad definition of a “pesticide” as defined by the *IPMA*. I am not persuaded by the Respondent’s submission that if a substance is used, whether directly or indirectly, to control a “pest,” it falls within the jurisdiction of the *IPMA* to regulate its use if used on a pest. If that were the case, there would be no need to have multiple definitions for a pesticide. An incredibly broad number of substances or materials could be captured by the definition, depending on how they are used.

[35] I am also not persuaded by the Respondent’s argument that the quantity of Detergent used in this case is relevant to the question of if it is a pesticide. In reading the *IPMA* and *Regulation* I see no reference to the quantity of a substance introduced into the environment as a factor in determining if that substance falls within the definition of a “pesticide.” The *IPMA* is silent on the quantity of a substance being introduced into the environment. Rather, the *IPMA* and the *Regulation* establish it is the designation of a substance or its chemical composition that bring that substance within the definition of a “pesticide.” It therefore follows that any reliance on the quantity of a substance introduced into the environment to determine if that substance meets the definition of a pesticide under the *IPMA* is in error.

[36] Reading the *IPMA* liberally, in its ordinary and grammatical sense and consistent with its scheme and objectives and with the intention of the legislature, I do not accept that using the Detergent for the purpose of killing moss brings the Detergent into the broad definition of “pesticide” under the *IPMA*. Given my finding above that the Detergent is a widely distributed product manufactured and advertised for use as a laundry detergent, I find on the balance of probabilities that it is not used or intended to be used to prevent, destroy, repel or mitigate a pest to a sufficient degree as to fall within the definition of a pesticide under the *IPMA*.

[37] If I were to conclude otherwise, the result would be that no individual, based on a plain reading of the *IPMA* through the modern principles of interpretation, would be able to determine if their use of a substance or material, which is not represented, manufactured, or sold as a pesticide, would be subject to the requirements and enforcement mechanisms of the *IPMA*. Were the interpretation of the Respondent followed here, it would result in the absurdity of a substance, which is not a pesticide,

briefly becoming a pesticide during its use before ceasing to be a pesticide once that use was complete.

[38] While this analysis answers whether the Detergent is a pesticide under the broad and general definition in the *IPMA*, I have also addressed the three examples of materials that satisfy that definition, provided in the *IPMA*. This provides further support for why the Detergent does not qualify as a pesticide under the *IPMA*.

Is the Detergent a material that is a plant growth regulator, a plant defoliator, or a plant desiccant?

Position of the Parties

[39] The parties did not make specific submissions on this question. I understand the Respondent's position to be that since the Detergent has some properties which may mean that it can prevent, destroy, repel or mitigate a specific pest—moss, this is sufficient for it to fall within the broad definition in the *IPMA*.

Panel's Findings

[40] The definition of a "pesticide" identifies that substances which are pesticides can include plant growth regulators, plant defoliators or plant desiccants.²

[41] It is not disputed between the parties that the Detergent appears to have some capacity to remove or destroy moss. The Appellant heard from others that the Detergent could be used to remove moss from roofs and had previously used it for this purpose. The Respondent did not provide specific evidence or submissions on whether the Detergent is a plant growth regulator, plant defoliator, or plant desiccant, but appears to have accepted anecdotal information that it can be used for this purpose to remove moss and that the Detergent's use to control a pest—moss—brings it into the definition of a pesticide.

[42] The terms "plant growth regulator," "plant defoliator," and "plant desiccant" are not defined in the *IPMA*. However, significantly, these terms describe inherent qualities of these micro-organisms or materials—what they are—rather than what they can be used for. I find it significant that the term "plant defoliator" is used, for example, and not "a micro-organism or material capable of defoliating plants," or words of similar effect. As a result, based on the text in the statute, I conclude that it is not sufficient, by itself, that a micro-organism or substance be capable of regulating, defoliating, or desiccating plants to be regulated by the *IPMA* as a pesticide. To qualify as a pesticide, a micro-organism or substance must be cultivated, harvested, created, or distributed for the purposes of its properties of plant growth regulation, plant defoliation, or plant desiccation.

² Desiccants are herbicides and/or defoliant used to artificially accelerate the drying of plant tissues.

[43] In my view, on a balance of probabilities, is not sufficient for a substance like the Detergent, which is manufactured and sold for another purpose, but when used in mass quantities may have some effectiveness as a plant regulator, plant defoliator, or plant desiccant, to allow me to conclude it falls under the definition of a pesticide. To interpret the legislation in this manner would mean a vast number of substances or materials could be considered a plant growth regulator, plant defoliator, or a plant desiccant when this is not their primary or intended purpose. As I have already concluded, the legislature did not intend to capture all substances on the basis that they may have some properties which control pests. The legislation requires that these materials or substances also pose an unreasonable risk to human health or the environment for the legislative scheme to be enacted.

Is the Detergent a pest control product as defined in the PCPA?

Position of the Parties

[44] The Appellant did not make any submission on this point.

[45] The Respondent submits that a “pest control product” as defined in section 2 of the *PCPA* includes:

- (a) ... a product, an organism or a substance, including a product, an organism or a substance derived through biotechnology, that consists of its active ingredient, formulants and contaminants, and that is manufactured, represented, distributed or used as a means for directly or indirectly controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects;
- (b) An active ingredient that is used to manufacture anything described in paragraph (a); or
- (c) Any other thing that is prescribed to be a pest control product.

[46] The Respondent submits the Detergent is not registered under the *PCPA* because it does not have a pest control product registration number on its label, nor is it listed on the federal government’s pest control product registry. The Respondent submits the use of the Detergent to control a pest is prohibited under section 6(1) of the *PCPA* which states:

6(1) No person shall manufacture, possess, handle, store, transport, import, distribute or use a pest control product that is not registered under this Act, except as otherwise authorized under subsection 21(5) or 41(1), section 48 or 51, any of sections 53 to 59 or the regulations.

[47] The Respondent submitted that the Detergent is an unregistered pest control product as defined in the *PCPA* because the Detergent is not listed in the federal government database and the Detergent’s label does not include a pest control product registration number. The Respondent further submits that the Detergent is an

unregistered pest control product as defined under the *PCPA* by virtue of its use to control, destroy or remove a pest: moss. This evidence was not challenged by the Appellant.

[48] The Respondent submits that the definition of a pest control product is very similar to the definition of pesticide in the *IPMA*, and the use of the Detergent to remove a pest like moss brings the Detergent into the broad definition of an unregistered pest control product because it is indirectly used to prevent, destroy, repel or mitigate a pest.

[49] The Respondent submits the use of the Detergent by the Appellant, especially the substantial volume applied to kill moss on the roofs of the Property, brought the Detergent within the definition of an unregistered pest control product.

[50] The Respondent also noted that the use of the Detergent in this manner did not fall into any of the exceptions for use provided through section 6(1) of the *PCPA* or through its regulations.

Panel's Findings

[51] I understand the Respondent's position in this appeal is that the Detergent is an unregistered pest control product, which when used to remove moss, falls into the broad definition of a "pesticide" in the *IPMA* or a "pest control product" under the *PCPA*, when used for "controlling, destroying, attracting or repelling a pest or for mitigating or preventing its injurious, noxious or troublesome effects."

[52] I find that limited evidence was presented on the question of whether the Detergent is a pest control product. The Respondent relies on the evidence that the Detergent is not registered in the database the federal government uses for this purpose and the Detergent's label does not include a pest control product registration number.

[53] However, I find it is more likely than not that the Detergent is not listed in the federal government registry of pest control products and does not include a pest control registration number on its label because it was not manufactured or sold for this purpose.

[54] As I have found above, I find on the balance of probabilities that the Detergent is a laundry detergent, not a pesticide as defined by the *IPMA*. Similar to the scheme under the *IPMA*, I find that the *PCPA* is intended to regulate substances that have a likelihood to cause harm to human health or the environment.

[55] In my view, this is where the Respondent's reasoning fails. I find it cannot be the intent of the Legislatures for any substance or material that is used to remove moss from structures to fall within the scope of the *IPMA* or the *PCPA*. Rather, these acts are intended to regulate products, materials, chemicals, and other substances may create an unacceptable risk to human health or to the environment. Additionally, both the *IPMA* and the *PCPA* have mechanisms to include or exclude substances from the regulatory schemes depending on assessed risks of products on human health or the environment.

[56] There is insufficient evidence before me to support, on a balance of probabilities, that the Detergent has properties expected to cause unreasonable harm to human health

or the environment such that it should fall into the definition of a pest control product, whether registered or not. My plain reading of the *PCPA* supports an interpretation that more is required than simply that a material or substance has some effectiveness in controlling a pest, particularly where that material or substance was developed, marketed, sold and distributed for another purpose, and was only used in mass quantities to attempt to control a particular pest -- moss.

Is the Detergent a substance classified as a pesticide by regulation?

Position of the Parties

[57] The Appellant made no submission on this point.

[58] The Respondent says that if the Detergent were excluded from the definition of a pesticide by way of section 3 of the *Regulation*, it would then follow that the administrator would not have the jurisdiction to impose a penalty for any contravention of section 3(2)(b) of the *IPMA*. However, the Respondent argues, because the Detergent is not excluded from the definition of pesticide, and despite some of its ingredients potentially being classified as Excluded Pesticides³, the administrator can still find that the use of the Detergent to remove moss resulted in contravention of section 3(2)(b) because the pesticide was not registered under the *PCPA* and was not used in a manner and for a purpose expressly allowed under that act.

Panel's Findings

[59] The *IPMA* provides mechanisms for establishing a class, or multiple classes, of pesticides. Section 2 of the *Regulation* establishes the following classes of pesticides: Permit-restricted, Restricted, Commercial, Domestic, and Excluded. This section sets out that the excluded class, "Excluded Pesticides," is comprised of pesticides whose use is not regulated through compliance with the requirements imposed on a licensee, permit holder, or confirmation holder under the *IPMA*, because the administrator considers their use will not increase the risk of unreasonable adverse effects. Under section 38 of the *IPMA*, it is the Minister that enacts regulations that classify substances as pesticides, establishes classes of pesticides, and identifies substances which are excluded from the definition of pesticide.

[60] Schedule 2 includes substances and materials like cleansers (domestic and commercial), deodorizers (domestic and commercial), laundry additives (domestic and commercial), and soaps (domestic and commercial).

[61] The Respondent submits, and I agree, that the Detergent has not been excluded from the definition of a "pesticide" by the Minister through regulation under section 38(2)(c) of the *IPMA*. Section 38 (2)(c) provides the following:

³ *Integrated Pest Management Regulation*, B.C. Reg. 604/2004, Schedule 2, Excluded Pesticides.

- (c) prescribing micro-organisms, materials, substances or control products as excluded from the definition of "pesticide", or as excluded from the definition of "pesticide" if used for a specified purpose or in a specified manner

[62] Although the Respondent appears to concede that the Detergent, or its key ingredients, fall into one or more of the categories of Excluded Pesticides listed in Schedule 2, including cleansers, deodorizers, fatty acids, laundry additives, soaps, and surfactants, the Respondent maintains that a contravention of section 3(2)(b) occurred through the use of an Excluded Pesticide because Excluded Pesticides can be subject to some regulatory requirements under the *IPMA*. Specifically, the Respondent relies on the *Integrated Pest Management Act and Regulation: Landscape/Structural Sector Review Paper* (February 2016) (the "Paper")⁴ which states that Excluded Pesticides may still be subject to some regulatory requirements under the *IPMA*.

[63] The table on page four of the Paper asserts that Excluded Pesticides require a permit for uses of high concern, for example aerial application over urban or residential areas, and their use must not cause an unreasonable adverse effect. Consequently, the Respondent argues, a determination of contravention can be made, and an administrative penalty issued, because Excluded Pesticides in Schedule 2 are not the same as substances excluded from the definition of pesticides in section 3 of the *Regulation*.

[64] In this case, the Appellant used a significant volume of the Detergent, and I understand that this is a factor relied upon by the Respondent in determining that the Appellant contravened the *IPMA* due to the resulting adverse effect on the Creek. It is not disputed that the use of the Detergent by the Appellant resulted in discharge of residue into the Creek. However, the question before me is not whether there was an unlawful discharge of waste or effluent into the environment but whether the Detergent is a pesticide.

[65] The Minister has specifically set out what substances or materials are considered Excluded Pesticides under Schedule 2 of the *Regulation*. The effect of establishing this list of Excluded Pesticides is that the use of these specific substances is not subject to the requirements under the *IPMA* and the *Regulation*. It would be inconsistent with the overall scheme of the *IPMA* to find that the use of a product, like the Detergent, which contains key components which are classified as Excluded Pesticides, be considered an unregistered pesticide which was used contrary to the *PCPA*.

[66] For the reasons provided above, I find that the Detergent does not fall into the broad definition of pesticide under the *IPMA*. However, even if I am wrong in that conclusion, I find that the active ingredients of the Detergent are comprised of substances

⁴ Publicly available at: https://www2.gov.bc.ca/assets/gov/environment/pesticides-and-pest-management/pesticide-use/reviews/landscape_review.pdf

that have been classified as Excluded Pesticides. The classification of Excluded Pesticides exempts those materials from the compliance requirements of the *IPMA* because it has been determined that these substances will not have unreasonable adverse effects from their use.

[67] I find that the Detergent, which was not manufactured or intended to be used to control a pest, and whose components are classified as “Excluded Pesticides,” is not “a pesticide not registered under the *PCPA*” for the purposes of section 3(2)(b) of the *IPMA*.

Did the Appellant contravene section 3(2)(b) of the *IPMA*?

Position of the Parties

[68] The Appellant’s argument that it was an employee of the Strata Corporation or that the Respondent assigned liability on the wrong party are not issues that are relevant in this appeal.

[69] The Respondent submits a contravention occurred because the use of the Detergent to kill moss falls within the regulatory jurisdiction of both the *IPMA* and the *PCPA* when used as an unregistered pesticide or pest control product to remove moss.

[70] The Respondent argues the Appellant used an unregistered pesticide in a manner and purpose inconsistent with the *PCPA* that may have posed an unacceptable risk to human health and the environment. Therefore, the Appellant contravened section 3(2)(b) of the *IPMA*. The Respondent also submits section 3(2)(b) of the *IPMA* is broadly worded and applies to individuals’ actions independently from other restrictions in the *IPMA*.

Panel’s Findings

[71] For the reasons given above, I have found that the Detergent is not “a pesticide not registered under the *PCPA*” or a pesticide as defined by the *IPMA*. Therefore, for the purposes of section 3(2)(b) of the *IPMA*, I find there was no contravention.

[72] I find that it was not within the Respondent’s jurisdiction to determine that the use of the Detergent by the Appellant was a contravention of section 3(2)(b) of the *IPMA*. As a result, I find the Respondent erred in concluding that the Appellant contravened section 3(2)(b) of the *IPMA*.

Should the Determination be confirmed, varied, or reversed?

[73] Section 23(1) of the *IPMA* grants the administrator the power to issue an administrative penalty if, on the balance of probabilities, a person is found to have contravened a provision of the *IPMA* or the *Regulation*, failed to comply with an order under the *IPMA*, or failed to comply with a requirement of a licence, certificate or permit issued, or a pesticide notice given under the *IPMA*.

[74] I find, on the balance of probabilities, that the Appellant did not contravene section 3(2)(b) of the *IPMA*. Since there was no contravention of the *IPMA*, no administrative penalty under section 23(1) can be issued.

[75] I find in favour of the Appellant and I reverse the Respondent's Determination.

DECISION

[76] I note that the *IPMA* was not the only regulatory framework available at the time to address the circumstances resulting from the introduction of the Detergent residue into a potentially fish bearing creek. The *Environmental Management Act*, S.B.C. 2003, c. 53, and the *Water Sustainability Act*, S.B.C. 2014, c. 15, are two other statutory regimes which address the protection of human health and the environment in situations similar to those present in this appeal. The jurisdiction, authority, and remedies available to decision makers under those statutes are, naturally, different from those available under the *IPMA*.

[77] Other regulatory, investigative, and administrative penalty mechanisms were available to address the Appellant's release of Detergent or Detergent residue into the Creek. However, this appeal is of a decision made under the *IPMA*, and it is the *IPMA* which must be considered when assessing if the Appellant contravened the law.

[78] For the reasons outlined above, I have found the Appellant did not contravene section 3(2)(b) of the *IPMA*, and the Respondent had no jurisdiction to issue an administrative penalty. Therefore, I reverse the administrative penalty.

[79] In making this decision, I have carefully considered all the evidence before me, and the submissions and arguments made by the parties, whether or not they have been specifically referenced in these reasons.

[80] For the reasons set out above, the appeal is granted, and the Determination issued to the Appellant is reversed.

"David Bird"

David Bird, Panel Chair
Environmental Appeal Board