

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

OCT 06 2022

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 and biting insects by New York City Department of Environmental Protection (NYCDEP) water utility 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 a revision to the 6 NYCRR Part 325 regulations addresses 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, NYCDEP water utility workers, and their contractors, may need to work in hazardous conditions or in secure areas where special clearances are required, such as, but not limited to the following: high traffic areas; confined spaces; elevated positions; in or over water; or near electrical equipment. While working in these areas they may encounter stinging or biting insects, which could increase the danger associated with this work, and potentially endanger the public if the work is not completed in a timely manner. Stinging and biting insects include but are not limited to bees, wasps, hornets, and spiders.

The use of pesticides to control insects on NYCDEP property 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. Because these pesticide 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 or biting 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 and biting insects. There is a need for workers to be protected from stinging or biting insects in situations where workers or contractors must respond to an emergency or imminent public safety issues. Therefore, DEC is allowing NYCDEP water utility workers, and their contractors, under this enforcement discretion to apply

New York State registered general use pesticides, labeled for stinging or biting insect control without a pesticide applicator certification in certain situations.

NYCDEP water utility workers, and their contractors, are allowed under this enforcement discretion to apply a registered pesticide, appropriately labeled for the target pest, with a directed spray from an aerosol container, 18 fluid ounces or less, to protect themselves from an imminent threat from stinging or biting insects. This exemption from certification will only be applicable on property owned, operated, or maintained by the NYCDEP, where NYCDEP water utility workers, or their contractors, must respond to an emergency or imminent public safety issue in the following situations:

- accessing, inspecting, repairing or installing equipment, vehicles and structures needed to safely operate the system;
- working in confined spaces, areas where access is limited or hazardous, underground facilities, or manholes;
- working in high traffic areas;
- working in secure areas where special clearances are required;
- working elevated in a bucket or other similar lift device;
- working in contaminated areas; or
- removing or trimming 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