*** § 390-c. Notice of pesticide applications.** 1. For the purposes of this section the following terms shall have the meanings set forth below:

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

(b) "Daycare facility" shall mean licensed and registered child daycare homes, programs and facilities.

2. Each daycare facility shall be subject to the following notice requirements when pesticides are used at such facility:

(a) A notice of each pesticide application shall be posted in a common area of the facility which is conspicuously visible to persons dropping off or picking up children from the facility. Such notice shall be posted not less than forty-eight hours prior to the pesticide application.

(b) The notice required to be posted pursuant to paragraph (a) of this subdivision shall include at a minimum:

(i) the location and specific date of the application at the daycare 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 statement "This notice is to inform you of a pending pesticide application at this facility. You may wish to discuss with a representative of the daycare facility what precautions are being taken to protect your child from exposure to these pesticides. Further information about the product or products being applied, including any warnings that appear on the label of the pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticide Telecommunications Network Information at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

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

(c) For purposes of this section the following pesticide applications shall not be subject to the notification posting 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 daycare 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 health, using a form developed by such 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 of health shall review such form to ensure that the circumstance did

warrant such emergency application. Such forms shall be kept on file at the department of health for three years from the date of application and shall be available to any individual upon request.

3. Any person, other than a daycare facility, who contracts for the application of a pesticide at a daycare facility shall provide to such facility operator information required to be contained in the posting pursuant to subdivision two of this section at least forty-eight hours prior to such application.

4. (a) Any daycare facility that violates the provisions of subdivision two of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such facility shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner after a hearing or opportunity to be heard.

(b) Any person who violates subdivision three of this section shall, for a first such violation of this section, in lieu of penalty, be issued a written warning, and shall also be issued educational materials pursuant to subdivision two of section 33-1005 of the environmental conservation law. Such person shall, however, for a second violation, be liable to the people of the state for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation, such penalties to be assessed by the commissioner of environmental conservation after a hearing or opportunity to be heard.

* NB There are 2 § 390-c's