

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 339

HOUSE OF REPRESENTATIVES	
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Introduced by AKBAYAN Representative Tomasito S. Villarin

Aerial spraying of pesticides is an agricultural practice by big banana plantations to kill insects and fungi considered pests to bananas. The practice of aerial spraying is resorted to by big banana plantations in order to cut costs in administering the pesticides. The campaign of farmers in Davao entitled "*Stop deadly shower, Dili kami peste*" shows the negative impacts to the life and property of the affected communities. Many studies have been conducted and the most significant one was that of the Department of Health (DOH) which showed the negative health effects to the communities hit by the aerial spray. Among the significant findings were the trace of the pesticides in the blood of the affected population and the slow mental development of children which can be attributed to the continued exposure to pesticides being sprayed aurally. The mist from aerial spray cannot be controlled to just hit the bananas. The wind carries it beyond the banana plantation, where residents live and communities are present.

The communities in Davao appealed to the government to ban aerial spraying. The Department of Health (DOH) and the Commission on Human Rights (CHR) issued a position paper recommending the ban of aerial spraying due to the adverse health effects, a violation of the right to life and healthy environment. Aside from the health of the communities, the crops like coconuts and durian of some small farmers are affected by aerial spray because the fruit trees do not bear fruit anymore when hit by the pesticides. Water sources of the residents outside of the plantation are also contaminated with the spray drift going beyond its target areas. At present there is no rule or law regulating aerial spraying. Thus, this proposal is being filed to regulate the practice.

The proposal to ban aerial spraying as a method of administering pesticides and provide heavy penalties to the pilots and aircraft owners who do aerial spray will save the thousands of lives and properties of many communities in Mindanao particularly in Davao city, Davao del Norte, Compostela Valley, South Cotabato, Surigao del Sur, among others. The precautionary principle is the main justification for banning aerial spray because it endangers public health and general welfare. The right to life and health is higher than the right to property as guaranteed by the Constitution which must be realized by the law.

Section 15, Article II of the 1987 Philippine Constitution mandates that the "State shall protect and promote the right to health of the people." A similar directive is also found in Section 16, Article II, which states that the "State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

The Supreme Court recently decided on a case banning GMO in the Philippines using the Writ of Kalikasan (environment) — a legal environmental remedy found only in the Philippines. The Court is also the first in the world to adopt the precautionary principle—which holds that it is best to err on the side of caution in the absence of scientific consensus—regarding GMO products in its decision.

In view of the foregoing, the immediate passage of the bill is earnestly sought.



TOMASITO S. VILLARIN

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AN ACT
PROHIBITING AERIAL SPRAYING AS A METHOD OF APPLYING
CHEMICALS AND SIMILAR SUBSTANCES ON AGRICULTURAL CROPS

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress Assembled:

SECTION 1. TITLE. – This Act shall be known as the “Aerial Spraying Prohibition Act of 2016”.

SECTION 2. DECLARATION OF STATE PRINCIPLES AND POLICIES. – Pursuant to *Section 15, Article II of the Philippine Constitution*, which declares that the State shall protect and promote the right to health of the people and instill health consciousness among them, as well as, *Section 16, Article II of the Philippine Constitution* which further declares that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, it is hereby declared the policy of the State:

1. To ensure protection and promotion of these Constitutionally guaranteed rights to health and balanced ecology of the people, including the generations yet to be born;
2. To protect the people from the hazards of this environmentally degrading and health threatening agricultural practice; and
3. To adopt the precautionary principle in assessing projects which are environmentally critical.

SECTION 3. DEFINITION OF TERMS. – For the purpose of this Act, the following terms shall be understood as follows:

- a.) **“Aerial Spraying”** shall refer to the to the application of substances, including, but not limited to, pesticides and any hazardous substances, through the use of any aircraft in order to dispense the substances into the air.

- b.) **"Agricultural Activity"** shall refer to the cultivation of the soil, planting of crops, growing of fruit trees, and shall include the following activities: land preparation, seeding, planting, cultivation, harvesting, bagging, and other activities and practices performed in conjunction with farming operations.
- c.) **"Agricultural Entity"** shall refer to any person, whether natural or juridical, who is involved in agricultural activities.
- d.) **"Buffer Zone"** shall refer to an identified area/zone within and around the boundaries of farms and plantations that need special monitoring to avoid or minimize harm to the environment and inhabitants from the use of hazardous substances. It must be planted with diversified trees.
- e.) **"Global Positioning System Survey"** shall refer to a survey plan to be made with the aid of Global Positioning System showing the metes and bounds of each agricultural farm/plantation that shall be submitted to the Office of the Mayor of the municipality/city which has jurisdiction over concerned agricultural farms/plantations.
- f.) **"Hazardous Substances"** shall refer to substances which present either:
 - a. Short-term acute hazards, such as acute toxicity by indigestion, inhalation or skin absorption, or other skin or eye contact hazards, or the risk of fire or explosion; or
 - b. Long-term hazards, including chronic toxicity upon repeated exposure, carcinogenicity (which may in some cases result from acute exposure but with a long latent period), resistant to detoxification process, such as biodegradation, the potential to pollute underground or surface waters, or aesthetically objectionable properties such as offensive odors; or
 - c. Those substances which the Fertilizer and Pesticides Authority (FPA) under the Department of Agriculture and other government agencies concerned will identify as hazardous.
- g.) **"Imminent Hazard"** shall mean a situation which exists when the continued use of a pesticide will likely result in unreasonable adverse effects on the public and/or the environment or will involve unreasonable hazards to the survival of a species declared endangered by the appropriate authorities.
- h.) **"Persistent Organic Pollutant"** shall refer to the organic compounds, which resist photolytic, chemical and biological degradation, that persist in the environment, bio-accumulate through the food web, and pose a risk of causing adverse effects to human health and the environment. *"Persistent Organic Pollutants"* include,

among others, dioxin, foran, polychlorinated biphenyls (PCBs), and organochlorine pesticides (such as Aldrin, dieldrin, DDT, hexachlorobenzene, lindane, toxaphere, and chlordane).

- i.) **"Pest"** shall mean any form of plant or animal life, or any pathogenic agent, injurious or potentially injurious to plants or plant products.
- j.) **"Pesticide"** shall refer to any substance or product, or a mixture thereof, including active ingredients, adjuvants and pesticide formulations, intended to control, prevent, destroy, repel or mitigate, directly or indirectly, any pest. The term *"pesticide"* shall be understood to include insecticide, fungicide, bactericide, nematocide, herbicide, molluscicide, avicide, rodenticide, plant regulator, defoliant, desiccant, and the like.
- k.) **"Toxicity"** shall mean a physiological or biological property determinative of the capacity of the chemical to do harm or produce injury to a living organism through non-mechanical means.

SECTION 4. SCOPE AND PRESUMPTION. – The provision of this Act shall apply to aerial spraying of pesticides in all agricultural activities: *Provided*, that the use of an aircraft to spray substances near or above an agricultural plantation is a *prima facie* presumption that such is engaged in aerial spraying of pesticides: *Provided, finally*, that a person or entity engaged in aerial spraying shall be presumed to be spraying hazardous substances or persistent organic pollutant.

SECTION 5. BAN ON AERIAL SPRAYING OF PESTICIDES. – The act of aerial spraying of pesticides, hazardous substances, and persistent organic pollutants is hereby declared as contrary to law and, thus, prohibited in all agricultural plantations three (3) months after the effectivity of this Act.

SECTION 6. WHO MAY BE HELD LIABLE. – Any person, natural or juridical, who shall be engaged in the practice of aerial spraying as a method of applying pesticides, hazardous substances, and persistent organic pollutants shall be held liable. *Provided*, that if the violator is a corporation, partnership, or any other juridical entity, the penal provisions hereof shall be applied to the president or the chief executive officer of the corporation, the managing partner in the case of partnership, or the equivalent head in the case of any other juridical entity or any other person acting in their behalf. In the case of corporation, the indictment shall include the manager of the department directly responsible for aerial spraying and similar operations.

SECTION 7. BUFFER ZONE. – All persons, natural or juridical, who are engaged in agricultural crop production of fifty (50) hectares and above shall observe the following;

1. A 40-meter buffer zone shall be established between the plantations and critical areas, such as recharge zones, critical slopes, riverbanks, rivers, springs, wells, and other sources of water; and
2. A 30-meter buffer zone shall be established between the plantation and residential houses, schools, clinics, chapels, and other institutions; *provided*, that the existing plantations, upon the effectivity of this Act, shall provide for the relocation of those inside the plantation and within the buffer zone to a suitable site at its own expense.

SECTION 8. IMPLEMENTING AGENCIES. – The Fertilizer and Pesticides Authority (FPA), created by virtue of Presidential Decree 1144, attached to the Department of Agriculture shall be the primary government agency responsible for the implementation and enforcement of this Act.

Provided, That the Department of Environment and Natural Resources – Environmental Management Board (DENR-EMB) shall conduct quarterly monitoring, in coordination with the established municipality/city-based monitoring team, to ensure compliance with *P.D. No. 1586 otherwise known as "The Philippine Environmental Impact Statement System (PEISS)"*.

Provided, further, That the Department of Health, in coordination with the regional and local health offices, shall conduct regular community health monitoring in areas located within or near agricultural farms/plantations.

Provided, finally, That the Department of Interior and Local Government (DILG) through the Office of the Governor of each Province or the Office of the City Mayor of each highly urbanized or chartered city where such farm/plantation is located shall be responsible in monitoring to ensure compliance of this Act. *Provided, further*, that the Provincial Governor or City Mayor shall form municipality/city-based monitoring teams from among farmers/farmworkers' organization, environment protection advocates, civil society organization, religious organization, and youth organization. The municipal/city mayor, municipal/city agriculturist, municipal/city health officer, community environmental officer, and the municipality/city chief of police shall be automatic members of the monitoring team.

The municipality/city-based monitoring teams shall have inspectorial powers with respect to compliance under Section 7 of this Act.

SECTION 9. DOCUMENTATION/INVENTORY. – The municipality/city-based monitoring team shall have a record of, but not limited to, the following:

1. Agricultural farms/plantations:

- a. Number of agricultural farms/plantations within their territorial jurisdiction;
 - b. GIS Maps of the location of these agricultural farms /plantations;
 - c. Area covered by these agricultural farms/plantations;
 - d. If there are communities within a 1 kilometer radius of the agricultural farms/plantations, a record of the population residing therein;
 - e. List of chemicals being used and frequency or schedule of applications; and
 - f. Main crop produced by these agricultural farms/plantations.
2. Agricultural farms/plantations engaged in aerial spraying or have been engaged in the business of providing aerial spraying services before the enactment of this Act:
- a. Aircrafts used in aerial spraying which shall include;
 - i. Brief distinctive description of the aircraft;
 - ii. Engine manufacturer's identification number; and
 - iii. Company logo.
 - b. Location of the hangar; and
 - c. Other relevant information/description.

SECTION 10. ADMINISTRATIVE FINES. - Upon the *motu proprio* finding of the Fertilizer and Pesticides Authority, based on the report of the Municipality/City-based monitoring team, and its corresponding recommendation to the Secretary of the Department of Agriculture, the following administrative fines shall be imposed for every day of aerial spraying of pesticides;

- 1. In violation of Section 5 and in relation to the presumption in Section 4 of this Act:
 - a. An administrative fine of not less than fifty thousand Philippine pesos (P50,000.00) but not more than one hundred thousand Philippine pesos (P100,000.00) upon the owner of the plantation or the person who actually commissioned the aerial spraying of pesticides.
 - b. An administrative fine of not less than twenty thousand Philippine pesos (P20,000.00) but not more than fifty thousand Philippine pesos (P50,000.00) upon the aircraft owner, operator, and the aircraft pilot: *Provided*, that the recommendation of the FPA shall include the immediate suspension of the permit to operate, in the case of the owner or operator of the aircraft, and the professional license, in case of the aircraft pilot, for a period of not less than one (1) month or until cessation of aerial spraying of pesticides.

2. In violation of Section 7 of this Act:

- a. An administrative fine of not less than fifty thousand Philippine pesos (P50,000.00).

SECTION 11. PENAL PROVISIONS. - The following penalties shall be imposed in violation of Section 5 and in relation to the presumption in Section 4 of this Act;

1. The penalty of *prision mayor* shall be imposed upon the owner of the plantation or the person who actually commissioned the aerial spraying. *Provided*, That in case of juridical persons, such penalty shall be imposed in relation to Section 7 of this Act.
2. In addition to the revocation of the permit to operate, in the case of the owner or operator, and the revocation of the professional license, in the case of the pilot, the penalty of *prision correccional* shall be imposed upon the owner or operator and the pilot of the aircraft used in the aerial spraying of pesticides.

The aircraft and other equipment used in violation of Section 5 of this Act shall be subject to forfeiture under Article 45 of Act No. 3815 otherwise known as "*The Revised Penal Code*".

The filing of a criminal action under this Act shall be without prejudice to the filing of civil and administrative cases by the persons or communities affected because of the aerial spraying of pesticides.

SECTION 12. IMPLEMENTING RULES AND REGULATIONS. - Within sixty (60) days from the effectivity of this Act, the Department of Agriculture, through the Fertilizer and Pesticides Authority, shall formulate and issue the Implementing Rules and Regulations of this Act in coordination with the DILG, DENR-EMB, and DOH.

SECTION 13. REPEALING CLAUSE. - All laws or parts of any law inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SECTION 14. SEPARABILITY CLAUSE. - If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall continue to be valid and operational.

SECTION 15. EFFECTIVITY CLAUSE. - This Act shall take effect fifteen (15) days after the completion of its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,