



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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BOSTON, MASSACHUSETTS 02114-2023

November 13, 2009

Your letter to Lisa P. Jackson, EPA Administrator, was forwarded to EPA's New England Office for a reply. We understand your concerns about proposed rights-of-way pesticide applications in your Cape Cod community, especially as they relate to potential impacts on groundwater.

The U.S. Environmental Protection Agency is the federal agency that regulates the use of pesticides under the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug and Cosmetic Act. FIFRA gives EPA the authority and responsibility for registering pesticides for specified uses, provided that such uses do not pose an unreasonable risk to human health or the environment. Pesticide registration decisions are based primarily on EPA's evaluation of test data provided by applicants. Testing is needed to determine whether a pesticide has the potential to cause adverse effects on humans, wildlife, fish, and plants, including endangered species. Potential human risks, which are identified by using the results of laboratory tests, include acute toxic reactions, such as poisoning and skin and eye irritation as well as possible long-term effects like cancer, birth defects, and reproductive system disorders. Data on "environmental fate" are also required so that EPA can determine whether a pesticide poses a threat to ground or surface water. When EPA registers pesticides it accepts pesticide label language, and it is a violation of the law for any person to use a pesticide in a manner inconsistent with its labeling.

The issue of specific applications by certified and/or licensed commercial applicators is under the jurisdiction of the state pesticide program. To implement the pesticide laws the EPA works closely with state pesticide regulatory programs. The Massachusetts pesticide regulatory agency is the Division of Crop and Pest Services that is located within the Department of Agricultural Resources. The state pesticide program is the agency responsible for enforcing pesticide laws and regulations and training and certifying pesticide applicators.

States may not change pesticides label language; however, they may further restrict the use of pesticide products through state regulations. Massachusetts has many restrictions on how pesticides are used beyond the federal pesticide label requirements, especially through its rights-of-way program. Under state regulations, the Department of Agricultural Resources has jurisdiction over herbicide application in rights-of-way areas.

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State regulations (333 CMR 11.00) contain provisions for the use of herbicides as part of a vegetation management plan and in the support of the functioning and use of rights-of-way areas. These state regulations are in addition to what is required on the federally accepted pesticide label. As part of these state regulations the Department of Agricultural Resources has developed a list of pesticides that are allowed for use in sensitive areas, including water supplies, wetlands, state-listed species habitat and residential and agricultural areas. This list of pesticides was generated after thorough review by the Massachusetts Department of Agricultural Resources and the Massachusetts Department of Environmental Protection. The Department of Agricultural Resources also reviews and approves Vegetation Management Plans (VMPs) and Yearly Operational Plans (YOPs) submitted by entities involved in rights-of-way management.

NSTAR has complied with the Massachusetts rights-of-way regulations. It has submitted and received approval on its VMP for designated rights-of-way areas and has requested to make a limited number of pesticide applications in certain areas on Cape Cod as part of its approved 2009 Yearly Operational Plan. There are three types of pesticide applications that may be made: 1) selective foliar applications; 2) low volume basal stem treatment; and 3) cut stump surface treatments. These three application methods minimize the amount of pesticide product applied and the risk to ground water resources. In addition, the Department of Fish and Wildlife has determined that this approach to vegetation management will be less disruptive to wildlife and state-listed species habitat than alternative approaches, including sole reliance on mechanical control methods.

EPA New England supports the Massachusetts right-of-way program because of its protections of human health and the environment. On August 12, 2009 in Eastham, Massachusetts the Department of Agricultural Resources participated in a public meeting on the proposed herbicide right-of-way applications. Presentations were made and/or questions answered at this meeting by Department of Agricultural Resources Commissioner, Scott Soares; Environmental Chemist and Water Quality Specialist, Hotze Wijnja, Ph.D.; Toxicologist, Steve Antunes-Kenyon; and Right of Way Program Coordinator and Pesticide Inspector, Mike McClean. Also participating in this meeting were representatives from the Massachusetts Fish and Wildlife Division and the utility company.

While we are confident about the strength of the Massachusetts rights-of-way program, we recognize your concerns. As a follow-up to your letter we will request that the pesticide regulatory program conduct pesticide use inspections for rights-of-way applications on Cape Cod. In addition, during our 2009 and 2010 end-of-year reviews of the Massachusetts pesticide program, EPA's oversight of the state program will include a review of all relevant pesticide inspection reports.

Thank you for your letter and interest in rights-of-way pesticide applications on Cape Cod.

If you have additional questions or believe that EPA New England can be of further assistance on this issue, please feel free to contact Robert Koethe of my staff by e-mail at Koethe.robert@epa.gov or by telephone at (617)-918-1535.

Sincerely,

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship

cc: Representative William Delahunt