

LOCAL LAW NO. "H" FOR 2001

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ADOPTING COUNTYWIDE NOTIFICATION REQUIREMENTS FOR COMMERCIAL AND RESIDENTIAL LAWN PESTICIDE APPLICATIONS

Introduced: 10/09/01

By Messrs. Richardson, Reilly, Mss. Wiley, McKnight, Messrs. Maikels, Monjeau, Messercola, Ms. Willingham and Mr. Domalewicz:

BE IT ENACTED AS FOLLOWS:

SECTION 1: Legislative Intent.

This Legislature finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property. This Legislature further finds and declares that pesticides may pose serious health and safety risks to people, particularly children, pregnant women, the elderly and infirm, and that citizens have the right to know about pesticides to which they may be exposed from applications to neighboring properties so that they can take steps to minimize such exposure to themselves, their families, pets, crops, livestock, backyard wildlife and property.

Recognizing the increasing public awareness and concern about pesticide exposure hazards, the State Legislature recently amended the New York Environmental Conservation Law to allow counties to adopt certain advance notification requirements for commercial and residential lawn pesticide applications. This Legislature declares that the people of Albany County deserve the greatest protection allowable by law. Therefore, this Legislature hereby adopts the special requirements for commercial and residential lawn applications as set forth in Section 33-1004 of the New York Environmental Conservation Law.

SECTION 2: Definitions.

All terms used herein shall be as defined in Section 33-0101 of the Environmental Conservation Law as amended.

SECTION 3: Special Requirements for Commercial and Residential Lawn Applications.

a. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner of Environmental Conservation pursuant to subdivision 1 of Section 33-1005 of the Environmental Conservation Law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision 3 of Section 33-1005 of the Environmental Conservation Law, to occupants of all dwellings, as defined in paragraph d of subdivision 5 of Section 33-0905 of the Environmental Conservation Law, on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises, as defined in paragraph d of subdivision 5 of Section 33-0905 of the Environmental Conservation Law, that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the State Commissioner of Environmental Conservation.

(ii) The prior notification provisions of this paragraph shall not apply to the following:

A. the application of anti-microbial pesticides and anti-microbial products as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);

B. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;

C. the use of non-volatile insect or rodent bait in a tamper resistant container;

D. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

E. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;

F. the use of boric acid and disodium octaborate tetrahydrate;

G. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;

H. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;

I. the application of a pesticide by direct injection into a plant or the ground;

J. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;

K. the application of a pesticide to the ground or turf of any cemetery; and

L. an emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this local law. Upon making an emergency application, the person making such application shall notify the State Commissioner of Health, using a form developed by such commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. (i) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.

(ii) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

SECTION 4: Enforcement.

The County Department of Health and the New York State Department of Environmental Conservation shall have concurrent authority to enforce this law pursuant to subdivision 2 of Section 33-1004 of the Environmental Conservation Law. All sanctions, which shall be assessed after providing a hearing and an opportunity to be heard, shall be as specified in Section 71-2907 of the Environmental Conservation Law.

SECTION 5: Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be

invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 6: Effective Date.

This local law shall take effect January 1, 2002.

Referred to Health Committee. 10/9/01