

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-8543 | F: (518) 402-9018
www.dec.ny.gov

SUBJECT: Enforcement Discretion for NYSAGM Pesticide Technicians to Apply Vaportape 2 in Traps for Invasive Species Survey

DATE: JUL 01 2024

To Whom It May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (Department) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Part 325 relating to the commercial pesticide applicator certification requirements for the application of pesticides by the New York State Department of Agriculture and Markets (NYSAGM), as set forth below.

The Department will exercise this authority regarding the provisions outlined below until the earliest of either three years from the date of this letter, until this discretion is revoked, or until the 6 NYCRR Part 325 regulations are revised to address this matter as described below. All other provisions of 6 NYCRR Parts 320 through 329, including the need for pesticide applicator certification in situations other than those mentioned below, remain in full force and effect, and will be enforced.

During their duties, NYSAGM employees may need to monitor invasive insects to protect the natural and agricultural resources in New York State. In some cases, this monitoring involves the use of New York State registered pesticides in insect traps to identify species populations. The traps alone without the pesticide are an ineffective way to identify several species. The Box Tree Moth, Pine Beauty Moth, and Old World Moth are a few of the invasive species that require NYSAGM to use a pesticide for trapping. NYSAGM claims that the most effective pesticide for this use is Vaportape II Insecticidal Strips (EPA Registration number 8730-50), a NYS registered general use pesticide. The application of Vaportape II Insecticidal Strips in these traps is considered the commercial application of pesticides. Therefore, commercial pesticide applicator certification is required. In addition, Vaportape II Insecticidal Strips meet the New York State Environmental Conservation Law definition of a fumigant.

6 NYCRR Part 325.7(d)(3) requires a certified commercial pesticide technician (technician) to apply fumigants under the direct observation and instruction of a certified commercial pesticide applicator, except in limited situations using specific general use fumigants. Furthermore, 6 NYCRR Part 326.7(d)(2)(iii) does not allow commercial pesticide apprentices (apprentice) to apply fumigants, except in limited situations using specific general use fumigants. Therefore, a New York State certified commercial

pesticide applicator (certified applicator) is required to be on-site to either conduct the application or oversee the application by a technician.

NYSAGM is requesting enforcement discretion to allow technicians and apprentices to conduct applications of Vaportape II Insecticidal Strips. NYSAGM does not employ a sufficient number of certified pesticide applicators to adequately address the need to monitor these pests. The loss of the ability to apply this pesticide will impair NYSAGM's ability to maintain quarantines, certify plants for shipment, protect the environment, and may restrict the sale of New York State agricultural products in the United States.

The DEC believes it is in the best interest of DEC to allow NYSAGM employees, under this enforcement discretion, to apply Vaportape II Insecticidal Strips (EPA Registration number 8730-50) in its insect traps for the purpose of identifying Box Tree Moths, Pine Beauty Moths, and Old World Moths with the off-site direct supervision of a certified commercial pesticide applicator.

This off-site direct supervision discretion will apply only to NYSAGM employees that are technicians in the same pesticide application category as the certified applicator, or apprentices. Prior to an apprentice being permitted to apply Vaportape II Insecticidal Strips with off-site direct supervision under this enforcement discretion, the apprentice must receive 8 hours of pesticide safety training as outlined in 6 NYCRR Section 325.18 and 7 hours of pesticide application experience using Vaportape II Insecticidal Strips (EPA Registration number 8730-50) with the on-site direct supervision of a certified applicator in the proper certification category. Apprentice training documentation as required in 6 NYCRR Section 325.10(c) must be produced before an apprentice can apply this pesticide and must be available to DEC for inspection. This Enforcement Discretion will also serve as a waiver for the 40 hours pesticide use experience as required in 6 NYCRR Section 325.10(b). Technicians do not require any additional training.

Experience gained under this discretion shall be considered pesticide application experience for the purpose to upgrade from technician to certified applicator.

If you have any questions regarding this enforcement discretion, please contact the Pesticide Enforcement and Compliance Assurance Section in the Bureau of Pesticides Management of the Division of Materials Management at (518) 402-8727.

Sincerely

A handwritten signature in black ink, appearing to read 'TSB', with a long horizontal flourish extending to the right.

Thomas S. Berkman
Deputy Commissioner
and General Counsel