

**DISTRICT DEPARTMENT OF THE ENVIRONMENT****NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

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 intent to amend 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 emergency action is necessary to protect the public further from potential pesticide hazards, in anticipation of the effective date of 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; DCR). 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 will take effect immediately upon the Act’s becoming effective and require pesticide operators to implement these requirements. It is, therefore, necessary to promulgate regulations to define the list of reduced-risk pesticides and form of posting for exterior pesticide applications to permit timely and effective implementation of the Act and prevent confusion among the public. This emergency rulemaking was adopted on May 16, 2008, and became effective immediately on that date.

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.

The Director also gives notice of the intent to take final rulemaking action to adopt this amendment following a public hearing on the proposed rules, as required by D.C. Official Code § 8-411(a), and in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The emergency rule will expire on September 13, 2008, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

**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](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](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.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Dr. Robert Hamilton, District Department of the Environment, by mail: 51 N Street, N.E., Room 6002, Washington, D.C. 20002, or by email: robert.hamilton@dc.gov. Comments must be received no later than thirty (30)

days after publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained by writing to the above address or by visiting the DDOE web site at [ddoe.dc.gov](http://ddoe.dc.gov).

Figure A



## DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the District Department of Transportation, pursuant to the authority of section 7 of the Performance Parking Pilot Zone Emergency Act of 2008 (Act), effective March 19, 2008 (D.C. Act 17-320; 55 DCR 3432), or any substantially identical temporary or permanent legislation, Mayor's Order 2008-56 (March 28, 2008), sections 3 and 5(3) of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02 and 50-921.04(3)), and sections 6(a)(1), (a)(5), and (a)(6) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code §§ 50-2201.03(a)(1), (a)(5), and (a)(6)), hereby gives notice of the adoption on an emergency basis of amendments to Chapter 24 of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations (DCMR). The proposed amendments implement the Adams Morgan Taxicab Zone Pilot Program established by the Act.

Emergency rulemaking action is necessary because members of the Adams Morgan business community have identified the urgent need for a taxicab zone to prevent the recurrence of severe congestion caused by taxicabs cruising for customers in Adams Morgan along the busiest sections of 18<sup>th</sup> Street, N.W. Immediate solutions must be implemented to alleviate congestion, improve the efficiency of curbside parking, and protect the public safety.

This emergency rulemaking was adopted on May 15, 2008, and became effective immediately on that date. The emergency rulemaking will expire on September 11, 2008, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director also gives notice of intent to take final rulemaking action to adopt this rulemaking in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Title 18 DCMR is amended as follows:**

**Chapter 24 (Stopping, Standing, Parking, and Other Non-Moving Violations) is amended by adding new subsections 2409.9 through 2409.16 to read as follows:**

- 2409.9 Subsections 2409.9 through 2409.16 implement and apply to the Adams Morgan Taxicab Zone during the Adams Morgan Taxicab Zone Pilot Program. The pilot program commences on May 15, 2008, and concludes on October 1, 2010.
- 2409.10 The Director designates the area bounded by 18<sup>th</sup> Street, N.W., from 18<sup>th</sup> Street, N.W., and Kalorama Road, N.W., to 18<sup>th</sup> Street, N.W., and Columbia Road, N.W., as the Adams Morgan Taxicab Zone.
- 2409.11 The Adams Morgan Taxicab Zone hours shall be:

- (a) From 9:00 p.m. Thursday to 4:00 a.m. Friday;
  - (b) From 9:00 p.m. Friday to 4:00 a.m. Saturday; and
  - (c) From 9:00 p.m. Saturday to 4:00 a.m. Sunday.
- 2409.12 No taxicab operator shall pick up a passenger for hire during Adams Morgan Taxicab Zone hours, except at a designated taxicab stand.
- 2409.13 A taxicab shall stand only in a taxicab stand during Adams Morgan Taxicab Zone hours to await passengers for hire.
- 2409.14 The Director shall post signage to identify zone hours, zone restrictions, and taxicab stand locations.
- 2409.15 The Director may list taxicab stand locations in a public notice to be published in the D.C. Register.
- 2409.16 Except as provided in §§ 2409.9 through 2409.15, Title 31 of the District of Columbia Municipal Regulations shall apply to the Adams Morgan Taxicab Zone.

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Karina Ricks, Associate Director, District Department of Transportation, 2000 14th Street, N.W., 7th Floor, Washington, D.C. 20009. Comments may also be sent electronically to [publicspace.committee@dc.gov](mailto:publicspace.committee@dc.gov). Copies of this proposal are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's web site at [www.ddot.dc.gov](http://www.ddot.dc.gov).