

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Mary M. Cheh introduced the following bill, which was referred to the Committee on _____.

To further restrict the application of restricted use pesticides on public use property, near waterways, at schools, at 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, to increase the pesticide product registration fee, and to amend the Pesticides Operations Act of 1977 to increase penalties.

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) "Child-occupied facility" means a building, or portion of a building, which as part of its function receives children under the age of 6 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 daycare centers, nurseries, preschool centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, or similar entities.

(2) "Department" means the District Department of the Environment.

1 (3) “District property” means buildings or land owned, leased, or otherwise occupied by
2 the government of the District of Columbia.

3 (4) “Integrated pest management” or “IPM” means a decision-making process for
4 managing pests that uses monitoring to determine pest injury levels and combines biological,
5 cultural, physical, and chemical tools to minimize health, environmental, and financial risks.
6 IPM uses extensive knowledge about pests, such as infestation thresholds, life histories,
7 environmental requirements, and natural enemies to complement and facilitate biological and
8 other natural control of pests. The method uses toxic synthetic pesticides only as a last resort to
9 controlling pests and uses the least toxic pesticide available for the situation.

10 (5) “Minimum risk pesticide” means a pesticide registered with the Department, but
11 exempt from federal registration under Section 25(b) of the Federal Insecticide, Fungicide, and
12 Rodenticide Act, due to inclusion on the 4A list of exempt pesticides produced by the United
13 States Environmental Protection Agency or a pesticide so designated by the Department by the
14 process described in Section 3.

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

17 (7) “Pest Management” means the control of plants, insects, herbs, or rodents with
18 chemical agents deployed as pesticides.

19 (8) “Pesticide” means a substance or mixture of substances intended to prevent, destroy,
20 repel, or mitigate any pest and a substance or mixture of substances intended for use as a plant
21 regulator, defoliant, or desiccant; provided, that sanitizers, disinfectants, antimicrobial agents,
22 and pesticide baits are not included.

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

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

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

5 (12) “Public-use property” means land on which any of the following is situated:

6 (A) A recreation, sports, or cultural center; or

7 (B) An outdoor recreation center or a nature interpretation center.

8 (13) “Restricted use pesticide” means any pesticide or pesticide use classified as
9 restricted through the process outlined in section 3 by the Administrator of the United States
10 Environmental Protection Agency in 40 CFR Subpart I, 152.160 or a pesticide so designated by
11 the Department by the process described in Section 3.

12 (14) “School” means any public or private facility whose primary purpose is to provide
13 K-12 educational services.

14 (15) “University” means the University of the District of Columbia.

15 (16) “Waterbody” means a wetland, watercourse, river, stream, creek, storm water
16 retention or detention basin, or other similar water resource.

17 (17) “Waterway-contingent property” means property within 25 feet of a waterbody, as
18 measured from the high water mark or intermittent streams that are dry from the top of the near
19 bank.

20 **Sec. 3. Restricted Use and Minimum Risk Pesticides.**

21 (a) The Department shall designate pesticides registered for use in the District as either
22 restricted use or a minimum risk, consistent with the designations of the United States
23 Environmental Protection Agency in 40 CFR Subpart I, 152.160, except as provided in (b)(2),
24 within 270 days of the effective date of this act.

1 (b) The Department shall, as necessary, update the designations required by subsection
2 (a) of this section using the following criteria:

3 (1) A pesticide classified as restricted use or minimum risk by the Administrator
4 of the United States Environmental Protection Agency in 40 CFR Subpart I, 152.160 shall be
5 presumed to carry the same designation for purposes of sections 3 and 4;

6 (2) For the purposes of section 4, the Department may designate an EPA
7 designated Minimum Risk pesticide as a Restricted Use pesticide if:

8 (A) The pesticide requires repeated use;

9 (B) Effective, economical alternatives to the pesticide are available; and

10 (C) The available alternatives do not require application of pesticides in
11 quantities that would pose a risk to human health and the environment.

12 (3) The Department may designate certain restricted use pesticides as exempt
13 from the restrictions of section 4, in whole or in part, if effective and economic pest
14 management in the District requires the use of a restricted use pesticide, as determined by the
15 Department.

16 (4) If a pesticide registered for use in the District has not been classified by the
17 United States Environmental Protection Agency as restricted use or minimum risk, the
18 Department shall designate it as restricted use or minimum risk for purposes of this act based on
19 the following criteria:

20 (A) Toxicity toward human and environmental health;

21 (B) Necessity of use for pest management in the District; and

22 (C) Availability of effective, economical alternatives.

23 (c) This section shall not authorize a pesticide usage that would be prohibited by federal
24 law.

1 Sec. 4. Prohibited Uses.

2 No person or entity shall apply restricted use pesticides to public use property, schools,
3 child-occupied facilities, waterway-contingent property, or District property except as provided
4 in section 5.

5 Sec. 5. Exemptions.

6 (a) This act shall not apply to the use of any pesticide for the purpose of improving or
7 maintaining water quality at:

8 (1) Drinking water treatment plants;

9 (2) Wastewater treatment plants;

10 (3) Reservoirs and swimming pools; and

11 (4) Related collection, distribution, and treatment facilities.

12 (b) A person or entity may apply to the Department for an exemption from section 4 of
13 up to one year, to use a restricted use pesticide for a limited purpose. The Department may grant
14 an exemption only upon a finding that the application:

15 (1) Establishes a good-faith effort to find alternatives to the restricted use
16 pesticide;

17 (2) Clearly demonstrates that effective, economical alternatives to the prohibited
18 pesticide are unavailable for the intended use;

19 (3) Demonstrates a reasonable plan for investigating alternatives to the restricted
20 use pesticide during the exemption period; provided, that an exemption granted under this
21 subsection shall not permit a use prohibited by federal law; and

22 (4) The application shall be made under the penalty of perjury, pursuant to D.C.

23 Official Code §§ 22-2402.

1 (c) A person or entity subject to section 4 may apply to the Department for an emergency
2 exemption if an emergency pest outbreak poses an imminent threat to public health, or if
3 significant economic damage would result from the inability to use a pesticide prohibited by
4 section 4. The Department shall impose specific conditions for the granting of emergency
5 applications.

6 Sec. 6. Pesticide Education

7 The University shall provide:

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

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

12 Sec. 7. Annual Reporting.

13 The University shall prepare and submit a report to the Council by January 1, 2014
14 assessing the effectiveness of the District's pesticides programs. The University shall prepare
15 and submit a new report by January 1 of each subsequent calendar year assessing the
16 effectiveness of the District's pesticide programs. The report shall include:

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

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

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

21 Sec. 8. Pesticide Applicator Reports.

22 Pesticide applicators shall submit to the Department records of their applications of
23 registered pesticides to property in the District on an annual basis.

24 Sec. 9. Product Registration Fee.

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

2 Sec. 10. Penalties.

3 (a) A violation of this act shall be a civil infraction for purposes of the Department of
4 Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective July 16, 1985 (Law 6-
5 42; D.C. Official Code § 2-1801.01 *et seq.*). Civil fines, penalties, and fees may be imposed as
6 sanctions for any infraction of the provisions of this act, or the rules issued under authority of
7 this act, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of
8 1985, effective July 16, 1985 (Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*). Adjudication
9 of any infractions shall be pursuant to the Department of Consumer and Regulatory Affairs Civil
10 Infractions Act of 1985, effective July 16, 1985 (Law 6-42; D.C. Official Code § 2-1801.01 *et*
11 *seq.*). Nothing in this section shall be construed to limit the enforcement of the Phosphate Soap
12 and Detergent Restriction Act of 1985, effective March 25, 1986 (D.C. Law 6-98; D.C. Official
13 Code § 8-107.02).

14 (b) The Department shall revoke the license of a pesticide operator or applicator who
15 violates section 4 more than once in a calendar year.

16 Sec. 11. The Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70;
17 D.C. Official Code § 8-403 *et seq.*), is amended to read as follows:

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

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

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

1 “(a) Any person violating any provision of this act or of any rule or regulation
2 promulgated pursuant thereto, shall be fined according to the schedule set forth in Title 16 of
3 DCMR, or be imprisoned for not more than 90 days, or both; and

4 “(b) The Department shall revoke the license of a pesticide operator or applicator who
5 violates section 4 more than once in a calendar year.”.

6 Sec. 12. Rulemaking.

7 (a) The Department shall issue rules within 270 days of the effective date of this
8 legislation.

9 (b) For rules issued pursuant to Section 3, the Department shall afford great weight to the
10 decisions made pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide
11 Act, approved June 23, 1947 (61 Stat. 163; 7 U.S.C. § 136).

12 Sec. 13. Applicability.

13 This act shall apply on October 1, 2012.

14 Sec. 14. Fiscal impact statement.

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

18 Sec. 15. Effective date.

19 This act shall take effect following approval by the Mayor (or in the event of veto by the
20 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
21 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
22 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
23 Columbia.