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Environmental Health and Safety

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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October 19, 2009

Mr. Earl Haas
Pennsylvania Department of Agriculture
Bureau of Plant Industry
2301 North Cameron Street
Harrisburg, PA 17110-9408

Re: Proposed Pesticide Regulation Amendments

Dear Mr. Haas:

I am writing in response to the proposed amendments to the pesticide regulations as given in the September 26th, 2009 issue of the Pennsylvania Bulletin on behalf of pesticide use at Penn State University. We support the vast majority of the proposed changes, and particularly the improved clarity. We are concerned, however, that one of the regulatory changes proposed may make it more difficult for us to respond to potentially life threatening pest issues as well as affect our daily operations. In addition, the section on prior notification for different types of applications seems inconsistent. Our comments are provided below.

As background, Penn State employees who apply pesticides are all deemed to be public applicators according to 7 Pa Code §128.41, Requirements for Certification:

- (a) A person is deemed to be a commercial or public applicator and required to be certified if one or more of the following criteria are met: ...
 - (3) A person who applies or supervises the application of a pesticide **to the following locations** [my emphasis] or who is involved in the following types of application: ...
 - (iv) Educational and research institutions – Includes a person employed by a public or private educational and research facility that uses pesticides in its educational and research programs.

Our interpretation of this regulation is that because we use pesticides in our educational and research programs and because we are an educational and research institution, **all** of our employees that use pesticides are required to be public applicators. This includes employees who work at our housing and food service facilities, indoor facilities, landscape facilities, research facilities, etc.

This regulation has a significant impact on our trades personnel who may encounter a hornet's nest in their work area or our housing personnel who may encounter a student who is allergic to bees. It is impractical for every PSU employee to be a licensed public pesticide applicator (we do use licensed pesticide applicators for the vast majority of our "normal" pesticide applications

including landscape, agricultural, field maintenance, pools, indoor pests, etc.) thus we have chosen to provide our trades and housing personnel with EPA exempt products such as Victor's wasp and hornet killer (which contains mint oil, sodium lauryl sulfate, water, and carbon dioxide) to address these types of situations. This type of material can address the pest problem safely and reasonably effectively while providing no exposure issues and minimal training issues for these employees and the public.

The proposed regulation change to 7 PA Code §128.41 will specifically include EPA exempt products to be covered by regulation for those deemed to be commercial or public applicators. In EPA's Pesticide Registration (PR) Notice 2000-6, Minimum Risk Pesticides Exempted under FIFRA Section 25(b) Clarification of Issues, dated May 7, 2000 it states "In 1996, EPA exempted certain minimum risk pesticides from FIFRA requirements if they satisfy certain conditions. EPA exempted the products described in 40 CFR section 152.25(g) in part to reduce the cost and regulatory burdens on businesses as well as the public for pesticides posing little or no risk, and to focus EPA's limited resources on pesticides which pose greater risk to humans and the environment. This exemption provision is located in section 152.25(g) of Title 40 of the Code of Federal Regulations." We believe that this was reasonable and in good judgment, and disagree with the proposed regulation in Pennsylvania of these materials.

Subchapter C discusses prior notification for five types of applications: right-of-way, nonagricultural specific site, ornamental or turf, nonagricultural area-wide, and agriculture. In Definitions, 7 PA Code §128.2, is the following which addresses those to whom prior notification must be provided (as given below):

"Land contiguous to a restricted use pesticide application site – Premises which share a mutual border with the premises upon which the application site is located. The term does not include premises located more than 100 feet from the application site,"

In the revised 7 PA Code §128.81(b) (right-of-way applications), the term "land contiguous to the restricted use pesticide application site" is used in the discussion of who needs prior notification although in 7 PA Code §128.81(c)(1) the term is "land contiguous to the application site."

In 7 PA Code §128.82(a) and (b)(1) (nonagricultural specific site applications), the term "land contiguous to the application site" is used.

In 7 PA Code §128.83a(b)(1) and (c)(1) (agricultural applications) the term "land contiguous to the restricted use pesticide application site" is used.

In 7 PA Code §128.84(b)(1) (nonagricultural area-wide applications) the term "land contiguous to the application site" is used.

In 7 PA Code §128.85a(a)(1) (ornamental or turf applications) the term "premises sharing a mutual border with the residence of the person making the request" is used.

Our first comment on prior notification reflects the use of this language. If the term "land contiguous to the restricted use pesticide application site" is meant (as defined in 7 PA Code

§128.2) for all but the ornamental or turf applications, it should be specifically worded that way in the regulations for prior notice to reference the given definition.

Our second comment refers to the prior notification for ornamental or turf applications. Penn State owns many thousand acres of contiguous land. A pesticide application could be miles away from “premises sharing a mutual border with the residence of the person making the request.” We understand that the ornamental and turf prior notification includes both general use and restricted use pesticides (unlike that for other prior notice application requirements), but the unlimited distance of the application from the potential requester is both onerous and not meaningful. It would seem that with this proposed regulatory amendment it would be a good time to broaden the definition of “land contiguous to a restricted use pesticide application” to include both restricted and general use pesticide applications as it applies to turf and ornamentals. This would then limit the distance to 100 feet or less for prior notification for any pesticide application to ornamentals or turf.

We appreciate this opportunity to provide comment on this regulatory proposal. If you have any questions or require clarification, please feel free to call me.

Sincerely,

Lysa Holland, P.E.
Environmental Compliance Engineer

cc: Maurine Claver
Eric Lorenz