

Broome County Environmental Management Council
Pesticide Neighbor Notification Task Force:

**RECOMMENDATIONS ON IMPLEMENTATION
OF THE PESTICIDE NEIGHBOR NOTIFICATION LAW**

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INTRODUCTION

On August 21, 2000, Governor Pataki signed the Neighbor Notification Law, relating to commercial and residential lawn applications of pesticides in New York State. This is part of Chapter 285 of the Laws of 2000, and it amends Title 10, Article 33, Section 33-0101 and adds Sections 33-1004 and 33-1005 of the Environmental Conservation Law (ECL).

There are several sections to Chapter 285. Amendments to Section 409-H of the Education Law and Section 390-C of the Social Services Law relate to schools and day care facilities, and is mandated for the entire state. This portion of the law is not subject to county choice and, thus, is not discussed below. The amendments to the ECL (Article 33) pertain to commercial and residential applications of regulated pesticides, and allow counties to adopt a local law that includes the provisions set forth in the state law "in their entirety and without exception." It is this section of the law that is the subject of this Task Force report.

The Task Force analyzed this issue in depth, and met regularly from October 2000 until June 2001. This document is based on the research, outreach, and deliberations of the Task Force. Substantial amounts of the materials reviewed in this process are contained in a binder available from the Environmental Management Council.

PROVISIONS AND REQUIREMENTS OF THE LAW

The law does not apply to all pesticides or application areas. All granular pesticides are excluded; only liquid and powder pesticides applied by commercial applicators are regulated by the law. All over-the-counter pesticides, both liquid and granular, are excluded unless applied by consumers over an area greater than 100 square feet. Restricted use pesticides (i.e., those not available over-the-counter) are also excluded because they are currently regulated by the United States Environmental Protection Agency. In addition, applications on golf courses, cemeteries, and agricultural land are excluded from the law. Thus, assuming a county chooses to adopt a local law under the provisions established by the state, there are requirements for retail establishments that sell over-the-counter pesticides, for homeowners, and for commercial pesticide applicators. All are designed to provide the public with information so that appropriate decisions regarding exposure and/or use can be made. Specifics of applicable sections are discussed below.

Retail establishments that sell general use lawn pesticides must post information signs that: 1) warn residents to follow the label information on the pesticide container; 2) inform homeowners that they must post signs along their property boundaries when using such products; and 3) encourage consumers to notify neighbors. If retailers do not comply, they are issued a written warning and given seven days to correct the problem. Continued noncompliance will result in a civil penalty of a \$100 fine, and \$250 for violations thereafter.

Homeowners who choose to apply pesticides to any area greater than 100 square feet, including trees and shrubs, must use specific visual markers indicating use of pesticides (assumed to be sold by retailers) around the perimeter of their property. These markers must remain on the lawn for 24 hours after application. Homeowners who do not comply are given a written warning and educational materials for the first offense. A second violation could result in a civil penalty of up to \$100, and, for subsequent violations, up to \$250.

Perhaps the most contentious provision of the law is that relating to commercial pesticide applicators. These applicators are required to provide 48-hour advance written notice to abutting properties within 150 feet of any lawn pesticide application. Such notice can include up to two alternate dates for application in case a planned application has to be rescheduled due to weather conditions or for other reasons. Owners or property managers of multiple family dwellings must also notify tenants by circulating notices provided by commercial applicators. Noncompliance by commercial applicators carries administrative fines ranging from \$5000 for the first violation and up to \$10,000 for violations thereafter. Owners of multiple family housing are subject to the same penalties as are single-family homeowners.

WHAT THE LAW DOES NOT DO

The Pesticide Neighbor Notification Law applies only to non-granular pesticides, that is, those capable of becoming airborne. Drift is a source of environmental pollution and of potential adverse health effects. With sufficient advance notice, neighbors can take appropriate action to reduce their exposure. However, use of granular pesticides also carries with it environmental risks, particularly associated with surface and ground water pollution. These risks are not addressed in the Pesticide Neighbor Notification Law.

There is nothing in the law that would directly serve to reduce the amount of pesticides used. The provisions of the law relate to notification regarding use, but not to reducing use or to finding alternatives. The required notices provide a “paper trail” of use, but they do not address the concerns of many about the increased use of pesticides compared to alternative methods of controlling pests.

USE OF PESTICIDES IN BROOME COUNTY

The New York State Department of Environmental Conservation (NYSDEC) collects data on commercial use of pesticides, by county. The most recent complete set of data available is from 1998, as the data from 1999 are still in preliminary form. Thus, the 1998 data are used here. In that year, a total of 7,305 gallons of liquid pesticides and 195,876 pounds of dry pesticides were applied by commercial applicators in Broome County. It is impossible to sort out how much of the 195,876 pounds are comprised of granular pesticides, which are not regulated by the law (as opposed to dusts and powders), but all sources suggest that granular pesticides comprise the bulk of all dry pesticides used.

In order to better understand what these numbers suggest, the table below compares Broome County's 1998 usage figures to several other counties. These counties were chosen because of their recent decisions with regard to adoption or non-adoption of a local law implementing the provisions of the Pesticide Neighbor Notification Law. Chemung County has chosen not to adopt at this time, while Westchester County is one of several in the State that has adopted a local law. Suffolk County adopted a local law, but it currently faces legal challenges due to changes made by the County, which among other things, go against the requirement of adopting the provisions in their entirety and without exception. Finally, Ulster County is in the process of establishing a voluntary registry for neighbor notification.

Comparison of Counties Based on Pounds (#) and Gallons of Pesticides used in 1998

County	2000 Population	# per capita	Gal. per capita	Land area (mi ²)	# per sq. mile	Gal. per sq. mile	Per capita income*	Action Taken
Broome	200,536	0.98	0.036	707	277	10.3	\$35,340	
Chemung	91,070	0.89	0.085	408	198	19	\$33,988	Not adopt
Suffolk	1,419,369	1.51	0.31	912	2,350	483	\$53,560	Adopt; legally contested
Ulster	177,749	0.45	0.042	1,126	71	6.6	\$38,162	Not adopt; use of registry
Westchester	923,459	1.26	0.21	433	2,687	433	\$55,040	Adopt

*1997 estimates

OUTREACH TO THE COMMUNITY BY THE TASK FORCE

Besides undertaking research to understand the law, the problems it addresses, and the nature and use of pesticides, the Task Force undertook several activities to garner information about the local situation. Two publicized meetings were held at the Broome County Public Library; one (March 20) with commercial applicators, and the other (May 1) with the public. These meetings were conducted in order to obtain information directly from these groups.

Approximately half of the 28 NYSDEC registered commercial applicators that received notice of the meeting were in attendance. This group was most concerned with the added costs that would result from mandatory notification. Written notices would also become a burden if weather conditions prevented the scheduled application, and notices needed to be sent again. Pesticide applicators suggested that the cost would be passed on to the customers, resulting in homeowners taking care of their lawns themselves. Applicators argued that such a situation may well result in misuse and overuse of pesticides. According to commercial applicators, they are trained and licensed to perform such applications. They further asserted that applicators are willing to provide notification to neighbors, if they request.

Nine people (other than Task Force members) attended the meeting for the public. Their main concerns centered on how pesticides are applied, the long-term and cumulative health effects associated with them, and their right to know when an application will take place. There was a consensus during this meeting that there is a strong need for public education. In particular, it was noted that it is important to disseminate information to the community so the public can make educated decisions about using pesticides.

In an effort to gauge how much is being sold over the counter, a survey was sent to all retailers in the County who sell general use pesticides. Unfortunately, the Task Force did not receive a sufficient number of responses, and some of those that did respond provided lists of inventory, rather than amounts sold. Thus, these data do not enter into our analysis because they are neither reliable nor representative.

ARGUMENTS FOR ADOPTING A LOCAL LAW MANDATING NEIGHBOR NOTIFICATION

Based on the Task Force's research and information ascertained from public meetings, the following list represents positive points should the local law be adopted:

- Greater information on pesticide use by neighbors would be available.
- Exposure to drift would be reduced if neighbors can take protective action.
- Pesticide use may be reduced if costs for commercial applications increase.
- Enforcement provisions exist as part of the law, through the County and NYSDEC.
- Self-policing can be effective in such cases where neighbors report applicators who did not notify them.
- Unregistered applicators will be more easily found as they are least likely to comply with provisions of the law, since they are already out of compliance with pesticide laws.
- Increased signage by homeowners and applicators helps prevent children and pets from treading on treated lawns.
- There have been reports that applicators have failed to notify neighbors despite requests for such notification.

ARGUMENTS AGAINST ADOPTING A LOCAL LAW MANDATING NEIGHBOR NOTIFICATION

There are a number of reasons that argue against Broome County's adopting a local law regarding neighbor notification at this time. Those identified by the Task Force include:

- In comparison to some other counties, Broome County uses much smaller quantities of pesticides.
- Of the total quantities of pesticides, greater quantities of granular pesticides are used, which are not regulated by the law.
- Most pesticide applicators reputedly notify their customer's neighbors if asked to do so.
- Issues of enforcement must be resolved, as the personnel dedicated to such tasks is limited at the State level, and would have to be identified at the County level.
- The costs of doing business for commercial applicators will increase.
- As the above costs increase, so may the use of pesticides by homeowners who are usually not educated in both safe and appropriate methods of application.
- An increase in environmental resource use will be associated with sending out notices (such as paper/trees).
- An increase in government personnel use, who will likely be call on by commercial applicators to provide maps of their clients' neighborhoods for notification purposes.
- The purpose of the law may be defeated if residents get too many notices and end up ignoring them, particularly given that some areas of the County are characterized by heavy homeowner use of commercial applicators and others by very little use, if any.

RECOMMENDATIONS

The Pesticide Neighbor Notification Task Force of the Broome County Environmental Management Council recommends that the County *not* adopt a local law comprised of the provisions set out by the Pesticide Neighbor Notification Law. The Task Force makes this recommendation based on the relative weighing of the arguments for and against such an action, on the anticipated difficulties in enforcing such a law, and on the amount and type of pesticides used in Broome County. In addition, the current law has a provision that allows the County the

opportunity to adopt such a law in the future. However, the Task Force believes that some action should be taken, since the issues of pesticide use and notification of neighbors represent very important health and environmental concerns.

The Task Force further recommends that the County Legislature consider implementing a voluntary registry of individuals who wish to be notified of impending pesticide applications on neighbor's property, similar to what Ulster County is developing, to what other states have done, and to New York State's "Do Not Call" registry. Commercial pesticide applicators would be expected to consult the registry and notify any registered neighbors before any applications take place. The success of the registry can be measured over some period of time and, if it proves unsuccessful, then the County would consider adopting a local law that incorporates the provisions of the Pesticide Neighbor Notification Law. The Task Force recommends that the Legislature, with the assistance of the Task Force, revisit this issue in February 2002.

Finally, the Task Force recommends that a County-wide public education program be undertaken that ensures available information be distributed regarding the existence of the voluntary registry, and on the use of pesticides, risks associated with them, and alternatives to their use.

The Broome County Environmental Management Council, in its role as an advisory group to the Broome County government, would be pleased to assist the Legislature and others to develop specifics with regard to implementing our recommendations noted above.

Finally, we thank you for the opportunity to assist the Broome County Legislature with this task.