

State of New York
Office of the Attorney General



A report on the

**IMPLEMENTATION OF
PESTICIDE NEIGHBOR
NOTIFICATION IN
NEW YORK:
*SIX COUNTIES' EXPERIENCE***



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IMPLEMENTATION OF PESTICIDE NEIGHBOR NOTIFICATION IN NEW YORK: SIX COUNTIES' EXPERIENCE

Introduction

Since the State Legislature enacted the “Neighbor Notification Law” in 2000, six counties have adopted and implemented its provisions. In the Spring of 2003, the Attorney General’s office surveyed these counties to assess their experience and gather information that might assist other counties implementing or considering adoption of this new law.

The Neighbor Notification Law (Chapter 285 of the Laws of 2000), codified as Environmental Conservation Law (ECL) § 33-1004, provides counties and New York City the option of adopting new notification requirements for residential lawn applications of pesticides.¹ The Legislature enacted the law in response to growing public

¹ In addition to the option to adopt notice requirements for lawn applications, the new law also includes mandatory statewide notice requirements for pesticide applications at schools and day care centers. These requirements are explained in the Attorney General’s report *Citizens’ Guide to Pesticide Notification Laws in New York State*, available at www.ag.ny.gov.

concern about the health risks of exposure to pesticides. Providing notice when lawn pesticides are applied enables neighbors to take precautions to reduce their exposure to these toxic chemicals.

The law provides that if a county decides to “opt-in,” it must adopt a local law that includes all the exact provisions of ECL § 33-1004. Such a local law becomes effective in that county on January 1st of the year following adoption. The Neighbor Notification Law provides specific requirements for commercial applicators of pesticides, retailers, and homeowners.

To date, six New York State counties have opted-in to the Neighbor Notification Law. Albany, Nassau, Suffolk and Westchester Counties passed local laws opting-in during 2000, so that the notification provisions took effect in 2001. Rockland County opted-in effective 2002 and Tompkins County opted-in effective 2003.

I. Requirements of the Neighbor Notification Law

In counties where a Neighbor Notification Law is in effect, commercial applicators must provide 48 hours advance written notice to occupants of neighboring dwellings with property lines that fall within 150 feet of

the application site. (Under New York State law, commercial applicators must be certified under and must comply with the Environmental Conservation Law. A commercial lawn application is defined as the application of a pesticide to the ground, trees, or shrubs on public or private property, other than by the owner or occupant thereof, with exceptions for agriculture, golf courses and turf farms.) In the case of apartment buildings, notice must be given to the owner or owner's agent, who must in turn provide advance written notice to the building residents. Such notice is not required for applications of certain products that are considered of low enough toxicity not to warrant notice, or for applications to address a health emergency. Commercial applicators are subject to substantial fines and criminal prosecution for violations of these requirements.

Under the Neighbor Notification Law, individuals who apply pesticides on their own residential property to an area greater than 100 square feet are required to place visible markers along the perimeter on the day of application to warn others that pesticides have been applied. The markers must remain in place for 24 hours. This provision warns people to avoid the treated area while the pesticide residue is still concentrated, and keep their children and pets away.

Retailers of pesticide products in counties that have adopted local Neighbor Notification Laws are required to post a sign warning customers to follow label directions on all pesticides purchased at their establishments. The retail sign must include a detailed description of the notice requirements for homeowner pesticide applications and a recommendation that property owners notify their neighbors before applying any pesticide.

Details of the requirements of the Neighbor Notification Law are available in the New York State Attorney General's *Citizen Guide to Pesticide Notification Laws in New York State*. The publication (and other materials addressing pesticides) may be requested from the Attorney General's Office by calling 1-800-771-7755, through the AG website at: www.ag.ny.gov , or by writing to the Environmental Protection Bureau at:

New York State Attorney General's Office
Environmental Protection Bureau
The Capitol
Albany, NY 12224

II. Legal Challenges to Local Neighbor Notification Laws

Commercial pesticide applicators sued to invalidate local Neighbor Notification Laws in Nassau, Suffolk, Westchester and Albany Counties shortly after they were adopted. All the cases were unsuccessful.

All four cases claimed the counties failed to comply properly with the State Environmental Quality Review Act (SEQRA), ECL Article 8. The county trial courts reached varying conclusions, but on appeal, two different appellate courts upheld all four local laws, finding that the State Legislature did not intend counties to conduct any additional environmental review under SEQRA prior to adopting local laws. The courts also held that the applicators were not entitled to challenge the laws on environmental grounds because their interests were only economic.

The cases are:

- * *New York State Lawncare Association, Inc. v. County of Albany*, 292 A.D.2d 719 (3rd Dept.), *leave to appeal denied*, 98 N.Y.2d 608 (2002).

- * *Blue Lawn, Inc. v. County of Westchester*, 293 A.D. 2d 532 (2nd Dept.), *leave to appeal denied*, 98 N.Y.2d 607 (2002).
- * *Nature's Trees, Inc. v. County of Suffolk*, 293 A.D. 2d 543 (2nd Dept.), *leave to appeal denied*, 98 N.Y.2d 608 (2002).
- * *Nature's Trees, Inc. v. County of Nassau*, 293 A.D. 2d 544 (2nd Dept.), *leave to appeal denied*, 98 N.Y.2d 608 (2002).

III. Benefits of Adopting Neighbor Notification Laws

Pesticides are poisons that can pose health risks even when applied in full compliance with label directions and the law. Several pesticides commonly used in lawn care are classified as probable or possible carcinogens, and/or are associated with health problems including damage to the liver, kidneys, nervous and respiratory systems, and acute skin irritation and respiratory distress. Infants, children, pregnant women and the elderly and infirm are particularly susceptible to these risks. (For further information on children's health risks associated with pesticide use, see the Attorney General's report, *Pest*

Control in Public Housing, Schools and Parks: Urban Children at Risk, available at www.ag.ny.gov)

Exposure to pesticides can result in acute poisonings as well as lifelong health impacts.

These harms are a function of both a person's exposure to a pesticide and the toxicity of the pesticide used. Implementation of Neighbor Notification laws provides a means for residents to reduce their exposure, and also provides an incentive for applicators to use less toxic pest treatments. Reducing pesticide poisonings and long-term health problems pays off in the long run by reducing public health care costs.

IV. Cost of Implementation of the Neighbor Notification Law

Costs of implementation and enforcement have varied among the counties but have not been excessive. Most of the counties that have Neighbor Notification programs have experienced a downward trend in the number of complaints brought under the law the longer the program has been in effect, thus signaling decreased costs for enforcement.

Westchester County added two staff lines in the budget assigned to Neighbor Notification, but these employees also work on other programs. Suffolk County has no separate line item but assigns staff to Neighbor Notification among their other duties.

In Rockland County, one staff member handles the administration of the program, but also pursues other duties. Approximately half of that staff member's yearly salary is budgeted for the Neighbor Notification program. Based on that amount, plus reproduction and administrative costs and time spent by other staff members, Rockland County spent approximately \$46,000 on the Neighbor Notification program in 2002.

Nassau County assigns two staff members and one attorney to work on the Neighbor Notification program part-time. The time devoted by these staff members equals roughly fifty work days per year. As a result, Nassau County is spending approximately \$15,000 per year plus benefits. Other costs such as printing are estimated to be approximately \$3,000 per year.

Albany County has assigned one staff member to administer the Neighbor Notification program. This person has absorbed Neighbor Notification duties into

other duties for the Department of Health. A second staff member provides assistance for retail enforcement signage compliance checks. In 2001, Albany County utilized forty-six staff days for the administration of the Neighbor Notification program, at a cost of \$11,000. In 2002, fifteen staff days were used at approximately one-third the 2001 cost.

In Tompkins County, Neighbor Notification duties were absorbed by existing staff; costs associated with education and outreach are expected to amount to approximately \$7,000 for the year.

V. Getting the Word Out on Neighbor Notification

Each of the six counties that has enacted the Neighbor Notification Law relies on the Internet as a means of disseminating information to the public. The respective Health Department websites are listed below.

Albany County -

[http://www.Albanycounty.com/executive/News/nr_022601.
htm](http://www.Albanycounty.com/executive/News/nr_022601.htm)

Nassau County -

<http://www.co.nassau.ny.us/health/progdesc.html#section4>

(while Nassau does not have a separate page addressing Neighbor Notification, it is listed as one of the Health Department Programs)

Rockland County -

<http://www.co.rockland.ny.us/health/neighbornotify.htm>

Suffolk County -

<http://www.co.suffolk.ny.us/webtemp3.cfm?print=true&dept=6&id=1784>

Tompkins County -

<http://www.co.tompkins.ny.us/pubinfo/pesticide>

Westchester County -

<http://www.co.westchester.ny.us/health/pesticideneighbornotification.htm>

Each of the counties also relies on educational programs and printed materials as a means of increasing public awareness about the existence of the Neighbor Notification Law and its requirements. Each Health Department has brochures and information that are available to the public. Many of the counties also maintain information from the Department of

Environmental Conservation (DEC) through links on their websites or printed materials.

In Rockland County, Cornell Cooperative Extension has provided assistance by holding educational seminars for commercial applicators and providing continuing education credits for those who attend. Cornell Cooperative Extension also makes the Rockland County Health Department brochures available through their office.

The 2003 season marked the inauguration of the Neighbor Notification program in Tompkins County. There, the Health Department is planning to update its website as further information becomes available and is preparing a fact sheet to be included in any mailings concerning pesticides. Cornell Cooperative Extension held a series of three informational meetings before the pesticide application season began. These meetings were free and were directed toward commercial applicators, retailers, and homeowners.

In the spring of 2001, Albany County engaged in an extensive informational outreach campaign. The County developed fact sheets directed at each of the groups affected by the Neighbor Notification Law, modified the

DEC handouts, and updated its website. They also inventoried and contacted all retailers and commercial applicators by phone and mailed copies of the applicable regulations to them. The County solicited the help of Cornell Cooperative Extension for this informational outreach. The Health Department included Neighbor Notification as an agenda item at numerous meetings and provided workshops for applicators and retailers.

Educational outreach comes into play in the enforcement context as well. In cases of violations by homeowners, the law requires the provision of educational materials, provided by DEC, upon a first violation. Some counties address first violations by retailers and applicators in the same way.

VI. Experience With Neighbor Notification Laws

A. Commercial Pesticide Applicators

Some of the counties report that applicators have avoided notification requirements by shifting to the use of pesticide products that are exempted from the requirements of the Neighbor Notification Law. In some cases, the alternatives used have been granular pesticides; in others, county Health Department officials have

noticed an increased use of horticultural oils and tree injections. Applicators have complained about the added costs of compliance with notification requirements, and some of those who have switched to exempted pesticide products have also voiced concerns about the higher cost of those products. However, none of the county Health Departments were aware of any applicator who had gone out of business as a result of any increased cost. In fact, they reported widespread compliance by applicators with the requirements of the law.

Rockland County has implemented an innovative technique to assist commercial applicators with compliance. Rockland County maintains a Geographic Information System-based parcel identification system that was developed by the county Planning Department. Commercial applicators can access this system for a fee and thus far, three applicators have done so. Using this system, the address of the site to be treated can be entered into the database and the applicator will receive a list of all of the abutting properties. While the Health Department has noticed a shift toward non-covered pesticides since the implementation of the law, it expects there to be a switch back to covered pesticides as more applicators gain access to the system.

B. Pesticide Retailers

Compliance among retailers varies by county. In some of the counties, retail signage has not been sufficient. Rockland and Nassau Counties actively check for compliance among retailers. Westchester and Albany Counties actively checked for retail compliance following the implementation of the law and then returned for monitoring purposes on subsequent occasions. In September 2001, Albany County checked fifty-two of fifty-three retailers. Forty-nine were in total compliance and three were in partial compliance. When Health Department staff revisited the retailers one week later, all but one was in full compliance.

In Suffolk County, retail checks have been less prevalent. Suffolk County's program is complaint-driven, and Health Department staff do not engage in regular checks of retail establishments. However, when the Health Department learns of retailers potentially out of compliance, it has sent letters to them describing and emphasizing their obligations.

In most of the counties, the Neighbor Notification program is managed solely by the Health Department. As noted above, Tompkins County has divided up

implementation tasks. There, the Department of Weights and Measures has agreed to check for proper retail signage when inspecting locations for other reasons, thereby conserving county enforcement resources.

C. Local Property Owners

The level of compliance among property owners has proven difficult to investigate and document. Homeowners have frequently registered complaints against commercial applicators, but only rarely against each other, according to local officials. One problem encountered in most counties is that many residents believe that all pesticide applications require notification. Thus, Health Department staff spend much of their time determining which complaints actually fall within the purview of the Neighbor Notification Law. Many Health Department staff expressed doubts about the level of compliance among homeowners.

While the public apparently needs to be further educated about the specifics of the Neighbor Notification Law, it also appears that implementation of the law, and the accompanying dissemination of information to the public, has led to an increased awareness of pesticide use and other materials being applied in the environment. In

Westchester County, for example, the Department of Health has noticed an increase in call volume reporting the use of chemical fertilizers, which are not covered by the Neighbor Notification Law.

D. Enforcement

Most of the counties report that they resolve complaints through conciliation or by providing educational materials to the violator. Officials reported a total of only seven formal enforcement actions through 2002, four of which resulted in the imposition of a fine. As noted above, very few complaints have been registered against homeowners. The counties in which the Neighbor Notification Law has been in place for more than a year have generally experienced a decrease in the number of complaints after the first year.

County Health Department staff work with DEC on some enforcement matters. Westchester County staff reported referrals to DEC of other pesticide violations discovered when responding to Neighbor Notification complaints that turned out to involve exempt applications.

Health Department staff in Suffolk and Nassau Counties often consult with DEC when technical questions arise of a legal or scientific nature. The Albany Department of

Health also reports that it refers violations of other pesticide laws to DEC.

VII. Conclusions from the Counties' Experience

The six counties that have enacted the Neighbor Notification Law have reported positive results. Commercial applicators and retailers are generally in compliance. Some members of the public remain unaware of the specific requirements of the law, but if counties continue their outreach and education programs public awareness will improve.

Implementation of Neighbor Notification has not proved to be particularly burdensome on county governments. Where full time staff have been added, they have not had to devote all their time to Neighbor Notification. In some counties, existing Health Department staff have been able to incorporate Neighbor Notification into their other duties. Despite this lack of full-time personnel, the programs have been largely successful. Noncompliance has not proved to be a serious problem, so substantial resources have not been required for enforcement.

The success of the Neighbor Notification programs should be noted by counties considering their adoption. The costs and burdens of implementation are modest and the public health benefits -- significantly increased awareness of pesticide applications, the opportunity to reduce exposure, and increased use of less toxic pest treatments -- are substantial. The ease with which Health Department officials have incorporated Neighbor Notification into their existing programs, and the relatively low cost at which they have done so, should encourage other counties in New York to adopt local Neighbor Notification laws.