Richters
The Herb Specialists

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Re: Invasive Plants Policy

Dear Ms. Asbil,

Thank you for inviting us to submit our comments on the CFIA's proposed Invasive Plant Policy though the consultation period is officially closed. We did not know about the policy until we received your letter dated March 17, 2011. The policy will likely have a profound effect on our business so we are grateful for this opportunity.

My company, Richters Herbs, has been operating as a specialty nursery and seedhouse for over 40 years. We grow and sell culinary, medicinal and aromatic plants and rare and heirloom food plants. We employ between 20 and 40 employees depending on the season, and we sell our products through a mailorder catalogue and online. We ship to every province and territory in Canada and to all 50 U.S. states, and to other countries. Critical to our success is our ability to identify and bring to market new plants of interest to gardeners, herbalists, plant collectors, and commercial growers.

We are participants in the Canadian Greenhouse Certification Program which is administered by the CFIA. We participate in the United States Seed Certification program which is administered by the Canadian Seed Institute and authorized by the CFIA. We have a long history of cooperation with the CFIA in matters concerning seed and plant imports and sale in Canada. In addition we voluntarily prohibit sales of seeds and plants that we believe to present an unacceptable risk to Canadians or Americans. Our printed catalogue denotes which items we restrict by country, state and province.

From the above it should be clear that we do not dispute the need for regulation of pest plants. We do, however, have grave concerns about the Invasive Plant Policy as is described in the draft documents posted on the CFIA website. My comments below are based on those documents, and on my discussions with you by phone two days ago and last week.

You have stressed that the policy documents are draft documents, and that some of the draft documents are sample policy outcomes intended for discussion and refinement of the policy. My comments are offered in spirit of helping to improve the policy fairer and ultimately more effective.

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My comments are limited to pest plants only and not hosts of other pests that are regulated, as it is my understanding that the Invasive Plant Policy is intended to regulate pest plants only.

1) "White List" approach

The Invasive Plant Policy amounts to the adoption of a "white list" approach to the regulation of plants in Canada. This is a dramatic departure from current policy, and will have profound effect on businesses such as ours and on individuals wishing to grow new plants not on the "white list". In principle we disagree with the concept of a "white list". We believe that traditional "black lists" are adequate for the regulation of pest plants in Canada.

Under current policy laid out by the *Plant Protection Regulations* of the *Plant Protection Act* and by the *Weed Seeds Order* of the *Seeds Act*, pest plants are regulated by a "black list" approach in which named species and genera are prohibited or restricted entry into Canada. For example, the *Weed Seeds Order, 2005*, lists 19 prohibited noxious weed species which cannot be present as contaminants in seed lots and which cannot be sold even intentionally in Canada. The *Plant Protection Regulations* list 8 genera and their species which in practice effectively prohibits their entry into Canada. I estimate that less than 500 species of pest plants are prohibited entry by these two "black lists".

Under the proposed Invasive Plant Policy, plants new to Canada, or plants for which there is a new concern, will be evaluated for invasiveness. The result of that evaluation will place those plants on either a "black list" of prohibited plants or a "white list" of acceptable plants. Any plant not yet evaluated is effectively on what you described to me to be a "grey list" of plants that will not be permitted entry into Canada until an evaluation is completed. What I understand from our telephone conversations is that a "white list" has not yet been developed; but I understand that it will include plants known to occur in Canada or known to be cultivated in Canada. The proposed list of 25 "least wanted species" is the start of the creation of a "black list" of invasive plants.

I estimate that more than 100,000 species of plants will effectively and automatically move to the "grey list" under the proposed policy. This amounts to an unprecedented loss of access to plant species for not only companies such as ours, but for gardeners, herbalists, researchers, commercial growers, farmers, and plant collectors. If the process of evaluating "grey list" plants is expensive to importers, is slow, or is unfair, then the "grey list" amounts to a massive "black list".

2) The "Black Box" decision process and lack of transparency

The proposed policy gives few details how plants will be determined to be an invasive risk or not. The background document states that the risk assessment process will be "scientific" and will consider "a wide variety of factors such as the probability of introduction (entry and establishment) and spread of the plant, and the potential economic, environmental and social consequences of introduction and spread." This suggests to me that the risk assessment process will be anything but scientific. A true scientific analysis would require a review of field data from trials designed to evaluate invasive potential in conditions similar to those found in Canada. But this not what is contemplated according to what you told me; instead, the assessment process will likely be a subjective evaluation based largely on tangential evidence such as questionable reports of weediness in other countries and on imprecisely known traits such as hardiness.

Without a clear, detailed description of the assessment process, in the form of a decision tree or a points system, the assessment process as it stands now is essentially a "black box" that is highly subjective and unlikely to be reproducible. Without a clear standard by which plants will be judged there is no way to predict which plants will be swept onto the "black list" of putative invasive plants. Without knowing the details of the decision process we are being asked to comment on a system based on generalities and 25 examples. We have no way of knowing if the risk assessment process will ultimately be friendly or unfriendly to the interests of gardeners, herbalists and specialty businesses like ours.

In addition, we are concerned about an apparent lack of transparency. For example, I asked for details about the individuals who did the 25 pilot assessments. It would be helpful to know what training they have undergone and what the required qualifications are, and how many analysts are available for risk assessments, or will be. All that was revealed to me was that the analysts are on the staff of the CFIA. I also asked how the list of 25 species was arrived at and you initially mentioned that some 700 or so species were considered for the pilot assessments, but then when I asked for a copy of this initial list of species you backtracked and said that there is no such list. This closed door approach does little to foster trust or a feeling of fairness.

3) False positives

Some of the most important ornamentals and food plants grown in Canada today are weeds somewhere in the world – and yet they are not invasive here. Would *Tagetes erecta*, the common marigold, or *Calendula officinalis*, another common garden plant -- or indeed tomato -- have survived the risk assessment if they were to be evaluated for importation today? All are described as weeds in the *Global Compendium of Weeds* (http://www.hear.org/gcw/), and the two ornamentals are even described as "garden thugs" and are recorded as having escaped from cultivation in Finland. There are dozens and perhaps hundreds more examples like these. We are deeply concerned that using such data will result in a high rate of false positives.

4) No review process

If species is determined to be invasive and is placed on the "black list" there is no process for challenging that determination. There is the initial species RMD review process prior to a decision to place a species on the "black list". But there are many reasons why a process is needed to review and challenge species placed on the "black list" or already on it.

5) Flawed risk assessment

The Pest Risk Management Document for *Peganum harmala* was the only RMD that I have available to me during my preparation of these comments. But that RMD has several material errors that suggest how unreliable the risk assessment process will be. It is asserted that *Peganum harmala* is "prohibited for sale and import into Canada under the *Controlled Drugs and Substances Act*;" but this is not true. Only the purified harmaline is prohibited, not the plant itself. It is also asserted that there is no evidence that the plant has been cultivated in Canada. This is false. We have been selling seeds and plants for at least 20 years. If, as the document further asserts, the plant is not reported to occur in the wild as a naturalized plant in Canada – even after more than 20 years of sale – then it begs the question just how much of an invasive threat this plant is in Canada. We further dispute the RMD claim that the hardiness of *Peganum harmala* is zones 5-6 and, as the document suggests, may be as

low as zone 3. We are have never wintered *Peganum harmala* in our zone 5 location. We rate the plant's hardiness as zones 7-9, which would preclude its establishment in Canadian rangelands.

Other species of interest to us, but for which I did not have the RMD available to me during the preparation of these comments, are *Galega officinalis* and *Dioscorea polystachya*, both of which we sell. If you will afford the opportunity to add a supplementary comment on the RMDs for those two species I would appreciate having the opportunity to do so next week.

6) Unknown cost and time of risk assessments

Even if the risk assessment process is open and reproducible, the cost to importers and the time to assess a species could make a huge difference to importers. If the application cost is too high or the time required is too long, the policy could unnecessarily inhibit or delay the introduction of new plants. If cost recovery is applied to this program the cost to importers will almost certainly be onerous, forcing us to curtail introductions. It often takes a few years before we know if a new plant will build enough sales volume to become profitable, and many never become profitable. Some new varieties sell less than $100 per year, so any fee charged would affect our business.

You mentioned possible assessment times of up to two years. That would make it difficult to compete with our U.S. competitors. We compete on having the most plants of interest to our customers and any evaluation time longer than a month would limit our selection. We already find it tough to compete with U.S. competitors because plant quarantine rules already favour U.S. companies over Canadian companies. They can ship seed packets under 500 grams freely into Canada without any documentation while Canadian companies must ship all seeds to the U.S. with a phytosanitary certificate or equivalent.

No draft application form for risk assessments was provided. Seeing the form and kind of information that will be required will tell us a great deal about the process itself. As of now we have no idea whether a separate application must be submitted for each species or whether more than one species can be applied for in one application. This makes a big difference when potentially the numbers of species could be in the hundreds and even thousands.

7) Lack of granularity

The policy contemplates prohibiting a species throughout the whole country even if only part of the country is at risk. A plant such as *Peganum harmala* would be denied to residents of Eastern Canada even if, as the Pest Risk Management Document asserts, the plant is not likely to become established in Eastern Canada. We believe that the policy unfairly establishes the bar too high at zone 9 for all Canadians just because there are some zone 9 areas on Vancouver Island. The policy should be revised to permit a more granular regulation of species. Yes, seeds and plants can be transported from one region to another, but we believe that risk to be small. There is already ample precedent for more granular prohibitions based on province where appropriate. It can be a condition of importation to restrict sales to approved provinces. This system would infringe far less on the rights of gardeners and others to grow these plants.

8) Inadequate consultation

From what I recall from our conversations, the consultation that ended last September included two industry groups, the Canadian Horticultural Council and the Canadian Nursery Landscape Association. These two organizations represent the interests of members that are growing perhaps a thousand or so mainstream plant species. Pointedly there was no consultation of home gardeners, herbalists, medicinal plant growers, ethnic vegetable growers, or specialist nurseries such as ours. Not including the interests of these groups means that the consultation may have unfairly favoured the interests of groups seeking to block or limit the entry of new plants into Canada.

8) What exactly is meant by "invasive"?

There is big difference between plants that become merely established and those that overwhelm and cause serious damage. It appears that the term "invasive" is used overly broadly and at times is used to mean "merely established". In the *Peganum harmala* RMD, reports of scattered occurrence in the northern plains states are somehow conflated with the idea that the plant is an invasive threat in Canada. As the report admits, reports of *Peganum harmala* populations in Montana are doubtful and in no way invasive. In truth the northern limit of "invasiveness" – i.e. out of control growth – is further south, probably in a line from Texas to California.

9) No provision for grandfathering

While it is mentioned that the policy will focus on plants not known to be present in Canada or for which there is new information of invasiveness, there is no expressed provision for grandfathering plants that have already been imported into Canada. Companies that can demonstrate that plants have been imported and offered for sale in Canada should be allowed to continue to import and sell these species. In other words, for species already available in Canada, the burden should be on the CFIA to identify species that may be invasive. All these species should not be placed on the "grey list" but rather should automatically be placed on the "white list".

10) No provision for export exemption

There is provision to exempt plants imported for export reasons only. For years we have imported prohibited noxious weed seeds such as *Datura stramonium* and *Conium maculatum* on the premise that they will not be sold in Canada and can only be exported from Canada. This arrangement was agreed to with the Seeds Section (then with Agriculture Canada) many years ago. These plants are not weeds in all the markets that we serve and it is important for us to have this principle enshrined in the Invasive Plant Policy for any new species that we may have a market for internationally.

I thank you again for this opportunity to comment on the Invasive Plant Policy. I sincerely hope that the policy will be changed for the better so that the interests of gardeners, herbalists and other stakeholders will be respected.

Yours sincerely,

Conrad Richter
President