

Government Services & Administration  
LAI D ON DESKS 8/10/15  
DISCUSSION ONLY 9/8/15

RESOLUTION NO. 2015214

RE: LOCAL LAW NO. OF 2015, A LOCAL LAW AUTHORIZING PESTICIDE  
NEIGHBOR NOTIFICATION

Legislators TYNER, MAC AVERY, FARLEY, STRAWINSKI, JETER-JACKSON, and  
PERKINS offer the following and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt Local Law No. of  
2015, which has been submitted this day for consideration by said Legislature.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with  
the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 13<sup>TH</sup> day of October 2015, and that the  
same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 13<sup>th</sup> day of October 2015.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

LOCAL LAW NO. OF 2015

RE: A LOCAL LAW AUTHORIZING PESTICIDE NEIGHBOR NOTIFICATION

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

§ Legislative Intent.

This Board finds that individuals and their personal property are, or can be, unwittingly exposed to pesticides applied on their neighbor's property from commercial and residential lawn applications. This Board further finds that pesticides may pose health and safety risks to people, particularly children, pregnant women, the elderly, and people with infirmities. The intent of this local law is to provide information to county residents about certain pesticide applications to which they may be exposed, so that they can take steps to minimize such exposure to themselves, their families, pets, crops, livestock, backyard wildlife, and property.

Accordingly, this Board hereby adopts the special notice requirements for commercial and residential lawn applications of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this local law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and regulations promulgated there under.

This law shall be known as the Dutchess County Neighbor Notification Law for Pesticides.

§ Definitions.

All terms used 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 point in common with the property on which the pesticide is to be applied.
- b. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the educational law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.
- c. "Commercial lawn application" means the applications of pesticides to ground, trees, or shrubs on public or private outdoor property. For the purposes of this Local Law 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 requirements pursuant to section 33-1003 of the 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.

d. "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.

e. "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.

f. "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.

g. "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.

h. "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.

i. "Premises" means land and improvements or appurtenances or any part thereof.

j. "Residential lawn application" means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purpose of this Local Law 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 purpose of indoor pest control;
- (3) the application of pesticides by or on behalf of agencies shall be subject to visual notification requirements 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.

§ Notification Requirements for Commercial and Residential Lawn Applications.

The provisions in this section are adopted in their entirety and without exception, pursuant to section 33-1004 of the New York Environmental Conservation law.

a. Retail Consumer Information Sign.

(1) 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 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 written notice, as defined in subdivision three of section 33-1005 of the Environmental Conservation law, to:

A. 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

B. 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 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 the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (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 State 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.

§ Enforcement.

Pursuant to section 33-1004 of the New York Environmental Conservation Law, the Dutchess County Department of Health and Department of Consumer Affairs shall enforce the provisions of this local law administratively, provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in the Penalties provision herein of this law and shall be payable to and deposited with Dutchess County. In particular, the Department of Health shall be responsible for neighbor and applicator provisions and the Department of Consumer Affairs shall be responsible for retail establishment provisions.

§ Penalties.

a. Administrative Sanctions.

(1) A person providing a commercial lawn application who violates any provision of this local law 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 offense.

(2) 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 rule or regulation pursuant to the Section on Prior Notification of Commercial Lawn Applications, and a person who violates any provision the subdivision Posting of Residential Lawn Applications, shall for a first such violation, in lieu of 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.

(3) A person who violates the provisions of the section on Retail Consumer Information Sign 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.

b. Criminal Sanctions for Persons Providing Commercial Lawn Applications.

(1) Any person providing a commercial lawn application and 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 local law, 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.

(2) Any person providing a commercial lawn application who violates any provision of this local law 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 a fine not to exceed five thousand dollars.

§ Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to an person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ Effective Date and Filing.

This law shall take effect on the first day of January after it shall have been adopted and filed with the office of Secretary of State.

Within twenty days after adoption of this law, the Clerk of the County Legislature shall forward one certified copy thereof to the Commissioner of the New York State Department of Environmental Conservation and one to the New York State Department of Environmental Conservation and one to the New York State Attorney General.

# PESTICIDE NOTIFICATION LAW

No Fiscal Impact

## FISCAL IMPACT STATEMENT

### APPROPRIATION RESOLUTIONS

Total Current Year Cost \$ [not being implemented next year]

Total Current Year Revenue and Source: \$

Source of County Funds (check one): Existing Appropriations  
Contingency  
Transfer of Existing Appropriations  
Additional Appropriations  
Other (explain)

A. 6100.4458

Identify Line Item (s):  
Related Expenses:

p. 321 Medicaid - subtract \$5000 from

Nature of Expenses:

→ to enforce law (help homeowners, applicators, retailers)

Anticipated Savings to County:

[eventually - from protecting public health]

Net county Cost (this year): \$ 0

(over five years): \$ 0

Additional Comments:

★ ALLOCATE \$5000 to :

(p. 199) A. 4010.29 Health Dept. (Environmental Health)  
[materials/publicity]

[money saved in Medicaid - less illness in county from pesticides!]

# Children and Pesticides Don't Mix

## Children are especially vulnerable to pesticides

- The National Academy of Sciences reports that children are more susceptible to chemicals than adults and estimates that 50% of lifetime pesticide exposure occurs during the first five years of life.<sup>1</sup>
- According to EPA and the American Association of Poison Control Centers, every year more than 10,000 kids are poisoned by rodenticides. Rat poisons are by far the leading cause of [pesticide-related] visits to health care facilities in children under the age of six years and the second leading cause of hospitalization.<sup>2</sup>
- EPA concurs that children take in more pesticides relative to body weight than adults and have developing organ systems that are more vulnerable and less able to detoxify toxic chemicals.<sup>3</sup>
- A 2010 study conducted by the National Institutes of Environmental Health Sciences found certain foods eaten by children contained either an organophosphate or pyrethroid pesticide, leading researchers to believe that government agencies may be underestimating children's dietary exposure to pesticides and, therefore, the inherent risks to children's health.<sup>4</sup>
- One 2011 French cohort study finds that pre-natal exposures to atrazine are associated with fetal growth restriction and small head circumference.<sup>5</sup>
- Infants crawling behavior and proximity to the floor account for a greater potential than adults for dermal and inhalation exposure to contaminants on carpets, floors, lawns, and soil.<sup>6</sup>
- Children with developmental delays and those younger than six years are at increased risk of ingesting pesticides through nonfood items, such as soil.<sup>7</sup>
- Studies find that pesticides such as the weedkiller 2,4-D pass from mother to child through umbilical cord blood and breast milk.<sup>8</sup>
- One 2010 analysis observed that women who use pesticides in their homes or yards were two times more likely to have offspring with neural tube defects than women.<sup>9</sup>
- Consistent observations have led investigators to conclude that chronic low-dose exposure to certain pesticides might pose a hazard to the health and development of children.<sup>10</sup>
- The World Health Organization (WHO) cites that over 30% of

the global burden of disease in children can be attributed to environmental factors, including pesticides.<sup>11</sup>

## Children, cancer and pesticides

- The probability of an effect such as cancer, which requires a period of time to develop after exposure, is enhanced if exposure occurs early in life.<sup>12</sup>
- A 2010 population-based, case-control study of California and Washington state born children ten years of age or younger finds a strong interaction between insecticide exposure during childhood and chromosome abnormalities, suggesting that exposure in childhood to insecticides in combination with a reduced ability to detoxify them increases risk of developing brain tumors.<sup>13</sup>
- A study published in the *Journal of the National Cancer Institute* finds that household and garden pesticide use can increase the risk of childhood leukemia as much as seven-fold.<sup>14</sup>
- A 2010 meta-analysis on residential pesticide use and childhood leukemia finds an association with exposure during pregnancy, as well as to insecticides and herbicides. An association is also found for exposure to insecticides during childhood.<sup>15</sup>

## Commonly Used Chemicals

Chemical	Common Use	Health Effects
2,4-D	Lawns	c, ed, r, n, kl, sj, bd
Dicamba	Lawns	r, n, kl, sj, bd
Fipronil	Indoor/outdoor baits, pet care	c, ed, n, kl, sj
Glyphosate	Lawns	c, r, n, kl, sj
Permethrin	Mosquitoes, head lice, garden	c, ed, r, n, kl, sj

**Key:** Birth/developmental defects=bd; Kidney/liver damage=kl; Sensitizer/irritant=sj; Cancer=c; Neurotoxicity=n; Endocrine Disruption=ed; Reproductive effects=r

## Alternatives

Eliminate exposure to toxic chemicals by implementing organic management practices that use cultural, mechanical and biological methods of control. An organic diet keeps chemicals out of children.

**Studies show children's developing organs create "early windows of great vulnerability" during which exposure to pesticides can cause great damage.**



- Studies show that children living in households where pesticides are used suffer elevated rates of leukemia, brain cancer and soft tissue sarcoma.<sup>16</sup>
- Pesticides can increase susceptibility to certain cancers by breaking down the immune system's surveillance against cancer cells. Infants and children, the aged and the chronically ill are at greatest risk from chemically-induced immune suppression.<sup>17</sup>
- A study published by the American Cancer Society finds an increased risk for non-Hodgkin's lymphoma (NHL) in people exposed to common herbicides and fungicides, particularly the weedkiller mecoprop (MCPP). People exposed to glyphosate (Roundup®) are 2.7 times more likely to develop NHL.<sup>18</sup>
- 75 out of all 99 human studies done on lymphoma and pesticides find a link between the two.<sup>19</sup>
- Four peer-reviewed studies demonstrate the ability of glyphosate-containing herbicides to cause genetic damage to DNA (mutagenicity), even at very low concentration levels.<sup>20</sup>
- A 2007 study published in *Environmental Health Perspectives* finds that children born to mothers living in households with pesticide use during pregnancy had over twice as much risk of getting cancer, specifically acute leukemia (AL) or non-Hodgkin lymphoma (NHL).<sup>21</sup>
- A 2007 Canadian report shows that a greater environmental risk exists for boys, specifically when it comes to cancer, asthma, learning and behavioral disorders, birth defects and testicular dysgenesis syndrome.<sup>22</sup>

**Children, asthma and pesticides**

- Researchers find that pesticides may increase the risk of developing asthma, exacerbate a previous asthmatic condition or even trigger asthma attacks by increasing bronchial hyperresponsiveness.<sup>23</sup>
- A 2004 study finds that young infants and toddlers exposed to herbicides (weedkillers) within their first year of life are 4.5 times more likely to develop asthma by the age of five, and

almost 2.5 times more likely when exposed to insecticides.<sup>24</sup>

- EPA material safety data sheets for the common herbicides 2,4-D, mecoprop, dicamba, (often combined as Trimec®) and glyphosate (Roundup®) list them as respiratory irritants that can cause irritation to skin and mucous membranes, chest burning, coughing, nausea and vomiting.

**Children, learning and developmental disorders and pesticides**

- Roughly one in six children in the U.S. has one or more developmental disability, ranging from a learning disability to a serious behavioral or emotional disorder.<sup>25</sup>
- Scientists believe that the amount of toxic chemicals in the environment that cause developmental and neurological damage are contributing to the rise of physical and mental effects being found in children.<sup>26</sup>
- Studies show children's developing organs create "early windows of great vulnerability" during which exposure to pesticides can cause great damage.<sup>27</sup>
- According to researchers at the University of California-Berkeley School of Public Health, exposure to pesticides while in the womb may increase the odds that a child will have attention deficit hyperactivity disorder (ADHD).<sup>28</sup>
- A 2012 study was the first to find that, at age 7, boys had greater difficulty with working memory, a key component of IQ, than girls with similar prenatal exposure to chlorpyrifos exposures, establishing a difference between how boys and girls respond to prenatal exposure. Similarly, another 2012 study reports that babies exposed in the womb to chlorpyrifos have brain abnormalities after birth.<sup>29</sup>
- In utero exposure to organophosphate pesticides may cause long-term hormonal and behavior alterations. Studies show that exposure to even low levels of chlorpyrifos during pregnancy can impair learning and change brain function.<sup>30</sup>
- One study found that there has been a seven- to eight-fold

increase in the number children born in California with autism since 1990 where incidence to 5 years of age per 10,000 births rose consistently from 6.2 for 1990 births to 42.5 for 2001 births, suggesting that environmental factors including pesticides and household chemicals are also contributing to the phenomenon.<sup>31</sup>

- Lawn pesticide products containing herbicides and fertilizers (such as "weed and feed" products) tested on mice show increased risk of infertility, miscarriage and birth defects at very low dosages.<sup>32</sup>
- Additional studies on lawn pesticide product formulations show effects on learning ability, aggressiveness, memory, motor skills and immune system function.<sup>33</sup>
- A 2002 study finds children born to parents exposed to glyphosate (Roundup®) show a higher incidence of attention deficit disorder and hyperactivity.<sup>34</sup>
- A study of 210,723 live births in Minnesota farming communities finds children of pesticide applicators have significantly higher rates of birth defects than the average population.<sup>35</sup>
- In a 2004-2005 review of 2,4-D, EPA finds that, "there is a concern for endocrine disruption."<sup>36</sup>

#### **Pesticide accumulation and drift**

- Children ages 6-11 nationwide have significantly higher levels of pesticide residues in their bodies than all other age categories.<sup>37</sup>
- Biomonitoring testing in Canada finds residues of lawn pesticides, such as 2,4-D and mecoprop, in 15 percent of children tested, ages three to seven, whose parents had recently applied the lawn chemicals. Breakdown products of organophosphate insecticides are present in 98.7 percent of children tested.<sup>38</sup>

- A 2011 study by the Centers for Disease Control and Prevention's (CDC) National Institute for Occupational Safety and Health (NIOSH) and state agency partners finds that pesticide drift from conventional, chemical-intensive farming has poisoned thousands of farmworkers, rural residents and their children in recent years.<sup>39</sup>
- Scientific studies show that 2,4-D applied to lawns drifts and is tracked indoors where it settles in dust, air and surfaces and may remain for up to a year in carpets.<sup>40</sup>
- Samples from 120 Cape Cod homes, where elevated incidence of breast, colorectal, lung, and prostate cancers are reported, find high indoor air and dust concentrations of carbaryl, permethrin, and 2,4-D.<sup>41</sup>
- A study published in *Environmental Health Perspectives* found that children who eat a conventional diet of food produced with chemical-intensive practices carry residues of organophosphate pesticides that are reduced or eliminated when they switch to an organic diet.<sup>42</sup>
- Scientists at the California Department of Public Health found that 28% of the mothers studied who lived near fields in the Central Valley, which were sprayed with organochlorines, such as endosulfan and dicofol, have children with autism.<sup>43</sup>
- A 2005 study published in the *Journal of the American Medical Association* found that students and school employees are being poisoned by pesticide use at schools and from drift off of neighboring farmlands.<sup>44</sup>



**Children who eat a diet of food produced with chemical-intensive practices carry pesticide residues that are reduced or eliminated when they switch to an organic diet.**

## Resources

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- 3 USEPA, Office of the Administrator, Environmental Health Threats to Children, EPA 175-F-96-001, September 1996. See also: <http://www.epa.gov/pesticides/food/pest.htm>.
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- 9 Brender, JD., et al. 2010. Maternal Pesticide Exposure and Neural Tube Defects in Mexican Americans. *Ann Epidemiol*. 20(1):16-22
- 10 Weiss, B., et al. 2004 April. "Pesticides," *Pediatrics* 113(4): 1030-1036.
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- 12 Vasselinovitch, S., et al., "Neoplastic Response of Mouse Tissues During Perinatal Age Periods and Its Significance in Chemical Carcinogenesis," *Perinatal Carcinogenesis*, National Cancer Institute Monograph 51, 1979.
- 13 Nielsen, S.S., et al. 2010. Childhood brain tumors, residential insecticide exposure, and pesticide metabolism genes. *Environmental Health Perspectives* 118(1):144-149
- 14 Lowengart, R. et al. 1987. "Childhood Leukemia and Parent's Occupational and Home Exposures," *Journal of the National Cancer Institute* 79:39.
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- 16 Leiss, J., et al. 1995. "Home Pesticide Use and Childhood Cancer: A Case-Control Study," *American Journal of Public Health* 85:249-252; Gold, E. et al. 1979. "Risk Factors for Brain Tumors In Children," *Am J of Epidemiology* 109(3): 309-319; Lowengart, P., et al. 1995. "Childhood Leukemia and Parents' Occupational and Home Exposures," *J National Cancer Institute* 79(1): 39-45; Reeves, J. 1982. "Household insecticide-Associated Blood Dyscrasias in Children," (letter) *Am J of Pediatric Hematology/Oncology* 4:438-439; Davis, J., et al. 1993. "Family Pesticide Use and Childhood Brain Cancer," *Archives of Environmental Contamination and Toxicology* 24:87-92; Buckley, J., et al. 1994. "Epidemiological characteristics of Childhood Acute Lymphocytic Leukemia," *Leukemia* 8(5):856-864.
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McKinney's Consolidated Laws of New York Annotated  
Environmental Conservation Law (Refs & Annos)  
Chapter 43-B. Of the Consolidated Laws (Refs & Annos)  
Article 33. Pesticides (Refs & Annos)  
Title 10. Special Requirements for Commercial and Residential Lawn Applications (Refs & Annos)

McKinney's ECL § 33-1004

§ 33-1004. Lawn applications; certain municipalities

Effective: February 9, 2011

Currentness

1. Notwithstanding any other provision of law to the contrary, any county not contained entirely within a city, and any city with a population of one million or more, may, after public hearing, adopt a local law comprised of the following provisions in their entirety and without exception including all applicable definitions as provided in this article:

a. 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 this article, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of this article to:

A. occupants of all dwellings, as defined in paragraph d of subdivision five of section 33-0905 of this article, 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, as defined in paragraph d of subdivision five of section 33-0905 of this article, 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; and

B. owners, owners' agents or other persons in positions of authority for multiple family dwellings, the property of which is 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 in a manner specified by the commissioner.

(ii) The prior notification provisions of this paragraph 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 136 q (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 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. (i) 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.

(ii) The markers required pursuant to this paragraph 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.

2. Any county not contained entirely within a city or any city with a population of one million or more that adopts a local law pursuant to the provisions of this section, shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce such local law administratively, provided however that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 71-2907 of this chapter and shall be payable to and deposited with the enforcing municipality.

2-a. Within twenty days after the adoption of a local law pursuant to this section, the clerk or other officer designated by the legislative body shall forward one certified copy thereof to the commissioner and one to the attorney general.

2-b. Any local law adopted pursuant to this section shall take effect on the first day of January after it shall have been adopted.

3. The commissioner of health shall review any emergency form submitted pursuant to this section 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 made available to any person upon request.

#### Credits

(Added L.2000, c. 285, § 3, eff. March 1, 2001. Amended L.2010, c. 324, § 1, eff. Feb. 9, 2011.)

#### Editors' Notes

### PRACTICE COMMENTARIES

by Philip Weinberg

With this essential statute, enacted in 2000, the product of negotiation among legislative, public health, environmental and industry representatives, New York joins the increasing roster of states in which the public may receive notice that pesticides are being applied. Counties, and New York City, may adopt local laws requiring notice to occupants and neighbors before pesticides are used on lawns. Granular pesticides, which are not a dust or powder and thus less likely to be ingested, are exempted, as are emergency uses. The law requires both written notice at least 48 hours in advance and signs posted in the area. Under ECL § 33-1005, the Department is to enact rules mandating uniform signs and written notices. Education Law § 409-h, *in pari materia*, requires notice to staff and parents prior to pesticide application in schools, public and private. Similarly, Social Services Law § 390-c mandates such notice in daycare facilities for children.

The Commentary to ECL § 33-1001 recites the history of previous attempts to achieve public notice through DEC regulations, eventually set aside by the courts as there described.

This legislation, designed to overcome the barriers encountered by the earlier rulemaking, fills an important need, highlighted by concerns over the large-scale spraying of pesticides to deal with mosquitoes carrying the West Nile

virus. A defect of the statute, however, is that it is inapplicable to pesticide use by a municipality (except in schools and day-care facilities).

Courts have rejected claims that a local law enacted pursuant to this section necessitates an EIS under SEQRA. See *New York State Lawncare Association, Inc. v. County of Albany*, 292 A.D.2d 719, 739 N.Y.S.2d 212 (3d Dept.), *leave to appeal denied*, 98 N.Y.2d 608, 746 N.Y.S.2d 691, 774 N.E.2d 756 (2002), and *Nature's Trees, Inc. v. County of Nassau*, 293 A.D.2d 544, 740 N.Y.S.2d 417 (2d Dept.), *leave to appeal denied*, 98 N.Y.2d 608, 746 N.Y.S.2d 691, 774 N.E.2d 756 (2002), both also discussed in the Commentary to ECL § 8-0109 at C8-0109:3 under Pesticides. These courts ruled that the opening phrase of this statute, "[n]otwithstanding any other provision of law to the contrary," was intended to exempt pesticide-notification laws from SEQRA.

The City of New York enacted a pesticide notification local law as authorized by this section, N.Y.C. Local Law 36 (May 9, 2005).

The Department has enacted regulations, 6 NYCRR § 325.40, that require commercial applicators of pesticides to lawns to enumerate in their contracts the pesticides used and their active ingredients, as well as the dates of application and any warnings that appear on the labels of those pesticides. The rules also mandate the posting of yellow signs with black letters notifying the public that the pesticides have been applied to the area.

In *No Spray Coalition, Inc. v. City of New York*, 351 F.3d 602 (2d Cir., 2003), the Second Circuit ruled a suit to enjoin the City of New York's large-scale spraying of pesticides to eradicate mosquitoes bearing the West Nile virus, alleging a Clean Water Act violation, may proceed. The plaintiffs need not show FIFRA was violated before asserting a Clean Water Act claim, as the lower court had held, since the two statutes are distinct and FIFRA lacks a citizen-suit provision. The decision is further discussed in the Commentary to ECL § 17-0803.

#### Notes of Decisions (2)

McKinney's E. C. L. § 33-1004, NY ENVIR CONSER § 33-1004  
Current through L.2015, chapters 1 to 99.

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Article 33. Pesticides (Refs & Annos)  
Title 1. Definitions (Refs & Annos)

McKinney's ECL § 33-0101

§ 33-0101. Definitions

Effective: March 1, 2001

Currentness

1. "Active ingredient" means:

a. In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or their produce.

c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant.

d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

2. "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part of the article, or if any valuable constituent of the article has been wholly or in part abstracted.

3. "Affected area" means the area defined in a petition for the protection of a grape growing area.

4. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.

5. "Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation or other use by man or animals.

6. "Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of, or flight in, the air.

7. "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.
8. "Application of pesticide" means any application of pesticides by aircraft or ground equipment.
9. "Business registration" means the requirement of each person or business providing services of commercial application of pesticides, either entirely or as part of the business, to register with the department.
10. "Certified applicator" means any individual who is certified to use or supervise the use of any pesticide in any category of use covered by his certification.
11. "Commercial application" means any application of any pesticide except as defined in private or residential application of pesticides.
12. "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.
13. "Degradation" means the decomposition of a compound by stages, exhibiting well-defined intermediate products.
14. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.
15. "Development" means natural and normal growth before harvest.
16. "Experimental use permit" means a permit issued to an applicant for the use of a limited amount of a pesticide not registered pursuant to this article to accumulate data necessary to apply to register the pesticide.
17. "Fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeast, and bacteria, except those on or in living man or other animals.
18. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
19. "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 this article.
20. "Grape grower" means a producer of grapes for profit.
21. "Grape vineyard" means lands upon which grapevines are maintained and harvested for profit.

22. "Ground equipment" means any machine or device (other than aircraft) for use on land or water, designed for, or adaptable to use in applying pesticide as spray, dust, aerosol, fog, or in any other form.

23. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

24. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, except those on or in living man. This term shall also include nematodes.

25. "Inert ingredient" means an ingredient which is not an active ingredient.

26. "Ingredient statement" means either:

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and<sup>1</sup>

b. If the pesticide contains arsenic in any form, a statement of the percentage of total and water soluble arsenic, each calculated as elemental arsenic.

27. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever, except those on or in living man.

28. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, or its immediate container and any outside containers or wrappers.

29. "Labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide or any of its containers or wrappers;

b. Accompanying the pesticide at any time;

c. To which reference is made on the label or in literature accompanying the pesticide, except when accurate, non-misleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state agricultural experiment stations, state colleges of agriculture, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

30. "Major source of agricultural income" means that the producers of grapes within the affected area obtain at least ten percent of their gross income as a group in any five year period from the production of grapes.

31. "Metabolite" means any of the various organic compounds produced by metabolism.

32. "Misbranded" shall apply to any pesticide:

a. If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. If it is an imitation of or is offered for sale under the name of another pesticide; or if its labeling bears any reference to registration under this article;

c. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

d. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to health and the environment;

e. If the label is not visible and readable on the outside of the marketing package which is presented or displayed under customary conditions of purchase;

f. If any word, statement, or other information required by or under the authority of this article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticide; or

h. If in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticide; provided, that physical or physiological effects on plants or parts thereof shall not be deemed injurious, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

i. If its labeling in any other way fails to conform to the labeling requirements of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, as amended.<sup>2</sup>

33. "Person" means any individual, partnership, association, corporation, organized group of persons whether incorporated or not, private or public authority, state government or agency, political subdivision, governmental agency or any other legal entity whatever.

34. "Pest" means (1) any insect, rodent, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism (except viruses, bacteria or other micro-organisms on or in living man or other living animals) which the commissioner declares to be a pest.

35. "Pesticide" means:

a. Any substance or mixture or 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.

36. "Pesticide business" means any person providing commercial application of pesticides for hire.

37. "Plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or their produce, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

38. "Private application" means any application of any pesticide for the purpose of producing an agricultural commodity

a. on property owned or rented by the applicator or the applicator's employer, or

b. if applied without compensation other than the barter of personal services between producers of agricultural commodities, on property owned or rented by a party to such a barter transaction.

39. "Proximity" means a radial distance of two miles from the site of damage to grape vineyards.

40. "Registrant" means the person registering any pesticide pursuant to the provisions of this article.

41. "Residential application" shall mean the application of general use pesticides by ground equipment on property owned or leased by the applicator, excluding any establishment selling or processing food and any residential structure other than the specific dwelling unit in which the applicator resides.

42. "Restricted use pesticide" means a pesticide, as defined in this article and determined as provided in section 33-0303:

a. Which (1) either (a) persists in the environment, or (b) accumulates as either the pesticide per se, a pesticide metabolite, or a pesticide degradation product in plant or animal tissue or product, and is not excreted or eliminated within a reasonable period of time, and which may be transferred to other forms of life; and (2) which by virtue of such persistence or accumulation creates a present or future risk of harmful effects on any organism other than the target organisms; or

b. Which the commissioner finds is so hazardous to man or other forms of life that restrictions on its sale, purchase, use, or possession are in the public interest.

43. "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animals which the commissioner shall declare to be a pest.

44. "Target organisms" means those organisms which the pesticide is intended to inhibit or destroy pursuant to its registered labeled usage.

45. "Weed" means any plant which grows where not wanted.

46. "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:

a. the application of pesticide for the purpose of producing an agricultural commodity;

b. residential application of pesticides;

c. the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;

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 where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and

e. the application of pesticides on golf courses or turf farms.

47. "Major change in labeling" shall mean any new label or labeling or any amended label or labeling for a pesticide product which contains an active ingredient previously registered and which (a) results in a major change in the use pattern for the active ingredient; (b) changes the classification of the active ingredient or the product to general use or restricted use; increases the application rate; changes the percent concentration of an active ingredient other than an increase due to changes in methods of analysis; adds a previously-registered active ingredient or deletes any active ingredient; or (c) any other change which significantly increases the potential exposure of any non-target organism or which increases the potential for a significant impact to humans, property or the environment.

48. "Residential lawn application" means the application of general use pesticides to ground, trees or shrubs on property owned by or leased to the individual making such application. For the purposes of this article the following shall not be considered residential lawn application:

- a. The application of pesticides for the purpose of producing an agricultural commodity;
- b. The application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
- c. 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
- d. The application of pesticides on golf courses or turf farms.

49. "Abutting property" shall mean any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.

#### Credits

(Added L.1978, c. 685, § 1. Amended L.1983, c. 612, §§ 1 to 4; L.1987, c. 559, § 2; L.1992, c. 67, § 1; L.2000, c. 285, § 1, eff. March 1, 2001.)

#### Editors' Notes

### PRACTICE COMMENTARIES

by Philip Weinberg

This article should be read in conjunction with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C.A. §§ 136 to 136y, which comprehensively regulates pesticides at the federal level, administered by the Environmental Protection Agency (EPA). FIFRA, like the other major federal environmental statutes, contemplates joint federal-state control in many areas. FIFRA § 24 (7 U.S.C.A. § 136v) explicitly authorizes the states to regulate the sale and use of federally-registered pesticides as long as the state regulation does not conflict with the EPA's.

In general, FIFRA provides for EPA registration of pesticides, and bars their sale or use unless registered. Under FIFRA § 24(c) states may provide registration for additional uses of federally-registered pesticides to meet special local needs, but the EPA may disapprove such a state registration within 90 days of its effective date.

Residues of pesticides on food and animal feed are subject to tolerances set by the EPA pursuant to the Pure Food, Drug and Cosmetic Act, 21 U.S.C.A. §§ 346 and 346a. And FIFRA § 24(c)(3) (7 U.S.C.A. § 136v(c)(3)) bars states from registering pesticides for use on foods or feeds unless such a tolerance, or an exemption from the Food, Drug and Cosmetic Act, exists.

McKinney's Consolidated Laws of New York Annotated  
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Article 33. Pesticides (Refs & Annos)  
Title 10. Special Requirements for Commercial and Residential Lawn Applications (Refs & Annos)

McKinney's ECL § 33-1003

§ 33-1003. Visual notification

Currentness

1. All persons providing commercial lawn application 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. The markers required pursuant to this section 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.

**Credits**

(Added L.1987, c. 559, § 3.)

McKinney's E. C. L. § 33-1003, NY ENVIR CONSER § 33-1003

Current through L.2015, chapters 1 to 99.

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Article 33. Pesticides (Refs & Annos)  
Title 3. General Provisions (Refs & Annos)

McKinney's ECL § 33-0303

§ 33-0303. Powers and duties of the commissioner and the department

Effective: November 14, 2010

Currentness

1. Jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, is by this article vested exclusively in the commissioner.
  
2. All authority vested in the commissioner by this article may be executed with like force and effect by employees of the department designated by the commissioner; however, all hearings held under this article except those held under the provisions of title 9 shall be conducted by the commissioner or by a person designated by him for that purpose, and any decision rendered after any such hearing shall be made by the commissioner.
  
3. The commissioner is authorized, after a hearing:
  - a. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances;
  
  - b. To determine whether pesticides are highly toxic to man, and to promulgate a list of such pesticides;
  
  - c. To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of paragraph d of subdivision 1 of section 33-1301;
  
  - d. To promulgate a list of restricted use pesticides and the usages of such pesticides that may be permitted subject to whatever conditions or limitations which the commissioner deems appropriate to fully protect the public interest; provided, however, that no hearing shall be required on individual additions to such list unless requested sixty days after notice has been provided in the environmental notice bulletin as prescribed in section 3-0306 of such law, as added by chapter seven hundred fourteen of the laws of nineteen hundred seventy-five, by the applicant or an interested party; and
  
  - e. To adopt, promulgate and issue such rules and regulations as he may deem necessary to carry out and give full force and effect to the provisions of this article. However, rules and regulations regarding business registration and certification may be adopted only after a public hearing. Such rules and regulations may prescribe methods to be used in the application of pesticides, including the time, place, manner and method of application and equipment used, and may restrict or prohibit use of materials in designated areas during specified periods of time, and shall encompass all reasonable factors which he deems necessary to prevent damage or injury to health, property and wildlife. Rules and regulations shall be filed and open for public inspection

at the principal office of the department and shall be filed with the Secretary of State. The commissioner shall promulgate a regulation authorizing the use of alternative containers for pesticides by pesticide users.

4. In order to avoid confusion endangering the public health, or the life or health of any other non-target organisms, resulting from diverse requirements, particularly as to labeling and coloring of pesticides, and to avoid increased costs to the people of this state due to the necessity of complying with diverse requirements in the manufacture and sale of pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to pesticides. To this end the commissioner is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government.

5. The commissioner may require the submission of the complete formula of any pesticide whenever he deems it necessary in the administration of this article. The commissioner, of his own motion or upon complaint, may cause an examination to be made to determine whether any pesticide complies with the requirements of this article. If it shall appear from such examination that a pesticide fails to comply with the provisions of this article, the commissioner shall cause notice to be given to the offending person in the manner provided in section 71-2903, and the proceedings shall be as provided in such article provided that pesticides may be seized and confiscated as provided in title 15 of this article 33.

6. The commissioner may cooperate with any other agency of the state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this article and of securing uniformity of regulations.

7. The commissioner, in consultation with the commissioner of education and the commissioner of health, shall develop guidance on pesticide alternatives to facilitate compliance with section four hundred nine-k of the education law and three hundred ninety-g of the social services law.

#### Credits

(L.1972, c. 664, § 2. Amended L.1978, c. 685, §§ 3, 4; L.1992, c. 318, § 1; L.2010, c. 85, § 1, eff. Nov. 14, 2010.)

#### Editors' Notes

### PRACTICE COMMENTARIES

by Philip Weinberg

Is a pesticide registrant entitled to an adjudicatory hearing before the Department limits its use as hazardous to health? No, ruled the Court of Appeals in a decision upholding DEC's restriction of the repellent DEET at high levels. In *Chemical Specialties Mfrs. Ass'n v. Jorling*, 85 N.Y.2d 382, 626 N.Y.S.2d 1, 649 N.E.2d 1145 (1995), the court sustained the limiting of insect repellent containing DEET concentrates of over 30% under the Department's "broad rulemaking authority." DEC acted on concerns over adverse health effects ranging from skin rashes to rare instances of seizures in children exposed to high amounts of the substance.

This section (subd.3[d]) empowers DEC, after a hearing, to promulgate a list of restricted use pesticides and subject them to "whatever conditions or limitations ... the commissioner deems appropriate to fully protect the public interest; ...." The hearing need not be an evidentiary one since the agency's power is a rule-making function. The manufacturers unsuccessfully argued that the limitation was tantamount to a cancellation of the pesticides' registration,

which under ECL § 33-0713 requires such an evidentiary hearing. However, the court ruled that the right to a fact-finding hearing “may be trumped by the exercise of agency rulemaking authority.” FIFRA, the counterpart federal act, clearly contemplates an evidentiary hearing in such a case, but the court found the state law does not. Dissenting, Judges Ciparick and Bellacosa contended the ruling was an “evisceration” of the evidentiary hearing mandate of ECL § 33-0713, and in truth the decision does sanction an agency end-run around that requirement.

Thereafter the Department reversed its field and rescinded the DEET ban. On March 17, 1995 the Department of Health so recommended, concluding “the public health, safety and welfare would be best served” by repealing the rule. DEC accordingly four days later adopted an emergency rule repealing the earlier one. The repeal was then challenged and overturned in *Brodsky v. Zagata*, 165 Misc.2d 510, 629 N.Y.S.2d 373 (Sup.Ct. Albany Co., 1995). The court there held DEC violated State Administrative Procedure Act (SAPA) § 202(6)(d)(iv), requiring emergency rule adoptions to “include a statement fully describing the specific reasons” for finding the rule needed for public health, safety or welfare, together with “the facts and circumstances on which such findings are based.” It held the “mere parroting of the phrase ‘the public health, safety and welfare’ with no specific facts” ran afoul of SAPA. The court further found the repeal arbitrary and capricious since the “record fails to show any new factors to rationally justify this complete turn around by DEC.”

Following the *Brodsky* decision, DEC replaced its emergency ruling allowing the use of pesticides containing DEET concentrates of over 30% with a permanent repeal of the DEET ban. The court then reversed itself and sustained the repeal. *Brodsky v. Zagata*, 167 Misc.2d 175, 638 N.Y.S.2d 1018 (Sup.Ct. Albany Co., 1996), *affirmed*, 222 A.D.2d 48, 646 N.Y.S.2d 188 (3d Dept.), *leave to appeal denied*, 89 N.Y.2d 803, 653 N.Y.S.2d 280, 675 N.E.2d 1233 (1996). This time it ruled the petitioners challenging the rule change had to prove it “insupportable by any evidence,” relying on *Consolation Nursing Home v. Commissioner of N.Y. State Dept. Of Health*, 85 N.Y.2d 326, 624 N.Y.S.2d 563, 648 N.E.2d 1326 (1995). Here, the court noted, an affidavit from the Commissioner of Health and evidence submitted at a public hearing both supported the determination. Though there was contrary evidence, the court relied on the oft-cited precept that it may not substitute its judgment for that of the agency.

Affirming, the Third Department explained that “unsupported by any evidence,” used by the Court of Appeals in *Consolation Nursing Home*, really means “any evidence ... that could support — i.e., constitute a rational basis for — the action under review.” (Emphasis in original.) The evidence must be substantial, the court explained; that “inheres in the requirement that the evidence ‘support’ the contested action.”

The petitioners also argued that the lower court, in the first decision setting aside the emergency repeal of the DEET restriction in 1995, had found wanting the very evidence it now found sufficient. But the court justified this seeming about-face by noting that the first ruling had simply held there was insufficient evidence “that an emergency exist[ed]” so as to justify DEC bypassing its rule-making procedures. This time around, DEC followed those procedures and the court upheld its action. While this is literally correct, there is no gainsaying the fact that the administrative record is no stronger now than it was when the court overturned the repeal. This wine did not age in the bottle.

The original DEET ban, so fiercely resisted and narrowly upheld by the Court of Appeals, was thus swept away. The poet Southey's words about the Battle of Blenheim are apt:

“But what good came of it at last?”

Quoth little Peterkin.

“Why that I cannot tell” said he;

“But ‘twas a famous victory.”

The Department has dismissed charges under this article where its staff failed to institute them until five years after the most recent alleged violation. In *Manor Maintenance Corp.*, 1996 WL 172655 (N.Y. Dept. Env. Conserv.) (DEC Commissioner's Decision, Feb. 12, 1996), DEC ruled that a proceeding brought in 1991 charging unlawful applications of chlordane and other pesticides between 1981 and 1986 had unfairly prejudiced the respondents. The Department thus violated the requirement of State Administrative Procedure Act § 301(1) that agencies afford adjudicatory hearings within a reasonable time. DEC's administrative law judge explicitly found that "with the passage of time, [the] recollections [of the pesticide applicators] have been lost and cannot be revived despite the parties' best efforts.... Each of them said they could not recall having been to the premises ... or having performed those acts alleged in the complaint." Much to the Department's credit, since the delay was not caused by the respondents, it dismissed its charges against them.

The Supreme Court has held that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C.A. §§ 136-136y, does not preempt local laws on pesticide use, an issue that had led to divergent views among the states. New York's sole decision on the subject, *Long Island Pest Control Ass'n, Inc. v. Town of Huntington*, 72 Misc.2d 1031, 341 N.Y.S.2d 93 (Sup.Ct. Suffolk Co., 1973), *affirmed*, 43 A.D.2d 1020, 351 N.Y.S.2d 945 (2d Dept., 1974), held rather ambiguously that either FIFRA or the state statute preempted a town law. The court relied on subd. 1 of this section, vesting jurisdiction "in all matters pertaining to the distribution, sale, use and transportation of pesticides ... exclusively in [DEC]."

Courts in other states have not necessarily taken the tack that FIFRA bars local legislation regulating pesticide application. And in *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 111 S.Ct. 2476, 115 L.Ed.2d 532 (1991), the Supreme Court definitively ruled that a town law requiring a permit to apply pesticides to lands open to the public is valid. FIFRA's registration and labeling requirements, the Court held, do not bar the essentially different regulation of the use of pesticides.

It should be noted that *Long Island Pest Control* dealt with a local law requiring the registration of pesticides, not regulating their use as in *Mortier*. But the wording of subd. 1 appears broad enough to preempt either type of local law.

Another court looked at the question of FIFRA preemption of common-law nuisance actions, and ruled that the federal act does not bar a common-law public nuisance action charging the contamination of groundwater by pesticide chemicals. *State v. Fermenta ASC Corp.*, 160 Misc.2d 187, 608 N.Y.S.2d 980 (Sup. Ct. Suffolk Co., 1994), *appeal dismissed*, 238 A.D.2d 400, 656 N.Y.S.2d 342 (2d Dept.), *leave to appeal denied*, 90 N.Y.2d 810, 664 N.Y.S.2d 271, 686 N.E.2d 1366 (1997). This ruling is in keeping with numerous decisions holding federal environmental regulatory statutes do not preempt state nuisance actions. See, for example, *International Paper Co. v. Ouellette*, 479 U.S. 481, 107 S.Ct. 805, 93 L.Ed.2d 883 (1987).

In contrast, the labeling of pesticides is expressly preempted by FIFRA, as the court correctly held in *Little v. Dow Chemical Co., Inc.*, 148 Misc.2d 11, 559 N.Y.S.2d 788 (Sup.Ct. Erie Co., 1990). (But note that warnings on lawns are not "labeling" and thus not preempted, as discussed in the Commentary to ECL § 33-1001.)

Notes of Decisions (19)

McKinney's E. C. L. § 33-0303, NY ENVIR CONSER § 33-0303  
Current through L.2015, chapters 1 to 99.

McKinney's Consolidated Laws of New York Annotated  
Environmental Conservation Law (Refs & Annos)  
Chapter 43-B. Of the Consolidated Laws (Refs & Annos)  
Article 33. Pesticides (Refs & Annos)  
Title 10. Special Requirements for Commercial and Residential Lawn Applications (Refs & Annos)

McKinney's ECL § 33-1003

§ 33-1003. Visual notification

Currentness

1. All persons providing commercial lawn application 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. The markers required pursuant to this section 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.

**Credits**

(Added L.1987, c. 559, § 3.)

McKinney's E. C. L. § 33-1003, NY ENVIR CONSER § 33-1003

Current through L.2015, chapters 1 to 99.

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Article 33. Pesticides (Refs & Annos)  
Title 10. Special Requirements for Commercial and Residential Lawn Applications (Refs & Annos)

McKinney's ECL § 33-1004

§ 33-1004. Lawn applications; certain municipalities

Effective: February 9, 2011

Currentness

1. Notwithstanding any other provision of law to the contrary, any county not contained entirely within a city, and any city with a population of one million or more, may, after public hearing, adopt a local law comprised of the following provisions in their entirety and without exception including all applicable definitions as provided in this article:

a. 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 this article, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. (i) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of this article to:

A. occupants of all dwellings, as defined in paragraph d of subdivision five of section 33-0905 of this article, 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, as defined in paragraph d of subdivision five of section 33-0905 of this article, 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; and

B. owners, owners' agents or other persons in positions of authority for multiple family dwellings, the property of which is 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 in a manner specified by the commissioner.

(ii) The prior notification provisions of this paragraph 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 136 q (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 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. (i) 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.

(ii) The markers required pursuant to this paragraph 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.

2. Any county not contained entirely within a city or any city with a population of one million or more that adopts a local law pursuant to the provisions of this section, shall, in addition to any authority otherwise conferred in this chapter, have concurrent authority to enforce such local law administratively, provided however that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in section 71-2907 of this chapter and shall be payable to and deposited with the enforcing municipality.

2-a. Within twenty days after the adoption of a local law pursuant to this section, the clerk or other officer designated by the legislative body shall forward one certified copy thereof to the commissioner and one to the attorney general.

2-b. Any local law adopted pursuant to this section shall take effect on the first day of January after it shall have been adopted.

3. The commissioner of health shall review any emergency form submitted pursuant to this section 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 made available to any person upon request.

#### Credits

(Added L.2000, c. 285, § 3, eff. March 1, 2001. Amended L.2010, c. 324, § 1, eff. Feb. 9, 2011.)

#### Editors' Notes

### PRACTICE COMMENTARIES

by Philip Weinberg

With this essential statute, enacted in 2000, the product of negotiation among legislative, public health, environmental and industry representatives, New York joins the increasing roster of states in which the public may receive notice that pesticides are being applied. Counties, and New York City, may adopt local laws requiring notice to occupants and neighbors before pesticides are used on lawns. Granular pesticides, which are not a dust or powder and thus less likely to be ingested, are exempted, as are emergency uses. The law requires both written notice at least 48 hours in advance and signs posted in the area. Under ECL § 33-1005, the Department is to enact rules mandating uniform signs and written notices. Education Law § 409-h, *in pari materia*, requires notice to staff and parents prior to pesticide application in schools, public and private. Similarly, Social Services Law § 390-c mandates such notice in daycare facilities for children.

The Commentary to ECL § 33-1001 recites the history of previous attempts to achieve public notice through DEC regulations, eventually set aside by the courts as there described.

This legislation, designed to overcome the barriers encountered by the earlier rulemaking, fills an important need, highlighted by concerns over the large-scale spraying of pesticides to deal with mosquitoes carrying the West Nile

virus. A defect of the statute, however, is that it is inapplicable to pesticide use by a municipality (except in schools and day-care facilities).

Courts have rejected claims that a local law enacted pursuant to this section necessitates an EIS under SEQRA. See *New York State Lawncare Association, Inc. v. County of Albany*, 292 A.D.2d 719, 739 N.Y.S.2d 212 (3d Dept.), *leave to appeal denied*, 98 N.Y.2d 608, 746 N.Y.S.2d 691, 774 N.E.2d 756 (2002), and *Nature's Trees, Inc. v. County of Nassau*, 293 A.D.2d 544, 740 N.Y.S.2d 417 (2d Dept.), *leave to appeal denied*, 98 N.Y.2d 608, 746 N.Y.S.2d 691, 774 N.E.2d 756 (2002), both also discussed in the Commentary to ECL § 8-0109 at C8-0109:3 under Pesticides. These courts ruled that the opening phrase of this statute, “[n]otwithstanding any other provision of law to the contrary,” was intended to exempt pesticide-notification laws from SEQRA.

The City of New York enacted a pesticide notification local law as authorized by this section, N.Y.C. Local Law 36 (May 9, 2005).

The Department has enacted regulations, 6 NYCRR § 325.40, that require commercial applicators of pesticides to lawns to enumerate in their contracts the pesticides used and their active ingredients, as well as the dates of application and any warnings that appear on the labels of those pesticides. The rules also mandate the posting of yellow signs with black letters notifying the public that the pesticides have been applied to the area.

In *No Spray Coalition, Inc. v. City of New York*, 351 F.3d 602 (2d Cir., 2003), the Second Circuit ruled a suit to enjoin the City of New York's large-scale spraying of pesticides to eradicate mosquitoes bearing the West Nile virus, alleging a Clean Water Act violation, may proceed. The plaintiffs need not show FIFRA was violated before asserting a Clean Water Act claim, as the lower court had held, since the two statutes are distinct and FIFRA lacks a citizen-suit provision. The decision is further discussed in the Commentary to ECL § 17-0803.

#### Notes of Decisions (2)

McKimsey's E. C. L. § 33-1004, NY ENVIR CONSER § 33-1004  
Current through L.2015, chapters 1 to 99.

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Chapter 43-B. Of the Consolidated Laws (Refs & Annos)  
Article 33. Pesticides (Refs & Annos)  
Title 10. Special Requirements for Commercial and Residential Lawn Applications (Refs & Annos)

McKinney's ECL § 33-1005

§ 33-1005. Commissioner's regulations

Effective: February 9, 2011

Currentness

<[As added by L.2000, c. 285. Another BCL 33-1005 was added by another act.]>

For purposes of implementing section 33-1004 of this article in any county not contained entirely within a city or any city with a population of one million or more that has adopted a local law pursuant to such section:

1. The commissioner shall promulgate rules and regulations establishing uniform standards for a consumer pesticide use information sign which shall be placed in retail establishments that sell general use pesticides for commercial or residential lawn application. This sign shall contain the following information:

- a. a warning notice directing consumers to follow directions on labels;
- b. a provision to inform the customer of the posting requirements set forth in paragraph c of subdivision one of section 33-1004 of this article; and
- c. a recommendation that the customer notify neighbors prior to the application of pesticides so that such neighbors may take precautions to avoid pesticide exposure.

2. The commissioner shall prepare and publish, in consultation with the commissioner of health, educational materials explaining the requirements of paragraphs b and c of subdivision one of section 33-1004 of this article and section three hundred ninety-c of the social services law and the human and environmental health effects of lawn care pesticides.

3. a. The commissioner shall promulgate rules and regulations specifying the following: the content and form of the written notice required in paragraph b of subdivision one of section 33-1004 of this article, with the content consisting minimally of the following:

(i) the address of the premises where application is to be done;

(ii) the name and telephone number and pesticide business registration number or certified applicator number of the person providing the application;

(iii) the specific date of each pesticide application and two alternative dates to the proposed date of application when, due to weather conditions, the pesticide application on the proposed date is precluded;

(iv) the product name or names and the United States Environmental Protection Agency registration number or numbers of the pesticide or pesticides to be applied;

(v) a prominent statement that reads: "This notice is to inform you of a pending pesticide application to: 1. a neighboring property; or 2. this premise. You may wish to take precautions to minimize pesticide exposure to yourself, family members, pets or family possessions. Further information about the product or products being applied, including any warnings that appear on the labels of such pesticide or pesticides that are pertinent to the protection of humans, animals or the environment, can be obtained by calling the National Pesticides Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health Info line at 1-800-458-1158".

b. The commissioner shall review and revise as necessary the phone numbers required to appear in notices pursuant to this section and pursuant to section four hundred nine-h of the education law and section three hundred ninety-c of the social services law. Notwithstanding the provisions of the state administrative procedure act, such phone numbers shall be established as a rule by publication in the environmental notice bulletin.

4. The commissioner shall promulgate rules and regulations specifying: the manner in which persons providing commercial lawn application shall supply written notice as required under paragraph b of subdivision one of section 33-1004 of this article including, but not limited to, mailing, or leaving with a responsible adult or in a conspicuous location on the premises or abutting property; the manner in which the owner or owner's agent of multiple family dwellings covered under paragraph b of subdivision one of section 33-1004 of this article shall supply such written notice to the occupants of such multiple family dwellings; and for all other premises covered under paragraph b of subdivision one of section 33-1004 of this article, the manner in which the owner, owner's agent or other person in a position of authority shall supply such written notice. Such rules and regulations shall specify a manner in which persons providing commercial lawn applications may provide an option to occupants of dwellings to decline further notices.

5. The commissioner is hereby authorized to promulgate rules and regulations, not inconsistent with any other provisions of law, specifying procedures for the department's investigation and processing of alleged violations of paragraph c of subdivision one of section 33-1004 of this article that pertain to persons performing residential lawn applications. Such uniform procedures may require complaints to be in the form of a sworn statement containing the facts upon which an alleged violation is based and may provide that the department is not required to perform any testing or sampling in relation to the investigation of any such alleged violations.

#### Credits

(Added L.2000, c. 285, § 4, eff. March 1, 2001. Amended L.2010, c. 324, § 2, eff. Feb. 9, 2011.)

McKinney's E. C. L. § 33-1005, NY ENVIR CONSER § 33-1005  
Current through L.2015, chapters 1 to 99.

McKinney's Consolidated Laws of New York Annotated  
Penal Law (Refs & Annos)  
Chapter 40. Of the Consolidated Laws (Refs & Annos)  
Part One. General Provisions  
Title B. Principles of Criminal Liability  
Article 15. Culpability

McKinney's Penal Law § 15.05

§ 15.05 Culpability; definitions of culpable mental states

Currentness

The following definitions are applicable to this chapter:

1. "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.
2. "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.
3. "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.
4. "Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

**Credits**

(L.1965, c. 1030.)

**Editors' Notes**

**PRACTICE COMMENTARY**

by William C. Donnino

See Practice Commentary at Penal Law § 15.00.