

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel  
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**SUBJECT:** Enforcement Discretion for USDA Federal General Use Pesticide Course-Certified Staff to Apply Vaportape II in Field Surveys

**DATE:** JUL 01 2024

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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 United States Department of Agriculture (USDA), 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 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 effect and will be enforced.

During their duties, USDA 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 is 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 USDA to use a pesticide for trapping. USDA 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 meets 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



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

USDA is requesting enforcement discretion to allow certain employees to conduct applications of Vaportape II Insecticidal Strips. USDA does not employ a sufficient number of certified commercial pesticide applicators to adequately address the need to monitor these pests. The loss of the ability to apply this pesticide will impair their 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 to allow certain USDA 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.

Under this enforcement discretion, USDA employees that have completed the federal General Use Pesticide (GUP) course, the syllabus for which was sent to DEC in June 2024, are permitted 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. A record of this course, including the trainer's name, the name of the employee, and the date of course, must be maintained for three years and must be available to DEC for inspection.

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 'T. Berkman', with a long horizontal stroke extending to the right.

Thomas S. Berkman  
Deputy Commissioner  
and General Counsel