

Massachusetts Pesticide Board  
c/o Massachusetts Department of Agricultural Resources  
251 Causeway Street – Suite 500  
Boston, MA 02114

RE: Pesticide Board Meeting December 7, 2011  
Agenda Item No. 2: Policy Amending the Department's Interpretation of Applications of Pesticides

Made Under "Direct Supervision" of a Certified Applicator

Dear Board Members:

Please accept this note as a formal request for an Advisory Ruling pursuant to 333CMR 2.04. This request is made in reference to your consideration at the meeting scheduled to be held on December 7<sup>th</sup>, 2011 of Agenda Item No. 2: *Policy amending the Department's interpretation of the applications of pesticides made under the "direct supervision" of a certified applicator.*

The New England Pest Management Association (NEPMA) is made up of a group of 164 pest management firms providing service throughout the Commonwealth of Massachusetts. Our member firms employ several thousand licensed applicators, all of whom have a direct interest in your ultimate determination and guidance given the Department. As a consequence, we respectfully request the Board defer any ruling, consider this matter in depth and render an Advisory Ruling within 90 days per the regulation cited above.

The members of our group believe the policy amendments under consideration are so material and significant that their adoption as proposed by the Board would constitute action which is restricted to the legislative and rule making processes (Chapter 30A – Administrative Powers act).

The original legislation, M.G.L. Chapter 231B (Massachusetts Pesticide Control Act), as well as the provisions of 333CMR, "direct supervision" does not require a certified applicator be physically present at the time and place when restricted-use pesticides are being applied under another person's supervision, nor does it require the certified applicator be within a specific distance or time frame from the application itself.

A stated purpose of M.G.L. Chapter 132B is "to conform the Laws of Commonwealth to the Federal, Insecticide, Fungicide and Rodenticide Act, Public Law 92-515, as amended...". (FIFRA) The FIFRA language does not include the same requirements as those contained within the Department proposed amendments. Hence, we believe that any action taken by the Board on Agenda Item No. 2 at this time would constitute a legislative or rule-making act and result in Massachusetts law being inconsistent with FIFRA. We believe the amendments being proposed for consideration are outside the statutory authority of the Board, as implementation of the proposed policies constitutes law making, or at least regulation promulgation outside of Chapter 30A.

If endorsed as proposed, these new requirements will have a significant impact on our industry's ability to conduct business in the Commonwealth and provide services at a reasonable cost while protecting and servicing the consumers of Massachusetts. For example, mandating an artificial time limit to be able to appear on site of an application is not necessary when today's communication technology allows supervisory people to provide nearly instant advice and guidance, including stop action directions if

deemed necessary. Non-certified applicators have met the same safety, health and application standards as the certified person through an examination process, including demonstrating the ability to read and interpret pesticide labels. Non-certified individuals must also meet continuing education and training requirements in order to retain licensure and maintain competency.

In the Department's background document a number of bulleted point violations are cited. Each of the actions noted are violations of Chapter 132B or 333CMR. The Department already has the authority and tools to deal with each of these violations and the proposed changes would have no positive or negative impact on the agency's ability to take enforcement actions.

Without getting into more specifics, we respectfully request you grant our request to defer offering final advice on Agenda Item No 2 and conduct a comprehensive review of the proposed policy changes per 333CMR 2.04 and at least determine if this is the correct forum for these changes. The industry is interested in a continuing dialogue with the Department over their concerns and how to better address the issues raised.

Respectfully,

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Marillian Missitti, President