

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

DATE: AUG 07 2023

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 (Department) 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 pesticides to control stinging and biting insects by Monroe County Water Authority (MCWA) water utility workers, and their contractors, as set forth below. The Department will exercise this authority regarding the provisions outlined below until the earliest of either three years from the date of this letter, until this discretion is revoked, or until a revision to the 6 NYCRR Part 325 regulations are revised to address the application of stinging insect pesticides in the below situations. All other provisions of 6 NYCRR Parts 320 through 329, including the need for pesticide applicator certification in situations other than those mentioned below, remain in full effect and will be enforced.

During their duties, MCWA water utility workers, and their contractors, may need to work in hazardous conditions or in secure areas where special clearances are required, such as, but not limited to: high traffic areas; confined spaces; elevated positions; in or over water; or near electrical equipment. While working in these areas they may encounter stinging or biting insects, which could increase the danger associated with this work, and potentially endanger the public if the work is not completed in a timely manner. Stinging and biting insects include but are not limited to bees, wasps, hornets, and spiders.

The use of pesticides to control insects on MCWA property would be considered a commercial application of pesticides in New York State as it occurs on property not owned or leased by the applicator, and therefore does not meet the definition of either private or residential pesticide application in 6 NYCRR Part 325. Because these pesticide 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).

The Department recognizes that when stinging or biting insects are not anticipated in these hazardous situations it is not practical for a worker to wait for a certified applicator, technician, or apprentice to arrive at the site and conduct an application of pesticides to control stinging and biting insects. There is a need for workers to be protected from stinging or biting insects in situations where workers or contractors must respond to an emergency or imminent public safety issues. Therefore, the Department is allowing MCWA water utility workers, and their contractors, under this enforcement discretion to apply New York State registered general use pesticides, labeled for stinging or biting insect control without a pesticide applicator certification in certain situations.

MCWA water utility workers, and their contractors, are allowed under this enforcement discretion to apply a registered pesticide, appropriately labeled for the target pest, with a directed spray from an aerosol container, 18 fluid ounces or less, to protect themselves from an imminent threat from stinging or biting insects. This exemption from certification will only be applicable on property owned, operated, or maintained by the MCWA, where MCWA water utility workers, or their contractors, must respond to an emergency or imminent public safety issue in the following situations:

- accessing, inspecting, repairing or installing equipment, vehicles and structures needed to safely operate the system;
- working in confined spaces, areas where access is limited or hazardous, underground facilities, or manholes;
- working in high traffic areas;
- working in secure areas where special clearances are required;
- working elevated in a bucket or other similar lift device; or
- removing or trimming trees and vegetation necessary to protect the public.

If you have any questions, 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,



Thomas S. Berkman
Deputy Commissioner and
General Counsel