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**How Can**

**COMMERCIAL PESTICIDE**

**APPLICATORS**

**Comply With**

**The Neighbor Notification Law?**

March 1, 2001

## How Can Commercial Pesticide Applicators Comply With the Neighbor Notification Law?

### What is the Neighbor Notification Law?

The Neighbor Notification Law of 2000, formally known as Chapter 285 of the Laws of 2000, added new provisions to Title 10 of Article 33 of the Environmental Conservation Law (ECL) regarding posting of visual notification markers for residential lawn applications, posting of signs at certain retail establishments, and mandating neighbor notification of certain commercial lawn applications.

### Where is the Neighbor Notification Law in Effect?

The Neighbor Notification Law as it applies to commercial or residential lawn care ***is only in effect in Counties, or in New York City, that have adopted a local law to “opt into” the Neighbor Notification Law.*** The Neighbor Notification Law becomes effective on March 1, 2001.

***Portions of the Neighbor Notification Law also amend the Education Law for pesticide applications at schools (grades K-12) and the Social Services Law for pesticide applications at licensed daycare centers. The amendments for schools and daycare centers become effective statewide on July 1, 2001. The remainder of this pamphlet applies to commercial and residential lawn care applications which are regulated under the ECL.***

### What Regulations Apply to the Neighbor Notification Law?

New Section 41 of the 6NYCRR Part 325 regulations implements the Neighbor Notification Law and governs commercial and residential lawn applications. The new regulations become effective on March 1, 2001.

### What Is a Commercial Lawn Application?

A commercial lawn application is any application of pesticide to ground, trees, or shrubs on public or private outdoor property. The following pesticide applications are not 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 are subject to commercial lawn application visual notification requirements of this Part, once promulgated, where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; or (5) the application of pesticides on golf courses or turf farms.

### How Does this Regulation Affect Use of Pesticides in a Greenhouse?

Use of pesticides in a greenhouse is not considered a commercial or residential lawn care application.

### What Does the Law Require For Commercial Lawn Applicators?

#### ***Existing Statewide Requirements:***

- Commercial lawn applicators must be certified in Category 3A, Ornamentals and Turf, or be working under the direct supervision of an applicator certified in Category 3A.
- Commercial lawn applicators must meet all of the requirements in Title 10 of Article 33 of the ECL including existing requirements for written lawn care contracts and posting of visual notification markers.
- Commercial lawn applicators must also comply with the requirements of Section 33-0905.5 of the ECL by supplying a copy of the pesticide label information, including any warnings, for each pesticide used, in two different situations. First, this information must be supplied to the occupants of a dwelling (a one or two family residence) whenever an application is made on the premises of a dwelling. Second, this information must be supplied to the owner or owner's agent whenever an application is made on the premises of a multiple dwelling, building or structure other than a dwelling. The owner or owner's agent must then make this information available upon request to the residents or occupants of the multiple dwelling, building or structure.

#### ***Required in Counties that opt into the Neighbor Notification Law:***

- The new Neighbor Notification Law requirements for commercial lawn applicators involve giving 48 hour written notice for abutting properties with a property boundary within 150 feet of the lawn pesticide application site.

### Who Must be Given 48 Hour Written Notice?

At least forty-eight hours prior to any commercial lawn application the pesticide applicator or business making the commercial lawn application must provide written notice to occupants of all dwellings (one and two family residences) and to owners or owners' agents or other persons in a position of authority for multiple dwellings (such as apartment buildings or condominiums) and other occupied structures (such as shopping malls and office buildings), on abutting property that is within one hundred fifty feet of the site of the commercial lawn application.

### What is Considered an "Abutting Property?"

"Abutting property" means contiguous real property not separated by a publicly owned road or highway which has a boundary or boundary point in common with property on which a commercial lawn application is made. In other words, an abutting property is any property which borders the property on which the commercial lawn application is to be made.

### If My Commercial Lawn Application Is More than 150 Feet from Any Property Boundary, Do I Need to Give Anyone 48 Hour Written Notice?

No. The 48 hour written notice is only required if there is a property boundary within one hundred fifty feet of the precise site of the commercial lawn application.

### I Find it Is Difficult to Determine If a Dwelling or Multiple Dwelling Is on an Abutting Property since Natural or Unnatural Barriers May Not Clearly Indicate the Property Lines. Do I Still Have to Comply?

Yes. We recognize that determining notification requirements for abutting property may be difficult in some cases. However, it is mandated by the Neighbor Notification Law.

### How Can I Deliver the 48 Hour Written Notice?

The regulations provide that "such written notice may be provided in any reasonable manner." This is to allow hand delivery, postal service, e-mail delivery, or other reasonable methods. Timing for mailing of the notice to be received at least 48 hours before the scheduled commercial lawn application is the sole responsibility of the applicator.

### How Far in Advance Can the Required Notice Be Given?

The notice must be given no less than 48 hours prior to the pesticide application. The Regulations do not set a maximum period of time prior to the application. As long as the application is made on the scheduled date or on one of the two required alternative dates, the notice will meet the minimum requirements.

### Can I Give a Verbal Notice Rather than a Written Notice?

No. If you are making a commercial lawn application which requires 48 hour notice, the notice must be given in writing as required by the Neighbor Notification Law and related regulations.

### Do I Need to Address the Required 48 Hour Written Notice to the Property Owner by Name or Simply to "Occupant?"

The regulations require that the notice be given to occupants of dwellings and to

the owners or owners' agent or other person in a position of authority for multiple dwellings and other occupied structures on abutting property for certain commercial lawn applications. The purpose of the requirement is to provide prior notice to the indicated people. The notice need not be addressed to any individual by name.

#### How Can I Determine Who Are the Abutting Property Owners?

County tax maps and personal interviews may be the most effective method to make such determinations.

#### Do I Have to Give Notice to Neighbor Across the Street?

If the street is a publicly owned road or highway, you are not required to give notice to neighbors across the street since those neighbors do not have any boundary in common with the property on which the commercial lawn application is to be made. If there is any doubt, the County can tell you if the street is publicly owned.

#### What Has to Be Included in the 48 Hour Written Notice?

The 48 hour written notice must be in at least 12 point type and must always include at least the following information:

- the address of the premises where the lawn application is to take place;
- the name, telephone number and pesticide business registration number or pesticide applicator certification identification number of the person applying or supervising the pesticide application;
- the specific date of each scheduled application and two alternative dates, if weather or other conditions prevent application on the original scheduled date;
- the product name and the United States Environmental Protection Agency (EPA) registration number for each pesticide to be applied;
- a prominent statement that reads: "This notice is to inform you of a pending lawn care pesticide application to a neighboring property. 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 Pesticide Telecommunications Network at 1-800-858-7378 or the New York State Department of Health Center for Environmental Health information line at 1-800-458-1158."

If I Miss the Scheduled Date and the Two Alternative Dates, Do I Need to Give a New 48 Hour Written Notice Before I Can Make a Commercial Lawn Application?

Yes. The Neighbor Notification Law requires that a commercial lawn application that requires 48 hour written notice be made only on the scheduled date or one of the two alternative dates.

What Are the Allowable Reasons for Using an Alternative Date Rather than the Original Scheduled Date of Application?

There are many justifiable reasons to reschedule an application and use one of the two alternative dates including equipment failures, staff shortages, death in the family, and Integrated Pest Management (IPM) conditions. For example, it may be more protective of public health and the environment to reschedule an application and use one of the two alternative dates, rather than use faulty equipment or not adjust for IPM criteria. Regulations cannot foresee all events that might impact the application date for a particular location. The regulations allow businesses operating within New York State the flexibility to manage their own business, while meeting the intent of the legislature with regard to neighbor notification.

If I Am Following Integrated Pest Management Principles and Practices, How Can I Comply with the Neighbor Notification Law?

There are many ways in which an applicator can use IPM principles and practices and still comply with the Neighbor Notification Law:

- After giving the required 48 hour written notice, an applicator can scout on the scheduled date. If the target pest is present, the application can be made then using a pesticide listed in the 48 hour written notice. If the target pest is not present, the two alternative dates are still available for scouting and application, if necessary.
- If you are not certain which of several pesticides may need to be used, you may list the product name and EPA registration number of the possible products in your 48 hour written notice.
- You may use any of the exempted pesticides or application techniques and be exempt from the requirement for giving 48 hour written notice.

Do I Need to Include a Copy of the Pesticide Label with the 48 Hour Written Notice?

No. You are only required to list the product name and the EPA registration number for each pesticide to be applied.

### Can Any Other Information Be Included with the 48 Hour Written Notice?

Other information, such as information about your registered pesticide business, may be included with the 48 hour written notice, but any additional material may not obscure or hide the required notice. To avoid complaints from neighbors who missed the notice and, perhaps, a follow-up investigation, you may want to put a notice such as "IMPORTANT PESTICIDE NOTICE INSIDE" on the outside of your envelope to draw attention to the notice.

### If One of My Scheduled Pesticide Applications Covered in a 48 Hour Written Notice Is Canceled, Do I Need to Provide Notice of Canceled Pesticide Applications?

No. While you are not required to give notice of cancellations, you may find it to be good public relations to do so.

### Do I Need to Post Visual Notification Markers for Commercial Lawn Applications?

Yes. Visual notification markers must be posted on the day of any commercial lawn application and must be in place before the pesticides are applied. There are no exceptions, even when 48 hour written notice is not required or when the application is more than 150 feet from any property line. The markers may not be removed sooner than 24 hours following the commercial lawn application.

### If I Make a Commercial Lawn Application that Does Not Require 48 Hour Written Notice, Do I Need to Post Visual Notification Markers?

Yes. Visual notification markers must be posted for all commercial lawn applications. When commercial lawn applications are performed on behalf of a public agency, you only need to post the application area when it is within 100 feet of a dwelling, multiple dwelling, public building or public park.

### What Are the Requirements for Posting Visual Notification Markers?

The current requirements, which may be changed by future regulations, include:

- Markers must be posted on the day of any commercial lawn application and must be in place before the pesticides are applied.
- Markers must be placed around the perimeter of the area where pesticides will be applied.
- Markers must be clearly visible to persons immediately outside the perimeter of the property.
- Markers must instruct persons not to enter the treated property and not to remove the markers sooner than 24 hours following the commercial lawn application. The instructions must be printed boldly in letters at least three-eighths of an inch in height.

### Do All Commercial Lawn Applications Require 48 Hour Written Notice to Neighbors?

No. The regulations offer exemptions from the requirement for 48 hour written notice if the applicator uses one or more of several pesticides including the following:

- the application of anti-microbial pesticides as defined by FIFRA in 7 U.S.C. sections 136 (mm) and 136 Q (h)(2);
- the use of an aerosol product with a directed spray, not including foggers or aerosol products which discharge to a wide area, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging or biting insects such as venomous spiders, bees, wasps and hornets;
- the use of non-volatile insect or rodent bait in a tamper resistant container;
- the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25 (“minimum risk pesticides”);
- the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
- the use of boric acid and disodium octaborate tetrahydrate;
- the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
- the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;
- the application of a pesticide by direct injection into a plant or the ground;
- the spot application of a pesticide, where a spot application means the application of pesticides in a manually pressurized or non-pressurized container of thirty-two ounces or less to an area of ground less than nine square feet;
- the application of pesticides to the ground or turf of any cemetery;
- an emergency application of a pesticide when necessary to protect against an imminent threat to human health.

### How Can I Determine If an Anti-microbial Pesticide Is Exempt from the Requirement for 48 Hour Written Notice?

An anti-microbial pesticide used for a commercial lawn application is exempt if it is a pesticide used to disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or to protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

### What Ultra Low Volume (ULV) or Fogger Pesticide Applications Are Exempt From the Requirement for 48 Hour Written Notice?

The Neighbor Notification Regulations exempt from the requirement for 48 hour written notice, “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.” The regulations do not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area.

This exemption has caused some confusion in the regulated community. The key element in the definition of a commercial lawn application or residential lawn application is the application of a pesticide to ground, trees or shrubs on outdoor property. While it is true that use of aerosols or foggers greater than 18 fluid ounces for residential lawn application or commercial lawn application purposes are not exempt from the requirement for 48 hour written notice, the use of an ultra low volume pesticide application to the air column for mosquito control does not fall under the definition of either residential lawn application or commercial lawn application since the pesticide application is not made to “ground, trees or shrubs.”

To be considered an ultra-low volume aerosol or fog space spray, the pesticide must be delivered in accordance with label directions for ultra-low volume application. If the size of individual droplets exceeds the measurement indicated by label directions, or if the percentages of droplet size ratios specified on the label are exceeded, the application is considered a barrier or perimeter spray that leaves a residual deposit on vegetation and other surfaces in the target zone.

Therefore, these types of ULV aerosol or fog space spray applications are not subject to the any of the commercial lawn application or neighbor notification regulatory requirements. However, any non-ULV aerosol or fog spray, including any “barrier,” “residual” or “perimeter” pesticide application in which the pesticide contacts ground, trees or shrubs, is subject to the requirements of the Neighbor Notification Law and other provisions of Title 10 of Article 33 of the Environmental Conservation Law. For example, commercial lawn application contracts are required when providing a barrier or perimeter delivery of residual mosquito adulticide, but are not required when applying adulticide by ULV aerosol or fog delivery, or when applying larvicide or pupicide to surface waters. This contract requirement does not apply to the application of pesticides by or on behalf of agencies; therefore, State, regional and local municipal mosquito control programs applying pesticides to ground, trees and shrubs are exempt

from this requirement. In addition, the posting of visual notification markers is required when providing a barrier or perimeter delivery of residual mosquito adulticide, but is not required when applying adulticide by ULV aerosol or fog delivery, or when applying larvicide or pupicide to surface waters. This visual notification requirement does apply to the application of pesticides by or on behalf of agencies when such application is within 100 feet of a dwelling, multiple dwelling, public building or public park..

### What Are the Requirements for a Pesticide to Be Considered an Exempt Minimum Risk Pesticide?

The Neighbor Notification Law exempts from written notice requirements the commercial lawn application of a pesticide classified by the United States Environmental Protection Agency (EPA) as an exempt material under 40 CFR Part 152.25. These pesticides are more commonly known as “minimum risk pesticides.”

The Department of Environmental Conservation has the same registration policy for “minimum risk pesticides” as the EPA. The Department does not review or register “minimum risk pesticides” nor do we have a list of specific products which are considered minimum risk. The EPA guidelines for “minimum risk pesticides” are in Title 40 of the Code of Federal Regulations (40 CFR). This is a summary of the EPA guidelines:

- All active ingredients must be on the list in 40 CFR 152.25(g). (g) Minimum risk pesticides--(1) Exempted products. Products containing the following active ingredients are exempt from the requirements of FIFRA, alone or in combination with other substances listed in this paragraph, provided that all of the criteria of this section are met.
- The only permitted inert ingredients are those listed in the most current EPA List 4A. This list is updated periodically and is published in the Federal Register.
- Each product containing the substance must bear a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient.
- The product must not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents carrying specific diseases, including, but not limited to ticks that carry Lyme disease.
- The product must not include any false and misleading labeling statements, including those listed in 40 CFR 156.10(a)(5)(i) through (viii).

In addition, 6 NYCRR Part 325.2(b) requires every pesticide used in New York State to contain labeling with pesticide use directions, even if exempt from registration.

#### How Can I Determine If a Reduced Risk Pesticide or Biopesticide Is Exempt from the Requirement for 48 Hour Written Notice?

These pesticides must both meet the EPA requirements for a reduced risk pesticide or a biopesticide **and** be registered by the Department of Environmental Conservation for use in New York State. A list of such reduced risk pesticides and biopesticides is available on the Department's web site at: <http://dec.state.ny.us/website/dsh/pesticid/webinst.htm> or from any of our Regional offices.

#### Are Horticultural Soaps or Oils That Contain Petroleum Distillates Exempt from the Requirement for 48 Hour Written Notice?

The Neighbor Notification Law exempts from the 48 hour notice requirements "the use of horticultural soap and oils that do not contain synthetic pesticides or synergists." A horticultural soap or oil that contains a synthetic product, such as a petroleum distillate, which is neither a pesticide nor a synergist that enhances the effectiveness of an active ingredient would qualify for this exemption. If, however, the horticultural soap or oil contained a synthetic pesticide or synthetic synergist, the product would not qualify for this exemption.

#### What Is a Spot Treatment?

The Neighbor Notification Law defines a spot application to mean the application of pesticides in a manually pressurized or non-pressurized container of thirty-two ounces or less to an area of ground less than nine square feet.

#### What Are the Limits on the Number of Spot Treatments?

The Neighbor Notification Law does not place an upper limit on the number of spot treatments.

#### Can I Use a Hose-end Sprayer for Spot Treatments and Avoid Giving 48 Hour Written Notice?

No. A typical hose-end sprayer, which uses a canister (32 oz. or less) to hold concentrated pesticides, is attached to a water hose. The canister is not pressurized. Water running through the hose creates a negative pressure or vacuum in the canister and siphons measured amounts of the concentrated pesticide which is mixed with the water stream and delivered through the end of the hose. Such a hose-end sprayer fails to meet the requirements of this exemption. The pesticide is certainly delivered to the water stream by means of

a non-pressurized container; however, the pesticide is delivered to the lawn (or spot application) by means of a pressurized stream of water/pesticide mixture of essentially unlimited volume, certainly greater than 32 ounces. Even if such a hose-end sprayer were connected to a manually pressurized backpack sprayer, the capacity of the backpack sprayer would have to be limited to 32 ounces to meet the requirements of this exclusion.

If I Make a Pesticide Application to Trees or Shrubs in a Cemetery, Do I Need to Provide 48 Hour Written Notice?

Yes. The exemption applies only to the ground or turf of a cemetery, not to trees or shrubs.

What Is an Emergency Pesticide Application?

The Neighbor Notification Law defines an emergency application of a pesticide to be an application which is necessary to protect against an imminent threat to human health.

Does a Dying Tree or Lawn Meet the Definition of an Emergency Pesticide Application?

No. The application must be necessary to protect against an imminent threat to **human** health.

My Customer Is Concerned about Lyme Disease. Can I Make an Emergency Pesticide Application to My Customer's Lawn to Control Deer Ticks?

No. An emergency pesticide application must be necessary to protect against an **imminent** threat to human health.

What Are the Reporting Requirements for a Valid Emergency Pesticide Application?

**Prior to any emergency pesticide application**, the person making the emergency application must make a good faith effort to supply the required 48 hour written notice required pursuant to this section **and** must notify the New York State Commissioner of Health, using a form developed by the Commissioner of Health. The form must include at least:

- the name of the person making such application,
- the Pesticide Business Registration Number or certified applicator identification number of the person making or supervising such application,
- the street address, site location on the treated property and date of the application,
- the product name and EPA registration number for each pesticide applied, and
- the reason for such application.

### What Is the Penalty If the Application Is Not a Valid Emergency Pesticide Application?

If the application is not a valid emergency pesticide application and if the applicator failed to give the required 48 hour written notice, the applicator is subject to the penalties provided in Section 71-2907 of the ECL. The maximum civil penalty is not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense. Criminal penalties may be sought if warranted by the circumstances.

### Do I Need to Use Only Pesticides Registered for Use in New York State?

Yes. It is a violation of New York State law for a commercial pesticide applicator to use any pesticide not registered for use in New York State. It is the obligation of each certified pesticide applicator to ensure that each pesticide used is registered in New York State. For example, many pesticides which have been determined by the U. S. Environmental Protection Agency to satisfy its reduced risk criteria are either not registered for use in New York State or are restricted in New York State. However, as provided in Section 325.41(i), the Department will annually prepare a list of reduced risk pesticides and biopesticides that meet the requirements of Section 325.41(e)(10) and are registered for use in New York State. In addition, the Department maintains on its web site a list of all pesticides currently registered for use in New York State.

### How Can I Tell If a Pesticide Is Registered for Use in New York State?

Ask your supplier or check the Department of Environmental Conservation web site at: <http://dec.state.ny.us/website/dshh/pesticide/webinst.htm>

### What Do I Need as Proof That I Used a Product That Is Exempt from the Requirement for 48 Hour Written Notice?

To avoid the requirement for 48 hour notice, the applicator must use an exempted product. The applicator must also keep contemporaneous daily use records and submit an annual pesticide use report to the Department. Depending on individual circumstances, these records, backed by product purchase records may provide adequate proof.

### If I Use an Exempted Product, Do I Need to Provide this Information to a Neighbor Who Demands to Know Why 48 Hour Written Notice Was Not Given?

While the applicator is not otherwise required to share information on the exempt product being used, we expect that applicators will share information on the product being used if approached by a neighbor. This will minimize the number of complaints that may be lodged against the applicator and, perhaps, the need for follow-up investigations.

### Can Neighbors Decline 48 Hour Written Notices?

Any person or business making commercial lawn applications may set up one or more systems to allow occupants of dwellings (one or two family residences) to decline **further** notices of commercial lawn applications to abutting property for the dwelling unit in which the occupant resides. The declinations may be given verbally or in writing. The applicator or business must retain a record of each declination received and must make all such records available for inspection upon request by the Department. The applicator or business must also provide a reasonable mechanism for any occupant who issues such a declination to rescind the declination. The rescission must go into effect no later than five business days following receipt by the applicator or business making commercial lawn applications. This will minimize interference with 48 hour notices that have already been given to other neighbors. However, the applicator or business remains responsible in any case if the occupants change.

### If I Set up a System to Allow Occupants of Dwellings to Decline Further Notices, What Is My Responsibility If Someone Who Declines Further Notice Moves Away?

A significant concern for applicators is a situation where a declination is received from one or more occupants of a dwelling who then move away and the dwelling is occupied by someone else who has a right to receive prior notice of commercial lawn applications. Any declination applies to an occupant of a dwelling, not to an address. Consequently, it remains the obligation of the applicator to devise a system that will allow the applicator to provide the required notice to any future occupants of a dwelling in these situations. An applicator always has the option of notifying all neighbors that require notification.

### Can the Owner or Owner's Agent or Other Person in a Position of Authority Over Multiple Dwellings or Other Occupied Structures Decline Further Notices of Commercial Lawn Applications?

No. The option to decline further notices may only be given to occupants of dwellings (one or two family residences.)

### What are My Notification Obligations For Multiple Dwellings and Other Occupied Structures?

If an applicator makes a commercial lawn application, written notice may be required to be given to owners or owners' agents or other persons in a position of authority for multiple dwellings (such as apartment buildings or condominiums) and other occupied structures (such as shopping malls and office buildings), on abutting property that is within one hundred fifty feet of the site of the commercial lawn application. In these cases, the applicator must give the owner or owner's

agent or other person in a position of authority (the building manager or superintendent) the normal 48 hour written notice (see details, above.) The owner or owner's agent or other person in a position of authority must, in turn, supply the written notice to occupants of multiple dwellings or post the notice for occupants of other occupied structures within 24 hours of the scheduled application.

#### Am I Required to Set up a System to Allow Neighbors to Decline Further Notice?

No. A person or business making commercial lawn applications may, their discretion, provide one or more options to occupants of dwellings (one or two family residences) to decline further notice. There is no requirement to provide such options.

#### Applications of Pesticides Around or near the Foundation of a Building for the Purpose of Indoor Pest Control Are Not Considered a Commercial Lawn Application. How Can I Tell What Applications Are Considered Around or near the Foundation of a Building for the Purpose of Indoor Pest Control?

All pesticides must be applied according to label directions. The pest must be listed on the label **as a household or structural pest** and the applicator must be certified in the proper category or supervised by such an applicator. This exclusion applies to label directions which specify a treatment around or near a foundation **to control structural or household pests**, but does not apply to any label directions which specify a broadcast treatment to lawn areas on the premises. For example, if a label required a perimeter treatment such as 6 to 10 feet wide around the foundation for the purpose of controlling an indoor pest, such applications would not be considered commercial or residential lawn applications. However, if the label required a broadcast flea, tick or ant control treatment of entire lawn areas, such applications fall under the provision of the Neighbor Notification Law. Furthermore, current regulations at Part 325.16(c) identify outdoor broadcast treatments for fleas, ticks and other such pests to require certification in category 3A (Ornamental and Turf), the category required for commercial lawn applications.

#### Who Enforces the Neighbor Notification Law?

The Neighbor Notification Law will be enforced by both your County government and the New York State Department of Environmental Conservation.

#### What Are the Penalties for Violation of the Commercial Lawn Application Requirements of the Neighbor Notification Law?

The penalties are set forth Article 71 of the ECL. There are two types of penalties, administrative penalties and criminal penalties.

Administrative penalties are a maximum of \$5,000.00 for a first violation a maximum of \$10,000.00 for a subsequent offense. These administrative penalties may only be assessed after a hearing or opportunity to be heard.

Criminal sanctions are generally a misdemeanor punishable by a fine not to exceed \$5,000.00 (\$10,000.00 for subsequent offenses) for each day during which the violation continues or by imprisonment for a term of not more than one year, or by both a fine and imprisonment. Criminal prosecutions are conducted by the Attorney General or by a District Attorney.

These penalties do not affect the rights of any other person seeking damages arising out of a violation.