

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Materials Management, Bureau of Pesticides Management

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www.dec.ny.gov

February 11, 2022

To Whom It May Concern:

Re: Use of glyphosate by state agencies, state departments, public benefit corporations, or their contractors and subcontractors on state property.

On December 31, 2021 Subdivision 12 of Section 33-1301 of the Environmental Conservation Law (ECL) went into effect prohibiting the use of glyphosate by state agencies, state departments, public benefit corporations, or their contractors and subcontractors on state property. However, exemptions were written into the law to allow state agencies, state departments, public benefit corporations or their contractors and subcontractors to apply glyphosate on state properties under limited circumstances for critical uses. Furthermore, the law required the New York State Department of Environmental Conservation (DEC) to create a regulation to clarify the requirements of this law.

DEC is developing this regulation and has considered stakeholder input received during and after the October 27<sup>th</sup> regulatory stakeholder meeting. The questions and comments received provided an opportunity for DEC to evaluate various options during the regulatory development, some of which may be incorporated into the proposed regulation. However, since the law is in effect now, it raises the question about compliance with the ECL while the regulation is being developed. To assist with compliance during this interim period DEC opted to send this letter to advise state agencies, state departments, public benefit corporations, and their contractors and subcontractors that are planning whether to use glyphosate on state property.

Throughout this interim period DEC will consider state agencies, state departments, public benefit corporations, or their contractors and subcontractors applying glyphosate on state property to be in compliance with Subdivision 12 of Section 33-1301 of the ECL if all of the following conditions are met:

1. The state agency, state department, or public benefit corporation develops a glyphosate use determination documenting that the application is necessary to either:
  - maintain critical infrastructure;
  - maintain roadside vegetation to ensure public safety;
  - manage habitat for one of the following purposes:
    - control invasive species;
    - control pests of significant public health importance;



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2.

- control noxious plants injurious to ecosystem health; or
  - protect critical native plant species; or
  - conduct research into the environmental motility of glyphosate or to develop suitable alternatives to glyphosate for agricultural and environmental uses.
2. The state department, state agency, or public benefit corporation develops a human exposure assessment documenting that there will be no actual or significant threat of direct human exposure to glyphosate including:
- the potential settings and pathways of exposure to glyphosate for pesticide applicators, on-site workers, and the public;
  - the procedures used to prevent direct human exposure to glyphosate.
3. The state department, state agency or public benefit corporation develops a glyphosate alternatives analysis demonstrating that there are no effective and practicable alternatives to the use of glyphosate.
4. The state department, state agency, or public benefit corporation maintains records that must be made available for inspection by DEC upon request. The records must contain all of the following information:
- the planned date(s) or date range of the application(s);
  - the glyphosate use determination;
  - the application location(s);
  - the target pest(s);
  - the human exposure assessment; and
  - the glyphosate alternatives analysis.
5. By January 15<sup>th</sup> of each year the state department, state agency or public benefit corporation reports all of the following information to DEC in a digital or electronic format as specified or approved by DEC:
- the official name of the state department, state agency, or public benefit corporation;
  - the pesticide agency or pesticide business registration number, if applicable;
  - the pesticide product name;
  - the United States Environmental Protection Agency registration number of the pesticide product;
  - the amount of pesticide product applied; and
  - the location of application.

3.

A copy of this report must be maintained and made available for inspection by DEC upon request.

The conditions described in this letter for state agencies, state departments, public benefit corporations, or their contractors and subcontractors applying glyphosate on state property will remain in effect under the authority of the ECL until the regulation goes into effect or this document is rescinded.

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

Sincerely,

*Scott Menrath*

Scott Menrath P.E.  
Director, Bureau of Pesticides Management