

## **New York's New Pesticide Notification Law**

By Michael B. Gerrard

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Governor Pataki on August 21 signed into law a major new statute that requires notification before pesticides may be applied by commercial lawn applicators or in schools or day care centers.

The law, Chapter 285 of 2000, results from years of intense lobbying by environmental groups and similarly concerted opposition by various business interests.

This column discusses the contents of the new statute, its applicability and its origins.

### **Commercial Lawn Applicators**

Under the new law, before they may apply pesticides, commercial lawn applicators must give at least 48 hours advance notice to the owners of dwellings within 150 feet of the planned application. The owners of multiple dwellings who receive such notices must, in turn, provide written notice to the occupants.

This requirement is not triggered when the pesticide is applied by homeowners to their own property. It does not cover use of pesticides on farms, golf courses or cemeteries, or by government agencies. (Thus for several reasons it would not apply to spraying mosquitoes for the West Nile Virus, for example.) It does not cover purely indoor applications, or application around foundations for termite control. There are also numerous exemptions, including:

- spot applications;
- direct injection of pesticides into a plant or the ground;
- ground-applied granular pesticides (but not dust or powder);
- use of aerosol cans of 18 fluid ounces or less with directed sprays (as opposed to foggers); and
- certain low-risk products such as biopesticides and boric acid.

The details of the written notices are to be defined in regulations to be issued by the New York State Department of Environmental Conservation (DEC). The notices must provide the date of the application and two rain dates; the product names; various telephone contact numbers; and the suggestion that people take precautions to minimize pesticide exposure. Among the likely precautions are closing windows; bringing children, pets and toys inside; removing clothes from clotheslines; and covering lawn furniture and barbecues.

One provision applies not only to commercial lawn applicators, but also to homeowners treating more than 100 square feet of their own lawns. On the day of the application, they must place warning markers around the areas to be sprayed. The markers must be at least four inches by five inches and be at least twelve inches above the ground. Stores that sell pesticides must post notices advising customers of these requirements, and they presumably will also sell standard signs. DEC will publish brochures about this rule. (A similar requirement already applies to commercial applicators.)

Those who do not carry out any of these rules will be issued a warning for the first violation, and may be fined \$100 for a second violation and \$250 for subsequent violations. Commercial applicators may also be subject to criminal sanctions if they have the necessary culpable mental states.

These lawn application requirements do not automatically apply anywhere. Instead, they are a matter of local option. It is up to the City of New York, and each of the 57 counties in the state outside of the City, to decide whether to adopt the program. They must either adopt the program in its entirety, or not at all; they cannot pick and choose.

The statute as applied to lawn application (which amends Article 33 of the Environmental Conservation Law) is effective on March 1, 2001, but the implementing local laws do not take effect until the first day of January after they are adopted. There is some controversy as to whether this means that local laws that are adopted this fall can take effect on March 1, 2001, or not until January 2002.

## **Schools**

Separate sections of the new law apply to schools (amending the Education Law) and day care facilities (amending the Social Services Law). These provisions take effect on July 1, 2001.

“School” is defined to include “any public school district or private or parochial school or board of cooperative educational services.”

At the beginning of each academic year, every school must notify all staff members and all parents (and “persons in parental relation”) that the school may periodically use pesticide products, and that staff members and parents who wish to receive advance notice of such use may register. Everyone who registers must be given written notice, at least 48 hours in advance, before pesticides are applied. This notice must give the date of the planned application, identify the pesticides to be used, and provide contact information.

Three times a year the school must send all staff members and parents (whether or not they have registered for advance notice) a report about all pesticide applications during the preceding period, and reinvoke them to register.

The prior notification requirements do not apply under certain circumstances:

- the application of anti-microbial pesticides;
- use of aerosol cans of 18 fluid ounces or less with directed sprays;
- certain low-risk products such as biopesticides and boric acid; and
- applications when the school is closed and will remain unoccupied for at least 72 hours afterwards.

Schools may also dispense with the advance notice in emergencies “when necessary to protect against an imminent threat to human health,” but they must make a good faith effort to supply written notice, and after the emergency application they must file a special report with the State Health Department, which must then determine whether an emergency application was actually warranted.

If the State Education Department finds that a school has violated these requirements, it may penalize the school by withholding certain state financial assistance.

## **Day Care Facilities**

Somewhat different requirements apply to “daycare facilities,” which are defined to mean “licensed and registered child daycare homes, programs and facilities.”

Rather than relying on written notification to parents who register, daycare centers must provide at least 48 hours advance notice of a pesticide application by posting a notice “in a common area of the facility which is conspicuously visible to persons dropping off or picking up children from the facility.”

The same exemptions and emergency procedures that apply to schools also cover daycare facilities. However, there is no requirement that parents be given periodic reports about pesticide applications.

Daycare centers that are found to violate the rules may be given a warning for the first violation, a \$100 fine for the second violation, and a \$250 fine for subsequent violations.

## **Background**

This new law's origins have been traced to a suggestion made in 1992 by Neal Lewis, head of the Nassau-Suffolk Neighborhood Network, who had heard of an incident in Farmingville, Long Island when a baby suffered an allergic reaction from a cloud of pesticide that had just drifted through an open bedroom window from a nearby lawn application.

In 1996 the Legislature enacted and the Governor signed the State Pesticide Reporting Law, which requires commercial pesticide applicators and distributors annually to report information about the types and amounts of pesticides being sold and applied in the state. For each of the last several years the State Assembly passed a bill (whose prime sponsor was Assemblyman Thomas DiNapoli, D-Nassau) requiring neighbor notification. However, the bill always died in the State Senate.

Two statewide environmental groups -- EPL-Environmental Advocates and the New York Public Interest Research Group -- launched a major campaign to persuade the Senate to adopt the bill, supported by more than 50 environmental, breast cancer, health and civic organizations. They conducted a massive letter writing campaign and aired advertisements on Albany-area radio stations urging listeners to telephone Senate Major Leader Joseph Bruno and ask him to support the bill. They were opposed by the New York State Farm Bureau and a number of business organizations. Many small pesticide applicators said that the notification provisions are so onerous that the law would put them out of business, so that a handful of large national companies would then take over.

During the debate, Attorney General Eliot L. Spitzer released a report on finding that more than 90 percent of schools that responded to a statewide survey were using pesticides, but only about half provide warnings that would allow children to avoid exposure. A 1993 study by Spitzer's predecessor, Dennis Vacco, had come to a similar conclusion.

The crucial event that allowed the legislation to be enacted was the decision by Senator Carl Marcellino (R-Nassau/Suffolk), chair of the Senate Committee on Environmental Conservation, to support the bill. Senator Marcellino was facing a difficult reelection race and comes from a district in Long Island where pesticide use is of particular concern.

Intense negotiations ensued, during which the Assembly sponsors made one especially major concession -- that the lawn application provisions would be a matter of county option rather than automatically apply statewide. The environmental groups are now working to secure adoption of neighbor notifications throughout the state.

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Michael B. Gerrard is a partner in the New York office of Arnold & Porter. His book Brownfields Law and Practice: The Cleanup and Redevelopment of Contaminated Land, which was named Best Law Book of 1998, has recently been expanded to three volumes.