June 27, 2014

Ms. Mary Begin, Chief
Hazardous Materials Branch
District Department of the Environment
1200 First Street, 5th Floor
Washington, DC 20002

Dear Mary,

I write on behalf of the National Pest Management Association (NPMA) – the only national trade group for professional pest management companies as well as the de facto association for companies operating in the District of Columbia – to comment on the rulemaking published in the May 30 D.C. Register proposing the most far-reaching changes to the Pesticide Operations Regulations since the rules were first adopted in 1978.

Streamlining Licensing Requirements, Canine Pest Detection & Heat Treatments

First off, we express our deep appreciation to the District Department of Environment (DDOE) for proposing to streamline the commercial pesticide applicator and pesticide operator licensing process. The top complaint of NPMA members about doing business in the District is that they have to obtain their licenses from the District Department of Consumer and Regulatory Affairs. The process is time consuming, bureaucratic and inconvenient. The proposed change will benefit both industry and DDOE.

We further applaud DDOE for including Section 2218, Canine Pest Detection, in the proposed rulemaking. NPMA worked closely with the Maryland Department of Agriculture in the development of MDA’s first in the nation requirement specific to canine scent pest detection teams. We are glad that the proposed District requirement is virtually identical to Maryland’s.

NPMA also commends DDOE for proposing what is believed to be the first requirement specific to pest control heat treatments in the country. We are especially pleased that DDOE seeks to limit heat treatments to licensed and certified pesticide operators.
Integrated Pest Management

We have significant concerns about the proposed Section 2215 entitled “Integrated Pest Management.” Specifically, we urge DDOE to strike Section 2215.1(B) that reads “Pesticides are used only as a last resort after all alternative pest management strategies have been exhausted.” This requirement is totally impractical and infeasible. How is a pest management professional to determine that they have exhausted all alternative pest management strategies? For instance, in managing a bed bug infestation, an operator could theoretically control bed bugs with his or her thumb by smashing each individual bed bug as they appear instead of treating the affected area appropriately. It would be a shame to delay a treatment for bed bugs if a young child is being affected because of unnecessary steps. This would certainly be inefficient, ineffective, costly and underscore the impracticality of the provision, however, it is exhausting a control method. A similar provision is contained in 2215.3(e)(3).

We are also concerned about Section 2515.5. The language in the section states that no person required to obtain a license or certification shall apply a pesticide to public rights-of-way, parks, District-occupied buildings, other District property, or child-occupied facilities if the location does not have an IPM program approved by the Department. This seems to suggest that unlicensed, uncertified persons could make pesticide applications at District property and child-occupied facilities. We trust that is not the case and ask that this section be modified to make clear that this section applies to all persons applying pesticides.

Prohibited and Restricted Uses: Exemptions

We have concerns about the open qualifications for section 2209.8 as proposed. There are locations that are under heavy pressure due to the surrounding environment that would create a situation to where there is a potential need to request an exemption numerous times. Section 2209.8 would create an environment where some individuals may not ask for permission to properly treat a location or allow pest populations to build due to the requirement. Additionally, we need further clarification on the time frames around section 2209.8. Currently it is open ended, and tracking this would be difficult over an extended time period. If a company does not cross reference their records over multiple years, they could be putting their company at risk for noncompliance and delay a necessary treatment as a side effect. Additionally, we need clarification if one integrated pest management course is sufficient and then an individual never has
to take another one again, or does an individual have to take the course every instance of requesting multiple exemptions for a particular location.

**Registered Technician**

We appreciate increasing the standards for registered technicians, however, we have concerns about the workability of Section 2311, Registration of Technicians, as proposed. First off, we believe that persons who are registered technicians as of January 1, 2015 should be grandfathered from the examination requirements. Many of these technicians have been registered for many years and it seems a waste of DDOE’s limited administrative resources to examine such persons. DDOE would still retain the right to require grandfathered technicians who have committed violations to take an examination, however, their track record and years of field experience would seem to negate the value of or need for an examination.

NPMA would like clarification of the timetable outlined in Section 2311.3. The provision states “Application for registration of each technician shall be made within thirty (30) days after the first date of employment.” Does this section mean that a person must pass the core examination within 30 days of employment in order to be a registered technician? If so, NPMA strongly suggests that the time frame be extended to 90 days, so as to allow time to train and properly prepare the employee for the exam.

NPMA is also concerned about the availability of proper study material. We have been informed that DDOE does not provide study materials to persons taking the various exams. If the District uses the updated National Pesticide Applicator Certification Core Exam, this can be rectified fairly easily by simply posting the National Applicator Certification Core Manual online. As for the category exams, we urge DDOE to ensure that they are updated and that proper study material is available to persons taking the exam.

**Recordkeeping & Reporting**

We strongly urge DDOE to revise Section 2516, Recordkeeping and Reporting Requirements. While we appreciate that DDOE is simply requiring the records it already requires persons applying pesticides to maintain to be submitted, we strongly object to the specific addresses of treated property being submitted and subject to public records requests. We consider this information to be proprietary and do not believe the privacy of pest management professionals’ customers should be violated.
We also question the need to submit other data points including the time of the application; acreage, or number of plants or animals, or a description of or square or cubic footage of the structure treated; wind direction, estimated velocity, and weather conditions; and type of equipment used for structural pest management.

**Exempting Reduced Risk Pesticides & Methods of Pest Control from District RUP & Non-Essential Pesticides**

Per the exemptions from the definition of the term “pesticide” in Section 2 of the Pesticide Education and Control Amendments Act of 2012, we urge DDOE to include the list of Reduced Risk Pesticides and Methods of Pest Control listed in Section 2210 in the list of pesticides exempt from being classified as District restricted use or non-essential pesticides in Section 2205.

One of the exemptions in the law is “other chemicals, devices, or substances excluded by the District Department of the Environment (Department) in regulations.” Since DDOE determined in 2008 that the pesticides and methods of pesticides listed in Section 2210 are reduced risk under the Loretta Carter Hanes Pesticide Consumer Notification Amendment Act, we see no reason why they should not also be exempt from being classified as District restricted use or non-essential pesticides.

**Miscellaneous**

Section 2300.3 appears to be an error as it reads “No person shall apply for a pesticide applicator license unless the applicant is certified as a pesticide applicator.” This provision is not in the existing Pesticide Operations Regulations nor was it in the draft DDOE issued for review last September. We ask that it be removed.

NPMA questions why DDOE has proposed to change Section 2201.12 to permit licensed pesticide applicators certified in the category of “Industrial, Institutional, Structural and Related Pest Control” to inspect structures for termites as opposed to persons certified in the “Wood Destroying Organisms” (WDO) subcategory. We suspect that DDOE has made this change because it has broadened the scope of the paragraph to include all pest inspections. We respectfully suggest that DDOE split this paragraph into two paragraphs, one for WDO inspections and the other for bed bug and other pest inspections, as persons licensed and certified in the “Wood Destroying Organism” subcategory are certainly the most qualified to perform WDO inspections.
Unclear Statutory Authority

In closing, we urge DDOE, working with the Mayor’s office, to develop narrow, emergency legislation eliminating the numerous sections of the Pesticide Operations Act of 1977 that directly conflict with the Pesticide Education and Control Amendments Act of 2012.

For instance, while Section 12 of the Pesticide Education and Control Amendments Act of 2012 amends the Pesticide Operations Act of 1977 to limit pesticide applications to commercial, private and public applicators and registered technicians, other longstanding provisions of the Pesticide Operations Act of 1977 appear to confine DDOE’s authority to restricted use pesticide applications. Examples include definitions of the terms “certified applicator” and “certified commercial applicator” in DC Official Code 8-401 and DC Official Code 8-403(a)(1) and 8-403(b)(1).

NPMA fears this could inadvertently create an uneven playing field in the District, one in which unlicensed, uncertified operators who use general use pesticides do not have to bother with compliance with the rules and regulations or fear enforcement action because of DDOE’s lack of authority. Since well over 90 plus percent of all for-hire pesticide applications made in the District are done using general use pesticides, I’m sure DDOE can appreciate our concern.

NPMA appreciates the opportunity to comment on DDOE’s proposed rulemaking overhauling the Pesticide Operations Regulations of 1978. I encourage agency officials to contact me at (703) 352-6762 or gharrington@pestworld.org if you have any questions regarding these comments.

Sincerely,

Gene Harrington
Vice President, Government Affairs