



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of Chapter 14 of Title 24 of the Rules of the City of New York

In accordance with Section 1043(b) of the New York City Charter (“Charter”) and pursuant to the authority granted to the Department of Health and Mental Hygiene (“Department”) by Section 556 of the Charter, a notice of public hearing and opportunity to comment on the Department’s proposal to amend Title 24 of the Rules of the City of New York was published in the City Record on April 22, 2019, and a public hearing was held on May 29, 2019. No one testified at the public hearing and no public comments were received. The Department now adopts the amendments as set forth below.

Statement of Basis and Purpose

Local Law 71 of 2018 added a new Section 18-148 to Chapter 1 of Title 18 of the New York City Administrative Code to require that, within 24 hours of the City spraying a pesticide near a playground operated by or under the jurisdiction of the New York City Department of Parks and Recreation (“Parks Department”), the Parks Department clean the playground equipment located in that playground. Local Law 71 requires the New York City Department of Health and Mental Hygiene (“Department”) to prescribe by rule the distance between the spraying and the playground equipment that will trigger the cleaning requirement.

Citywide policy and Chapter 12 of Title 17 of the Administrative Code, as added by Local Law 37 of 2005, promote the reduction of pesticide use by City agencies. Utilizing an integrated pest management (“IPM”) approach at all times, City agencies implement a variety of strategies to control pests, and when pesticides are necessary to protect public health, use the least toxic products in the smallest amounts possible. As agencies rely on IPM techniques, the Department is aware of few circumstances when City agencies spray pesticides that have even the possibility of depositing on Parks Department playground equipment. Those circumstances include, for example, spraying to control mosquitoes to protect the public from West Nile virus and other mosquito-borne disease; to control stinging insects, such as wasps and hornets; and, starting in 2019, to assess approaches to control ticks. In addition, the Parks Department uses a variety of techniques to control weeds such as poison ivy. For example, when poison ivy is growing inside or within the area immediately outside of a playground, the Parks Department either manually removes the poison ivy or cuts the vine at the base and then paints the cut stem with herbicide. Spray is only used to control poison ivy in areas outside a playground.

The Department is not aware of any standard or guidance addressing whether and when to clean playground equipment in order to protect health following the spraying of pesticide. Two types of standards, however, may be relevant and provide guidance for this. First, the U.S. Environmental Protection Agency (EPA) uses the “No-Observed-Adverse-Effect-Level” (“NOAEL”) as a benchmark for risk classification and assessment of pesticides. The NOAEL is based on research demonstrating that there are pesticide exposure amounts that do not result in an observed harmful effect. Where a pesticide is applied in an amount that could not reasonably exceed the NOAEL, there is no public health basis to clean playground equipment. Applying the NOAEL to the circumstances here, the Department is requiring that the Parks Department not be required to clean playground equipment where the pesticide is sprayed in an amount that could not reasonably exceed the NOAEL.

Second, EPA pesticide labeling requirements and U.S. Fish and Wildlife Service guidance set out buffer zones, which are areas within which pesticides must not or should not be sprayed in order to avoid pesticide drift into waterways, agricultural fields, and other areas that could result in exposures that could be toxic to living organisms. Buffer zones of 30 feet—or 80 feet for ultra-low volume application—have been established in a context that could be considered analogous to this one.¹ In the absence of specific standards or guidance regarding cleaning of playground equipment following pesticide spraying, the Department is applying these analogous standards regarding buffer zones for these rules.

The Department is adopting a new Chapter 14 to Title 24 of the Rules of the City of New York to implement the provisions of Section 18-148 of Chapter 1 of Title 18 of the Administrative Code, as added by Local Law 71 of 2018.

The adopted rules are as follows:

Underlined material is new.

Section 1. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 14 (“Cleaning Park Playground Equipment”) to read as follows:

CHAPTER 14

CLEANING PARK PLAYGROUND EQUIPMENT

§ 14-01 Scope and applicability.

This Chapter applies to park playground equipment that is located within a playground operated by or under the jurisdiction of the New York City Department of Parks and Recreation (hereinafter referred to as “Department of Parks”).

§ 14-02 Definitions.

When used in this Chapter, the following terms have the following meanings:

“Minimum distance from the application of pesticide” means how near park playground equipment can be to the spraying of a pesticide without requiring the park playground equipment to be cleaned pursuant to § 18-148 of the Administrative Code.

“No observed adverse effect level” means the highest exposure level of a chemical at which no harmful effects have been seen in research and scientific studies, and which represents the common benchmark used by the federal environmental protection agency and the food and drug administration for risk classification and assessment of chemicals, including pesticides.

¹ See, e.g., US EPA (2008). Updated spray drift language for pyrethroid agricultural use products U.S. Environmental Protection Agency, Washington, DC. See, <https://www.epa.gov/sites/production/files/2015-08/documents/epapyrethroidletter.pdf>; US EPA (2014). Final Registration of Enlist Duo™ Herbicide. Washington, DC. EPA docket, EPA-HQ-OPP-2014-0195. See, <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OPP-2014-0195-0010&contentType=pdf>; White, J.A. 2004. Recommended Protection Measures for Pesticide Applications in Region 2 of the U.S. Fish and Wildlife Service, U.S. Fish and Wildlife Service, Region 2, Environmental Contaminants Program. 203p. See: https://www.fws.gov/southwest/es/arizona/documents/ecreports/rpmpa_2007.pdf.

“Playground” means an outdoor area open to the public where children play, which contains play equipment such as a sliding board, swing, jungle gym, or see-saw, or which is designated as a play area.

“Park playground equipment” means playground equipment which is located within a playground operated by or under the jurisdiction of the department of parks, including those for which the department of parks has an agreement with a conservancy or other not-for-profit organization with respect to operation of any aspect of a playground.

“Pesticide” means:

- a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and/or
- b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

§14-03 Minimum distance from application of pesticides.

Park playground equipment located less than a minimum distance of 30 feet from the application of pesticides using standard ground spraying equipment or 80 feet from the application of pesticides using ultra low volume spraying must be cleaned, except that such cleaning is not necessary if the pesticide is applied in an amount that could not reasonably exceed any “no observed adverse effect levels” associated with its chemical ingredients.