

## Chapter 691 PESTICIDE NOTIFICATION\*

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\*Cross references: Pesticide reduction, Ch. 690.

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### Sec. 691.01. Purpose.

The purpose of this law, to be known as the Westchester County Pesticide Notification Law, is to adopt the special notice requirements for commercial and residential applications of pesticides to lawns as established by the State of New York and as set forth in Section 33-1004 of the New York State Environmental Conservation Law.

(Added by L.L. No. 22-2000)

### Sec. 691.02. Definitions.

For purposes of this chapter, the following words shall have the meanings indicated:

1. "Abutting property" shall mean any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.
2. "Commercial application" means any application of any pesticide except as defined in private or residential application of pesticides.
3. "Dwelling" shall mean any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one (1) or two (2) families.
4. "Multiple dwelling" shall mean any dwelling which is to be occupied by or is occupied as the residence or home of three (3) or more families living independently of each other.
5. "Multiple dwelling unit" shall mean that portion of a multiple dwelling occupied by one (1) or more persons as the residence or home of such persons.
6. "Premises" shall mean land and improvements or appurtenances or any part thereof.
7. "Residential lawn application" shall mean the application of general use pesticides to the ground, trees or shrubs on property owned by or leased to the applicator. For the purposes of this law, the following shall not be considered a residential lawn application:

- a. The application of pesticides for the purpose of producing an agricultural commodity;
- b. The application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- c. The application of pesticides by or on behalf of agencies, which shall include county departments, and which shall be subject to the visual notification requirements of Section 33-1003 of the New York State Environmental Conservation Law as provided for in section 690.09 of the Laws of Westchester County where such application is within one hundred (100) feet of a dwelling, multiple dwelling, public building or public park; and
- d. The application of pesticides on golf courses or turf farms.

(Added by L.L. No. 22-2000)

**Sec. 691.21. Notification.**

1. *Retail establishments.*

- a. All retail establishments that sell general use pesticides for commercial or residential lawn application shall display in a conspicuous place a sign meeting standards established by the Commissioner of the New York State Department of Environmental Conservation. Such signs shall be placed as close as possible to the place where such pesticides are displayed.
- b. Such signs shall contain the following information at a minimum:
  - i. A warning notice directing consumers to follow directions on labels;
  - ii. A provision to inform the customer of the posting requirements set forth in section 691.31 1. of this chapter;
  - iii. A recommendation that the customer notify neighbors prior to the application of pesticides so that neighbors may take precautions to avoid pesticide exposure.

2. *Commercial applications.* At least 48 hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply and post written notice of such application to:

- a. Occupants of all dwellings on abutting property with a boundary that is within 150 feet of the site of such application; and to
- b. Owners, owners' agents, or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within 150 feet of the site of such application, and
  - i. Owners or owners' agents of multiple family dwellings shall provide this written notice to the occupants of such multiple family dwellings.
  - ii. 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 Commissioner of the New York State Department of Environmental Conservation.

3. *Content and form of notices.* The content and form of all such written notices shall conform to standards established by the Commissioner of the New York State Department of Environmental Conservation and shall consist of at least the following:
  - a. The address of the premises where the application is to be done;
  - b. The name and telephone number and pesticide business registration number or certified applicator number of the person providing the commercial lawn application;
  - c. The specific date of each pesticide application and two alternative dates to the proposed date of each application if the application on the proposed date is precluded due to weather conditions. The alternative dates shall be consecutive business days to the proposed date;
  - d. The common and scientific name or names of the pesticide or pesticides to be used and the United States Environmental Protection Agency Registration Number or Numbers of the pesticide or pesticides to be applied; and
  - e. A prominent statement that reads:

This notice is to inform you of a pending pesticide application to neighboring property. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions. Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health INFO LINE at 1-800-458-1158.
4. *Exceptions to notification.* The prior notification provisions of this section shall not apply to the following:
  - a. The application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. § 136(mm) and 7 U.S.C. § 136q(h)(2);
  - b. The use of an aerosol product with a directed spray, in containers of 18 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

Section 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 32 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 a written declaration has been issued by the New York State or County Commissioner of Health that a public health emergency exists requiring the emergency application of a pesticide during the period of such public health emergency. Prior to making an emergency pesticide application, the person making such application shall:
  - i. Provide the Commissioner of the Westchester County Department of Health, using a form developed by the Commissioner of Health for such purposes that shall minimally include: 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; and
  - ii. Make a good faith effort to supply the written notice required pursuant to subsections 2. and 3. of this section.

(Added by L.L. No. 22-2000)

**Sec. 691.31. Markers.**

- 1. All persons performing residential lawn applications treating an area of more than 100 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 12 inches above the ground and shall be at least four inches by five inches in size.
- 2. The markers required pursuant to this section 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 24 hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

(Added by L.L. No. 22-2000)

**Sec. 691.41. Enforcement.**

1. Westchester County shall have concurrent authority with the State of New York to enforce this Local Law.
2. The Commissioner of the Westchester County Department of Health shall promulgate rules and regulations not inconsistent with any other provisions of law specifying procedures for the investigation and processing of alleged violations of this chapter that pertain to persons performing residential lawn applications of pesticides.
3. The Westchester County Board of Health shall coordinate with the Westchester County Department of Health to enforce the provisions of this Local Law on behalf of Westchester County, providing, however, that all penalties that shall be assessed after a hearing or providing an opportunity to be heard, as appropriate, shall be as specified in section 691.51 below and shall be payable to Westchester County.

(Added by L.L. No. 22-2000)

**Sec. 691.51. Penalties.**

1. *Civil penalties.*
  - a. Commercial and residential lawn applications. Notwithstanding any provision of law to the contrary, an owner or owner's agent of a multiple dwelling, or owner, owner's agent or a person in a position of authority for all other types of premises who violates any provision of this chapter or Section 33-1004(2)(c) of New York State Environmental Conservation Law with respect to written notice of commercial lawn applications, and any person who violates any provision of this chapter or Section 33-1004(3) of New York Environmental Conservation Law with respect to markers for residential lawn applications, shall be issued a written warning at the time of the first violation, and shall also be issued educational materials published by or in accordance with the New York State Department of Environmental Conservation in conjunction with the New York State Health Department. For a second and subsequent violation, such person shall be liable for a civil penalty not to exceed \$100.00, and not to exceed \$250.00 for any subsequent violation.
  - b. Disclosure signs in retail establishments and other violations. Notwithstanding any provision of law to the contrary, any person who violates a provision of this chapter or of New York State Environmental Conservation Law Section 33-1004 regarding disclosure signs in retail establishments, or who violates any rule, regulation or order issued pursuant to this chapter or pursuant to such Section 33-1004 of the

Environmental Conservation Law, shall be issued a warning for the first violation, and shall be provided seven days to correct such violation. In addition, such person shall be liable for a civil penalty not to exceed \$100.00 for a second violation, and not to exceed \$250.00 for a subsequent violation.

- c. The Commissioner of the Westchester County Department of Health, acting through the County Attorney, may bring suit for collection of any such assessed civil penalty in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Commissioner of the Westchester County Department of Health before the matter has been referred to the County Attorney, and any such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the County Attorney. Any civil penalty assessed by the Westchester County Commissioner of Health under this subdivision shall be reviewable in a proceeding under Article 78 of the New York Civil Practice Law and Rules.
2. *Criminal penalties for persons providing commercial lawn applications.* Any person providing a commercial lawn application who, having the culpable mental states defined in New York State Penal Law Sections 15.05(1) or (2) or 20.20, violates any provision of this chapter or of New York State Environmental Conservation Law Section 33-1004 with respect to commercial lawn applications of pesticides shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$5,000.00 for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this paragraph, punishment shall be by a fine not to exceed \$10,000.00 for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. Prosecution hereunder shall be conducted by the District Attorney consistent with Section 71-0403 of the New York Environmental Conservation Law.

(Added by L.L. No. 22-2000)

### **Sec. 691.61. Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this chapter 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 chapter, 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.

(Added by L.L. No. 22-2000)