§ 409-h. Requirements for notification of pesticide applications. 1. For purposes of this section the following terms shall have the meanings set forth below:

(a) "School" shall mean any public school district or private or parochial school or board of cooperative educational services.

(b) "Pesticide" shall have the same meaning as in subdivision thirty-five of section 33-0101 of the environmental conservation law.

(c) "Facility" means any school building used for instructional purposes and its surrounding grounds, sites and other grounds to be used for playgrounds, athletics and other instructional purposes, and any administrative offices.

(d) "Written notification" shall mean notice in writing that is: provided directly to the student or staff; or delivered to a receptacle designated for that student or staff; or mailed to the student's or staff's last known address; or delivered by any other reasonable methods authorized by the commissioner.

(e) "School year" shall mean the period commencing on the first day of regular instruction and shall end on the last day of session.

(f) "Relevant facility" shall mean any facility where the staff person receiving notification regularly works or where a child of the person in parental relation receiving notification regularly receives instruction.

2. Schools shall establish a pesticide notification procedure to provide information on pesticide applications at school facilities. Schools shall provide written notification of pesticide applications at any relevant facility to staff and persons in parental relation according to the following provisions:

(a) The school shall provide written notification to all staff and persons in parental relation at the beginning of each school year. Provided however, that if a child enrolls after the beginning of the school year, notification shall be provided within one week of such enrollment. The notification provided at the beginning of the school year shall include at a minimum the following information:

(i) a statement that pesticide products may be used periodically throughout the school year;

(ii) a statement that schools are required to maintain a list of staff and persons in parental relation who wish to receive forty-eight hour

prior written notification of pesticide applications at relevant facilities, and instructions on how to register with the school to be on such list for notification; and

(iii) the name of a school representative and contact number to obtain further information.

(b) Within ten days of the end of the school year and within two school days of the end of winter recess and spring recess, the school shall provide written notification to all staff and persons in parental relation listing the date, location and product used, for each application which required prior notification and each emergency application made, at relevant facilities, during the period of time since the previous notice. Such notification shall also include a statement that schools are required to maintain a list of staff and persons in parental relation who wish to receive forty-eight hour prior written notification of pesticide applications and instructions on how to register with the school to be on such list for prior notification; how to obtain further information about the products being applied, including any warnings that appear on the label of the pesticides that are pertinent to the protection of humans, animals or the environment; and the name of a school representative and contact number for additional information.

(c) Each school shall establish and maintain a list of staff and persons in parental relation requesting written notification forty-eight hours in advance of pesticide applications at relevant facilities. Schools shall add any staff or person in parental relation to such list upon request.

(d) Not less than forty-eight hours prior to the application of a pesticide at a facility, a school shall provide to those on the list relevant to such facility, written notification which shall include, at a minimum the following information:

(i) the specific date and location of the application at the relevant facility. In case of outdoor applications the notice must provide a specific date, and may include two alternative dates in case the application cannot be made due to weather conditions;

(ii) the product name and pesticide registration number assigned by the United States Environmental Protection Agency;

(iii) the following statements: "This notice is to inform you of a

pending pesticide application to a school facility. You may wish to discuss with the designated school representative what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product(s) being applied, including any warnings that appear on the label of the pesticide(s) that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network information phone number 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158."; and

(iv) the name of a school representative and contact number for additional information.

(e) For purposes of this section the following pesticide applications shall not be subject to prior notification requirements:

(i) the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. § 136 (mm) and 136q (h)(2);

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

(iii) any application where the school facility remains unoccupied for a continuous seventy-two hour period following the application of the pesticide;

(iv) nonvolatile rodenticides in tamper resistant bait stations or in areas inaccessible to children;

(v) silica gels and other nonvolatile ready-to-use, paste, foam or gel formulations of insecticides in areas inaccessible to children;

(vi) nonvolatile insecticidal baits in tamper resistant bait stations or in areas inaccessible to children;

(vii) application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under Section 40 CFR Part 152.25;

(viii) boric acid and disodium octaborate tetrahydrate;

(ix) the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide; or

(x) any emergency application of a pesticide when necessary to protect against an imminent threat to human health, provided however, that prior to any such emergency application, the person making such application shall make a good faith effort to supply the written notice required pursuant to this section. Upon making such an emergency application, the person making such application shall notify the commissioner of the department of health, using a form developed by the commissioner for such purposes that shall include minimally the name of the person making the application, the pesticide business registration number or certified applicator number of the person making such application, the location and date of such application, the product name and USEPA registration number of the pesticide applied and the reason for such application. The commissioner shall review such form to ensure that the circumstance did warrant such emergency application. Such forms shall be kept on file at the department for three years from the date of application and shall be available to any individual upon request.

3. The commissioner is hereby charged with ensuring the compliance of schools with the requirements of this section, and shall establish a procedure for parents to notify the state of any school's failure to comply with the requirements of this section. Whenever it shall have been demonstrated to the satisfaction of the commissioner that a school district has failed to adopt a procedure for notification, or to faithfully and completely implement this section, the commissioner may, on thirty days notice to the district, withhold from the district monies to be paid to such district for the current school year pursuant to section thirty-six hundred nine-a of this chapter, exclusive of monies to be paid in respect of obligations to the retirement systems for the school and district staff and pursuant to collective bargaining agreements. Where it has been demonstrated to the satisfaction of the commissioner that a private or parochial school has failed to adopt a procedure for notification, or to faithfully and completely implement this section, the commissioner may, on thirty days notice to such school, withhold from the school state aid monies to be paid to such school for the current school year pursuant to chapter five hundred seven of the laws of nineteen hundred seventy-four, as amended by chapter nine hundred three of the laws of nineteen hundred eighty-four.

Prior to such withholding, the commissioner shall provide the school an opportunity to present evidence of extenuating circumstances; when combined with evidence that the school shall promptly comply within short time frames that shall be established by the commissioner as part of an agreement between the school and the commissioner, the commissioner may temporarily stay the withholding of such funds pending implementation of such agreement. If the school is in full compliance with this section, the commissioner shall abate the withholding in its entirety.

4. No school or employee of a school shall be held civilly or criminally liable for any failure to comply with the requirements of this section, unless such failure constitutes negligence, gross negligence, or intentional misconduct. Nothing contained herein shall be construed as limiting any legal cause of action or remedy at law, in statute or in equity that existed prior to the effective date of this section.