

**STATE OF NEW YORK:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of an Emergency Order  
Pursuant to ECL § 9-1303  
for the Establishment of a Quarantine District  
Within Cattaraugus and Chautauqua Counties  
and Promulgation of Rules and Regulations  
to Control the Spread of Emerald Ash Borer

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**QUARANTINE  
ORDER**

**WHEREAS:**

- A. The New York State Department of Environmental Conservation (“Department”) is directed to conserve, improve and protect the natural resources of the State, ECL § 1-0101.1, and to promote the control of pests, ECL 3-0301.1.j; and
- B. ECL § 9-1303.5 authorizes the Department to establish, by order, quarantine districts in any part or parts of the State, and to prohibit the movement of materials which may be harboring forest insects or forest tree diseases in any of their different forms; and
- C. ECL § 9-1303.7 empowers the Department to take any necessary steps to establish barrier or protective zones for the purpose of preventing the spread of forest insect pests, and in so doing shall have the authority and right to enter upon private lands for this purpose, and make such modifications in the composition of the forest growth as it may deem necessary for the purpose of preventing the spread of forest tree infestations, including spraying, cutting, destroying or otherwise treating trees or other vegetation; and
- D. ECL § 9-1303.9 provides that the Department may, by order, make rules and regulations governing any and all operations designed for the purpose of preventing the spread of or for the purpose of controlling forest insects in their different forms, and plants or trees infested by them, all of which are declared a public nuisance; and
- E. ECL § 3-0301.2.g empowers the Commissioner to enter and inspect any property or premises for the purpose of ascertaining compliance with any law, rule or regulation; and ECL § 9-1303.4 provides that any duly authorized agents of the Department may enter upon any lands for the purpose of determining if such property is infested with forest insects and

the extent of such infestations; and

F. Pursuant to ECL § 9-1303.1 the Department entered into a memorandum of understanding (MOU”) with the New York State Department of Agriculture and Markets on August 10, 2006 for the control and eradication of invasive pest species, which MOU includes, *inter alia*, cooperative regulatory oversight and enforcement activities and the establishment of parallel and complementary quarantines as necessary to better contain infestations of pest species; and

G. That an invasive species, known as the emerald ash borer, *Agrilus planipennis* (Coleoptera: Buprestidae) (“EAB”), was detected in the Town of Randolph, Cattaraugus County, New York, near the border with Chautauqua County, on June 15, 2009 by an entomologist at Cornell University, after two U.S. Department of Agriculture (“USDA”) Agricultural Research Service employees recognized damage to local ash trees just off Exit 16 of State Route 17/I-86. After receiving the report and conducting an initial inspection, an adult beetle from the infested area was submitted to and the identification confirmed by the USDA's Systematic Entomology Laboratory at the National Museum of Natural History in Washington, D.C.; and

H. The EAB is a small but destructive beetle that infests and kills North American ash tree species, including green, white, black and blue ash, a valuable resource for the wood products industry and a significant component of the natural environment. Damage is caused by the larvae, which feed in tunnels called galleries in the phloem just below the bark. The serpentine galleries disrupt water and nutrient transport, causing branches, and eventually the entire tree, to die. One female can lay 60-80 eggs, and the rate of natural spread is estimated to be approximately 0.5 miles per year, but may be more than 12 miles per year; and

I. Other than natural movement, the primary way EAB spreads is when infested firewood and wood products are moved from one place to another. Such movement enables the EAB to rapidly spread over long distances; and.

J. Since its discovery in southeastern Michigan in 2002, the EAB has been responsible for the destruction of over 70 million ash trees in the United States. The beetle has been moving steadily outward from its first discovered infestation in Detroit, Michigan, and has

now been found in 13 states and two neighboring Canadian provinces. New York has more than 900 million ash trees, representing about seven percent of all trees in the State, and all are at risk should this invasive pest become established. Many of New York State's forests and parklands, including Allegany State Park which is near the recent EAB finding, are high-risk areas due to the movement of firewood and other wood products and the abundance of ash trees; and

K. Since the discovery of the infestation on June 15, 2009, the Department, in a cooperative effort with the New York State Department of Agriculture and Markets, the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Transportation, the New York State Emergency Management Office, the USDA Forest Service and the USDA Animal and Plant Health Inspection Service (together the “cooperating agencies”) has worked to determine the age and extent of the current EAB infestation and to provide public information and outreach. To date, that investigation has confirmed the presence of EAB in a ten acre area in the Town of Randolph, Cattaraugus County, New York. Aging of the infestation is currently underway, and is currently estimated at five to seven years. Thirty-nine infested trees have been cut and chipped and 216 suspect trees have been destroyed on State land. The Department and the cooperating agencies are completing the deployment of approximately 1,336 traps within a 167 square mile area, and surveyed all the roads within that area, in Cattaraugus and Chautauqua Counties, in order to further delimit the extent of the infestation. Monitoring of the traps and suspect trees will begin on or about July 20, 2009. The cooperating agencies have also inspected 55 logging sites, lumber mills, campsites and firewood producers; and

L. The failure to immediately establish a quarantine district and regulate the movement of materials which may be harboring EAB would result in the spread of EAB beyond those areas and damage the natural resources and economy of the entire State. A spread of the infestation would have very adverse economic consequences to the wood products industries of the State, e.g. lumber, flooring, furniture and cabinet making, sporting and recreational products, and firewood, due to the destruction of the regulated articles upon which these industries depend. The effective control of EAB within the infestation area is also important to protect New York’s nursery industry. There is no approved protocol to diagnose or treat

nursery stock or infected trees, since approved methods, e.g. debarking, heat treatment, would kill the plants. In addition, the environmental and financial consequences of the loss of millions of ash trees is enormous including the consequences of dealing with standing dead trees, and the costs to municipalities, homeowners and State agencies for removal and disposition of dead trees, replanting, impacts on biodiversity, etc. Failure to immediately control EAB within the infestation area may lead to federal quarantines and quarantines by other states and foreign countries that would affect the entire state, rather than just the infested areas, and would result in a significant impact to New York State's economy. Thus, immediate and long-term action by the Department is necessary to prevent the spread of EAB to protect ash trees in the surrounding area and the entire State.

**NOW, THEREFORE**, pursuant to ECL § 9-1303, and based upon the above findings, **I HEREBY FIND** that an emergency exists due to the presence of EAB in and around the Town of Randolph, Cattaraugus County, New York; and **I HEREBY ORDER** that, in accordance with ECL § 9-1303.5, Cattaraugus County and Chautauqua County are hereby designated as a single Quarantine District to prevent the further spread of EAB; and **I HEREBY FURTHER ORDER** that the following rules and regulations are promulgated pursuant to ECL § 9-1303.9 for the purpose of preventing the spread of or for the purpose of controlling EAB, their pupae, eggs, larvae and any plants and trees infested by them, all of which are hereby declared a public nuisance.

#### **I. DEFINITIONS.**

The following terms shall be construed to mean:

- (A) APHIS means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.
- (B) ASH means all *Fraxinus* species including green ash, *Fraxinus pennsylvanica*, white ash *Fraxinus americana*, black ash, *Fraxinus nigra*, and blue ash, *Fraxinus quadrangulata*, as well as horticultural cultivars of these species.

(C) AUTHORIZED AGENT OF THE DEPARTMENT means a person authorized by the Department to act on behalf of the Department with respect to any activities authorized by this order, while acting within the scope of that authorization.

(D) BARK means the tough outer covering of the woody stems of trees, shrubs, and other woody plants as distinguished from the cambium and inner wood.

(E) CERTIFICATE means a document, such as certificates of quarantine compliance, and state phytosanitary certificates, issued by APHIS or NYSDAM to allow the movement of regulated articles which, under this order, could not otherwise be moved.

(F) COMPLIANCE AGREEMENT means a written agreement between APHIS or NYSDAM and a person moving or receiving regulated articles, which authorizes the restricted movement, processing, handling or utilization of regulated articles which, under this Order, could not otherwise be moved, processed, handled or utilized.

(G) CONTROL means, as appropriate, eradicating, suppressing, reducing, or managing EAB populations, whether by physical, chemical or other means, to prevent the spread of EAB from areas where they are present, and taking steps to reduce the effects of EAB and to prevent further invasions.

(H) DEPARTMENT means the New York State Department of Environmental Conservation

(I) DIRECTOR means the Director of the Department's Division of Lands & Forests or the Director's designee.

(J) EAB means an insect known as emerald ash borer (*Agilus planipennis* [Coleoptera: Buprestidae]) in any stage of development.

(K) FIREWOOD means any kindling, logs, chunkwood, boards, timbers or other wood of any tree species cut and split, or not split, into a form and size appropriate for use as fuel.

(L) INFESTED (INFESTATION) means the presence of EAB or physical evidence making it reasonable to believe that EAB is present, such as physical evidence of activity of one or more of the EAB's life stages.

(M) LAW ENFORCEMENT OFFICER means any state or local police force, including county, town, city and village police departments, sheriffs, the Division of State Police, and the Department's Environmental Conservation Officers and Forest Rangers.

(N) LIMITED PERMIT means a valid form issued by APHIS or NYSDAM authorizing the restricted movement of non-certified regulated articles which, under this Order, could not otherwise be moved, from the quarantine district to a specified destination, in accordance with conditions specified on the limited permit, for specified processing, handling or utilization.

(O) LOG means tree parts cut into lengths of greater than four feet.

(P) LUMBER means timber sawed into boards, planks, or other structural members of standard or specified length.

(Q) MOVED (MOVE, MOVEMENT) means shipped, offered for shipment, held for shipment, received for shipment, transported, carried, or allowed to be moved, shipped, transported or carried.

(R) NYSDAM means the New York State Department of Agriculture and Markets.

(S) PERSON means an individual, organization, corporation or partnership, public authority, county, town, village, city, municipal agency or public corporation, or any other legal entity other than the Department or its authorized agents.

(T) QUARANTINE DISTRICT means the entirety of both Cattaraugus County and Chautauqua County, State of New York

## **II. REGULATED ARTICLES.**

The following articles are subject to this Quarantine Order:

(A) EAB.

(B) Entire ash trees of any size, inclusive of nursery stock.

(C) Any part of ash trees, including leaves, bark, stumps, limbs, branches, and roots.

(D) Ash lumber or ash logs of any length.

(E) Any item made from or containing ash wood.

(F) Any article, product or means of conveyance determined by APHIS, NYSDAM or the Department to present a risk of spreading the EAB infestation.

(G) Firewood from any tree species.

(H) Wood chips and bark mulch from any tree species, larger than 1 inch in two dimensions, whether composted or uncomposted.

### **III. MOVEMENT OF REGULATED ARTICLES ORIGINATING WITHIN THE QUARANTINE DISTRICT MOVING WITHIN THE QUARANTINE DISTRICT**

(A) A regulated article originating within the quarantine district may be moved to a destination within the quarantine district only under the following conditions:

(1) With a compliance agreement or limited permit in compliance with the terms of such agreement or limited permit; or

(2) If exempted by administrative instructions by the Commissioner of NYSDAM.

### **IV. MOVEMENT OF REGULATED ARTICLES ORIGINATING FROM WITHIN THE QUARANTINE DISTRICT OUT OF THE QUARANTINE DISTRICT.**

(A) A regulated article originating from within the quarantine district may be moved out of the quarantine district only under one of the following conditions:

(1) With an authorizing certificate or limited permit in compliance with the terms of such certificate or limited permit; or

(2) If exempted by administrative instructions by the Commissioner of NYSDAM; or

(3) Without a certificate or limited permit, and where not exempted by administrative instructions by the Commissioner of NYSDAM, only if the regulated article is authorized to be moved by APHIS, NYSDAM or the Department for experimental or scientific purposes, provided appropriate precautions to prevent the proliferation of EAB are taken as prescribed by APHIS, NYSDAM, or the Department, and the container of articles so moved bears, securely attached to the outside thereof, an identifying tag issued APHIS, NYSDAM, or the Department showing compliance with such conditions.

(B) The points of origin and destination of the regulated article shall be indicated on a waybill accompanying the regulated article.

(C) The regulated article, or the container carrying the regulated article, shall be plainly marked at all times during movement, with the name and address of the consignor and the name and address of the consignee.

(D) The regulated article must have the certificate or limited permit acquired from APHIS or NYSDAM securely attached to the regulated article, the container carrying the regulated article, or the consignee's copy of the accompanying waybill, and the description of the regulated article on the certificate or limited permit and on the waybill shall be sufficient to identify the regulated article.

(E) For lot freight shipments, other than by road vehicle, one certificate or limited permit must be attached to one of the containers and another to the waybill. For carlot freight or express shipment, either in containers or in bulk, a certificate or limited permit need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill.

(F) The carrier must furnish the certificate or limited permit authorizing movement of the regulated article within or out of the quarantine district to the consignee at the destination of the shipment.

## **V. MOVEMENT OF REGULATED ARTICLES OTHER THAN EAB ORIGINATING FROM OUTSIDE THE QUARANTINE DISTRICT INTO OR THROUGH THE QUARANTINE DISTRICT**

A regulated article, other than EAB, originating outside the quarantine district may only be moved into or through the quarantine district under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article, if moved through the quarantine district during the period of May 1 through August 31 or when the ambient air temperature is 40 degrees Fahrenheit or higher, is moved in an enclosed vehicle or is completely covered to prevent EAB access; and

(C) If the final destination is not located within the quarantine district, the regulated article shall be moved directly through the quarantine district without stopping (except for refueling or unanticipated events, e.g. traffic conditions, traffic lights or stop signs, accidents, or breakdowns), or has been stored, packed or handled at locations approved by APHIS or NYSDAM as not posing a risk of infestation by EAB: and

(D) The regulated article, or the container carrying the regulated article, must be plainly marked at all times during movement with the name and address of the consignor and the name and address of the consignee.

## **VI. NURSERIES AND NURSERY STOCK**

A nursery inside the quarantine district having ash tree nursery stock must enter into a compliance agreement with APHIS or NYSDAM. Notwithstanding paragraph IV(A) above, ash tree nursery stock may not be moved out of the quarantine district except in accordance with Paragraph VIII. Ash tree nursery stock of any nursery operating without a compliance agreement shall be destroyed in compliance with instructions from APHIS or NYSDAM and in the presence of APHIS or NYSDAM personnel, without cost to the State except for that inspection and supervision.

## **VII. FIREWOOD**

(A) All producers of firewood from any species of tree within the quarantine district must enter into a compliance agreement with APHIS or NYSDAM.

(B) To the extent the provisions of this Quarantine Order and 6 NYCRR § 192.5, Firewood Restrictions to Protect Forests From Invasive Species, are in conflict, the more restrictive provisions shall apply.

## **VIII. SPECIAL EXEMPTIONS.**

The Commissioner or his designee may allow, with prior written approval, the movement of regulated articles into or within New York State for experimental, scientific or research purposes, provided appropriate precautions to prevent the proliferation of EAB are taken as prescribed by APHIS, NYSDAM, or the Department, The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued APHIS, NYSDAM, or the Department showing compliance with such conditions.

## **IX. ACCESS AND CONTROL**

(A) Pursuant to ECL §9-1303.4, duly authorized agents of the Department may enter upon any lands within the State of New York for the purpose of determining if such property is infested with EAB, and the extent of any such infestation. Such entry may include, but not be limited to, visual inspections, trap hanging, and tree blazing and girdling to facilitate trap efficacy.

(B) Pursuant to ECL § 9-1303.10, no action for trespass shall lie on account of entry on private lands by any duly authorized agent of the Department for the purpose of determining if such property is infested with EAB, and the extent of any such infestation.

(C) Pursuant to ECL §9-1303.11, no person shall willfully resist or obstruct the work of any duly authorized agents of the Department engaged in the investigation of EAB infestation.

(D) Duly authorized agents of the Department shall take reasonable steps and exercise due diligence to notify affected landowners of this Quarantine Order by holding public meetings and sending written notification to affected land owners and local media, as appropriate.

(E) The Director shall take any and all further necessary actions, including the establishment of barriers or protective zones, to prevent or control the spread of EAB within and without the quarantine district.

(F) The Director may authorize agents, under the direction of Department personnel, for the purpose of performing any activities pursuant to this Quarantine Order.

## **X. VIOLATIONS, ENFORCEMENT AND PENALTIES.**

(A) Any person who violates any provision of this Quarantine Order shall be deemed to have violated the provisions of ECL § 9-1303, and each such violation shall be subject to enforcement in accordance with ECL Article 71, Title 7.

(B) The risk of spreading EAB created by anyone moving a regulated article in violation of this Quarantine Order may be mitigated by the Department at the expense of the person violating the Quarantine Order.

(C) This Quarantine Order may be enforced by any law enforcement officer.

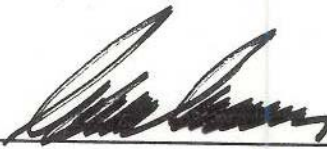
(D) Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate within or out of the quarantine district which a law enforcement officer has probable cause to believe may contain infestations of the EAB, or articles or things regulated under this Quarantine Order, may be examined by such law enforcement officer at any time or place. When articles or things are found to be moving or to have been moved intrastate in violation of any provision set forth in this Quarantine Order, the law enforcement officer may take such action as he deems necessary, including confiscation of the regulated articles and any commingled articles, to eliminate the danger of dissemination of the EAB, without cost to the State except for that inspection and supervision.

**I HEREBY FURTHER ORDER** that the Department shall immediately file a certified copy of this Quarantine Order concurrently with the Department of State, the office of the County Clerk of Cattaraugus County and the office of the County Clerk of Chautauqua County; and publish notice of this Quarantine Order in the State Register and the Environmental Notice Bulletin.

**I HEREBY FURTHER ORDER** that pursuant to ECL § 9-1303.5 this Quarantine Order shall become effective on the tenth day after such filing with both the Cattaraugus County Clerk and the Chautauqua County Clerk, and pursuant to ECL § 9-1303.5 and ECL § 9-1303.9, this Quarantine Order shall remain in effect until it is rescinded or superseded by a Department order or regulations.

DATED:

JUL 23 2009



Alexander B. Grannis, Commissioner  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION