

3817

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. ENGLEBRIGHT -- 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 ASSEMBLY, 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:  
19 2. Activities subject to regulation shall include any form of drain-  
20 ing, dredging, excavation, removal of soil, mud, sand, shells, gravel or

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

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

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

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

30 1-A. AN APPLICATION FOR A PERMIT TO APPLY A PESTICIDE IN OR WITHIN ONE  
31 HUNDRED FEET OF FRESHWATER WETLANDS SHALL PROVIDE THE FOLLOWING INFORMA-  
32 TION:

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

34 (B) A DESCRIPTION OF THE TARGET ORGANISM;

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

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

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

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

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

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

53 (B) CONFIRM THAT AN INTEGRATED PEST MANAGEMENT PROGRAM, INCLUDING  
54 BIOLOGICAL AND CULTURAL METHODS TO CONTROL THE TARGET ORGANISM HAVE BEEN  
55 UTILIZED, AND ONLY AS A LAST RESORT, IS A PESTICIDE APPLICATION PROPOSED

1 WHICH UTILIZES THE LEAST TOXIC PESTICIDE REGISTERED FOR CONTROL OF THE  
2 TARGET ORGANISM;

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

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

20 (I) THE PURPOSE OF THE PESTICIDE APPLICATION;

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

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

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

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

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

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

33 6. "PESTICIDE" SHALL MEAN:

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

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

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

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

49 2. Activities subject to regulation hereunder include any form of  
50 draining, dredging, excavation, and removal either directly or indirect-  
51 ly, of soil, mud, sand, shells, gravel or other aggregate from any tidal  
52 wetland; any form of dumping, filling, or depositing, either directly or  
53 indirectly, of any soil, stones, sand, gravel, mud, rubbish, or fill of  
54 any kind; APPLYING PESTICIDES; the erection of any structures or roads,  
55 the driving of any pilings or placing of any other obstructions, whether  
56 or not changing the ebb and flow of the tide, and any other activity

1 within or immediately adjacent to inventoried wetlands which may  
2 substantially impair or alter the natural condition of the tidal wetland  
3 area.

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

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

16 1-A. AN APPLICATION FOR A PERMIT TO APPLY A PESTICIDE IN OR WITHIN ONE  
17 HUNDRED FEET OF TIDAL WETLANDS SHALL PROVIDE THE FOLLOWING INFORMATION:

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

19 (B) A DESCRIPTION OF THE TARGET ORGANISM;

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

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

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

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

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

31 (A) consider the compatibility of the proposed activity with reference  
32 to the public health and welfare, marine fisheries, shellfisheries,  
33 wildlife, flood and hurricane and storm dangers, and the land-use regu-  
34 lations promulgated pursuant to section 25-0302 of this [act] ARTICLE;

35 (B) CONFIRM THAT AN INTEGRATED PEST MANAGEMENT PROGRAM, INCLUDING  
36 BIOLOGICAL AND CULTURAL METHODS TO CONTROL THE TARGET ORGANISM HAVE BEEN  
37 UTILIZED, AND ONLY AS A LAST RESORT, IS A PESTICIDE APPLICATION PROPOSED  
38 WHICH UTILIZES THE LEAST TOXIC PESTICIDE REGISTERED FOR CONTROL OF THE  
39 TARGET ORGANISM;

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

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

1 (I) THE PURPOSE OF THE PESTICIDE APPLICATION;  
2 (II) THE PRODUCT NAME OF THE PESTICIDE AND THE ACTIVE INGREDIENT IN  
3 THE PRODUCT BEING APPLIED;  
4 (III) THE PROPOSED DATES OF THE PESTICIDE APPLICATION;  
5 (IV) THE SPECIFIC LOCATION OF THE PESTICIDE APPLICATION;  
6 (V) A CONTACT PERSON AND TELEPHONE NUMBER FOR FURTHER INFORMATION,  
7 INCLUDING A COPY OF THE PESTICIDE OR CHEMICAL LABEL; AND  
8 (VI) PROVIDE FOR POSTING OF PUBLIC NOTICES FOR PESTICIDE APPLICATIONS  
9 AUTHORIZED BY A PERMIT ISSUED BY THE DEPARTMENT, AT REGULAR INTERVALS  
10 AROUND OR ALONG THE PERIMETER AND AT PUBLIC ACCESS POINTS OF THE TREATED  
11 TIDAL WETLAND.

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

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

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

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

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

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

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

38 A. CERTIFICATION THAT THE AIRCRAFT CURRENTLY MEETS ALL APPLICABLE  
39 FEDERAL AND STATE REGULATIONS;

40 B. THE AIRCRAFT IDENTIFICATION NUMBER;

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

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

43 E. THE OWNERSHIP OF THE TARGET AREA;

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

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

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

48 I. THE PESTICIDE TO BE USED;

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

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

52 L. CERTIFICATION THAT THE CERTIFIED APPLICATOR HAS PARTICIPATED IN A  
53 TRAINING PROGRAM APPROVED BY THE DEPARTMENT, WHICH SHALL INCLUDE THE  
54 MIXING AND LOADING OF THE PESTICIDE INTO THE AIRCRAFT, CALIBRATION AND  
55 OPERATION OF THE APPLICATION EQUIPMENT USED BY THE APPLICATOR, AND  
56 CLEANING THE APPLICATION EQUIPMENT; AND

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

5 2. THE FOLLOWING CONDITIONS SHALL APPLY TO ALL PESTICIDE APPLICATIONS  
6 BY AIRCRAFT:

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

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

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

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

20 (IV) DESIGNED TO ALLOW COMPLETE DRAINAGE DURING FLIGHT AND ON THE  
21 GROUND;

22 B. ALL PESTICIDES APPLIED AERIALY:

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

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

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

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

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

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

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

43 C. APPLICATION OF PESTICIDES BY AIRCRAFT IS PROHIBITED:

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

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

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

55 B. THE DISTANCE MAY BE WAIVED FOR A SINGLE-FAMILY RESIDENCE THAT IS  
56 OCCUPIED BY THE PERSON CONTRACTING TO HAVE THE APPLICATION PERFORMED AND

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

14 4. NOTIFICATION FOR COMMUNITY OF AREA-WIDE PESTICIDE APPLICATIONS BY  
15 AIRCRAFT SHALL:

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

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

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

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

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

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

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

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

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

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

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

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

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

15 F. "PESTICIDE APPLICATION" SHALL HAVE THE SAME MEANING AS IS ASCRIBED  
16 TO THE TERM "APPLICATION OF PESTICIDE" BY SUBDIVISION EIGHT OF SECTION  
17 33-0101 OF THE ENVIRONMENTAL CONSERVATION LAW.

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

21 A. REQUIREMENTS FOR PUBLIC UTILITY COMPANY RIGHT-OF-WAY PESTICIDE  
22 APPLICATIONS.

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

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

34 B. POSTING OF NOTICE OF PUBLIC UTILITY COMPANY RIGHT-OF-WAY PESTICIDE  
35 APPLICATIONS.

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

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

- 1 (A) FOR PESTICIDE APPLICATIONS MADE TO INDIVIDUAL TREES OR POLES,  
2 PLACED ON EACH TREE OR POLE AT LEAST THREE FEET ABOVE THE GROUND AND  
3 CLEARLY VISIBLE FROM OUTSIDE OF THE BOUNDARY OF THE RIGHT-OF-WAY.
- 4 (B) FOR ALL OTHER COMMERCIAL LAWN APPLICATIONS, PLACED EVERY FIFTY  
5 FEET ALONG THE BOUNDARIES OF THE RIGHT-OF-WAY AND AROUND THE PERIMETER  
6 OF THE PESTICIDE APPLICATION AREA, AT LEAST THREE FEET ABOVE THE GROUND  
7 AND CLEARLY VISIBLE FROM OUTSIDE OF THE RIGHT-OF-WAY.
- 8 (C) AT THE TIME OF THE PESTICIDE APPLICATION AND REMAIN IN PLACE FOR  
9 AT LEAST THREE DAYS FOLLOWING THE PESTICIDE APPLICATION.
- 10 C. SPECIAL NOTIFICATION REQUIREMENTS. WHERE THE COMMERCIAL LAWN APPLI-  
11 CATIONS ARE MADE ON OR ADJACENT TO THE PREMISES OF SCHOOLS, CHILD CARE  
12 FACILITIES, HEALTH CARE FACILITIES, SENIOR CITIZEN FACILITIES OR AGRI-  
13 CULTURAL LANDS, THE PUBLIC UTILITY COMPANY SHALL DELIVER TO THE OWNER OR  
14 THE OWNER'S AGENT A COMPLETE LEGIBLE COPY OF THE LABEL AND LABELING FOR  
15 THE PESTICIDE TO BE APPLIED, NOT LESS THAN FIVE DAYS PRIOR TO THE PESTI-  
16 CIDE APPLICATION. THE OWNER OR OWNER'S AGENT SHALL BE RESPONSIBLE FOR  
17 INFORMING THE OCCUPANTS OF THE STRUCTURES OF SUCH PESTICIDE APPLICATIONS  
18 AT LEAST FORTY-EIGHT HOURS PRIOR TO SUCH APPLICATIONS.
- 19 D. NEWSPAPER PUBLICATION OF PUBLIC UTILITY COMPANY RIGHT-OF-WAY PESTI-  
20 CIDE APPLICATIONS. NOTICE OF COMMERCIAL LAWN APPLICATIONS BY OR ON  
21 BEHALF OF PUBLIC UTILITY COMPANIES SHALL BE PROVIDED THROUGH PROMINENT  
22 PUBLICATION IN A NEWSPAPER IN GENERAL CIRCULATION IN THE TREATMENT AREA  
23 AT LEAST TWICE PRIOR TO THE PESTICIDE APPLICATION, ONCE AT LEAST ONE  
24 WEEK PRIOR TO THE APPLICATION AND A SECOND NOTICE AT LEAST SEVENTY-TWO  
25 HOURS PRIOR TO THE APPLICATION.
- 26 E. PESTICIDE APPLICATION LIMITATIONS. NO COMMERCIAL LAWN APPLICATION  
27 OF PESTICIDES, BY OR ON BEHALF OF A PUBLIC UTILITY COMPANY, SHALL BE  
28 CONDUCTED BY MEANS OF AN AIRCRAFT.
- 29 S 14. This act shall take effect on the sixtieth day after it shall  
30 have become a law.