

## DISTRICT DEPARTMENT OF THE ENVIRONMENT

## NOTICE OF FINAL RULEMAKING

As required by D.C. Official Code § 8-411(a), the Director of the District Department of the Environment ("DDOE") is publishing this notice of final rulemaking after providing a public hearing on September 9, 2008, pursuant to D.C. Official Code § 8-411(a), and a public comment period of not less than thirty (30) days from the date of publication of the proposed rules notice in the *D.C. Register* (55 D.C. REG. 6216 on May 30, 2008). The public hearing and the thirty (30) day public comment period have passed and one comment was received. DDOE has considered that comment, but has concluded that the comment did not require any changes to the rule as it was proposed. Accordingly, no changes were made to the rule. The comment and DDOE's response to the comment are available to the public for inspection, upon request, by contacting Mr. Robert Hamilton, Associate Director for Toxic Substances, at (202) 535-2280. The comment and response are located in the DDOE's Pesticide Rulemaking Docket. DDOE hereby submits these regulations for publication as final rules, which shall be effective immediately upon publication in the D.C. Register.

The Director of the District Department of the Environment ("DDOE"), pursuant to the authority set forth in section 12(a) and (c) of the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-411(a) and (c) (2001)); section 103(b)(1)(B)(ii)(II) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(b)(1)(B)(ii)(II) (2007 Supp.)); and Mayor's Order 98-47, as amended by Part III.20 of Mayor's Order 2006-61, dated July 14, 2006, hereby gives notice of the amendment to Chapter 22 (Control of Pesticides) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) to require notification and posting by pesticide operators of basic contact information, notice of pesticide application, and pesticide risk information to better inform the public.

This action is necessary to protect the public further from potential pesticide hazards, as required by the Loretta Carter Hanes Pesticide Consumer Notification Amendment Act of 2008 ("Act"), signed by the Mayor on April 14, 2008 (D.C. Act 17-342; 55 DCR 18). Section 2 of the Act requires DDOE to: (1) establish a uniform statement and format for the sign that is to be posted at the time of an exterior pesticide application (e.g., lawn spraying); and (2) promulgate a list of reduced-risk pesticides and methods of pest control that will be made publicly available and referenced in a mandatory public notification. The posting and notification requirements became effective as D.C. Law on June 5, 2008 (D.C. Law 17-168; 55 DCR 26) and require pesticide operators to implement these requirements.

The Act requires that pesticide applicators inform customers whether they are applying a pesticide that DDOE has determined poses a reduced risk because: (1) the pesticide itself, when applied in accordance with U.S. Environmental Protection Agency ("U.S. EPA")-or DDOE-approved label instructions, poses a reduced risk; or (2) the method of application of a pesticide poses a reduced risk because it is applied in a manner that renders the pesticide inaccessible to children and pets. While the Act is intended to encourage the uses of reduced-risk pesticides and/or methods of pesticide application, DDOE notes that, at present, there may not be a

reduced-risk pesticide, or reduced-risk method of application, for every situation. For example, there is presently no reduced-risk substance or method that is known to be effective for treating bedbugs.

DDOE also notes that the science of pest control is continually evolving, and that additional reduced-risk pesticides may come onto the market that are not available today. Accordingly, DDOE is today promulgating a list of reduced-risk pesticides or classes of pesticides that it intends to be a living list. Thus, DDOE has determined that products which the U.S. EPA may later classify as exempt from regulation under section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act, approved October 21, 1972 (86 Stat. 997; 7 U.S.C. § 136w(b)), as well as biopesticide active ingredients and components of plant incorporated protectants that U.S. EPA may later register, will also constitute reduced-risk pesticides warranting inclusion in the list DDOE is promulgating today.

**Chapter 22 of Title 20 DCMR is amended as follows:**

**A new section 2209 is added to read as follows:**

**2209 Reduced Risk Pesticides and Methods of Pest Control**

- 2209.1 The following pesticides are identified by the Department of the Environment as reduced-risk:
- (a) Products classified by the United States Environmental Protection Agency ("U.S. EPA") as exempt from regulation under section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act, approved October 21, 1972 (86 Stat. 997; 7 U.S.C. § 136w(b)), when used according to District-approved label instructions, because the products meet all of the criteria set forth in 40 C.F.R. § 152.25, contain only the active ingredients listed in 40 C.F.R. § 152.25(f)(1) (2008, or as amended), and include only the inert ingredients described in 40 C.F.R. § 152.25(f)(2) and listed in the most current List 4A (4A Inerts List), which may be found at <http://www.epa.gov/opprd001/inerts/inerts-list4Acas.pdf>;
  - (b) Biopesticide active ingredients in products registered by U.S. EPA, which ingredients are set forth at <http://www.epa.gov/oppbppd1/biopesticides/ingredients/index.htm>, including registered components of plant-incorporated protectants ("PIPs"), which components are set forth at <http://www.epa.gov/oppbppd1/biopesticides/pips/pip-list-htm>, when used according to U.S.EPA-approved label directions;
  - (c) The following compounds, when used according to U.S. EPA label directions: boric acid, disodium octaborate tetrahydrate, silica gels, or diatomaceous earth; and

(d) Non-volatile pesticides in tamper resistant containers.

2209.2 The following methods for applying pesticides, when the pesticides are used according to U.S. EPA-approved label directions, are identified by the Department of the Environment as reduced-risk:

- (a) Pesticides used for the purpose of rodent control that are placed directly into rodent burrows or placed in areas inaccessible to children or pets; and
- (b) Pesticides in the form of a non-liquid gel used for the purpose of insect control that are placed in areas inaccessible to children or pets.

**A new section 2214 is added to read as follows:**

**2214 Posting**

2214.1 Any person required to have a license under D.C. Official Code § 8-403 who is applying a pesticide to a lawn or to exterior landscape plants shall post, at the time of application, a sign that conforms to the requirements of this section. This section applies only to those persons required to be certified in pest control pursuant to 20 DCMR § 2301.1(a)(1) and (2).

2214.2 The sign required by § 2214.1 shall meet the following requirements:

- (a) Be no smaller than four (4) inches in height x five (5) inches in width;
- (b) Be constructed of a sturdy, weather resistant material;
- (c) Be rigid, as opposed to a flag;
- (d) Be on a flexible stake, preferably not wire;
- (e) Have yellow background with black, bold-faced lettering; and
- (f) Be posted so that the bottom of the sign shall be at least twelve (12) inches but not more than sixteen (16) inches above the surface of the soil.

2214.3 The information contained on the sign shall meet the following requirements:

- (a) Information contained on the front of the sign shall be the same words and symbols and in the sizes specified in Figure A shown at the end of this chapter; and
- (b) Information contained on the back of the sign shall be at least eighteen (18) point type ( $5/32$  inch) in size and indicate the following:
  - i. Date applied;

- ii. Name of applicator; and
- iii. Telephone number of applicator.

- 2214.4 The person applying the pesticide shall place the sign at each primary access to the property treated, with the front of the sign facing the access. If only a spot pesticide application is made, or only a small area of a large area receives a pesticide application, the sign may be posted at the location where the pesticide application was made, with the front of the sign facing the probable path of access to the area.
- 2214.5 The sign shall remain in place for forty-eight (48) hours following the pesticide application, after which time the property owner is responsible for removal of the sign.
- 2214.6 Subject to the penalties provided in D.C. Official Code § 8-418, no person, acting alone or in concert with others, may remove, alter, or deface the sign within forty-eight (48) hours of its posting.

**Subsection 2299.1 is amended by adding two new definitions to read as follows:**

**Biopesticide** - a chemical derived from plants, fungi, bacteria, or other non-man-made synthesis that is effective in controlling target pests or certain microorganisms including bacteria, fungi, viruses, and protozoa that are effective in controlling target pests. These agents usually do not have toxic effects on animals and people and do not leave toxic or persistent chemical residues in the environment.

**Plant incorporated protectant** - pesticidal substances that are intended to be produced and used in a living plant or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. Plant incorporated protectant also includes any inert ingredient contained in the plant, or produce thereof.

Figure A

