

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel  
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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 (DEC) 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 to control stinging insects by State and municipal highway workers and their contractors, as set forth below. DEC 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 the application of stinging insect pesticides in the below situations. 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 State and municipal highway workers and their contractors may need to work in hazardous areas such as, but not limited to the following: high traffic areas; confined spaces; elevated positions; in or over water; or on electrical equipment. While working in these areas they may encounter stinging insects, which could increase the danger associated with this work, and potentially endanger the public. The use of pesticides to control stinging insects in these areas would be considered a commercial application of pesticides in New York State as it occurs on property not owned or leased by the applicator and therefore does not meet the definition of either private or residential pesticide application in 6 NYCRR Part 325. Since these applications are considered commercial pesticide applications, they are required to be conducted by a certified commercial pesticide applicator (certified applicator), a certified commercial pesticide technician (technician), or an apprentice working under the direct supervision of a certified commercial pesticide applicator (apprentice).

DEC recognizes that when stinging insects are not anticipated in these hazardous situations it is not practical for a worker to wait for a certified applicator, technician, or apprentice to arrive at the site and conduct an application of pesticides to control stinging insects. But there is still a need for workers to be protected from stinging insects to perform their required duties. Therefore, under this enforcement discretion DEC is allowing State and municipal highway workers and their contractors to apply New York State registered general use pesticides, labeled for stinging insect control without a pesticide applicator certification in certain situations.

State and municipal highway workers and their contractors are allowed under this discretion to apply an aerosol pesticide, appropriately labeled for the target pest, with a directed spray from a container 18 fluid ounces or less, to protect themselves from an

imminent threat from stinging or biting insects. Stinging and biting insects include but are not limited to bees, wasps, hornets, and spiders. This exemption from certification shall only be applicable on property owned, operated, or maintained by the State or municipality and in situations where workers or contractors must:

- Access equipment and vehicles to respond to an emergency or imminent public safety issues;
- Inspect and repair: roadways, bridges, culverts, signals, signal boxes, lights, signs, communication devices, generators, pumps, variable message boards, drainage structures, railway equipment, access barriers, jersey barriers, cones, and similar equipment and structures needed to safely operate the transportation system;
- Provide motor carrier safety inspections; and
- Remove and trim trees and vegetation necessary to protect the public.

If you have any questions, please contact the Pesticide Enforcement and Compliance Assistance 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 flourish extending to the right.

Thomas S. Berkman  
Deputy Commissioner  
and General Counsel