

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF PROPOSED RULEMAKING

Pesticides Infractions: Schedule of Fines Amendments

The Director of the District Department of the Environment (DDOE or Department), pursuant to the authority set forth in the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04 (2012 Repl.)); the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2012 Repl. & 2013 Supp.)); the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code §§ 8-401 *et seq.* (2012 Repl. & 2013 Supp.)); the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-191; D.C. Official Code §§ 8-431 *et seq.* (2013 Repl.)); Mayor’s Order 2006-61, Section 29, dated June 14, 2006; and Mayor’s Order 2009-113, dated June 18, 2009, hereby gives notice of the intent to amend Chapter 40 (Department of Environment) of Title 16 (Consumers, Commercial Practices, & Infractions) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking amends Section 4002 of Title 16 to correspond with the new Notice of Proposed Rulemaking for the District of Columbia Pesticide Operation Regulations that amends Chapters 22 through 25 of Title 20 (Environment) of the DCMR. Appendix A lists sections that were not previously included in the Schedule of Fines.

Chapter 40 (Department of Environment), Title 16 (Consumers, Commercial Practices, & Infractions) of the DCMR is amended as follows:

Section 4002, PESTICIDE INFRACTIONS, is amended to read as follows:

4002 PESTICIDE INFRACTIONS

4002.1 Violation of any of the following provisions shall be a Class 1 infraction:

- (a) 20 DCMR § 2201.7 (using a pesticide in a manner harmful to human health, non-target organisms, or the environment);
- (b) 20 DCMR § 2201.12 (performing an inspection for wood infestation or determination of the presence of pests by a pesticide operator without a certification in the “Industrial, Institutional, Structural, and Health Related Pest Control” category as described in 20 DCMR § 2301.5);
- (c) 20 DCMR § 2202.1 (using, manufacturing, distributing, selling, shipping, or applying a pesticide not registered with the Department);

- (d) 20 DCMR § 2208.1 (applying a District restricted-use pesticide to schools, child-occupied facilities, waterbody-contingent property, or District property);
- (e) 20 DCMR § 2208.2 (applying a non-essential pesticide to schools, child-occupied facilities, waterbody-contingent property, or District property);
- (f) 20 DCMR § 2213.1 (failure to store pesticides in accordance with the requirements of 20 DCMR § 2213.1);
- (g) 20 DCMR § 2213.2 (storing a restricted-use pesticide without posting a sign in accordance with the requirements of 20 DCMR § 2213.2);
- (h) 20 DCMR § 2213.3 (failure to dispose of a pesticide in accordance with the Resource Conservation and Recovery Act or label directions);
- (i) 20 DCMR § 2213.4 (failure to transport a pesticide in accordance with the requirements of 20 DCMR § 2213.4);
- (j) 20 DCMR § 2219.1(j) (making a false or fraudulent record, invoice, or report);
- (k) 20 DCMR § 2219.1(k) (acting as, advertising as, or assuming to act as a pesticide dealer without a license);
- (l) 20 DCMR § 2219.1(l) (aiding, abetting, or conspiring to evade pesticide laws or regulations);
- (m) 20 DCMR § 2219.1(m) (making fraudulent or misleading statements during or after an inspection of a pest infestation or an inspection conducted pursuant to 20 DCMR Chapter 25);
- (n) 20 DCMR § 2219.1(n) (impersonating a federal, state, or District inspector or official);
- (o) 20 DCMR § 2219.1(o) (failure to immediately notify and report to the Department any pesticide accident, incident, fire, flood, or spill);
- (p) 20 DCMR § 2219.1(p) (distributing an adulterated pesticide);
- (q) 20 DCMR § 2219.1(q) (failure to maintain a record required for a transaction involving a restricted-use pesticide);
- (r) 20 DCMR § 2311.2 (permitting the use of a pesticide by a technician who is not registered with the Department and acting under the direct supervision of a licensed applicator);

- (s) 20 DCMR § 2400.4 (permitting the use of a restricted-use pesticide by a person who is not a licensed and certified applicator or a registered technician acting under the direct supervision of a licensed applicator); or
- (t) 20 DCMR § 2505.4 (violating a “stop sale, use, or removal” order).

4002.2

In addition to § 4002.3, violation of any of the following provisions shall be a Class 2 infraction:

- (a) 20 DCMR § 2201.1 (using a pesticide in a manner inconsistent with its labeling or in violation of a law or regulation);
- (b) 20 DCMR § 2201.2 (failure to maintain equipment);
- (c) 20 DCMR § 2201.3 (failure to distribute a registered pesticide in the registrant’s or manufacturer’s unbroken, immediate container);
- (d) 20 DCMR § 2201.10 (detaching, altering, defacing, or destroying a label required by FIFRA);
- (e) 20 DCMR § 2214.1 (distributing a pesticide or device that is misbranded);
- (f) 20 DCMR §§ 2214.3 to 2214.4, or 2214.6 to 2214.14 (failure to comply with a labeling, package, container, or wrapper requirement);
- (g) 20 DCMR § 2214.5 (offering for sale a pesticide under the name of another pesticide or imitation of another pesticide);
- (h) 20 DCMR § 2215.5 (failure to have a Department-approved Integrated Pest Management program that meets the requirements of 20 DCMR § 2215.5);
- (i) 20 DCMR § 2215.7 (applying a pesticide to public rights-of-way, parks, District-occupied buildings, other District property, or child-occupied facilities without an approved integrated pest management plan);
- (j) 20 DCMR § 2216.1 (performing fumigation without being a licensed applicator certified to perform fumigation or without supervision by a licensed applicator certified to perform fumigation);
- (k) 20 DCMR § 2216.2 (failure to train and provide safety equipment to each member of a fumigation crew);
- (l) 20 DCMR § 2216.3 (failure to notify the nearest fire station prior to fumigation);

- (m) 20 DCMR § 2216.5 (failure to conspicuously post warning signs for fumigation);
- (n) 20 DCMR § 2216.7 (failure to have a guard present on-site during fumigation);
- (o) 20 DCMR § 2216.8 (failure of guard to be capable, awake, alert, or to remain on duty at the site at all times);
- (p) 20 DCMR §§ 2216.9 or 2216.10 (failure to comply with a requirement for introducing a fumigant or for allowing re-occupancy after fumigation);
- (q) 20 DCMR § 2217.1 (performing pest control by heat treatment without being a licensed and certified pesticide operator);
- (r) 20 DCMR § 2218.1 (using a canine scent pest detection team without being a licensed and certified pesticide operator or using an uncertified canine scent pest detection team);
- (s) 20 DCMR § 2219.1(a) (failure to register a pesticide in the District of Columbia);
- (t) 20 DCMR § 2219.1(b) (using a pesticide in a manner inconsistent with its labeling or in violation of imposed restrictions);
- (u) 20 DCMR § 2219.1(c) (making a pesticide recommendation that is inconsistent with its labeling or in violation of imposed restrictions);
- (v) 20 DCMR § 2219.1(d) (falsifying, refusing, or neglecting to maintain or make available required records);
- (w) 20 DCMR § 2219.1(e) (using fraud or misrepresentation in applying for certification or a license);
- (x) 20 DCMR § 2219.1(g) (making a false or fraudulent claim through any media that misrepresents the effect of a pesticide or method to be utilized in its application);
- (y) 20 DCMR § 2219.1(h) (applying an ineffective or improper pesticide; operating faulty or unsafe equipment); or
- (z) 20 DCMR § 2219.1(i) (using or supervising the use of a pesticide in a faulty, careless, or negligent manner).

4002.3

In addition to § 4002.2, violation of any of the following provisions shall be a Class 2 infraction:

- (a) 20 DCMR § 2300.2 (purchasing or using a restricted-use pesticide without a license and not under the direct supervision of a licensed commercial or public applicator, or supervising the use of a restricted-use pesticide without a license);
- (b) 20 DCMR § 2310.4 (improper use of a public applicator license);
- (c) 20 DCMR § 2312.8 (failure to instruct an employee on proper pesticide use);
- (d) 20 DCMR § 2313.1 (failure to instruct an employee on the hazards of pesticide use and proper steps to avoid those hazards);
- (e) 20 DCMR § 2313.2 (failure to provide an employee with necessary safety equipment and protective clothing);
- (f) 20 DCMR § 2313.3 (failure to inform an employee of reentry requirements or provide necessary protective clothing or apparatus if premature reentry is necessary);
- (g) 20 DCMR §§ 2400.1 or 2400.5 (failure to obtain a pesticide operator license);
- (h) 20 DCMR § 2400.6 (transferring a pesticide operator license from one business to another);
- (i) 20 DCMR § 2401.7(c) (using a restricted-use pesticide without the supervision of a licensed certified applicator during the grace period provided in 20 DCMR § 2401.7(b));
- (j) 20 DCMR §§ 2403.1 or 2403.2 (failure to obtain a pesticide dealer's license);
- (k) 20 DCMR § 2403.7 (selling or transferring a restricted-use pesticide to any person other than a licensed certified applicator or authorized representative); or
- (l) 20 DCMR § 2516.10 (failure to report a significant pesticide accident or incident within twenty-four (24) hours of occurrence).

4002.4

Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 20 DCMR § 2201.4 (failure to have a FIFRA label affixed to a pesticide container);
- (b) 20 DCMR § 2201.5 (using a pesticide container for a purpose other than containing the original product);
- (c) 20 DCMR § 2201.8 (applying a pesticide when the wind velocity will cause the pesticide to drift beyond the target area);
- (d) 20 DCMR § 2201.9 (displaying or offering for sale a pesticide in a container which is damaged or has a damaged or obscure label);
- (e) 20 DCMR § 2201.11 (applying a pesticide without a copy of the label available for inspection);
- (f) 20 DCMR § 2203.4 (using or revealing for one's own advantage information relating to the formula of a pesticide registered with the Department);
- (g) 20 DCMR § 2211.1 (failure to provide customer with required information before a pesticide application);
- (h) 20 DCMR § 2211.3 (failure to provide customer with advance notice of a pesticide application upon request);
- (i) 20 DCMR § 2211.4 (failure to provide customer with advance notice of a pesticide application to multi-unit property upon request);
- (j) 20 DCMR § 2211.5 (failure to provide tenant and resident with required information before a pesticide application);
- (k) 20 DCMR § 2211.7 (failure to provide notice of pesticide application to abutting property);
- (l) 20 DCMR § 2217.2 (failure to comply with record keeping requirements for pest control by heat treatment);
- (m) 20 DCMR §§ 2218.7 or 2218.8 (failure to comply with record keeping requirements for canine scent pest detection);
- (n) 20 DCMR § 2218.9 (failure to design a canine scent detection test that meets the requirements of 20 DCMR § 2218.9);
- (o) 20 DCMR §§ 2218.14 to 2218.16 (failure to comply with the requirements for conducting a canine scent detection test);

- (p) 20 DCMR § 2219.1(f) (refusing or neglecting to comply with a limitation or restriction on a certification or license);
- (q) 20 DCMR §§ 2306.1 or 2307.5 (failure to renew certification);
- (r) 20 DCMR § 2311.1 (applying a pesticide without being registered with the Department and acting under the direct supervision of a licensed certified applicator);
- (s) 20 DCMR § 2311.3 (failure to register an employee who works under the direct supervision of a licensed certified applicator within thirty (30) days of employment);
- (t) 20 DCMR §§ 2402.2 to 2402.5 (failure to comply with liability insurance requirements);
- (u) 20 DCMR § 2514.3 (failure to renew a license on or before the first day of a licensure period);
- (v) 20 DCMR §§ 2516.1 to 2516.3, or 2516.5 to 2516.10 (failure to comply with a record keeping requirement or provide records or other information); or
- (w) 20 DCMR §§ 2517.1 or 2517.2 (failure to comply with a record keeping requirement for or provide records on restricted-use pesticides).

4002.5

Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 20 DCMR § 2201.6 (failure to use an effective anti-siphon device for equipment);
- (b) 20 DCMR § 2212.1 (failure to post a sign at the time of pesticide application that meets the requirements of 20 DCMR § 2212);
- (c) 20 DCMR § 2300.8 (failure to post license conspicuously);
- (d) 20 DCMR § 2305.5 (failure to submit credentials and license to employer after termination of employment);
- (e) 20 DCMR § 2305.6 (failure to notify the Department of the termination of an employee and return a terminated employee's license and credentials to the Department within ten (10) working days of employee submitting license and credentials);
- (f) 20 DCMR § 2311.7 (failure to have registered technician identification card available for inspection));

- (g) 20 DCMR § 2311.13 (failure to give written notice of termination of a registered technician within thirty (30) days of termination or failure to return a terminated registered technician's identification card);
- (h) 20 DCMR § 2312.6 (failure to have a pesticide label at work site);
- (i) 20 DCMR § 2400.7 (failure to surrender an operator certification and license within ten (10) working days of termination of a business);
- (j) 20 DCMR § 2400.8 (failure to notify the Department of any change of address within thirty (30) days of the change);
- (k) 20 DCMR § 2400.10 (failure to post license conspicuously); or
- (l) 20 DCMR § 2401.7 (failure to notify the Department when supervision by a licensed certified applicator is not available).

4002.6

Violation of any provision of the Pesticide Operations Act of 1977, effective April 18, 1978, as amended (D.C. Law 2-70; D.C. Official Code §§ 8-401 to 8-419); the Pesticide Education and Control Amendment Act of 2012, effective October 23, 2012, as amended (D.C. Law 19-191; D.C. Official Code §§ 8-431 to 8-440); or the implementing rules in 20 DCMR Chapters 22 through 25 which is not cited elsewhere in this section, shall be a Class 5 infraction.

Appendix A – Chart of Newly Scheduled Infractions

The following regulation sections were not previously included in the Schedule of Fines:

SECTION	CLASS
20 DCMR § 2208.1	1
20 DCMR § 2208.2	1
20 DCMR § 2213.1	1
20 DCMR § 2213.2	1
20 DCMR § 2213.3	1
20 DCMR § 2213.4	1
20 DCMR § 2219.1(k)	1
20 DCMR § 2219.1(q)	1
20 DCMR § 2311.2	1
20 DCMR § 2215.5	2
20 DCMR § 2215.7	2
20 DCMR § 2218.1	2
20 DCMR § 2201.4	3
20 DCMR § 2201.11	3
20 DCMR § 2211.1	3
20 DCMR § 2211.3	3
20 DCMR § 2211.4	3
20 DCMR § 2211.5	3
20 DCMR § 2211.7	3
20 DCMR § 2217.2	3
20 DCMR § 2218.7	3
20 DCMR § 2218.8	3
20 DCMR § 2218.9	3
20 DCMR § 2218.14	3
20 DCMR § 2218.15	3
20 DCMR § 2218.16	3

The Director gives notice of the start of a thirty (30) day public comment period for this proposed rulemaking, as required by D.C. Official Code § 8-411(a) (2012 Repl.). Comments on these proposed rules must be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to DDOE’s Hazardous Materials Branch, 1200 First Street, NE, 5th Floor, Washington, D.C. 20002, Attention: Pesticide Regulations; or sent electronically to ddoe.pesticidereg@dc.gov, with “Pesticide Regulations Proposed Rulemaking” in the subject line. Copies of the proposed rule may be obtained between the hours of 9:00 A.M. and 5:00 P.M. at the address listed above for a small fee to cover the cost of reproduction or on-line at <http://ddoe.dc.gov>.

All comments will be treated as public documents and will be made available for public viewing on the Department's website. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. The Department will look for the commenter's name and address on the comment. If a comment is sent by email, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Department's website. If the Department cannot read a comment due to technical difficulties and is unable to contact the commenter for clarification, the Department may be unable to consider the comment. Including the commenter's name and contact information in the comment will avoid this difficulty.