

DSHM-PES-05-07
Pesticide Product Registration Enforcement

New York State Department of Environmental Conservation

DEC Program Policy

Issuing Authority: Carl Johnson, Deputy Commissioner

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I. SUMMARY

This Program Policy was formerly identified as TAGM 94-07.

This Policy provides enforcement, quarantine and procedural guidelines relating to unregistered (federal and State) pesticide products, for Regional Bureau of Pesticides Management staff. Enforcement of unregistered pesticide products uncovered in inspections and/or investigations are subject to the Statutes and Regulations relating to the registration of pesticides under Article 33 of the Environmental Conservation Law (ECL), Sections ECL 33-0701, ECL 33-1301 (1) (a), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 326.14 (a).

II. POLICY

A. Enforcement

The Bureau of Pesticides Management, in cooperation with the Division of Environmental Enforcement (DEE), is responsible for ensuring compliance with the Pesticide Product Registration Program in a manner that ensures all pesticide products distributed, offered for sale, sold, possessed or used within the State, or transported in interstate or intrastate commerce are registered with the Department.

B. Pesticide Product Quarantine

When Regional Pesticide staff find pesticide products in use or being sold, offered for sale, possessed or distributed within the State, or being transported in intrastate commerce or between points within this State through any point outside of the State, that are not registered in New York, such products should be immediately quarantined. Quarantines should remain in place: (1) until the attorney handling the case has determined that all aspects of the enforcement action are resolved, or (2) until a stipulation is signed in which the violator acknowledges the facts related to the quarantine and the defect has been corrected.

III. PURPOSE AND BACKGROUND

This Policy defines the enforcement procedures for pesticide product registration violations, including prosecution in accordance with the Pesticide Enforcement Guidance Memorandum.

IV. RESPONSIBILITY

The NYSDEC Division of Solid & Hazardous Materials, Bureau of Pesticides Management, is responsible for interpreting, implementing, maintaining and updating this policy. The Bureau can be reached at 518-402-8781 for additional guidance on this Program Policy, if needed.

V. PROCEDURE

A. Procedure Upon Discovery of Unregistered Pesticide Product

Regional Pesticide staff shall immediately notify the Bureau of Pesticides Management Director or the Director's designee of any investigation that involves an unregistered pesticide product. The notification should be accomplished by the immediate transmittal of the Quarantine Order to the Bureau of Pesticides Management Director. If the unregistered product has been completely sold or distributed, precluding a quarantine, notice of the sale or distribution should be sent in lieu of the Quarantine Order. Furthermore, the Regional Pesticides Management staff should ascertain how the product first entered New York and from whom and the extent to which the product is being distributed throughout the State. The Bureau of Pesticides Management Central Office will alert all other Regions and request that, as a function of marketplace inspections within a fixed period of time, the Regions look for additional unregistered product, to determine the extent to which the product may have been distributed throughout the State. As circumstances dictate, where the producer is located in a Region of the State other than where the product is found, the Bureau of Pesticides Management Central Office will direct that an appropriate inspection be conducted in the Region where the producer is located.

B. Resolution of Enforcement Cases¹

All Quarantine Orders forwarded to the Bureau of Pesticides Management Director, along with the results of the follow-up investigation, shall be evaluated in a timely manner by Bureau of Pesticides Management Central Office in cooperation with the DEE. The Bureau of Pesticides Management and DEE will determine if, upon the evidence of the submittals, there are violations of potential Statewide impact. If a matter is determined to be significant, pursuant to the Pesticides Enforcement Guidance Memorandum, the Bureau of Pesticides Management and DEE will coordinate enforcement with the appropriate Regional Attorney(s) and Regional program staff.

In resolving significant Statewide violations, an enforcement action may be undertaken by either the Pesticides Compliance Counsel (DEE), Regional Legal Affairs or Regional program staff. The Director of DEE, in cooperation with the Director of the Division of Solid & Hazardous Materials and the appropriate Regional Attorneys, will designate the enforcement lead.

¹These procedures follow, and are subordinate to, the provisions of the Pesticide EGM, which states the following mechanism for resolution of Pesticide enforcement actions:

Matters involving out-of-State violators affecting more than one Region, as well as other violations of potential Statewide impact, should be handled by or in close coordination with the DEE and Central Office Bureau of Pesticides Management. Regional program staff suspecting violation by an out-of-State firm or violations of potential Statewide impact, should apprise the Regional Attorney. The Regional Attorney should coordinate enforcement with the DEE Pesticides Compliance Counsel and the Central Office Bureau of Pesticides Management. The General Counsel, in coordination with the DEE Director, the Regional Director and the Director of Solid & Hazardous Materials, will consider assigning the case for Central Office prosecution; or a coordinated Regional response; or, where appropriate, referral to another prosecutorial agency [3/93 Pesticide EGM, Section VI, Paragraph 8 (page 12)].

References:

Pesticide Enforcement Guidance Memorandum:

<http://www.dec.state.ny.us/website/ogc/egm/pesticide.html>

Article 33 of the Environmental Conservation Law (ECL):

<http://www.dec.state.ny.us/website/dshm/regs/331571.htm>

Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 326.14 : <http://www.dec.state.ny.us/website/regs/part326.html>

If you have any questions, please contact:

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