

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

[www.dec.ny.gov](http://www.dec.ny.gov)

## **SUBJECT: Enforcement Discretion for Agricultural Plant (Category 1A) Commercial Pesticide Apprentices to Apply Federally Restricted Use Pesticides During the COVID-19 Emergency**

**DATE: May 26, 2020**

---

To Whom It May Concern:

Due to the COVID-19 crisis, the New York State Department of Environmental Conservation (DEC) will exercise its enforcement discretion with respect to certain provisions of 6 NYCRR Part 325, as set forth in this letter. During this period, the procedures delineated herein may be used to allow commercial pesticide apprentices (Apprentices) to apply federally restricted use pesticides while acting under the off-site direct supervision of a category 1a (Agricultural Plant) certified commercial pesticide applicator (Certified Applicator) employed by the same business. All other provisions of Part 325 remain in full force and effect and will be enforced.

This action is taken to support Governor Cuomo's state of disaster emergency declaration (Executive Order 202) issued on March 7, 2020.<sup>1</sup> The Department issued an Emergency Declaration, which is set to expire on September 7, 2020. As identified in the Guidance on Executive Order 202.6,<sup>2</sup> essential businesses or entities that are not required to reduce in-person workforce by 100% include businesses that manufacture pesticides and businesses that provide pest control services, including pesticides applications and other pest control measures.

DEC recognizes agricultural custom application businesses as essential because they provide crop protection services for many New York State farms. New York State farms grow over 1 million acres of corn and 270 thousand acres of soy annually and agricultural custom pesticide application businesses provide a vital service to farms. The application of federally restricted use pesticides during the growing season is a critical portion of the crop protection business. These applications take place within a six-month period starting in early May. In many cases farmers in New York State are not certified to apply federally restricted use pesticides and prefer to hire these businesses for crop protection services in order to produce at the capacity necessary to support the

---

<sup>1</sup> <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>

<sup>2</sup> <https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

food supply and provide feed for the dairy industry, which is a major contributor to the New York State economy.

To apply restricted use pesticides in New York State pesticide applicators must be either a certified pesticide applicator or working under the direct supervision of a certified pesticide applicator. Depending on the circumstances, direct supervision can be on-site or off-site. Certified Commercial Pesticide Technicians (technicians) can apply state and federal restricted use pesticides with off-site direct supervision, with some exceptions. Commercial Pesticide Apprentices can apply State restricted use pesticides under direct supervision, with some exceptions, but direct supervision must be on-site when applying federally restricted use pesticides as required by 6 NYCRR 325.7(d)(2)(i)(a).

Due to the current crisis, the pesticide applicator certification exam which allows apprentices to become certified applicators or technicians has been put on hold. DEC is temporarily unable to conduct the essential exam sessions necessary to accommodate exam candidates due to NY PAUSE requirements. A previous enforcement discretion letter issued by DEC extended the expiration date of currently certified applicators. Therefore, apprentices are unable to take the exams to become certified applicators or technicians, which is creating an immediate shortage of eligible workers for agricultural custom application businesses who can apply federally restricted use pesticides.

In order to alleviate this immediate shortage of eligible workers and allow agricultural custom application businesses to operate during this crisis, DEC is providing this enforcement discretion to allow apprentices to apply federally restricted use pesticides while working under the off-site direct supervision of a certified applicator certified in the Agricultural Plant category (category 1a). In order to take advantage of this discretion businesses must operate in accordance with the procedures listed below.

**Procedures:**

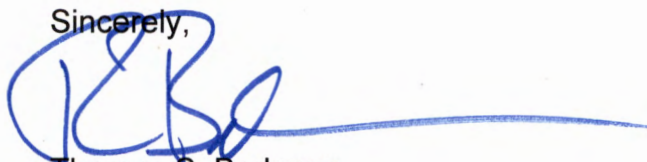
To operate in accordance with this enforcement discretion agricultural custom application business and certified applicators must do the following:

- 1) Ensure that the apprentice is eligible to meet the requirements to take a pesticide applicator certification exam to become a certified applicator or technician in category 1a. To meet this eligibility requirement the apprentice must have completed a category 1a 30-hour course or have a minimum of two years documented pesticide use experience as an apprentice in category 1a;
- 2) Provide training to the apprentice as required in 6 NYCRR § 325.10(a);
- 3) Maintain records as required in 6 NYCRR § 325.10(c);
- 4) Maintain exam eligibility documentation for 3 years;
- 5) Maintain a copy of this enforcement discretion letter for 3 years;
- 6) Make these records available to DEC upon request;
- 7) Prohibit the apprentice from applying fumigants, unless exempt by

- regulation;
- 8) Prohibit the apprentice from applying pesticide products with labels that require on-site supervision or require a certified applicator to conduct the application; and
  - 9) Ensure that the apprentice follows the other direct supervision requirements in 6 NYCRR § 325.7.

This enforcement discretion will terminate 60 days after the expiration of DEC's Emergency Declaration, subject to any extensions issued thereto, or by written notice from DEC.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Berkman', with a long horizontal flourish extending to the right.

Thomas S. Berkman  
Deputy Commissioner, General Counsel