

**Compliance with Certain Provisions of
Commercial Lawn Application Regulations
in 6 NYCRR Part 325
DSH-PES-05-11**

New York State Department of Environmental Conservation

DEC Program Policy

Issuing Authority: Carl Johnson

Title: Deputy Commissioner

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I. Summary:

This Policy provides information on the compliance measures and actions which pesticide applicators or businesses need to take to comply with certain provisions in the commercial lawn application regulations in 6 NYCRR Part 325. The Policy focuses on commercial lawn application contracts, visual notification and certain aspects of pesticide product label notification. The Policy takes effect thirty days after the date of issuance.

II. Policy:

A. Definition of Commercial Lawn Application

Indoor Pest Control -

Regulatory Citation: "Commercial lawn application" is defined under 6 NYCRR 325.1(s). Included in the definition is the identification of pesticide applications which are not considered commercial lawn care. 6 NYCRR 325.1(s)(3) provides that "the application of pesticides around or near the foundation of a building for the purpose of indoor pest control" is not considered a commercial lawn application.

Compliance Measures: To determine the distance from a foundation where pesticide application occurs for indoor pest control purposes (which is not considered a commercial lawn application), applicators must use one of the following compliance measures:

- First, the applicator should refer to the perimeter/barrier treatment or similar specifications on the label for the indoor pest control product. Labels for some indoor pest control products include in those specifications a distance (e.g., six to ten feet) for applying a band of pesticides around and adjacent to a structure. If such a distance is specified on the label, the application of pesticide to ground beyond that distance, if also allowed under label directions for other than perimeter/barrier treatment, would not fall within the exclusion from commercial

lawn application under 6 NYCRR 325.1(s). In other words, it would be a commercial lawn application.

- Second, if a perimeter/barrier treatment for indoor pest control is provided for under the label directions, but there is no distance specified on the label for the indoor pest control product, the applicator should apply the pesticide no more than four feet from the foundation, which is consistent with the industry standard. The Department will consider applications more than four feet from the foundation as a “commercial lawn application.”

NOTE: Application of Pesticides on Golf Courses - As in Environmental Conservation Law (ECL) Article 33, the regulatory definition of "commercial lawn application" under 6 NYCRR 325.1(s)(5) provides that "the application of pesticides on golf courses..." is not considered a commercial lawn application. Although there are no specific compliance measures included in this Policy, it should be noted that, in the absence of a definition of "golf course" (to assist in providing enforcement/compliance consistency), if complaints or questions arise regarding the application of pesticides on golf courses, such matters will be handled by the Department's Region in which the issue arises. The Bureau of Pesticides Management will provide guidance to the Regions to ensure Statewide consistency.

B. Written Contracts for Commercial Lawn Application(s)

Regulatory Citation: Under 6 NYCRR 325.40(a), “Prior to making a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner’s agent.”

Compliance Measure: A sample commercial lawn application contract has been developed by the administration of the Nassau/Suffolk Landscape Gardener’s Association.¹ The Department reviewed the specific provisions of the original industry-developed sample contract, that are required by 6 NYCRR 325.40, and found those specific provisions in that original version to be consistent with 6 NYCRR 325.40. The

¹The sample contract, developed by the commercial lawn application industry, is available from the Nassau/Suffolk Landscape Gardener’s Association. The Cornell University Pesticide Management Education Program has posted the sample industry contract on its websites at: <http://pmep.cce.cornell.edu/certification/index.html> (click on item “F”) and <http://pmep.cce.cornell.edu/facts-slides-self/index.html> (click on last bullet under “Pesticide Application”).

commercial lawn application industry also included other elements in the sample contract, beyond those required by the regulation.

NOTE: The sample contract is a commercial lawn application industry document; it is not a Department document. Therefore, the Department does not control and is not responsible for any changes made to the sample industry contract. The industry contract is cited in this Policy as a courtesy informational reference for the regulated community.

ALSO NOTE: It is the responsibility of the commercial lawn application applicator or business² to ensure that the contract it uses complies with the statute and regulation. If an applicator/business modifies the sample industry contract for its own use or designs a contract of its own, the contract used must still meet all requirements for commercial lawn application contracts contained in 6 NYCRR Part 325 and ECL 33-1001. The applicator/business should consult the regulation and statute to determine whether its contract meets the regulatory requirements.

C. Approximate Date(s) of Application(s) in Commercial Lawn Application Contracts

Regulatory Citation: Under 6 NYCRR 325.40(a)(1), a written commercial lawn application contract "...must specify the approximate date or dates of application or applications..." 6 NYCRR 325.40(a)(1) further provides that the written contract must include a specific statement advising that the property owner or owner's agent may ask for the specific date(s) of application(s) and, if the specific date is requested, the applicator/business "...must inform of the specific date(s) and include that date or dates in the contract."

Compliance Measures: The Department encourages the applicator/business to use as specific a date as possible for the approximate date identified in the contract. For the purposes of 6 NYCRR 325.40, the Department interprets the term "approximate date" as a span of consecutive calendar days no greater than 21 calendar days. The Department interprets 6 NYCRR 325.40(a)(1) such that an approximate date identified as a span of consecutive calendar days greater than 21 days fails to comply with the regulation. The applicator/business cannot exceed that 21-day maximum without violating the regulation.

In addition, the Department interprets the term "date" as including the year. Therefore, in specifying approximate date(s) of application(s), the applicator/business must include in the contract the month, day and year(s) of each approximate date or date range specified in the contract. Date(s) must be shown this way in all year-to-year contracts (those with a term of one year).

²In the remainder of this Policy, the commercial lawn application applicator and/or business will be referred to as "applicator/business."

To show the approximate dates of application for each year in which applications will be made under a multiyear contract, prior to making the commercial lawn applications, the applicator/business must do one of the following:

- Indicate in the initial contract the month, day and year for each approximate date for each year covered in the multiyear contract, or
- Identify in the contract each approximate date(s) of application to occur during the first year of the multiyear contract, specifying the month, date and year for each such approximate date. Thereafter, the applicator/business must advise the property owner, prior to making the commercial lawn application(s), of approximate date(s) of application(s) for subsequent years covered by a multiyear contract through a contract amendment or contract amendments. Such amendments must specify the month, date and year for each approximate date identified in the amendment.

Overall, a contract amendment could be accomplished by reissuing the entire contract or by notifying of the specific amendment through another means, such as a postcard. As under 6 NYCRR 325.40(a)(7), prior to applying pesticides, the applicator/business must obtain written proof of acceptance of the property owner/agent of the contract amendment and revised approximate dates.

Generally, the property owner/agent would accept amended dates of application through their signature. For example, if the applicator/business provides a postcard or similar notification to the property owner/agent advising of the amended date of application (rather than sending the entire amended contract), the applicator/business must receive the postcard returned with the property owner's/agent's signature on the postcard, as written proof of acceptance of the amended dates. (Note: As stated in item K. of this policy, for multiyear contracts, applicators/businesses must indicate the specific term of the contract, including specifying the year(s) (e.g., 2004, 2005, 2006).

When a specific date or dates of application have been requested by the property owner, the applicator/business must inform the property owner of the specific date(s) for each application and include the date(s) in the commercial lawn application contract. If that date is requested and agreed to by the contracting parties after the contract is signed, it would be considered a contract amendment and, under 6 NYCRR 325.40(a)(7), the applicator/business must amend the contract and obtain written proof of acceptance from the property owner of such amendment prior to applying pesticides. (Also see Item J of this Policy, regarding compliance measures for requirements for alternate dates of commercial lawn applications.)

D. Total Cost of Commercial Lawn Application(s) Specified in Contracts

Regulatory Citation: Under 6 NYCRR 325.40(a)(3), the lawn application contract must “state the total cost of the commercial lawn application service to be provided...”

Compliance Measure: The total cost of the commercial lawn application(s) must be stated in the contract, separate from any costs for other services at the property (e.g., mowing, use of fertilizers only (without pesticides)). If combined costs (commercial lawn applications, plus other services) are included in the contract, the total cost of the commercial lawn application(s) alone must be stated separately in the contract.

E. 12-Point Type for Certain Commercial Lawn Application Contract Language

Regulatory Citation: Under 6 NYCRR 325.40(a)(4), the contract must include certain items “in at least 12-point type...” (See 6 NYCRR 325.40(a)(4)(i)-(iii) for list of specific items required to be in 12-point type.)

Compliance Measures: Commercial lawn applicators/businesses must show certain items in the contract in 12-point type. Twelve-point type may be achieved by typing information in a typeface, or by enlarging pretyped material on equipment such as a photocopier, so that no character is less than one-eighth inch in height. *[NOTE: Any further references in this Policy to “12-point type” means typed characters of no less than one-eighth of an inch in height.]*

F. Identification and Notification of Pesticide(s) to be Applied

Regulatory Citations: 6 NYCRR 325.40(a)(4)(i) and (ii) and 6 NYCRR 325.40(d) set forth the requirements regarding informing property owners and others of pesticides to be used and the specific pesticide to be used on a particular date during commercial lawn applications. A summary of the provisions follows:

- Under 6 NYCRR 325.40(a)(4)(i), a written commercial lawn application contract must contain “a list of pesticides to be applied including brand names and generic names of active ingredients.”
- Under 6 NYCRR 325.40(a)(4)(ii), a written commercial lawn application contract must include “any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment.”
- Under 6 NYCRR 325.40(d), “If the contract does not state which pesticide(s) of a group of pesticides will be applied on a proposed date, or if the applicator or business has not advised the owner or owner’s agent of this information, the

pesticide applicator or business must, prior to application, provide to the owner or owner's agent a written notice which indicates the specific pesticide(s) to be used."

Compliance Measures:

Identifying Pesticide Products to be Applied - Regarding the requirements to identify, in writing prior to pesticide application, the specific pesticide(s) to be applied on certain dates at a particular property, the applicator/business must use compliance measure number 1 below and compliance measure number 2 or number 3, or in a similar way satisfy the Department's interpretation of 6 NYCRR 325.40:

1. To comply with 6 NYCRR 325.40(a)(4)(i) and (ii), the applicator/business must list in the contract the pesticide product(s) brand and generic names and certain warnings associated with the product(s) in 12-point type and/or the applicator/business must attach to the contract the pesticide product label(s) with that information in 12-point type. This method identifies, at the point of initial contracting, pesticides to be applied or potentially to be applied at a particular property. (See item E in this Policy for the compliance measure regarding what size constitutes 12-point type.)
2. To comply with 6 NYCRR 325.40(d), when the applicator/business includes in the contract the pesticide product brand and generic names and warnings, the applicator/business may also identify in the contract the date on which each specific pesticide will be applied. However, the regulation does not require the applicator/business to match, in the contract, the date(s) or approximate date(s) of application to particular pesticide(s).
3. If the date on which a particular pesticide will be applied is not specified in the contract, then, to comply with 6 NYCRR 325.40(d), the applicator/business must, prior to application, provide written notice to the property owner or owner's agent of the pesticide(s) to be applied on specific date(s). The Department encourages providing that written notice directly to the property owner or owner's agent, prior to application. However, to comply with 6 NYCRR 325.40(d), "provided to" includes leaving for the owner/agent, prior to application, a separate written notice of pesticide(s) to be used on a particular date (e.g., leaving notice on the doorknob), if the owner is absent. That interpretation of "provided to" applies only to 6 NYCRR 325.40(d).

NOTE: Regardless of whether compliance measures 1 and 2, or 1 and 3 are used, the applicator/business must provide notification of the specific pesticide to be used in writing and prior to application.

Use of Pesticide Product Registration Number in Product Identification - Under New York State's regulatory scheme for pesticides, it is impossible to fully identify a pesticide product without the United States Environmental Protection Agency (USEPA) product registration number. Therefore, the Department interprets the term "pesticide," as used in 6 NYCRR 325.40(d), to include the product name and USEPA product registration number in order to provide full specific pesticide notification. This product registration number is a specific identifier of a pesticide product that can form a distinction between products with similar names. For example, some products may have the same brand name, but have different basic pesticide registrants or pesticide distributors and/or different formulations and, therefore, different product registration numbers.

Therefore, in order to fully identify the specific pesticide to be used, the applicator/business must provide to the property owner/agent the USEPA product registration number(s) for the pesticide(s) to be applied. The applicator/business may indicate the product registration number(s) using any one or more of the following compliance measures:

- Specify in the contract the product registration number of the pesticide to be applied.
- Specify the product registration number by relying on the number indicated on the pesticide product label provided to the property owner/agent. If the label is provided in a packet of labels with the contract, then the product registration number of the pesticide to be applied must be included when the applicator/business supplies to the property owner/agent the separate written notice of the specific pesticide(s) to be used. This must be provided to the property owner/agent prior to pesticide application (required under 6 NYCRR 325.40(d)).
- If only one label is attached to the contract and that label is for the pesticide to be applied, and that label contains the pesticide product registration number, this suffices for providing the product registration number in that instance.

(For information on other compliance measures related to supplying the pesticide product labels to property owners/agents and dwelling occupants, please see Item N of this Policy on 6 NYCRR 325.40(i).)

G. Inclusion of Applicator Certification Identification Card Number in Commercial Lawn Application Contracts

Regulatory Citations: Under 6 NYCRR 325.40(a)(4)(iii), a commercial lawn care contract must include, among other items listed in (iii), "...the pesticide applicator

certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service....”

Under a related 6 NYCRR, 6 NYCRR 325.40(a)(7), a contract must “be amended, if changes are made to any of the elements of the contract required by this 6 NYCRR....” (There are a number of “elements” related to the requirement to amend contracts, including the certification identification card number.)

Compliance Measures: Applicators/businesses must include in all commercial lawn application contracts, the certification identification (ID) card number of the applicator who is to provide or supervise the service, under 6 NYCRR 325.40(a)(4)(iii). If any change occurs in the applicator to be involved, then the contract must be amended (under 6 NYCRR 325.40(a)(7)). The applicator/business may use one of the following compliance measures regarding this requirement:

- Certification ID card numbers for applicators and technicians may be listed in the contract as the pesticide applicator. Apprentices cannot be listed as the applicators. However, if an apprentice is performing the application, the ID card number of applicator supervising the apprentice must be listed in the contract.
- If one applicator certification ID card number is listed in a contract, signed by both the applicator/business and the property owner/agent, and that applicator is no longer going to conduct or supervise the application under that contract, then the applicator/business must amend the contract to identify the certification ID card number of the applicator who will perform or supervise the application. Likewise, if, for any reason, the certification ID card number of the applicator who is to perform or supervise the application is not listed in the contract, the applicator/business must amend the contract to add that person’s certification ID card number to the contract. Amendments must be made per 6 NYCRR 325.40(a)(7).
- If multiple applicator certification ID card numbers are listed in the contract, and the status changes for one or more of the applicators listed (e.g., applicator no longer employed by the business), a contract amendment is needed only if, as a result of the change of status, the applicator who will actually perform or supervise the application is not listed in the contract. If the applicator who will perform or supervise the service is listed and their status remains unchanged, no contract amendment is needed, even if the status of other applicators listed has changed.

H. Business Signatory to Commercial Lawn Application Contracts

Regulatory Citation: Under 6 NYCRR 325.40(a)(6), the contract must “be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner’s agent of the property...” to be treated.

Compliance Measures: The following are the alternative compliance measures for several scenarios regarding business signature on commercial lawn application contracts:

- The business owner may sign the contract, even if the owner is not a certified applicator.
- An applicator may sign the contract, if authorized by the business to do so, and that applicator does not have to be the applicator whose certification number is listed in the contract as the person to perform or supervise the service.
- An apprentice may sign the contract, if the business authorizes the apprentice to sign for the business.

I. Substitutes for Property Owner/Agent Signature on Contract

Regulatory Citation: Under 6 NYCRR 325.40(a)(6), the commercial lawn application contract must “be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services.”

Compliance Measure: If an applicator/business chooses to use a prepayment check or a similar document as evidence of acceptance of the written contract by the property owner/agent, then the applicator/business must ensure that one of the following occurs:

- The prepayment check from the property owner/agent is for the exact amount specified in the written contract for commercial lawn application(s) only, or
- The prepayment check from the property owner/agent is for the full cost of the commercial lawn application contract, including the cost of commercial lawn application(s) service and the cost of any other services provided under the contract.

A prepayment check for any amount less than the full cost of the contract or for any amount less than the exact cost of the commercial lawn application(s) service only would not serve as evidence of contract acceptance on the part of the property owner/agent with respect to the commercial lawn applications. In the case of prepayment checks for lesser amounts (e.g., installment payment checks), the contract itself should be signed by the property owner/agent as well as the applicator/business.

J. Alternate Date(s) of Commercial Lawn Application(s)

Regulatory Citation: Under 6 NYCRR 325.40(c), “In the event that the commercial lawn application on the date or dates specified in the contract becomes infeasible, the pesticide applicator or business must provide the owner or owner’s agent oral or written notice of any proposed alternate date or dates. The pesticide applicator must obtain acceptance from the owner or owner’s agent of such alternate date or dates prior to initiating any commercial lawn application.” (Also see Item C of this Policy, regarding approximate dates of commercial lawn applications.)

Compliance Measures: The following are the compliance measures regarding alternate date(s) of commercial lawn application:

Time Frame of Alternate Date(s) - The Department encourages the applicator/business to use as specific a date as possible for the alternate date(s) of application(s). The Department interprets the term “alternate date” as a span of consecutive calendar days no greater than 21 calendar days. The Department interprets 6 NYCRR 325.40(a)(1) such that an alternate date identified as a span of consecutive calendar days greater than 21 days to fail to comply with the regulation. The applicator/business cannot exceed that 21-day maximum without violating the regulation.

In addition, the Department interprets the term “date” as including the year. Therefore, in specifying alternate date(s) of application(s), the applicator/business must include the month, day and year(s) of each alternate date or date range specified.

NOTE: The alternate date does not need to be continuous with the approximate date. The alternate date may be set for a time period after the approximate date (e.g., several days or weeks after the approximate date) or the alternate date might precede the approximate date, in the event that the approximate date becomes infeasible and the application needs to be made earlier than planned.

The above compliance measures apply to any alternate date that is set, whether it is specified in the contract or by another written or oral means other than a contract. There are additional, separate compliance measures for setting alternate dates in a commercial lawn application contract or setting them in a different manner outside of the contract, as described below.

Setting Alternate Dates by Inclusion in a Commercial Lawn Application Contract -

Under 6 NYCRR Part 325, the alternate date is not required to be included in the commercial lawn application contract. However, an applicator/business may choose to include it in the contract. The applicator/business must use the following compliance measures regarding specifying alternate dates in contracts:

- If the alternate date is included in the contract, then only one alternate date for each approximate date may be included in the contract.
- In some instances, multiple applications are to be made and, therefore, an approximate date is listed in the contract for each application to be made. If an alternate date needs to be identified for one or more of the approximate dates in the contract, the applicator/business must specify the approximate date for which an alternate date is being named, so that it is clear which approximate date is being replaced by an alternate date through a contract amendment.
- If an applicator/business includes the alternate date in the contract and if the commercial lawn application becomes infeasible on that alternate date, then, for the applicator/business to perform an application on a different date and still be in compliance with the regulatory requirements regarding application dates, the contract must be amended to identify a new alternate date and "...written proof of acceptance of the contract amendment must be obtained from the property owner or owner's agent prior to applying pesticides" (6 NYCRR 325.40(c)). To show the alternate dates of application for each year in which applications will be made under a multiyear contract, the applicator/business must indicate the month, day and year for each alternate date for each year covered in the multiyear contract.

Setting Alternate Dates Separately from the Commercial Lawn Application

Contract - If no alternate date is included in the contract, and commercial lawn application on the approximate date becomes infeasible, then, for the applicator/business to perform an application on a different date and still be in compliance with the regulatory requirements regarding application dates, the applicator/business "...must provide the owner or owner's agent oral or written notice of any proposed alternate date or dates" and the applicator/business "...must obtain acceptance from the owner or owner's agent of such alternate date or dates prior to initiating any commercial lawn application" (6 NYCRR 325.40(c)).

NOTE: Regarding Waiver of Notification to Property Owner/Agent of Alternate

Date - Commercial lawn application contracts may not include language by which the owner/agent waives notification of alternate dates, because it would not be consistent with ECL 33-1001(2) and 6 NYCRR 325.40(c), which require the applicator/business to provide the property owner/agent with oral or written notice of the proposed alternate date(s) of commercial lawn application(s) and receive acceptance of those dates.

Including such a waiver in a commercial lawn application contract and acting in reliance upon it as a substitute for notifying the property owner/agent and obtaining their acceptance of an alternate date of application is not a means of compliance with the requirement of ECL 33-1001(2) or 6 NYCRR 325.40(c). Therefore, to comply with ECL 33-1001(2) and 6 NYCRR 325.40(c), applicators/businesses must provide to the property owner/agent oral or written notice of proposed alternate date(s) of commercial lawn application(s) and receive acceptance of such date(s) from the owner/agent.

K. Retention of Commercial Lawn Application Contracts in Business Records

Regulatory Citation: Under 6 NYCRR 325.40(e), the pesticide applicator or business “...must retain a complete copy of each written contract for a minimum of three years following the expiration of the contract [emphasis added]....”

Compliance Measures: The applicator/business must indicate in commercial lawn application contracts the year or years which the contract covers, so that the Department can determine whether the applicator/business is fulfilling the regulatory requirement. Including the year(s) covered by the contract defines the contract expiration and the start of the required three-year records retention clock. For multiyear contracts, if the contract covers commercial lawn applications which would occur during more than one year, applicators/businesses must indicate the specific term of the contract, including specifying the year(s) (e.g., 2004, 2005, 2006) (General Obligations Law Section 5-701). (See item C. of this Policy for compliance measures on showing the complete date for approximate dates in a multiyear contract.)

In addition, as stated in the compliance measures in this Policy for 6 NYCRR 325.40(i), if a number of pesticide product labels (sometimes referred to as a “label pack”) are the same labels that are included with a large number of contracts, at least one copy of those labels must be maintained with the copies of the contracts on record and be available to the Department, if contract records are requested.

L. Effective Date of Visual Notification Marker Feature Requirements and Color of Notification Markers

Regulatory Citation: Under 6 NYCRR 325.40(f), visual notification “...markers must, by January 1, 2005, be yellow in color, have lettering which is black in color and be constructed of rigid material.”

Compliance Measures: The January 1, 2005 effective date applies to 6 NYCRR 325.40(f) and (g), which cover all marker design features and text content. The entire notification marker, front and back, must be yellow. **NOTE:** Statutory requirements in ECL 33-1003, regarding size and placement of notification markers as well as size of

lettering on the marker and other provisions, have been in effect since 1988 and are current requirements that must continue to be complied with.

M. Date and Time of Application

Regulatory Citation: Under 6 NYCRR 325.40(f)(2), notification markers must include “the specific date and time of the actual commercial lawn application, unless the date and time are provided to the property owner or owner’s agent immediately following application and prior to leaving the premises.”

Compliance Measures: The requirement to provide date and time of application to the property owner/agent may be met in any one or more of the following ways:

- If the applicator chooses to include the date and time of application on the notification marker, the applicator must indicate the date and time on the marker and post the markers on the property prior to application (as indicated in 6 NYCRR 325.40(f)(2)).
- If the applicator posts the markers prior to application without the date and time marked on them, the applicator must provide the date and time of application to the property owner or owner’s agent immediately following application and prior to leaving the premises. If the property owner or owner’s agent is present, the applicator/business can provide the date and time directly to them, prior to leaving the premises. If the owner and agent are absent, “provided to” can include actions such as leaving notice of date and time with the invoice or on a separate document, prior to leaving the premises which was treated.

N. Providing Pesticide Product Label Information

Regulatory Citations: Under 6 NYCRR 325.40(i), “Every certified applicator must, prior to application of a pesticide within or on the premises of a dwelling, supply the occupants therein with a written copy of the information, including any warnings, contained on the label(s) of the pesticide(s) to be applied.”

Under 6 NYCRR 325.40(i)(1), “Every certified applicator must, prior to the application of a pesticide within or on the premises of a multiple dwelling, building, or structure other than a dwelling, supply the owner or owner’s agent, with a written copy of the information, including all warnings, contained on the label(s) of the pesticide(s) to be applied....”

Alternative Compliance Measures:

- To comply with 6 NYCRR 325.40(i)(1), the applicator/business may attach the pesticide product label(s) to the contract. (If attached, it would be considered a part of the contract.) If a label pack is attached to the contract and names of pesticides to be used are listed in the contract, then, all pesticides listed in the contract must be described in the label pack. If a label or label pack is attached to the contract, the following must be in 12-point type on that label: brand and generic names of active ingredients (per 6 NYCRR 325.40(a)(4)(i)) and certain warnings (per 6 NYCRR 325.40(a)(4)(ii)). (See Items E. and F. in this Policy for further compliance measures regarding what constitutes 12-point type and pesticide product information required to be in a contract.)

If an applicator/business uses the same label pack for a large number of contracts, at least one copy of the label pack must be maintained with the copies of the contracts for at least three years following the expiration of the contract (per 6 NYCRR 325.40(e)) and be available for inspection by the Department, if contract records are requested. (See Item J. in this Policy for further information on contract records retention.)

NOTE: If the applicator/business attaches a label or label pack to the contract, it might be useful for the applicator/business to reference the attachment in the contract to clarify that the label constitutes part of the contract.

- If a label or label pack is not included with the contract and only the product names and warnings are listed in the contract in 12-point type (per 6 NYCRR 325.40(a)(4)), then, to be in compliance with 6 NYCRR 325.40(i) and (i)(1), the applicator/business must provide to the property owner/agent, prior to application, a written copy of the information on the label. (See Item E. in this Policy for the compliance measure regarding what size constitutes 12-point type. See Item F. of this Policy for information on compliance measures related to pesticide product label information required to be included in the contract (per 6 NYCRR 325.40(a)(4)) and on identification and notification of specific pesticide(s) to be applied on certain dates (per 6 NYCRR 325.40(f).)

III. Purpose and Background:

In general, the purpose of this Policy is to clarify for the regulated community and Department staff compliance measures, that, if taken, will meet certain requirements of the commercial lawn application regulation in 6 NYCRR 325.40. The commercial lawn application regulation, which became effective January 1, 2004, forms the regulatory framework for requirements contained in Article 33, Title 10 of the ECL, specifically ECL 33-1001 and 33-1003, as well as ECL 33-0905(5) (a) and (b). ECL 33-1001 and

33-1003 lay out the basic requirements regarding contracts and notification markers for commercial lawn applications and the Title 9 subdivisions relate to pesticide product labels. ECL Article 33, Title 10 also authorizes the Department to promulgate regulations to carry out the requirements of that Title.

During the July 22, 2003 Environmental Board meeting on the commercial lawn application rulemaking, the Department made a commitment to the Board to develop a Policy to provide clarification regarding the commercial lawn application regulation. This Policy provides such clarification and identifies appropriate compliance measures in response to questions raised by the regulated community and Department staff on the implementation of certain requirements in the regulation. The Policy addresses certain requirements, which warranted attention in a program Policy for further clarification and Department interpretation. To facilitate addressing questions from the regulated community, the Department obtained input on the proposed content of this Policy from a group of commercial lawn application industry representatives.

This Policy was developed to set forth the Department's view of the actions that would need to be taken to comply with certain regulatory requirements from 6 NYCRR 325.40, which are listed in this Policy. One or more compliance measures are identified in the Policy for each requirement from 6 NYCRR 325.40 addressed in the Policy. A compliance measure is the action the regulated community would need to take to comply with a specific requirement. Accordingly, Department staff shall be guided by this Policy in determining compliance with certain requirements of 6 NYCRR 325.40. By adhering to the compliance measures stated in this Policy, persons subject to the regulation will meet the specific commercial lawn application requirements cited in this Policy from 6 NYCRR Part 325.

This Policy also reflects the legislative intent and public policy purpose of ECL Article 33, which requires commercial lawn applicators/businesses to inform and protect the public through steps such as entering into written contracts, disclosing names of pesticides and associated warnings, and posting notification markers to warn the public that pesticides have been applied.

Since this Policy does not address all of the commercial lawn application requirements in 6 NYCRR Part 325, the Policy, the regulation and the ECL need to be used together for information on commercial lawn application requirements and compliance measures. When the regulation, ECL and Policy are used in conjunction with each other, they provide an overall reference on commercial lawn application, with the purposes of assisting the Department and regulated community in interpreting and applying the commercial lawn application regulations, facilitating regulated community compliance, and assisting the Department in achieving uniformity in the commercial lawn application program throughout the State.

The Policy does not in any way limit the Department's ability to enforce the applicable statutes, commercial lawn application regulatory program or any requirements in the 6 NYCRR Part 325 commercial lawn application regulation, whether or not the requirement is addressed in this Policy.

The Department encourages integrated pest management (IPM) practices in commercial lawn care. In developing this Policy, the Department considered IPM and believes that the compliance measures delineated in this Policy are workable within and complement the framework of an IPM approach to commercial lawn care and are also consistent with the requirements of ECL Article 33, Title 10. While notification and contracting procedures must occur as required, it continues to be important to recognize the benefits of IPM and utilize IPM as one of the pest management tools in commercial lawn care.

IV. Responsibility:

The responsibility for interpreting and updating this document resides in the Department's Division of Solid & Hazardous Materials, Bureau of Pesticides Management.

Responsibility for implementing this Policy lies with Department pesticides management staff in the Regional and Central Offices, as well as the pesticides program attorney, Department attorney involved in enforcement and staff of the Division of Law Enforcement.

V. Procedure:

This Policy was developed to set forth the Department's view of the actions that would need to be taken to comply with certain regulatory requirements from 6 NYCRR 325.40, which are listed in this Policy. One or more compliance measures are identified in the Policy for each requirement from 6 NYCRR 325.40 addressed in the Policy. A compliance measure is the action the regulated community would need to take to comply with a specific requirement. Accordingly, Department staff shall be guided by this Policy in determining compliance with 6 NYCRR 325.40. By adhering to the compliance measures stated in this Policy, the Department will consider the regulated community, or member of that community, to be meeting those specific commercial lawn application requirements cited in this Policy from 6 NYCRR Part 325.

Since this Policy does not address all of the commercial lawn application requirements in 6 NYCRR Part 325, the Policy, the regulation and the ECL need to be used together for information on commercial lawn application requirements and compliance measures. When the regulation and Policy are used in conjunction with each other, they provide an overall reference on commercial lawn application, with the purposes of assisting the Department and regulated community in interpreting and applying the commercial lawn

application regulations, facilitating regulated community compliance, and assisting the Department in achieving uniformity in the commercial lawn application program throughout the State.

This Program Policy does not serve as the sole repository of the Department's construction of what would be needed to comply with every aspect of the 6 NYCRR Part 325 commercial lawn application regulation or with the Department's commercial lawn care regulatory program. Although the Department believes that the primary compliance measures available for the particular requirements identified in the Policy are covered in this Policy, there might be compliance measures other than those identified herein. If an alternative compliance approach, which is not included in this Policy is used by a member of the regulated community, it is the responsibility of the regulated entity using that approach to ensure that it is in compliance with 6 NYCRR 325.40.

The Policy does not in any way limit the Department's ability to enforce the commercial lawn application regulatory program or any requirements in the 6 NYCRR Part 325 commercial lawn application regulation, whether or not the requirement is addressed in this Policy.

The regulation and this Policy supersede any correspondence or other Department communications regarding commercial lawn application regulatory matters issued prior to the effective date of the Policy, other than those communications associated with the development of 6 NYCRR 325.40. The Department will use that regulation and this Policy as a uniform basis for providing interpretive information to the regulated community on 6 NYCRR Part 325 commercial lawn care requirements and in determining compliance with certain of such requirements (also utilizing other standard Department enforcement documents such as the Enforcement Guidance Memorandum).

Related References

ECL 33-1001 (Requirements and restrictions) and 33-1003 (Visual notification) and ECL 33-0905.5(a) and (b) (in ECL 33-0905 - Pesticide applicator certification).

6 NYCRR 325.1(s) and 6 NYCRR 325.40.

If you have any questions, please contact:

Pesticide Compliance Section
Bureau of Pesticides Management
Division of Solid & Hazardous Materials
518-402-8781
Or your DEC Regional Office.