

**LOCAL LAW ENTITLED "AMENDING MONROE COUNTY SANITARY CODE TO ADD NEW ARTICLE ENTITLED PESTICIDE NEIGHBOR NOTIFICATION LAW "**

BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF MONROE, as follows:

Section 1. The Monroe County Sanitary Code is hereby amended to add the following Article XIII, entitled "Pesticide Neighbor Notification Law" to read as follows:

**PESTICIDE NEIGHBOR NOTIFICATION LAW**

**§569-89. Legislative Intent.**

The purpose of this Article is to implement the provisions of section 33-1004 of the New York Environmental Conservation Law. It is intended that this Article be read and applied consistently with that section and all other applicable provisions of the New York Environmental Conservation Law and regulations promulgated thereunder.

The Monroe County Legislature hereby reserves the right to modify or nullify this article, in the event that New York Environmental Conservation Law Section 33-1004 or other applicable provisions of the Environmental Conservation Law or regulations are revised subsequent to the passage of this article.

**§569-90. Definitions.**

For the purposes of this Article, all terms herein shall be as defined in Article 33 of the New York Environmental Conservation Law.

- A. "Abutting property" means any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.
- B. "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. For the purposes of this Article the following shall not be considered commercial lawn application:
  - 1. the application of pesticide for the purpose of producing an agricultural commodity;
  - 2. residential application of pesticides;
  - 3. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
  - 4. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification

requirement pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

5. the application of pesticides on golf courses or turf farms.
- C. "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.
- D. "Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families.
- E. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the New York Environmental Conservation Law.
- F. "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.
- G. "Pesticide" means:
1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
  2. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
- H. "Premises" means land and improvements or appurtenances or any part thereof.
- I. "Residential lawn application" means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the person making such application. For the purposes of this Article the following shall not be considered residential lawn application:
1. the application of pesticides for the purpose of producing an agricultural commodity;
  2. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
  3. the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirement pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and
  4. the application of pesticides on golf courses or turf farms.

**§ 569-91. Notification Requirements for Commercial and Residential Lawn Applications.**

**A. Retail Consumer Information Sign.**

All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner pursuant to subdivision one of section 33-1005 of the New York Environmental Conservation Law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

**B. Prior Notification of Commercial Lawn Applications.**

1. At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply the written notice provided for in subdivision three of Section 33-1005 of the New York Environmental Conservation Law, to occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to owners, owners' agents, or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owners' agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owners' agents or other persons in a position of authority shall post such written notice in a manner specified by the Commissioner.
2. Such prior notification provisions shall not apply to the following:
  - a. the application of anti-microbial pesticides and anti-microbial products as defined by FIFRA in 7 U.S.C. Section 136 (mm) and 136q(h)(2);
  - b. 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;
  - c. the use of non-volatile insect or rodent bait in a tamper resistant container;
  - d. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;

- e. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
- f. the use of boric acid and disodium octaborate tetrahydrate;
- g. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
- h. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;
- i. the application of a pesticide by direct injection into a plant or the ground;
- j. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;
- k. the application of a pesticide to the ground or turf of any cemetery; and
- l. an 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 providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the Commissioner of the New York State Department of Health, using a form developed by such Commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

C. Posting of Residential Lawn Applications.

1. All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.
2. Such markers shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

**§569-92. Enforcement and Administrative Sanctions.**

- A. Pursuant to section 33-1004 of the New York Environmental Conservation Law, the County shall have concurrent authority to enforce the provisions of this Article administratively, provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as provided herein and shall be payable to the County.
- B. Except as provided in paragraphs (1) and (2) of this subdivision, any person who violates any provision of this Article shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent violation. Notwithstanding the foregoing:
  1. An owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises, who violates any provision of subdivision (B) of section 569-91 of this Article, and a person who violates any provision of subdivision (C) of such section, shall for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials prepared by the Commissioner pursuant to subdivision two of section 33-1005 of the New York Environmental Conservation Law. Such person shall, however, for a second violation, be liable for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation.
  2. Any person who violates any provision of subdivision (A) of section 569-91 of this Article shall be issued a warning for the first violation and shall be provided seven days to correct such violation; and shall be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for a subsequent violation.

§569-93. Criminal Sanctions.

Penalties imposed pursuant to this section may be assessed only against a person providing a commercial lawn application.

- A. Any person having the culpable mental states defined in subdivision one or two of section 15.05 of the New York Penal Law who violates any provision of this Article, except an offense relating to the application of a general use pesticide, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.
- B. Any person who violates any provision of this Article relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be by a fine not to exceed five thousand dollars.

§569-94. Effective Date.

This Article shall take effect on the first day of January immediately succeeding the date of its filing with the Secretary of State.

Section 2. This local law shall take effect in accordance with the provisions of Section 21 of the Municipal Home Rule Law and immediately upon filing in the office of the Secretary of State as provided for in Section 27 of the Municipal Home Rule Law.

Environment and Public Works Committee; March 2, 2005 - CV: 5-2 (As Amended)  
File No. 05-0071.LL

ENACTED: Date: June 14, 2005      Vote: 21-8 (*Legislators Amato, Assiri, Bullard, Colby, Driscoll, Hanna, P. McCann and Thomas voted in the negative.*)

ACTION BY THE COUNTY EXECUTIVE

APPROVED: X      VETOED: \_\_\_\_\_

SIGNATURE: Maggie Brooks      DATE: 7/07/05

EFFECTIVE DATE OF RESOLUTION: 7/07/05