

TEXT

A new Part 186 is added to 6 NYCRR to read as follows:

Part 186 Feeding of wild white-tailed deer or wild moose

186.1 Findings and purpose. The Department of Environmental Conservation (“Department”) finds that the intentional feeding of wild white-tailed deer or wild moose is not in the public interest, and will unnaturally concentrate wild white-tailed deer or wild moose and thereby lead to environmental harm including: destruction of natural habitat; disruption of natural movements; increased risks for introduction, transmission or spread of disease; and alterations of behavior in wild white-tailed deer or wild moose that may increase danger to people or damage to property, or both. The purpose of this part is to: define the limited circumstances and lawful practices by which wild white-tailed deer or wild moose may be intentionally fed but not result in unnatural concentrations or environmental harm; to require that commercially produced foods for attracting or feeding deer or moose be labeled with a warning about the feeding prohibition; and to provide a clear procedure for the authorization and use of automated feeding devices to dispense 4-Poster™ Tickicide for control of ticks on deer that may transmit disease to humans.

186.2. Definitions. For the purposes of this Part, the following terms have the indicated meanings:

(a) “Automated feeding devices” are devices that dispense food material, such as corn, and dispense 4-Poster™ Tickicide (Environmental Protection Agency Registration No. 39039-12, Special Local Need Registration SLN NY-120001) onto deer to kill ticks.

(b) "Commercial deer foods" means food or food products labeled or packaged as a product to be used for feeding or attracting deer or moose, including those in packages that depict hunters, hunting, live or dead deer or moose, or antlers, use camouflage or bright orange coloration, or include words related to hunting, harvesting, or attracting deer or moose.

(c) "Deer or moose" means any free-ranging animal of Genus *Cervus*, Genus *Odocoileus*, or Genus *Alces*.

(d) "Feed or feeding of deer or moose" means to intentionally place or distribute food or food products, or any act to maintain the availability of such material, resulting in the attraction of deer or moose to a particular site or location and the consumption by deer or moose of such material or the substrate on which it is distributed. Placing or distributing commercial deer foods such that they are accessible to deer or moose is presumptive evidence of intent to feed deer or moose.

(e) "Food or food products" means any material including but not limited to any powders, liquids, fruits, vegetables, grains, minerals, or commercially produced foods made for consumption by humans or domestic or wild animals.

(f) "Incidental or indirect feeding" means using, placing, giving, exposing, depositing, distributing or scattering any food or food products for a different purpose than feeding or attracting deer or moose but that results in the attraction of one or more deer or moose. This includes the use and storage of birdseed in a manner that is accessible to deer or moose. This does not include normal agricultural or horticultural practices.

(g) "Municipality" is a State, County, Town or Village government official or agency.

186.3. Prohibitions.

(a) No person shall intentionally feed deer or moose at any time in New York State except:

- (1) under a license or permit issued by the Department pursuant to article 11 of the Environmental Conservation Law for bona fide scientific research, mitigation of wildlife damage or nuisance problems, wildlife disease surveillance and response, or wildlife population reduction programs only;
- (2) by use of an automated feeding device that has 4-Poster™ Tickicide as permitted by the Department in accordance with Section 186.4;
- (3) by planting, cultivating or harvesting of vegetation associated with normal agricultural or horticultural practices;
- (4) by planting, cultivating or harvesting plants to enhance wildlife habitat conditions;
- (5) by distribution of food material for livestock directly associated with livestock husbandry;
- (6) by distribution of food material for legally possessed captive animals of the family Cervidae where measures are in place to eliminate the availability of food material to deer or moose; or
- (7) by cutting of trees or brush.

(b) No person shall incidentally or indirectly feed deer or moose or maintain the availability of incidental or indirect food sources for deer or moose after the Department has issued a written warning notice to the person or persons directly responsible for the incidental or indirect feeding of a deer or moose.

(c) No person shall feed wild or captive animals of the family Cervidae with any material that contains protein derived from any mammalian tissue.

(d) No person shall sell at retail or offer for retail sale in New York commercial deer foods or deer feeding equipment unless such products or equipment are affixed with a label that reads as follows:

NOTICE TO CUSTOMERS

It is illegal to intentionally feed wild white-tailed deer and moose in New York State. Placing this product so that it is accessible to wild deer or moose in New York is presumptive evidence of intent to feed deer or moose. Any person found intentionally feeding this product to wild deer or moose will be subject to prosecution pursuant to 6 NYCRR Part 186.

Such label may be obtained by download from the Department's website at www.dec.ny.gov and must measure at least 3 inches by 4 inches and be prominently displayed on the top or the top half of the front of the product or package.

186.4 Authorization of automated feeding devices, with 4-Poster™ Tickicide.

(a) Eligible permittees. The Department may, at its discretion, issue permits pursuant to this section to any of the following entities or their designated representatives to deploy automated feeding devices using whole kernel corn in parts of the state where 4-Poster™ Tickicide is registered for use: municipalities, public or private landowners, or homeowner associations that, singly or in combination, own and control a contiguous land area inhabited by white-tailed deer and totaling at least 40 acres in size.

(b) Criteria for permit issuance. The following criteria must be met before a permit may be issued by the Department pursuant to this section:

- (1) The applicant must identify the specific properties (e.g., tax parcel numbers, latitude/longitude, or UTM coordinates of proposed deployment locations) that are included in the proposed deployment area and their owners;
- (2) The identified properties must include a contiguous land area totaling at least 40 acres in size;
- (3) The applicant(s) must be one or more of the person(s) who own(s) property included in the application, or be an agent with written permission from the owner(s) of the property(ies) where the device(s) will be located;
- (4) Written consent of owners of all properties that are wholly or partially included in a 40-acre circle (745-foot radius) centered on each device location must be provided as part of the application;
- (5) The applicant must provide a written deer management plan using a format provided by the Department that will be implemented in conjunction with the use of 4-Poster™ Tickicide and an automated feeding device. At a minimum, the plan must include measures to ensure that white-tailed deer populations and the impacts of deer (e.g., vehicle collisions and damage to ornamental plantings and native vegetation) will not increase as a result of deploying the automated feeding devices. The deer management plan may include, but is not limited to, recreational hunting, culling, surgical sterilization, fencing of sensitive areas, and enforcement of State and local deer feeding prohibitions pursuant to this Part or local laws or regulations. The plan must clearly indicate how it relates to any deer management plans currently in place for the

municipality where automated feeding devices would be deployed. Prior to the issuance of a permit for an automated feeding device using 4-Poster™ Tickicide, the deer management plan must be approved by the Department. The Department may deny a permit to any person that it determines has not adequately considered and incorporated deer population management techniques in conjunction with deployment of automated feeding devices. Examples of this would include, but not be limited to, maintaining landowner restrictions on deer hunting that exceed State and local statutes necessary to ensure public safety;

- (6) If the applicant is not a municipality, written approval of the specific location(s) of deployment of automated feeding devices with 4-Poster™ Tickicide must be provided by the smallest municipality with jurisdiction where the property is located; and
- (7) Permit applications may be submitted at any time of year using forms provided by the Department.

(c) Permit conditions and reporting requirements:

- (1) Automated feeding devices may only be used in parts of the state where 4-Poster™ Tickicide is registered for use and may be deployed only at the locations identified in an application approved by the Department;
- (2) Permits may be issued for up to a 3-year period, but will include an annual reporting requirement using a form provided by the Department. Annual reports shall be submitted to the Department on or before December 31 and shall include a summary of bait consumption and 4-Poster™ Tickicide applications by week for each automated feeding device, recommendations for future use of automated feeding devices in the

areas covered by the permit, and a summary of actions employed by the permittee to control deer population growth and impacts and monitor impacts;

(3) Permits may allow deployment and maintenance of automated feeding devices with 4-Poster™ Tickicide at any time of year;

(4) Automated feeding devices with 4-Poster™ Tickicide may not be placed within 300 feet of a public highway pursuant to Environmental Conservation Law 11-0505(8);

(5) Automated feeding devices with 4-Poster™ Tickicide may not be placed within 300 feet of any dwelling, multiple dwelling, playground or any other locations where children may be present without adult supervision, unless the area around the automated feeding device with 4-Poster™ Tickicide is surrounded with a fence 28 to 30 inches high with a minimum diameter of 29 feet and constructed in accordance with specifications outlined in New York State-approved labeling for 4-Poster™ Tickicide;

(6) The Department may, when it determines that attraction of black bears or other non-target species (e.g., raccoons) poses an ecological or public safety risk, require that automated feeding devices with 4-Poster™ Tickicide be surrounded with an electrified fence with a minimum diameter of 29 feet, constructed and maintained in such a manner as to prevent any non-target species of concern from gaining access to the automated feeding device;

(7) Any person that receives a permit to use an automated feeding device with 4-Poster™ Tickicide and any municipality that endorses such a permit issued to any entity located in their jurisdiction must take steps to inform the public, including landowners, hunters, and local law enforcement agencies, of the presence and locations of automated feeding devices in their area. Examples of such steps would include but not

be limited to notices on municipal websites, in local newspapers, and posted at entrances to properties where automated feeding devices with 4-Poster™ Tickicide are deployed;

(8) The permittee shall deploy automated feeding devices with 4-Poster™ Tickicide in accordance with the manufacturer's instructions, in compliance with U.S. Environmental Protection Agency and New York State label requirements and subject to the applicable provisions of Environmental Conservation Law Article 33;

(9) An automated feeding device shall only be baited with feed when rollers are charged with 4-Poster™ Tickicide and all bait shall be removed and disposed of in an approved waste disposal facility upon cessation of 4-Poster™ Tickicide application; and

(10) Additional permit conditions may be included at the Department's discretion.

(d) Revocation. Permits may be revoked for violation of permit conditions or failure to implement and maintain deer management measures as described in the Department-approved deer management plan, or when the Department determines that the continued use of automated feeding devices with 4-Poster™ Tickicide poses a threat of disease spread or transmission.

(e) An automated feeding device with 4-Poster™ Tickicide deployed in accordance with a Department-issued permit shall not be considered a "pre-established bait pile" that would prohibit the taking of deer by a licensed hunter pursuant to ECL 11-0901

(4)(b)(7).