

**Center for Environmental Health  
New York State Department of Health  
February 4, 2011**

**Guidance for Public Health-related Emergency Pesticide Application  
Determinations at Schools and Day Care Centers**

**SUMMARY**

Recent legislation (Laws of 2010, Chapter 85) generally prohibits the use of pesticides on turf, playgrounds, and athletic and playing fields at schools and day care centers, except when an emergency pesticide application is determined necessary. County health departments and the state Commissioner of Health can each make such emergency determinations, however they will only consider requests from non-public schools and day care centers, and only when the issue is health related. It is expected that there will be few if any situations that would warrant an emergency pesticide application to address a health concern in these settings. Requests for determinations from non-public schools and day care centers related to environmental concerns should be addressed by DEC. Requests for determinations from public schools should be handled by the school board, regardless of the issue (see table below). Contacts for additional information are provided in the guidance.

**Emergency Determination Authorities**

Entity	Authorized to make emergency determinations	Issues that can be addressed by entity
County and State DOH	Yes	Public health issues at non-public (parochial and private) schools and day care centers
DEC	Yes	Environmental issues at non-public (parochial and private) schools and day care centers
OCFS	No	None, but can be consulted when making determinations at day care centers
School Board	Yes, for public schools only	All issues at public schools
SED	No	None, but can be consulted when making determinations at public and non-public (parochial and private) schools

## **Guidance for Public Health-Related Emergency Pesticide Application Determinations at Schools and Day Care Centers**

The purpose of the following document is to provide background information on the Chapter 85 amendments to several laws and to provide guidance to health departments, schools and day care centers regarding the determination of whether an emergency pesticide application is warranted for public health related issues.

### Background

Recent legislation (Laws of 2010, Chapter 85) amends Environmental Conservation Law (ECL), Education Law (EDL) and Social Services Law (SSL) with respect to the application of pesticides at schools and day care centers. The modifications to EDL and SSL prohibit, with some specific exceptions, the use of pesticides (which includes insecticides, herbicides, fungicides, rodenticides and others) on the playgrounds, turf, athletic or playing fields of schools and day care centers. An exception allows that emergency pesticide applications can be made as determined by several specified entities.

Entities authorized by Chapter 85 to make emergency pesticide application determinations are:

- the county health department, or for a county not having a health department, such authority as the county legislature shall designate,
- the Commissioner of Health or his or her designee,
- the Commissioner of Environmental Conservation or his or her designee, or
- in the case of a public school, the school board.

### Role of Entities with Regard to Chapter 85 and Pesticide Applications at Schools and Day Care Centers

The State Department of Health (DOH), Department of Environmental Conservation (DEC), State Education Department (SED) and the Office of Children and Family Services (OCFS) together, based on their interpretation of Chapter 85, have identified a working framework for emergency determinations, so that schools and day care centers know which entity to contact when seeking emergency determinations to apply otherwise prohibited pesticides. The roles and responsibilities of the various involved entities are summarized in the below table.

Entity	Authorized to make emergency determinations	Issues that can be addressed by entity
County and State DOH	Yes	Public health issues at non-public (parochial and private) schools and day care centers
DEC	Yes	Environmental issues at non-public (parochial and private) schools and day care centers
OCFS	No	None, but can be consulted when making determinations at day care centers
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**Consequently, all *public* schools should direct any requests for emergency pesticide application determinations to their school boards. *Non-public* schools and day care centers should direct requests for determinations regarding public health to the county or State DOH. For requests related to environmental matters, *non-public* schools and day care centers should contact DEC for determinations.**

Overall Guidance for Determining When a Situation is Not an Emergency

The intent of the Chapter 85 law is to require schools and day care centers to manage grounds and pests without pesticides. The Chapter 85 amendments neither define nor provide guidance on what conditions constitute emergencies regarding pesticide applications at schools and day care centers. However, emergency determinations should only be sought or granted for a one-time pesticide application for a specific situation which presents a true emergency. To provide guidance on deciding when a situation is *not* an emergency, the State DOH, DEC, SED, in consultation with OCFS, identified the following situations that these agencies generally would not consider to warrant an emergency pesticide application determination:

- When the problem can be managed with the allowed products and/or alternative pest management methods (even when it takes time to learn and fully practice pesticide alternatives)
- For routine or repetitive pest problems. Pest problems can occur on a regular or seasonal basis, but they do not usually rise to the level of a public health or environmental threat that constitute emergencies
- When the pesticide application would be for purely aesthetic (non-emergency) reasons

### Guidance for Public Health-related Emergency Application Determinations

An emergency pesticide application based on public health reasons should be reserved for serious situations that happen unexpectedly or deserve immediate action (e.g., residual larvicide applications to control mosquitoes that carry Eastern Equine Encephalitis virus).

It is reasonable to consider an emergency pesticide application at a school or day care center warranted when the safety and health of children and adults present in the setting could be compromised and a pesticide application would significantly reduce the threat.

Some examples of situations that may warrant an emergency pesticide application for public health reasons include:

- An unusual infestation (not the routine presence) of a vector population (e.g., ticks) that may carry human pathogens
- Situations that may arise in the future, but that have not yet been identified or are not currently problems in New York State (e.g., establishment of fire ant colonies).

Some examples of situations that would not generally warrant an emergency pesticide application for public health reasons include:

- Growth of a poisonous plant
- The presence of any undesired species of plant
- A normal population of an insect species capable of transmitting a human pathogen

If a county health department, school or day care center would like to discuss matters regarding public health-related emergency pesticide applications, State DOH staff can be contacted at the number provided in the Contacts section of this document.

### Regulatory Differences Between the Neighbor Notification Law (NNL) and Chapter 85

A determination by one of the empowered entities that an emergency pesticide application is warranted, as required by Chapter 85, does not mean that such an application can be made without first having to provide the required prior notification as specified in NNL.

An emergency exemption under the NNL waives the requirement of providing prior notification for a pesticide application. This exemption does not make a determination of whether a pesticide application is warranted *before* that application is made. By contrast, an emergency pesticide application determination must be rendered *before* an application can be made under Chapter 85. Thus, the pesticide application would take place either way in the case of the NNL - it is only a matter of timing - whereas the determination in Chapter 85 decides whether a pesticide application will take place at all.

The NNL requirements for schools pertain to the use of pesticides at any school building used for instructional purposes or administration, as well as surrounding grounds including playgrounds and athletic fields. For day care centers, the NNL also pertains to both the indoor and outdoor settings of the facility. Chapter 85 pertains only to the rather narrow settings of playgrounds, turf, athletic or playing fields of school and day care centers.

## Summary

The Chapter 85 changes generally prohibit the use of pesticides on turf, playgrounds, and athletic and playing fields at schools and day care centers, except when an emergency pesticide application is determined necessary by one of several specific authorities. While county health departments and the state Commissioner of Health can each make such emergency determinations, they will only consider requests from non-public schools and day care centers, and only when the issue is health related. However, as discussed in this guidance, there are few if any situations that would warrant an emergency pesticide application to address a health concern in these settings. Requests for determinations from non-public schools and day care centers related to environmental concerns should be addressed by DEC. Requests for determinations from public schools should be handled by the school board, regardless of the issue. Contacts for additional information are provided below.

## Contacts

For information regarding public health issues and emergency pesticide applications as relates to Chapter 85, please contact your local health department (see attached list) or the State DOH's Bureau of Toxic Substance Assessment at 518/402-7820.

For information regarding invasive species, and other environmental issues, and emergency pesticide applications as relates to Chapter 85, please contact DEC at 518/402-8768. DEC has also developed guidance for their responsibilities under Chapter 85. This guidance can be found on the DEC website (<http://www.dec.ny.gov/chemical/41822.html>).

For information regarding the regulation of pesticides in New York State, please contact your regional office of the DEC.

The State Education Department, Office of Facilities Planning can be reached at 518/474-3906.

The Office of Children and Family Services, Division of Child Care Services can be reached at 518/474-9454.

## Text of the Laws Added by Chapter 85

To read the new laws added by Chapter 85, go to the New York State Legislature website: (<http://public.leginfo.state.ny.us/MENUGETF.cgi?COMMONQUERY=LAWS+&TARGET=VIEW>).

- For schools, see EDN Section 409-k of the State Education Law.
- For day care centers, see SOS Section 390-g of the Social Services Law.
- For DEC's requirements, see ENV Section 33-0303.7 of the Environmental Conservation Law, as well as EDN Section 409-k of the State Education Law and SOS Section 390-g of the Social Services Law (which also includes DOH responsibilities).

The text for the Neighbor Notification Law sections that apply to schools and day care centers can also be accessed at the above website. The applicable sections are:

- For schools, see EDN Section 409-h of the State Education Law.
- For day care centers, see SOS Section 390-c of the Social Services Law.