

2545

2009-2010 Regular Sessions

I N A S S E M B L Y

January 20, 2009

Introduced by M. of A. ENGLEBRIGHT, COLTON, ESPAILLAT -- Multi-Sponsored
by -- M. of A. CYMBROWITZ, JOHN, MAYERSOHN, McENENY, PERRY -- read
once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to
requirements for pesticide applications in freshwater wetlands and
tidal wetlands, and by aircraft; to amend the public service law and
the environmental conservation law, in relation to notification of
utility right-of-way applications; and to repeal subdivision 6 of
section 33-0101 of the environmental conservation law relating to
pesticide applications by aircraft

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 24-0107 of the environmental conservation law is
2 amended by adding two new subdivisions 9 and 10 to read as follows:
3 9. "PESTICIDE" SHALL MEAN:
4 (A) ANY SUBSTANCES OR MIXTURE OF SUBSTANCES INTENDED FOR PREVENTING,
5 DESTROYING, REPELLING OR MITIGATING ANY PEST; AND
6 (B) ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT
7 REGULATOR, DEFOLIANT OR DESICCANT.
8 10. "INTEGRATED PEST MANAGEMENT" MEANS AN ECONOMICAL AND ENVIRON-
9 MENTALLY SENSITIVE APPROACH TO PEST MANAGEMENT WHICH RELIES ON A COMBI-
10 NATION OF BIOLOGICAL, CHEMICAL, CULTURAL, MECHANICAL AND OTHER NON-CHEM-
11 ICAL PEST CONTROL TECHNIQUES AND PRACTICES, AND, WHEN NECESSARY, TO USE
12 SELECTIVE PESTICIDES TO MANAGE PEST POPULATIONS BY THE MOST EFFECTIVE
13 MEANS TO PREVENT UNACCEPTABLE LEVELS OF PEST ACTIVITIES AND DAMAGE, WITH
14 THE LEAST HAZARD TO PEOPLE, PROPERTY AND THE ENVIRONMENT. CHEMICAL
15 CONTROL MEASURES SHALL BE THE PRACTICE OF LAST RESORT.
16 S 2. Subdivisions 2 and 5 of section 24-0701 of the environmental
17 conservation law, as amended by chapter 654 of the laws of 1977, are
18 amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 2. Activities subject to regulation shall include any form of drain-
2 ing, dredging, excavation, removal of soil, mud, sand, shells, gravel or
3 other aggregate from any freshwater wetland, either directly or indi-
4 rectly; and any form of dumping, filling, or depositing of any soil,
5 stones, sand, gravel, mud, rubbish or fill of any kind, either directly
6 or indirectly; APPLY PESTICIDES; erecting any structures, roads, the
7 driving of pilings, or placing of any other obstructions whether or not
8 changing the ebb and flow of the water; any form of pollution, including
9 but not limited to, installing a septic tank, running a sewer outfall,
10 discharging sewage treatment effluent or other liquid wastes into or so
11 as to drain into a freshwater wetland; and any other activity which
12 substantially impairs any of the several functions served by freshwater
13 wetlands or the benefits derived therefrom which are set forth in
14 section 24-0105 of this article. These activities are subject to regu-
15 lation whether or not they occur upon the wetland itself, if they
16 impinge upon or otherwise substantially affect the wetlands and are
17 located not more than one hundred feet from the boundary of such
18 wetland. Provided, that a greater distance from any such wetland may be
19 regulated pursuant to this article by the appropriate local government
20 or by the department, whichever has jurisdiction over such wetland,
21 where necessary to protect and preserve the wetland.

22 5. Public health activities, orders, and regulations of the department
23 of health shall be excluded from regulated activities, EXCEPT THAT
24 PESTICIDE APPLICATIONS FOR PUBLIC HEALTH PURPOSES SHALL BE SUBJECT TO
25 REGULATION PURSUANT TO THIS TITLE. Copies of all such public health
26 orders and regulations affecting wetlands shall be filed with the
27 department of environmental conservation. The commissioner may request
28 modification of such orders or regulations if he deems such necessary to
29 implement the policy of this article.

30 S 3. Section 24-0703 of the environmental conservation law is amended
31 by adding a new subdivision 1-a to read as follows:

32 1-A. AN APPLICATION FOR A PERMIT TO APPLY A PESTICIDE IN OR WITHIN ONE
33 HUNDRED FEET OF FRESHWATER WETLANDS SHALL PROVIDE THE FOLLOWING INFORMA-
34 TION:

35 (A) THE PURPOSE AND JUSTIFICATION OF THE PESTICIDE APPLICATION;

36 (B) A DESCRIPTION OF THE TARGET ORGANISM;

37 (C) THE PROPOSED DATE AND METHOD OF PESTICIDE APPLICATION;

38 (D) A DISCUSSION OF THE INTEGRATED PEST MANAGEMENT PROGRAM, INCLUDING
39 NON-CHEMICAL ALTERNATIVES TO USING PESTICIDES, TO BE UTILIZED FOR
40 CONTROLLING THE TARGET ORGANISM; AND

41 (E) A DISCUSSION OF THE LEAST-TOXIC PESTICIDES AVAILABLE TO CONTROL
42 THE TARGET ORGANISM, WHICH MIGHT BE USED AS A LAST RESORT.

43 S 4. Subdivision 1 of section 24-0705 of the environmental conserva-
44 tion law, as amended by chapter 654 of the laws of 1977, is amended to
45 read as follows:

46 1. In granting, denying or limiting any permit, the local government
47 or the commissioner shall:

48 (A) consider the effect of the proposed activity with reference to the
49 public health and welfare, fishing, flood, hurricane and storm dangers,
50 and protection or enhancement of the several functions of the freshwater
51 wetlands and the benefits derived therefrom which are set forth in
52 section 24-0103 of this article. The effects of the proposed activity
53 shall be considered by the department or a local government, as the case
54 may be, irrespective of political boundaries;

55 (B) CONFIRM THAT AN INTEGRATED PEST MANAGEMENT PROGRAM, INCLUDING
56 BIOLOGICAL AND CULTURAL METHODS TO CONTROL THE TARGET ORGANISM HAVE BEEN

1 UTILIZED, AND ONLY AS A LAST RESORT, IS A PESTICIDE APPLICATION PROPOSED
2 WHICH UTILIZES THE LEAST TOXIC PESTICIDE REGISTERED FOR CONTROL OF THE
3 TARGET ORGANISM;

4 (C) CONFIRM THAT NOTICE HAS BEEN GIVEN TO PERSONS LIKELY TO BE
5 ADVERSELY AFFECTED BY SUCH USE OF PESTICIDES, REQUIRING CONSENT OF
6 PERSONS WHO HAVE A SUBSTANTIAL INTEREST IN SUCH USE, PRIOR TO THE ISSU-
7 ANCE OF ANY PERMIT FOR SUCH USE, EXCEPT THAT CONSENT SHALL NOT BE
8 REQUIRED IN THE CASE OF A PUBLIC EMERGENCY DECLARED BY THE COMMISSIONER
9 OF HEALTH OR A LOCAL HEALTH AGENCY AND APPROVED BY THE COMMISSIONER OF
10 HEALTH; AND

11 (D) PROVIDE FOR PUBLISHED NOTICE OF ANY PESTICIDE APPLICATION AUTHOR-
12 IZED BY A PERMIT ISSUED BY THE LOCAL GOVERNMENT OR THE COMMISSIONER, IN
13 A NEWSPAPER GENERALLY CIRCULATED IN THE AREA WHERE THE APPLICATION IS TO
14 OCCUR, AT LEAST ONE WEEK PRIOR TO AND AT LEAST THREE DAYS PRIOR TO SUCH
15 APPLICATION. FOR PESTICIDE APPLICATIONS CONDUCTED IN RESPONSE TO A
16 PUBLIC HEALTH EMERGENCY DECLARED BY THE DEPARTMENT OF HEALTH OR A LOCAL
17 HEALTH AGENCY AND APPROVED BY THE DEPARTMENT OF HEALTH, NEWSPAPER PUBLI-
18 CATION OF THE PESTICIDE APPLICATION SHALL BE REQUIRED AT LEAST THREE
19 DAYS PRIOR TO THE APPLICATION. THE NEWSPAPER PUBLICATION SHALL CONTAIN
20 AT LEAST THE FOLLOWING INFORMATION:

21 (I) THE PURPOSE OF THE PESTICIDE APPLICATION;

22 (II) THE PRODUCT NAME OF THE PESTICIDE AND THE ACTIVE INGREDIENT IN
23 THE PRODUCT BEING APPLIED;

24 (III) THE PROPOSED DATES OF THE PESTICIDE APPLICATION;

25 (IV) THE SPECIFIC LOCATION OF THE PESTICIDE APPLICATION;

26 (V) A CONTACT PERSON AND TELEPHONE NUMBER FOR FURTHER INFORMATION,
27 INCLUDING A COPY OF THE PESTICIDE OR CHEMICAL LABEL; AND

28 (VI) PROVIDE FOR POSTING OF PUBLIC NOTICES FOR PESTICIDE APPLICATIONS
29 AUTHORIZED BY A PERMIT ISSUED BY THE DEPARTMENT, AT REGULAR INTERVALS
30 AROUND OR ALONG THE PERIMETER AND AT PUBLIC ACCESS POINTS OF THE TREATED
31 FRESHWATER WETLAND.

32 S 5. Section 25-0103 of the environmental conservation law is amended
33 by adding two new subdivisions 6 and 7 to read as follows:

34 6. "PESTICIDE" SHALL MEAN:

35 (A) ANY SUBSTANCES OR MIXTURE OF SUBSTANCES INTENDED FOR PREVENTING,
36 DESTROYING, REPELLING OR MITIGATING ANY PEST; AND

37 (B) ANY SUBSTANCE OR MIXTURE OF SUBSTANCES INTENDED FOR USE AS A PLANT
38 REGULATOR, DEFOLIANT OR DESICCANT.

39 7. "INTEGRATED PEST MANAGEMENT" MEANS AN ECONOMICAL AND ENVIRON-
40 MENTALLY SENSITIVE APPROACH TO PEST MANAGEMENT WHICH RELIES ON A COMBI-
41 NATION OF BIOLOGICAL, CHEMICAL, CULTURAL, MECHANICAL AND OTHER NON-CHEM-
42 ICAL PEST CONTROL TECHNIQUES AND PRACTICES, AND, WHEN NECESSARY, TO USE
43 SELECTIVE PESTICIDES TO MANAGE PEST POPULATIONS BY THE MOST EFFECTIVE
44 MEANS TO PREVENT UNACCEPTABLE LEVELS OF PEST ACTIVITIES AND DAMAGE, WITH
45 THE LEAST HAZARD TO PEOPLE, PROPERTY AND THE ENVIRONMENT. CHEMICAL
46 CONTROL MEASURES SHALL BE THE PRACTICE OF LAST RESORT.

47 S 6. Subdivisions 2 and 4 of section 25-0401 of the environmental
48 conservation law, as added by chapter 790 of the laws of 1973, are
49 amended to read as follows:

50 2. Activities subject to regulation hereunder include any form of
51 draining, dredging, excavation, and removal either directly or indirect-
52 ly, of soil, mud, sand, shells, gravel or other aggregate from any tidal
53 wetland; any form of dumping, filling, or depositing, either directly or
54 indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of
55 any kind; APPLYING PESTICIDES; the erection of any structures or roads,
56 the driving of any pilings or placing of any other obstructions, whether

1 or not changing the ebb and flow of the tide, and any other activity
2 within or immediately adjacent to inventoried wetlands which may
3 substantially impair or alter the natural condition of the tidal wetland
4 area.

5 4. Activities, orders, and regulations of the department of health or
6 of units of local government with respect to matters of public health
7 shall be excluded from regulation hereunder, except as hereinafter
8 provided, AND EXCEPT THAT PESTICIDE APPLICATIONS FOR PUBLIC HEALTH
9 PURPOSES TO TIDAL WETLANDS SHALL BE EXCLUDED PURSUANT TO THIS TITLE AND
10 SUBJECT TO REGULATION. Copies of all such public health orders and
11 regulations affecting tidal wetlands shall be filed with the department
12 of environmental conservation. The commissioner may require modification
13 of such orders or regulations if he deems it necessary to implement the
14 policy of this [act] ARTICLE.

15 S 7. Section 25-0402 of the environmental conservation law is amended
16 by adding a new subdivision 1-a to read as follows:

17 1-A. AN APPLICATION FOR A PERMIT TO APPLY A PESTICIDE IN OR WITHIN ONE
18 HUNDRED FEET OF TIDAL WETLANDS SHALL PROVIDE THE FOLLOWING INFORMATION:

- 19 (A) THE PURPOSE AND JUSTIFICATION OF THE PESTICIDE APPLICATION;
20 (B) A DESCRIPTION OF THE TARGET ORGANISM;
21 (C) THE PROPOSED DATE AND METHOD OF PESTICIDE APPLICATION;
22 (D) A DISCUSSION OF THE INTEGRATED PEST MANAGEMENT PROGRAM, INCLUDING
23 NON-CHEMICAL ALTERNATIVES TO USING PESTICIDES, TO BE UTILIZED FOR
24 CONTROLLING THE TARGET ORGANISM; AND
25 (E) A DISCUSSION OF THE LEAST-TOXIC PESTICIDES AVAILABLE TO CONTROL
26 THE TARGET ORGANISM, WHICH MIGHT BE USED AS A LAST RESORT.

27 S 8. Subdivision 1 of section 25-0403 of the environmental conserva-
28 tion law, as amended by chapter 233 of the laws of 1979, is amended to
29 read as follows:

30 1. In granting, denying or limiting any permit under this [act] ARTI-
31 CLE, the commissioner shall:

- 32 (A) consider the compatibility of the proposed activity with reference
33 to the public health and welfare, marine fisheries, shellfisheries,
34 wildlife, flood and hurricane and storm dangers, and the land-use regu-
35 lations promulgated pursuant to section 25-0302 of this [act] ARTICLE;
36 (B) CONFIRM THAT AN INTEGRATED PEST MANAGEMENT PROGRAM, INCLUDING
37 BIOLOGICAL AND CULTURAL METHODS TO CONTROL THE TARGET ORGANISM HAVE BEEN
38 UTILIZED, AND ONLY AS A LAST RESORT, IS A PESTICIDE APPLICATION PROPOSED
39 WHICH UTILIZES THE LEAST TOXIC PESTICIDE REGISTERED FOR CONTROL OF THE
40 TARGET ORGANISM;

41 (C) CONFIRM THAT NOTICE HAS BEEN GIVEN TO PERSONS LIKELY TO BE
42 ADVERSELY AFFECTED BY SUCH USE OF PESTICIDES, REQUIRING CONSENT OF
43 PERSONS WHO HAVE A SUBSTANTIAL INTEREST IN SUCH USE, PRIOR TO THE ISSU-
44 ANCE OF ANY PERMIT FOR SUCH USE, EXCEPT THAT CONSENT SHALL NOT BE
45 REQUIRED IN THE CASE OF A PUBLIC EMERGENCY DECLARED BY THE COMMISSIONER
46 OF HEALTH OR A LOCAL HEALTH AGENCY AND APPROVED BY THE COMMISSIONER OF
47 HEALTH; AND

48 (D) PROVIDE FOR PUBLISHED NOTICE OF ANY PESTICIDE APPLICATION AUTHOR-
49 IZED BY A PERMIT ISSUED BY THE DEPARTMENT, IN A NEWSPAPER GENERALLY
50 CIRCULATED IN THE AREA WHERE THE APPLICATION IS TO OCCUR, AT LEAST ONE
51 WEEK PRIOR TO AND AT LEAST THREE DAYS PRIOR TO SUCH APPLICATION. FOR
52 PESTICIDE APPLICATIONS CONDUCTED IN RESPONSE TO A PUBLIC HEALTH EMERGEN-
53 CY DECLARED BY THE DEPARTMENT OF HEALTH OR A LOCAL HEALTH AGENCY AND
54 APPROVED BY THE DEPARTMENT OF HEALTH, NEWSPAPER PUBLICATION OF THE
55 PESTICIDE APPLICATION SHALL BE REQUIRED AT LEAST THREE DAYS PRIOR TO THE

1 APPLICATION. THE NEWSPAPER PUBLICATION SHALL CONTAIN AT LEAST THE
2 FOLLOWING INFORMATION:

3 (I) THE PURPOSE OF THE PESTICIDE APPLICATION;

4 (II) THE PRODUCT NAME OF THE PESTICIDE AND THE ACTIVE INGREDIENT IN
5 THE PRODUCT BEING APPLIED;

6 (III) THE PROPOSED DATES OF THE PESTICIDE APPLICATION;

7 (IV) THE SPECIFIC LOCATION OF THE PESTICIDE APPLICATION;

8 (V) A CONTACT PERSON AND TELEPHONE NUMBER FOR FURTHER INFORMATION,
9 INCLUDING A COPY OF THE PESTICIDE OR CHEMICAL LABEL; AND

10 (VI) PROVIDE FOR POSTING OF PUBLIC NOTICES FOR PESTICIDE APPLICATIONS
11 AUTHORIZED BY A PERMIT ISSUED BY THE DEPARTMENT, AT REGULAR INTERVALS
12 AROUND OR ALONG THE PERIMETER AND AT PUBLIC ACCESS POINTS OF THE TREATED
13 TIDAL WETLAND.

14 S 9. Subdivision 6 of section 33-0101 of the environmental conserva-
15 tion law is REPEALED and a new subdivision 6 is added to read as
16 follows:

17 6. "AIRCRAFT" SHALL MEAN A WEIGHT-CARRYING STRUCTURE FOR NAVIGATION OF
18 THE AIR THAT IS SUPPORTED EITHER BY ITS OWN BUOYANCY OR BY THE DYNAMIC
19 ACTION OF THE AIR AGAINST ITS SURFACES AND INCLUDES EITHER FIXED-WING OR
20 ROTARY-WING AIRCRAFT.

21 S 10. Paragraph d of subdivision 46 of section 33-0101 of the environ-
22 mental conservation law, as added by chapter 559 of the laws of 1987, is
23 amended to read as follows:

24 d. the application of pesticides by or on behalf of agencies except
25 that agencies shall be subject to visual notification requirements
26 pursuant to section 33-1003 OF THIS ARTICLE where such application is
27 within one hundred feet of a dwelling, multiple dwelling, public build-
28 ing or public park; AND EXCEPT THAT PUBLIC UTILITY COMPANIES SHALL
29 COMPLY WITH THE REQUIREMENTS OF SECTION ONE HUNDRED NINETEEN-D OF THE
30 PUBLIC SERVICE LAW; and

31 S 11. The environmental conservation law is amended by adding a new
32 section 33-0908 to read as follows:

33 S 33-0908. APPLICATIONS OF PESTICIDES BY AIRCRAFT.

34 1. A CERTIFIED APPLICATOR SHALL OBTAIN A PERMIT ISSUED BY THE COMMIS-
35 SIONER IN ORDER TO APPLY, OFFER TO APPLY, OR CAUSE TO BE APPLIED ANY
36 PESTICIDE BY AIRCRAFT. A SEPARATE PERMIT SHALL BE REQUIRED FOR EACH
37 AERIAL PESTICIDE APPLICATION. AN APPLICANT FOR AN AERIAL PESTICIDE
38 APPLICATION PERMIT SHALL INCLUDE THE FOLLOWING INFORMATION TO THE
39 COMMISSIONER:

40 A. CERTIFICATION THAT THE AIRCRAFT CURRENTLY MEETS ALL APPLICABLE
41 FEDERAL AND STATE REGULATIONS;

42 B. THE AIRCRAFT IDENTIFICATION NUMBER;

43 C. THE TYPE OF AIRCRAFT (FIXED WING OR ROTARY WING);

44 D. THE BOUNDARIES AND EXACT LOCATION OF THE TARGET AREA;

45 E. THE OWNERSHIP OF THE TARGET AREA;

46 F. THE IDENTITY OF NON-TARGET AREAS AND SAFETY HAZARDS LOCATED ON OR
47 ADJACENT TO THE TARGET AREA;

48 G. THE CROP OR TYPE OF TARGET AREA TO BE TREATED;

49 H. THE TARGET ORGANISM OR ORGANISMS TO BE CONTROLLED;

50 I. THE PESTICIDE TO BE USED;

51 J. THE PROPOSED DATE AND TIME OF THE APPLICATION;

52 K. THE CERTIFICATION IDENTIFICATION NUMBER, NAME AND ADDRESS OF THE
53 CERTIFIED APPLICATOR APPLYING THE PESTICIDE;

54 L. CERTIFICATION THAT THE CERTIFIED APPLICATOR HAS PARTICIPATED IN A
55 TRAINING PROGRAM APPROVED BY THE DEPARTMENT, WHICH SHALL INCLUDE THE
56 MIXING AND LOADING OF THE PESTICIDE INTO THE AIRCRAFT, CALIBRATION AND

1 OPERATION OF THE APPLICATION EQUIPMENT USED BY THE APPLICATOR, AND
2 CLEANING THE APPLICATION EQUIPMENT; AND

3 M. PROOF, IN A FORM DETERMINED BY THE DEPARTMENT, THAT THE AERIAL
4 APPLICATION EQUIPMENT HAS BEEN PROPERLY CALIBRATED ACCORDING TO THE
5 MANUFACTURER'S INSTRUCTIONS FOR THE TYPE OF APPLICATION PROPOSED,
6 INCLUDING THE DATE OF CALIBRATION.

7 2. THE FOLLOWING CONDITIONS SHALL APPLY TO ALL PESTICIDE APPLICATIONS
8 BY AIRCRAFT:

9 A. ALL AERIAL SPRAY OR SPREADING EQUIPMENT SHALL BE:

10 (I) FREE OF LEAKS AND SHALL HAVE A POSITIVE SHUTOFF SYSTEM TO PREVENT
11 LEAKING AND DISSEMINATION OF PESTICIDES ON ANY NON-TARGET AREAS OVER
12 WHICH THE FLIGHT IS MADE;

13 (II) REGULARLY CALIBRATED, ACCORDING TO THE MANUFACTURER'S
14 INSTRUCTIONS; RECORDS SHALL BE KEPT OF EVERY CALIBRATION, INCLUDING THE
15 DATE AND TYPE OF CALIBRATION ACTIVITY CONDUCTED;

16 (III) THOROUGHLY RINSED AFTER EACH AGRICULTURAL AIRCRAFT OPERATION,
17 EXCEPT IF THE NEXT APPLICATION WILL BE MADE USING THE SAME PESTICIDE, OR
18 IF ANOTHER PESTICIDE IS TO BE USED, IT IS COMPATIBLE WITH THAT PREVIOUS-
19 LY USED IN THE EQUIPMENT AND WILL NOT RESULT IN ILLEGAL RESIDUES OR
20 SIGNIFICANT RISK OR INJURY OR DAMAGE WHEN APPLIED TO THE NEW TARGET
21 SITE; AND

22 (IV) DESIGNED TO ALLOW COMPLETE DRAINAGE DURING FLIGHT AND ON THE
23 GROUND;

24 B. ALL PESTICIDES APPLIED AERIALLY:

25 (I) AS LIQUIDS, IN LIQUID CARRIERS, OR AS DUSTS SHALL BE RELEASED
26 WITHIN FIFTEEN FEET ABOVE THE TARGET, EXCEPT FOR APPLICATIONS TO FOREST
27 OR TREES WHICH SHALL BE WITHIN FIFTY FEET ABOVE THE TARGET AND EXCEPT
28 WHERE OBSTRUCTIONS IN OR ADJACENT TO THE TARGET WOULD ENDANGER THE SAFE-
29 TY OF THE PILOT WHILE APPLYING PESTICIDES AT THAT ALTITUDE; AND

30 (II) AS DRY GRANULES OR PELLETS SHALL BE RELEASED WITHIN FORTY FEET
31 ABOVE THE TARGET, EXCEPT WHERE OBSTRUCTIONS IN OR ADJACENT TO THE TARGET
32 WOULD ENDANGER THE SAFETY OF THE PILOT WHILE APPLYING PESTICIDES AT THAT
33 ALTITUDE.

34 3. THE FOLLOWING CONDITIONS SHALL APPLY TO CERTAIN PESTICIDE APPLICA-
35 TIONS BY AIRCRAFT:

36 A. AERIAL PESTICIDE APPLICATIONS FOR NON-AGRICULTURAL PURPOSES USING:

37 (I) ROTARY WING AIRCRAFT SHALL NOT BE PERFORMED ON A TARGET SITE LESS
38 THAN THREE CONTIGUOUS ACRES IN SIZE; AND

39 (II) FIXED WING AIRCRAFT SHALL NOT BE PERFORMED ON A TARGET SITE LESS
40 THAN TEN CONTIGUOUS ACRES IN SIZE.

41 B. AERIAL PESTICIDE APPLICATIONS FOR AGRICULTURAL PURPOSES MAY BE
42 PERFORMED ON ANY SIZE FIELD, PROVIDING THAT THE FIELD BEING SPRAYED IS
43 PART OF A LARGER PROPERTY OF FIVE OR MORE ACRES WHOLLY OWNED OR
44 CONTROLLED BY THE PERSON CONTRACTING FOR THE PESTICIDE APPLICATION.

45 C. APPLICATION OF PESTICIDES BY AIRCRAFT IS PROHIBITED:

46 (I) ON ANY RIGHT-OF-WAY; OR

47 (II) WITHIN THREE HUNDRED FEET HORIZONTALLY OF THE PREMISES OF A
48 SCHOOL, HOSPITAL, NURSING HOME, DAY CARE CENTER, HOUSE OF RELIGIOUS
49 WORSHIP OR ANY BUILDING WHICH IS USED FOR RESIDENTIAL, BUSINESS OR
50 SOCIAL ACTIVITY, IF EITHER THE PREMISES OR THE BUILDING IS OCCUPIED BY
51 PEOPLE; EXCEPT THAT:

52 A. PESTICIDES MAY BE DEPOSITED AERIALLY WITHIN ONE HUNDRED FEET OF A
53 BUILDING USED FOR AN AGRICULTURAL BUSINESS, PROVIDED THAT ONLY A GENERAL
54 USE PESTICIDE IS APPLIED AND WARNING IS GIVEN PRIOR TO APPLICATION, SO
55 THAT DOORS AND/OR WINDOWS ON THE BUILDING ARE CLOSED AND THE OCCUPANTS
56 THEREOF ARE ALLOWED TIME TO VACATE THE BUILDING; AND

1 B. THE DISTANCE MAY BE WAIVED FOR A SINGLE-FAMILY RESIDENCE THAT IS
2 OCCUPIED BY THE PERSON CONTRACTING TO HAVE THE APPLICATION PERFORMED AND
3 WHICH IS LOCATED ON A PROPERTY WHICH INCLUDES THE TARGET SITE AND WHOSE
4 OCCUPANT OF LEGAL AGE HAS ENTERED INTO A WRITTEN CONSENT AGREEMENT WITH
5 PESTICIDE APPLICATOR, REGISTERED BUSINESS OR PARTY CONTRACTING FOR THE
6 APPLICATION SERVICE, WHICH CONTAINS THE DATE OF THE AGREEMENT; THE TIME
7 PERIOD FOR WHICH THE CONSENT IS VALID; THE LOCATION OR DESIGNATION OF
8 THE PRIVATE RESIDENCE; AND THE SIGNATURE OF THE CONSENTING INHABITANT OF
9 THE PRIVATE RESIDENCE. CONSENT MAY BE WITHDRAWN AT ANY TIME BY ANY
10 CONSENTING INHABITANT, BY NOTIFYING THE PARTY WHICH REQUESTED THE
11 CONSENT IN WRITING; THIS NOTIFICATION IMMEDIATELY INVALIDATES THE
12 CONSENT AGREEMENT. COPIES OF WRITTEN CONSENT AGREEMENTS AND WITHDRAWALS
13 FROM THE CONSENT AGREEMENT SHALL BE MAINTAINED BY THE PESTICIDE APPLICA-
14 TOR AND/OR THE REGISTERED PESTICIDE BUSINESS AND SHALL BE AVAILABLE FOR
15 INSPECTION BY THE DEPARTMENT.

16 4. NOTIFICATION FOR COMMUNITY OF AREA-WIDE PESTICIDE APPLICATIONS BY
17 AIRCRAFT SHALL:

18 A. BE PROVIDED FOR ALL PERSONS RESIDING IN THE PROPOSED TREATMENT AREA
19 THROUGH ADVERTISEMENT IN AT LEAST TWO NEWSPAPERS HAVING THE GREATEST
20 CIRCULATION IN THE VICINITY OF THE PROPOSED TARGET SITE NO MORE THAN
21 THIRTY DAYS OR LESS THAN SEVEN DAYS PRIOR TO THE PROPOSED APPLICATION
22 DATE; EXCEPT THAT THE COMMISSIONER MAY GRANT A WAIVER FROM THE TIME
23 PERIOD REQUIRED IN THIS PARAGRAPH FOR A DOCUMENTED PUBLIC HEALTH EMER-
24 GENCY DECLARED BY THE COMMISSIONER OF HEALTH OR MUNICIPAL BOARDS OF
25 HEALTH, PURSUANT TO THE PUBLIC HEALTH LAW, IN WHICH CASE THE NEWSPAPER
26 PUBLICATION SHALL OCCUR AT LEAST TWO DAYS PRIOR TO THE AERIAL PESTICIDE
27 APPLICATION;

28 B. CONTAIN THE PROPOSED APPLICATION DATE; THE LOCATION OF THE APPLICA-
29 TION; THE NAME, ADDRESS AND BUSINESS REGISTRATION NUMBER OF THE PESTI-
30 CIDE BUSINESS PERFORMING THE APPLICATION; THE PESTICIDE PRODUCT NAME,
31 ACTIVE INGREDIENT AND ENVIRONMENTAL PROTECTION AGENCY REGISTRATION
32 NUMBER; THE APPLICATION EQUIPMENT TO BE USED; A CONTACT PERSON FROM WHOM
33 TO REQUEST SPECIFIC INFORMATION ABOUT THE APPLICATION; THE NAME AND
34 TELEPHONE NUMBER OF THE NEAREST POISON CONTROL CENTER; THE TELEPHONE
35 NUMBER OF THE STATE PESTICIDE POISONING REGISTRY. IN THE CASE OF APPLI-
36 CATIONS WHICH ARE NOT BEING PERFORMED IN RESPONSE TO DOCUMENTED PUBLIC
37 HEALTH EMERGENCIES, INDIVIDUALS IN THE TARGET AREA MUST BE OFFERED THE
38 OPPORTUNITY TO REQUEST EXEMPTION FROM THE PESTICIDE APPLICATION;

39 C. BE PROVIDED, UPON REQUEST, DIRECTLY TO ANY INDIVIDUAL WHO RESIDES
40 IN THE APPLICATION AREA; AND

41 D. BE RECORDED AND MAINTAINED, INCLUDING DATES OF PUBLICATION AND ANY
42 REQUEST FOR DIRECT NOTIFICATION BY INDIVIDUALS, FOR INSPECTION BY THE
43 DEPARTMENT.

44 S 12. Section 33-1301 of the environmental conservation law is amended
45 by adding a new subdivision 12 to read as follows:

46 12. FOR ANY PERSON TO APPLY PESTICIDES BY AIRCRAFT WITHOUT A PERMIT
47 ISSUED BY THE DEPARTMENT AND WITHOUT PROVIDING THE NOTIFICATION REQUIRED
48 FOR SUCH A PERMIT.

49 S 13. The public service law is amended by adding a new section 119-d
50 to read as follows:

51 S 119-D. PUBLIC UTILITY RIGHT-OF-WAY PESTICIDE APPLICATION. 1. DEFI-
52 NITIONS. AS USED IN THIS SECTION:

53 A. "CERTIFIED APPLICATOR" SHALL HAVE THE SAME MEANING AS IS ASCRIBED
54 TO SUCH TERM BY SUBDIVISION TEN OF SECTION 33-0101 OF THE ENVIRONMENTAL
55 CONSERVATION LAW.

1 B. "COMMERCIAL LAWN APPLICATION" SHALL HAVE THE SAME MEANING AS IS
2 ASCRIBED TO SUCH TERM BY SUBDIVISION FORTY-SIX OF SECTION 33-0101 OF THE
3 ENVIRONMENTAL CONSERVATION LAW.

4 C. "INTEGRATED PEST MANAGEMENT" SHALL MEAN A DECISION-MAKING PROCESS
5 FOR PEST CONTROL THAT UTILIZES REGULAR MONITORING TO DETERMINE IF AND
6 WHEN CONTROLS ARE NEEDED; EMPLOYS PHYSICAL, MECHANICAL, CULTURAL,
7 BIOLOGICAL AND EDUCATIONAL TACTICS TO CONTROL CONDITIONS THAT PROMOTE
8 PEST INFESTATIONS AND TO KEEP PEST POPULATIONS AT TOLERABLE DAMAGE OR
9 ANNOYANCE LEVELS; AND ONLY AS A LAST RESORT, UTILIZES LEAST-TOXIC PESTI-
10 CIDE CONTROLS. THE OVERALL GOAL OF SUCH MANAGEMENT IS TO ELIMINATE THE
11 UNNECESSARY USE OF PESTICIDES AND REDUCE THE USE OF ALL PESTICIDES.

12 D. "PEST" SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO SUCH TERM BY
13 SUBDIVISION THIRTY-FOUR OF SECTION 33-0101 OF THE ENVIRONMENTAL CONSER-
14 VATION LAW.

15 E. "PESTICIDE" SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO SUCH TERM
16 BY SUBDIVISION THIRTY-FIVE OF SECTION 33-0101 OF THE ENVIRONMENTAL
17 CONSERVATION LAW.

18 F. "PESTICIDE APPLICATION" SHALL HAVE THE SAME MEANING AS IS ASCRIBED
19 TO THE TERM "APPLICATION OF PESTICIDE" BY SUBDIVISION EIGHT OF SECTION
20 33-0101 OF THE ENVIRONMENTAL CONSERVATION LAW.

21 2. NOTIFICATION. COMMERCIAL LAWN APPLICATIONS OF PESTICIDES AND PESTI-
22 CIDE APPLICATIONS TO UTILITY POLES CONDUCTED BY OR ON BEHALF OF PUBLIC
23 UTILITY COMPANIES SHALL MEET THE FOLLOWING REQUIREMENTS:

24 A. REQUIREMENTS FOR PUBLIC UTILITY COMPANY RIGHT-OF-WAY PESTICIDE
25 APPLICATIONS.

26 (1) ALL PESTICIDE APPLICATIONS CONDUCTED BY OR ON BEHALF OF PUBLIC
27 UTILITY COMPANIES SHALL BE CONDUCTED USING INTEGRATED PEST MANAGEMENT
28 TECHNIQUES, AND ONLY AS A LAST RESORT, MAY PESTICIDES WHICH ARE THE
29 LEAST TOXIC BE USED TO CONTROL THE TARGET ORGANISMS.

30 (2) ALL PESTICIDE APPLICATIONS CONDUCTED BY OR ON BEHALF OF PUBLIC
31 UTILITY COMPANIES SHALL ONLY BE PERFORMED BY PERSONS WHO ARE CERTIFIED
32 APPLICATORS OR WORKING UNDER THE DIRECT SUPERVISION OF A CERTIFIED
33 APPLICATOR WHO IS ON THE RIGHT-OF-WAY SITE WITHIN THE LINE OF SIGHT AND
34 WITHIN ONE THOUSAND FEET OF THE PESTICIDE APPLICATION. IN URBAN
35 SETTINGS, THE CERTIFIED APPLICATOR SHALL BE WITHIN THE LINE OF SIGHT AND
36 WITHIN ONE HUNDRED FEET OF THE PESTICIDE APPLICATION.

37 B. POSTING OF NOTICE OF PUBLIC UTILITY COMPANY RIGHT-OF-WAY PESTICIDE
38 APPLICATIONS.

39 (1) NOTICES SHALL BE POSTED ALONG THE PERIMETER WHERE COMMERCIAL LAWN
40 APPLICATIONS OF PESTICIDES OCCUR. THE NOTICES SHALL BE PLACED SO AS TO
41 BE CLEARLY VISIBLE TO PERSONS IMMEDIATELY OUTSIDE THE PERIMETER OF SUCH
42 PROPERTY. AT LEAST ONE NOTICE SHALL BE PLACED ON EACH BOUNDARY OF THE
43 PROPERTY RECEIVING THE COMMERCIAL LAWN APPLICATION AND THE NOTICES SHALL
44 BE PLACED AT LEAST EVERY FIFTY FEET. IF INDIVIDUAL TREES OR UTILITY
45 POLES ARE TREATED, EACH TREE OR POLE SHALL BE POSTED WITH THE NOTICE.
46 ALL NOTICES SHALL BE AT LEAST TWELVE INCHES SQUARE. THE NOTICES SHALL BE
47 PUT IN PLACE AT THE TIME THE PESTICIDE IS BEING APPLIED.

48 (2) THE NOTICES SHALL PROVIDE THE FOLLOWING INFORMATION: THE NAME OF
49 THE PUBLIC UTILITY COMPANY PERFORMING OR ON WHOSE BEHALF THE PESTICIDES
50 ARE BEING APPLIED; THE PESTICIDE BUSINESS CONDUCTING THE PESTICIDE
51 APPLICATION (IF APPLICABLE); THE CERTIFIED APPLICATOR PERFORMING OR
52 SUPERVISING THE PESTICIDE APPLICATION; THE DATE OF THE PESTICIDE APPLI-
53 CATION; THE ENVIRONMENTAL PROTECTION AGENCY PESTICIDE PRODUCT REGISTRA-
54 TION NUMBER AND THE PRODUCT NAME OF THE PESTICIDE TO BE APPLIED; THE
55 SPECIFIC LOCATIONS WHERE THE PESTICIDE WILL BE APPLIED; THE TARGET
56 ORGANISMS; AND DIRECTIONS FOR THE OCCUPANT TO RECEIVE FURTHER INFORMA-

1 TION ABOUT THE PESTICIDE APPLICATION. THE NOTICE FORM SHALL BE COMPOSED
2 OF MATERIAL ABLE TO WITHSTAND ADVERSE WEATHER CONDITIONS AND POSTED IN
3 THE FOLLOWING MANNER:

4 (A) FOR PESTICIDE APPLICATIONS MADE TO INDIVIDUAL TREES OR POLES,
5 PLACED ON EACH TREE OR POLE AT LEAST THREE FEET ABOVE THE GROUND AND
6 CLEARLY VISIBLE FROM OUTSIDE OF THE BOUNDARY OF THE RIGHT-OF-WAY.

7 (B) FOR ALL OTHER COMMERCIAL LAWN APPLICATIONS, PLACED EVERY FIFTY
8 FEET ALONG THE BOUNDARIES OF THE RIGHT-OF-WAY AND AROUND THE PERIMETER
9 OF THE PESTICIDE APPLICATION AREA, AT LEAST THREE FEET ABOVE THE GROUND
10 AND CLEARLY VISIBLE FROM OUTSIDE OF THE RIGHT-OF-WAY.

11 (C) AT THE TIME OF THE PESTICIDE APPLICATION AND REMAIN IN PLACE FOR
12 AT LEAST THREE DAYS FOLLOWING THE PESTICIDE APPLICATION.

13 C. SPECIAL NOTIFICATION REQUIREMENTS. WHERE THE COMMERCIAL LAWN APPLI-
14 CATIONS ARE MADE ON OR ADJACENT TO THE PREMISES OF SCHOOLS, CHILD CARE
15 FACILITIES, HEALTH CARE FACILITIES, SENIOR CITIZEN FACILITIES OR AGRI-
16 CULTURAL LANDS, THE PUBLIC UTILITY COMPANY SHALL DELIVER TO THE OWNER OR
17 THE OWNER'S AGENT A COMPLETE LEGIBLE COPY OF THE LABEL AND LABELING FOR
18 THE PESTICIDE TO BE APPLIED, NOT LESS THAN FIVE DAYS PRIOR TO THE PESTI-
19 CIDE APPLICATION. THE OWNER OR OWNER'S AGENT SHALL BE RESPONSIBLE FOR
20 INFORMING THE OCCUPANTS OF THE STRUCTURES OF SUCH PESTICIDE APPLICATIONS
21 AT LEAST FORTY-EIGHT HOURS PRIOR TO SUCH APPLICATIONS.

22 D. NEWSPAPER PUBLICATION OF PUBLIC UTILITY COMPANY RIGHT-OF-WAY PESTI-
23 CIDE APPLICATIONS. NOTICE OF COMMERCIAL LAWN APPLICATIONS BY OR ON
24 BEHALF OF PUBLIC UTILITY COMPANIES SHALL BE PROVIDED THROUGH PROMINENT
25 PUBLICATION IN A NEWSPAPER IN GENERAL CIRCULATION IN THE TREATMENT AREA
26 AT LEAST TWICE PRIOR TO THE PESTICIDE APPLICATION, ONCE AT LEAST ONE
27 WEEK PRIOR TO THE APPLICATION AND A SECOND NOTICE AT LEAST SEVENTY-TWO
28 HOURS PRIOR TO THE APPLICATION.

29 E. PESTICIDE APPLICATION LIMITATIONS. NO COMMERCIAL LAWN APPLICATION
30 OF PESTICIDES, BY OR ON BEHALF OF A PUBLIC UTILITY COMPANY, SHALL BE
31 CONDUCTED BY MEANS OF AN AIRCRAFT.

32 S 14. This act shall take effect on the sixtieth day after it shall
33 have become a law.