S T A T E O F N E W Y O R K

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:

Section 1. Section 24-0107 of the environmental conservation law is amended by adding two new subdivisions 9 and 10 to read as follows:

9. "PESTICIDE" SHALL MEAN:

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

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

10. "INTEGRATED PEST MANAGEMENT" MEANS AN ECONOMICAL AND ENVIRONMENTALLY SENSITIVE APPROACH TO PEST MANAGEMENT WHICH RELIES ON A COMBINATION OF BIOLOGICAL, CHEMICAL, CULTURAL, MECHANICAL AND OTHER NON-CHEMICAL PEST CONTROL TECHNIQUES AND PRACTICES, AND, WHEN NECESSARY, TO USE SELECTIVE PESTICIDES TO MANAGE PEST POPULATIONS BY THE MOST EFFECTIVE MEANS TO PREVENT UNACCEPTABLE LEVELS OF PEST ACTIVITIES AND DAMAGE, WITH THE LEAST HAZARD TO PEOPLE, PROPERTY AND THE ENVIRONMENT. CHEMICAL CONTROL MEASURES SHALL BE THE PRACTICE OF LAST RESORT.

S 2. Subdivisions 2 and 5 of section 24-0701 of the environmental conservation law, as amended by chapter 654 of the laws of 1977, are amended to read as follows:

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

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

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

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

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

(B) A DESCRIPTION OF THE TARGET ORGANISM;

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

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

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

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

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

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

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

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

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

(D) PROVIDE FOR PUBLISHED NOTICE OF ANY PESTICIDE APPLICATION AUTHORIZED BY A PERMIT ISSUED BY THE LOCAL GOVERNMENT OR THE COMMISSIONER, IN A NEWSPAPER GENERALLY CIRCULATED IN THE AREA WHERE THE APPLICATION IS TO OCCUR, AT LEAST ONE WEEK PRIOR TO AND AT LEAST THREE DAYS PRIOR TO SUCH APPLICATION. FOR PESTICIDE APPLICATIONS CONDUCTED IN RESPONSE TO A PUBLIC HEALTH EMERGENCY DECLARED BY THE DEPARTMENT OF HEALTH OR A LOCAL HEALTH AGENCY AND APPROVED BY THE DEPARTMENT OF HEALTH, NEWSPAPER PUBLICATION OF THE PESTICIDE APPLICATION SHALL BE REQUIRED AT LEAST THREE DAYS PRIOR TO THE APPLICATION. THE NEWSPAPER PUBLICATION SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION:

(I) THE PURPOSE OF THE PESTICIDE APPLICATION;

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

(III) THE PROPOSED DATES OF THE PESTICIDE APPLICATION;

(IV) THE SPECIFIC LOCATION OF THE PESTICIDE APPLICATION;

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

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

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

6. "PESTICIDE" SHALL MEAN:

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

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

7. "INTEGRATED PEST MANAGEMENT" MEANS AN ECONOMICAL AND ENVIRONMENTALLY SENSITIVE APPROACH TO PEST MANAGEMENT WHICH RELIES ON A COMBINATION OF BIOLOGICAL, CHEMICAL, CULTURAL, MECHANICAL AND OTHER NON-CHEMICAL PEST CONTROL TECHNIQUES AND PRACTICES, AND, WHEN NECESSARY, TO USE SELECTIVE PESTICIDES TO MANAGE PEST POPULATIONS BY THE MOST EFFECTIVE MEANS TO PREVENT UNACCEPTABLE LEVELS OF PEST ACTIVITIES AND DAMAGE, WITH THE LEAST HAZARD TO PEOPLE, PROPERTY AND THE ENVIRONMENT. CHEMICAL CONTROL MEASURES SHALL BE THE PRACTICE OF LAST RESORT.

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

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

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

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

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

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

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

(B) A DESCRIPTION OF THE TARGET ORGANISM;

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

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

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

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

1. In granting, denying or limiting any permit under this [act] ARTICLE, the commissioner shall:

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

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

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

(D) PROVIDE FOR PUBLISHED NOTICE OF ANY PESTICIDE APPLICATION AUTHORIZED BY A PERMIT ISSUED BY THE DEPARTMENT, IN A NEWSPAPER GENERALLY CIRCULATED IN THE AREA WHERE THE APPLICATION IS TO OCCUR, AT LEAST ONE WEEK PRIOR TO AND AT LEAST THREE DAYS PRIOR TO SUCH APPLICATION. FOR PESTICIDE APPLICATIONS CONDUCTED IN RESPONSE TO A PUBLIC HEALTH EMERGENCY DECLARED BY THE DEPARTMENT OF HEALTH OR A LOCAL HEALTH AGENCY AND APPROVED BY THE DEPARTMENT OF HEALTH, NEWSPAPER PUBLICATION OF THE PESTICIDE APPLICATION SHALL BE REQUIRED AT LEAST THREE DAYS PRIOR TO THE APPLICATION. THE NEWSPAPER PUBLICATION SHALL CONTAIN AT LEAST THE FOLLOWING INFORMATION:

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

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

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

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

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

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

S 33-0908. APPLICATIONS OF PESTICIDES BY AIRCRAFT.

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

A. CERTIFICATION THAT THE AIRCRAFT CURRENTLY MEETS ALL APPLICABLE FEDERAL AND STATE REGULATIONS;
B. THE AIRCRAFT IDENTIFICATION NUMBER;
C. THE TYPE OF AIRCRAFT (FIXED WING OR ROTARY WING);
D. THE BOUNDARIES AND EXACT LOCATION OF THE TARGET AREA;
E. THE OWNERSHIP OF THE TARGET AREA;
F. THE IDENTITY OF NON-TARGET AREAS AND SAFETY HAZARDS LOCATED ON OR ADJACENT TO THE TARGET AREA;
G. THE CROP OR TYPE OF TARGET AREA TO BE TREATED;
H. THE TARGET ORGANISM OR ORGANISMS TO BE CONTROLLED;
I. THE PESTICIDE TO BE USED;
J. THE PROPOSED DATE AND TIME OF THE APPLICATION;
K. THE CERTIFICATION IDENTIFICATION NUMBER, NAME AND ADDRESS OF THE CERTIFIED APPLICATOR APPLYING THE PESTICIDE;
L. CERTIFICATION THAT THE CERTIFIED APPLICATOR HAS PARTICIPATED IN A TRAINING PROGRAM APPROVED BY THE DEPARTMENT, WHICH SHALL INCLUDE THE MIXING AND LOADING OF THE PESTICIDE INTO THE AIRCRAFT, CALIBRATION AND OPERATION OF THE APPLICATION EQUIPMENT USED BY THE APPLICATOR, AND CLEANING THE APPLICATION EQUIPMENT; AND

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

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

A. ALL AERIAL SPRAY OR SPREADING EQUIPMENT SHALL BE:

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

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

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

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

B. ALL PESTICIDES APPLIED AERIALLY:

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

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

3. THE FOLLOWING CONDITIONS SHALL APPLY TO CERTAIN PESTICIDE APPLICATIONS BY AIRCRAFT:

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

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

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

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

C. APPLICATION OF PESTICIDES BY AIRCRAFT IS PROHIBITED:

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

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

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

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

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

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

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

B. CONTAIN THE PROPOSED APPLICATION DATE; THE LOCATION OF THE APPLICATION; THE NAME, ADDRESS AND BUSINESS REGISTRATION NUMBER OF THE PESTICIDE BUSINESS PERFORMING THE APPLICATION; THE PESTICIDE PRODUCT NAME, ACTIVE INGREDIENT AND ENVIRONMENTAL PROTECTION AGENCY REGISTRATION NUMBER; THE APPLICATION EQUIPMENT TO BE USED; A CONTACT PERSON FROM WHOM TO REQUEST SPECIFIC INFORMATION ABOUT THE APPLICATION; THE NAME AND TELEPHONE NUMBER OF THE NEAREST POISON CONTROL CENTER; THE TELEPHONE NUMBER OF THE STATE PESTICIDE POISONING REGISTRY. IN THE CASE OF APPLICATIONS WHICH ARE NOT BEING PERFORMED IN RESPONSE TO DOCUMENTED PUBLIC HEALTH EMERGENCIES, INDIVIDUALS IN THE TARGET AREA MUST BE OFFERED THE OPPORTUNITY TO REQUEST EXEMPTION FROM THE PESTICIDE APPLICATION;

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

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

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

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

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

S 119-D. PUBLIC UTILITY RIGHT-OF-WAY PESTICIDE APPLICATION. 1. DEFINITIONS. AS USED IN THIS SECTION:

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

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

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

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

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

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

2. NOTIFICATION. COMMERCIAL LAWN APPLICATIONS OF PESTICIDES AND PESTICIDE APPLICATIONS TO UTILITY POLES CONDUCTED BY OR ON BEHALF OF PUBLIC UTILITY COMPANIES SHALL MEET THE FOLLOWING REQUIREMENTS:

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

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

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

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

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

(2) THE NOTICES SHALL PROVIDE THE FOLLOWING INFORMATION: THE NAME OF THE PUBLIC UTILITY COMPANY PERFORMING OR ON WHOSE BEHALF THE PESTICIDES ARE BEING APPLIED; THE PESTICIDE BUSINESS CONDUCTING THE PESTICIDE APPLICATION (IF APPLICABLE); THE CERTIFIED APPLICATOR PERFORMING OR SUPERVISING THE PESTICIDE APPLICATION; THE DATE OF THE PESTICIDE APPLICATION; THE ENVIRONMENTAL PROTECTION AGENCY PESTICIDE PRODUCT REGISTRATION NUMBER AND THE PRODUCT NAME OF THE PESTICIDE TO BE APPLIED; THE SPECIFIC LOCATIONS WHERE THE PESTICIDE WILL BE APPLIED; THE TARGET ORGANISMS; AND DIRECTIONS FOR THE OCCUPANT TO RECEIVE FURTHER INFORMATION ABOUT THE PESTICIDE APPLICATION. THE NOTICE FORM SHALL BE COMPOSED OF MATERIAL ABLE TO WITHSTAND ADVERSE WEATHER CONDITIONS AND POSTED IN THE FOLLOWING MANNER:

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

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

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

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

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

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

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