

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
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SUBJECT: Enforcement Discretion for Utility Workers to Apply Stinging Insect Sprays for Personal Protection

DATE:

AUG 11 2020

To Whom It May Concern:

This is to advise you that subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (DEC) will exercise its authority to utilize enforcement discretion with respect to certain provisions of the Environmental Conservation Law (ECL) Article 33 and 6 NYCRR Part 325 relating to the commercial pesticide applicator certification requirements for the application of stinging insect sprays by utility workers and utility contractors for personal protection. The DEC will exercise this authority until the DEC Pesticide Application regulations are revised to address the application of stinging insect sprays in these situations or three years from the date of this letter, whichever is earlier. All other provisions of ECL Article 33 and 6 NYCRR Parts 320 through 329, including the need for pesticide applicator certification in situations other than those mentioned above, remain in effect and will be enforced.

The application of stinging insect sprays to a hive or nest by utility personnel and utility contractors is considered the commercial application of pesticides in New York State as it does not meet the definition of either private or residential pesticide application in 6 NYCRR Part 325. Because these applications are considered commercial pesticide applications, they are required to be conducted by a certified commercial pesticide applicator (certified applicator), a certified commercial pesticide technician (technician), or an apprentice working under the direct supervision of a certified commercial pesticide applicator (apprentice).

In many cases utility workers and utility contractors may or will be: responding to emergency situations; working in hazardous areas where specialized training is required; working from elevated positions; working on live electrical equipment; or working in a secure area where special clearances are required. In these cases, it is not practical for the worker to wait for a certified applicator, technician, or apprentice to conduct an application of pesticides for stinging insects, but there is still a need for personal protection for those working on the equipment from stinging insects in order for equipment maintenance to be performed.

Therefore, the DEC is allowing utility workers and utility contractors under this enforcement discretion to apply New York State registered general use pesticides labeled for stinging insect control without an applicator certification in certain situations. In order to operate under this discretion, the applicator must apply an aerosol product with a directed spray from a container 18 fluid ounces or less, to protect themselves from an imminent threat from stinging or biting insects, including bees, wasps, hornets, or spiders. This exemption from certification shall only be applicable in the following situations:

- electric crews working on pole or structure mounted electric equipment,
- electric crews working on equipment within electrical substations;
- electric crews accessing pad mounted transformers;
- electric crews working in and around underground facilities and manholes;
- electric crews working in contaminated areas,
- electric crews working elevated in a bucket or other similar lift device,
- electric and gas workers gaining access to or working in and around restricted, secured, or hazardous areas;
- for gas transmission and distribution personnel working on appurtenances located on properties owned or held by easement to a registered gas corporation, which includes: meter stations, pipelines, valve sites, test stations, regulator stations, and liquefied natural gas or generation facilities.

If you have any questions, please contact the Pesticides Enforcement and Compliance Assurance Section in the Bureau of Pest Management of the Division of Materials Management at (518) 402-8727.

Sincerely,



Thomas S. Berkman
Deputy Commissioner and
General Counsel