

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
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SUBJECT: Enforcement Discretion for Application of Dry Ice Rodenticides

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 6 NYCRR Part 325 relating to the commercial pesticide applicator certification requirements for the application of USEPA and DEC registered general use rodenticides with dry ice as the only active ingredient. The DEC will exercise this authority until three years from the date of this letter, until this discretion is revoked, or until the DEC Pesticide Application regulations are revised to address the use of general use fumigants. All other provisions of 6 NYCRR Parts 320 through 329 remain in effect and will be enforced.

Dry ice rodenticides are considered fumigants by the DEC due to the regulatory definition of fumigant in 6 NYCRR Part 325.1(a) - "Fumigant means any pesticide product that is a vapor or a gas, or forms a vapor or gas on application, and whose pesticidal action is through the gaseous state". Upon application the dry ice sublimates to carbon dioxide gas. Dry ice rodenticides meet the requirements of this definition and the applicable category of pesticide applicator certification is category 7B, fumigation, as described in 6 NYCRR Part 325.16(g)(2).

The certification requirements for fumigants and the direct supervision of commercial certified pesticide technicians {technicians} and commercial pesticide apprentices (apprentices) are described in 6 NYCRR Part 325.7 as follows:

- 6 NYCRR Part 325.7(d)(1)(ii) requires on-site direct supervision when a technician applies fumigants, except when using fumigants classified as general use that are applied to in-place utility poles.
- 6 NYCRR Part 325.7(d)(2)(iii) prohibits apprentices from applying fumigants, except when using fumigants classified as general use that are applied to in-place utility poles.
- 6 NYCRR Part 325.7(d)(3) requires technicians to apply fumigants under the direct observation and instruction of the certified applicator, except when using fumigants classified as general use that are applied to in-place utility poles.

These application requirements and the direct supervision requirements for fumigants were developed in response to the toxicity and inhalation hazards associated with restricted use fumigants and did not specifically address general use fumigants, except those developed for application to in-place utility poles. The lower toxicity of this newly registered product, general use dry ice rodenticides, does not warrant the on-site oversight by a certified applicator that a restricted use fumigant would require. The precautionary language on the label for restricted use fumigants is much more stringent than those of dry ice rodenticides. In addition to category 7B, the DEC has explored the possibility of allowing the application of dry ice in certification categories 7A, structural and rodent; 3A, ornamentals, shade trees and turf; and 3B, turf due to the lower toxicity and risks associated with use of this newly registered product.

Therefore, the DEC will be exercising enforcement discretion associated with the on-site direct supervision requirements of fumigants for the use of dry ice rodenticides. This enforcement discretion will allow technicians and apprentices to apply dry ice rodenticides under the off-site direct supervision of a certified pesticide applicator in category 7B, fumigation, in a manner similar to the application of general use fumigants for in-place utility poles. This discretion will also allow the use of dry ice rodenticides by applicators, technicians, and apprentices in certification categories 7A, structural and rodent; 3A, ornamentals, shade trees and turf; and 3B, turf. The area of application for each category will be limited to those specified in the category descriptions in 6 NYCRR Part 325.16 and DEC regulatory interpretations.

Thank you for your cooperation in this matter. If you have any questions, please contact the Pesticide Enforcement and Compliance Assurance Section in the Bureau of Pest Management of the Division of Materials Management at (518) 402-8727.

Sincerely,

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

Thomas S. Berkman
Deputy Commissioner
and General Counsel