

AN ACT
D.C. ACT 19-446

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

AUGUST 9, 2012

*Codification
District of
Columbia
Official Code*

2001 Edition

2012 Fall
Supp.

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Publisher

To further restrict the application of pesticides near waterways, at schools, day care centers, and on District property, to establish publicly available courses on pesticides at the University of the District of Columbia, to require an annual report on pesticide usage, to require pesticide applicators to submit usage data, and to increase the pesticide product registration fee; to amend the Pesticides Operations Act of 1977 to increase penalties; and to amend the Human and Environmental Health Protection Act of 2010 to allow the Mayor to issue rules permitting limited exemptions.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Pesticide Education and Control Amendment Act of 2012".

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) "Agriculture" means land whose primary purpose and use is to raise crops.
- (2) "Child-occupied facility" means a building or portion of a building which, as part of its function, receives children under the age of 6 years on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function. The term "child-occupied facility" includes day care centers, nurseries, pre-school centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, and similar entities.
- (3) "Department" means the District Department of the Environment.
- (4) "District property" means buildings or land owned, leased, or otherwise occupied by the District government.
- (5) "District restricted use" means a pesticide identified by the Department as requiring additional restrictions for use to prevent a hazard to human health, the environment, or property as set forth in section 3.
- (6) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, approved June 23, 1947 (61 Stat. 163; 7 U.S.C. § 136 *et seq.*).
- (7) "Forestry" means trees on land that is at least one acre in size and at least 10% occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use.

(8) “Integrated pest management” or “IPM” means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage economically, and with a strong preference for examining a range of cultural, mechanical, biological, and chemical practices and selecting a method presenting the least possible hazard to people, property, and the environment.

(9) “Minimum risk” means a pesticide registered with the Department, but exempt from federal registration under section 25(b) of the FIFRA.

(10) “Non-essential” means a pesticide that is non-critical to managing pests that threaten health, property, or the environment in the District as set forth in section 3.

(11) “Pest” has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(12) “Pest management” means the control of plants, insects, herbs, or rodents with chemical agents deployed as pesticides.

(13) “Pesticide” has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299); provided, that the definition shall not include:

(A) Fertilizers and other plant supplements whose primary purpose is to provide nutrition to plant-life and not to repel, treat, or control pests;

(B) Pesticides exempt under the FIFRA and its implementing regulations, specifically those pesticides exempted under section 25(b) of FIFRA and 40 C.F.R. 152.25(f), subject to reclassification as set forth in section 3;

(C) Individual repellents, personalized devices, and other agents not necessarily classified under FIFRA but employed by individuals for protection from pests;

(D) Sanitizers, disinfectants, and antimicrobial agents; and

(E) Other chemicals, devices, or substances excluded by the Department in regulations.

(14) “Pesticide application” means the spraying, laying, injecting, delivering, or other action whereby plants, insects, herbs, or other pests are controlled by a registered pesticide or a chemical agent that includes a registered pesticide.

(15) “Pesticide applicator” has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(16) “Pesticide operator” has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(17) “Pesticide registration fee” means the fee set for product registration by section 2506 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2506).

(18) “Reduced risk” has the same meaning as provided in section 2209 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2209).

(19) “Restricted use” means any pesticide or pesticide use classified as restricted

through the process outlined by the Administrator of the United States Environmental Protection Agency in Subpart I of Part 152 of Subchapter E of Chapter 1 of Title 40 of the Code of Federal Regulations (40 C.F.R. § 152.160 *et seq.*), or a pesticide so designated by the Department by the process described in section 3.

(20) "School" means a public or private facility whose primary purpose is to provide K-12 educational services and includes adjacent or contiguous recreation centers or athletic fields owned or maintained by the educational facility.

(21) "University" means the University of the District of Columbia.

(22) "Waterbody" means those waters located within the District that are:

(A) Subject to the ebb and flow of the tide; or

(B) Free flowing, unconfined, and above-ground rivers, streams, or

creeks.

(23) "Waterbody-contingent property" means property within 25 feet of a waterbody.

Sec. 3. District restricted-use and non-essential pesticides.

(a) The Department shall create and maintain lists of pesticides classified as District restricted-use or non-essential.

(b) The Department shall, through regulations, designate as non-essential a pesticide that is non-critical to pest management in the District.

(1) Critical pest management includes controlling:

(A) Plants that are poisonous to touch or may cause damage to a structure or infrastructure; or

(B) Insects that bite or sting, are venomous or disease-carrying, or that may cause damage to a structure or infrastructure.

(2) The Department shall presume that a pesticide should not be classified as non-essential if it is intended primarily for use on or for:

(A) Agriculture;

(B) Forestry;

(C) Promotion of public health or safety; or

(D) Other prescribed uses set forth in regulation.

(c) The Department shall, through regulations, designate as District restricted-use any pesticide that:

(1) When used as directed or in accordance with commonly recognized practice requires additional restrictions for that use to prevent a hazard to human health, the environment, or property; or

(2) The Department determines presents a significant, scientifically sound basis justifying that reclassification.

(d) The Department shall offer an opportunity for public comment conforming to the conditions set forth in subsection (e) of this section before classifying as District restricted-use

any pesticide that is not designated as restricted-use under 40 CFR § 152.175 or adding restrictions to a restricted-use pesticide designated under 40 CFR § 152.175.

(e) The opportunity for public comment required by subsection (d) of this section shall include at least one published notice in the District of Columbia Register regarding the proposed reclassification of a particular pesticide and a comment period of at least 30 days; provided, that the agency is required to hold a public hearing only if significant public interest is expressed during the 30-day comment period.

Sec. 4. Prohibited and restricted uses.

(a) No person or entity shall apply non-essential pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in section 5.

(b) The Department may establish restrictions for District restricted-use pesticides when they are to be used on schools, child-occupied facilities, waterbody-contingent property, or District property.

Sec. 5. Exemptions.

(a) Section 4 shall not apply to the use of a pesticide for the purpose of improving or maintaining water quality at:

- (1) Drinking water treatment plants;
- (2) Wastewater treatment plants;
- (3) Reservoirs and swimming pools; and
- (4) Related collection, distribution, and treatment facilities.

(b) A person or entity may apply to the Department for an exemption from section 4 for a District restricted-use pesticide. The Department may grant an exemption if the applicant demonstrates:

- (1) That the applicant has made a good-faith effort to seek effective and economical alternatives to the restricted-use or District restricted-use pesticides, and they are unavailable;
- (2) That providing a waiver will not violate District or federal law; and
- (3) That use of the restricted-use or District restricted-use pesticide on the property prohibited under section 4 is linked to a need to protect health, the environment, or property.

(c) A person or entity may apply to the Department for an exemption from section 4 for a non-essential pesticide. The Department may grant an exemption to apply a non-essential pesticide on property prohibited under section 4 if the applicant demonstrates:

- (1) That effective alternatives are unavailable;
- (2) That providing a waiver will not violate District or federal law; and
- (3) That use of the non-essential pesticide is critical and necessary to protect human health or prevent imminent and significant economic damage.

(d) A person or entity subject to section 4 may apply to the Department for an emergency exemption if an emergency pest outbreak poses an imminent threat to public health or if

significant economic damage would result from the inability to use a pesticide prohibited or restricted by section 4. The Department shall impose specific conditions for the granting of emergency applications.

(e) The Department may, as set forth by the Mayor in regulations, require that an applicant who applies for substantially the same exemption at substantially the same property due to managing pests with proper adherence to IPM principles attend a District-approved IPM course.

Sec. 6. Pesticide education.

The University shall provide:

(1) An educational course on integrated pest management, which shall occur at least once per month and at least once per year in each of the District's 8 wards; and

(2) An educational course on integrated pest management specifically for pesticide applicators, which shall be offered at least once every 90 days.

Sec. 7. Annual reporting.

The University shall prepare and submit a report to the Council on or before January 1, 2015 assessing the effectiveness of the District's pesticide programs. The University shall prepare and submit a new report by January 1 of each subsequent calendar year assessing the effectiveness of the District's pesticide programs. The report shall include:

(1) An assessment of attitudinal changes of District residents toward pesticide use;

(2) An assessment of changes in the cost of pest management in the District; and

(3) An assessment of changes in the number of pesticides registered and used in the District.

Sec. 8. Pesticide applicator reports.

Pesticide applicators shall submit to the Department records of pesticide applications to property in the District on an annual basis in a form that the Department shall prescribe; provided, that applications of minimum-risk and reduced-risk pesticides are exempt from this requirement.

Sec. 9. Pesticide registration fee.

The Department shall set a pesticide registration fee of at least \$200.

Sec. 10. Penalties.

(a) A violation of this act shall be a civil infraction for purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective July 16, 1985 (Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*) ("Civil Infractions Act"). Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this act, or the rules issued under authority of this act, pursuant to the Civil Infractions Act. Adjudication of any infractions shall be pursuant to the Civil Infractions Act.

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(b) The Department may, as set forth by the Mayor in regulations, suspend or revoke the license of a pesticide operator or applicator who violates section 4 more than once in a calendar year in a manner that endangers human health or the environment.

Sec. 11. Rules.

(a) Within 570 days of the effective date of this act, the Mayor shall issue rules to implement the provisions of sections 2 through 10.

(b) For rules issued pursuant to section 3, the Department shall afford great weight to the decisions made pursuant to section 18 of the FIFRA.

Sec. 12. The Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-401 *et seq.*), is amended as follows:

**Amend
§ 8-403**

(a) Section 4(b) (D.C. Official Code § 8-403(b)) is amended by adding a new paragraph (9) to read as follows:

“(9) When determining the competency of an applicator, the Mayor shall ensure that an applicator demonstrates mastery of the principles of integrated pest management.”.

(b) A new section 4e is added to read as follows:

“Sec. 4e. Notification to abutting properties.

“A certified applicator or registered technician, before applying a restricted-use pesticide outside the confines of an enclosed structure, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application to property that abuts the property to be treated.”.

**Amend
§ 8-404**

(c) Section 5 (D.C. Official Code § 8-404) is amended to read as follows:

“Sec. 5. Registered technicians.

“(a) No person, except those acting as a private applicator or licensed as a commercial applicator, public applicator, or registered technician shall apply any pesticide in the District for a fee.

“(b) The application to become a licensed registered technician shall be made in writing on a form prescribed by the Mayor, and the registration shall be valid for the time period prescribed by the Mayor. The Mayor shall, by regulation, establish appropriate education and training requirements for registration as a registered technician.

“(c) The Mayor shall provide for the issuance of appropriate credentials for all registrants.”.

**Amend
§ 8-411**

(d) Section 12(a) (D.C. Official Code § 8-411(a)) as follows:

(1) Designate the existing text as paragraph (1).

(2) A new paragraph (2) is added to read as follows:

“(2) “Within 570 days of the effective date of the Pesticide Education and Control Amendment Act of 2012, passed on 2nd reading on July 10, 2012 (Enrolled version of Bill 19-643), the Mayor shall issue rules to implement the provisions of that amendatory act.”.

**Amend
§ 8-418**

(e) Section 19 (D.C. Official Code § 8-418) is amended to read as follows:

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“Sec. 19. Penalties.

“(a) A person violating a provision of this act or of a rule or regulation promulgated pursuant thereto, shall be fined according to the schedule set forth in Chapter 32 of Title 16 of the District of Columbia Municipal Regulations, or be imprisoned for not more than 90 days, or both.

“(b) The Department may, as set forth by the Mayor in regulations, revoke or suspend the license of a pesticide operator or applicator who violates section 4 more than once in a calendar year in a manner that endangers human health or the environment.”.

Sec. 13. Section 3 of the Human and Environmental Health Protection Act of 2010, effective March 31, 2011 (D.C. Law 18-336; D.C. Official Code § 8-108.02), is amended by adding a new subsection (e) to read as follows:

**Amend
§ 8-108.02**

“(e) The Mayor may create or adjust a de minimis exemption for products affected by this section, if feasibility or undue hardship on manufacturing justifies such action. The Mayor may also exempt products from this section for as long as feasibility or undue hardship justifies the exemption.”.

Sec. 14. Applicability.

(a) Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 shall apply as of October 1, 2013.

(b) Sections 6 and 7 shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register, but not before October 1, 2013.

Sec. 15. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 16. Effective date.

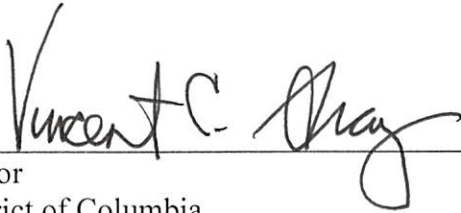
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
August 9, 2012



COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

Docket No. **B19-643**

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FIRST READING, 06-26-12

VOICE VOTE
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT

BARRY

ROLL CALL VOTE – Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Wells	X			
Barry				X	Evans	X								
Bowser	X				Graham	X								
Brown	X				McDuffie	X								
X – Indicate Vote					AB – Absent					NV – Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

8-2-12

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

ADOPTED FINAL READING, 07-10-12

VOICE VOTE
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT

ALL PRESENT

ROLL CALL VOTE – Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson	X				Catania	X				Orange	X			
Alexander	X				Cheh	X				Wells	X			
Barry	X				Evans	X								
Bowser	X				Graham	X								
Brown	X				McDuffie	X								
X – Indicate Vote					AB – Absent					NV – Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

8-2-12

Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE
 RECORDED VOTE ON REQUEST

ABSENT

ROLL CALL VOTE – Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Mendelson					Catania					Orange				
Alexander					Cheh					Wells				
Barry					Evans									
Bowser					Graham									
Brown					McDuffie									
X – Indicate Vote					AB – Absent					NV – Present, Not Voting				

CERTIFICATION RECORD

Secretary to the Council

Date