EMERGENCY WAIVER PROVISIONS[1]

THE CHILDREN'S AND FAMILIES' PROTECTION ACT ("the Act")

Introduction

This document serves as a guide for Boards of Health and Health Officials, Schools, and Pest Management Professionals (PMP) when making decisions regarding pest problems that are deemed an emergency in accordance with the Children's and Families' Protection Act (**"the Act"**).

The Act limits and prohibits the use of certain pesticides in schools, day care centers, and school-age childcare programs (**Note: schools, day care centers, and school-age childcare programs will be referred to as schools and their respective properties as school property**). In addition, the Act requires written notification for outdoor uses at least two (2) days prior to the commencement of the use of any pesticide allowed by Act. **However, pest situations deemed an emergency might warrant a pesticide not otherwise allowed in the Act or warrant its use sooner than two (2) days.**

The emergency provisions provide schools with the only mechanism to waive the requirements of the Act in order to protect children in the event of an emergency pest problem (one that poses an immediate threat and when no viable alternative to the use of pesticides exist). *Although the law provides for schools to apply for an emergency waiver from the Department of Agricultural Resources, the Department encourages schools to communicate with the Board of Health regarding these matters particularly in the case of public schools*.

Finally, it is recommended that schools work closely with their local public health authorities and pest management professional (PMP) to carefully consider each pest situation individually since no blanket approvals will be given. The Act requires the use of Integrated Pest Management or IPM, which focuses on prevention strategies to minimize and/or eliminate the need for such emergency waivers.

Emergency Waiver Overview

The main components of the emergency provisions are:

(a) Schools should first:

- **determine that an immediate human health emergency exists** that warrants the use of pesticides not allowed under the Act or that warrants their use sooner than the two day notification requirement would allow
- **apply for a single-use waiver** from the local Board of Health Agent or Department of Agricultural Resources

(b) Boards of Health or the Department of Agricultural Resources (if applicable) must:

- **determine if the single-use emergency waiver is warranted** using the following criteria:
  - **(a)** the *pest problem poses an immediate threat to human health* **AND**
  - **(b)** *no viable alternatives other than pesticides exist to address the problem*

- **require a commitment from school(s) to identify the cause(s) of the emergency pest problem in order to prevent future problems**

(c) Schools are required to:

- post **warning signs near and along the perimeter of the site of the treatment**

- leave the warning **signs posted for at least 72 hours**

- provide **standard written notification** to employees, pupils, and parents **immediately prior to or immediately following emergency treatment (this includes indoor & outdoor emergency applications)**

- maintain and make available to the public upon request written or electronic records of the emergency, the cause, and actions taken on site for 5 years

---

[1] Section 6 H of Chapter 85 of the Acts of 2000 amending Chapter 132 B of the Massachusetts General Laws (State Pesticide Control Act)

Emergency Waiver Requirement and Recommendation

The Act requires that the local Board of Health Agent or Department of Agricultural Resources (if applicable) determine if an emergency waiver requested by schools is warranted. The decision to grant the waiver should be based upon the following criteria.

1. The emergency pest situation must present an immediate threat to human health **AND**
2. There must be no viable alternatives to the use of pesticides to address the pest problem

- If an emergency exists, the Department of Agricultural Resources recommends that schools request a waiver ***by faxing*** *the attached emergency waiver applicatio n* (see attached application form) to the Board of Health. **For the purpose of implementation, the Department of Agricultural Resources recommends that the local authority such as the Board of Health exercise approval authority for emergency requests particularly in the case of public schools.**

Examples of Emergency Waiver

It would not be practical to pre-determine all of the anticipated situations that could be approved as an emergency waiver. However, it would be safe to say that the following circumstances are commonplace at schools.

Example A

Hymenopterous insects (ants, bees, wasps, and hornets) located in an area (entryway) where employees and pupils are at risk of being harmed is an example of an immediate threat to human health which could necessitate an emergency waiver. In this circumstance, the risk of being stung and potential allergic reactions call for immediate action. Pesticide products that ensure quick knockdown and stupefaction are warranted and as such should be approved as an emergency waiver. In this case, viable alternatives that could assure immediate protection would not exist.

However, if these insects were located in another area (away from buildings) of the school property where the risk of being harmed was negligible, an immediate threat to human health would not exist. Therefore, an emergency waiver should not be approved.

On the other hand, hymenopterous insects attracted to dandelions and clover could be construed as an example of an immediate threat to human health. However, a viable alternative to the use of chemical pesticides exists such as frequent mowing to remove flower heads that attract stinging insects. This scenario proves unworthy for emergency status!

Many situations appearing to be a health threat will have viable alternatives. These situations would have to be closely reviewed with accurate identification of the pest an important part of the decision-making process.

Example B

Honey bees unlike wasps and hornets have bodies that appear densely covered with hairs. Although they can sting, their behavior is less aggressive. A honey bee swarm although appearing to be an immediate threat would not require action with a pesticide. Children and employees can be told to avoid the area temporarily since the swarm will leave on its own accord within a few hours. Digger bees and wasps that may burrow in sand around play areas can cause consternation. However, correctly identifying these insects would indicate that they are non-aggressive type of wasp and the play area could be covered with plastic to deter activity. Mud-dauber wasps are not aggressive and are another example whereby a viable alternative exists such as scraping away and removing of nests. Stinging ants hitchhiking on indoor potted plants from another part of the country have viable alternatives such as removing and replacing the plants. **In these situations, it is imperative that the school works closely with the pest management professional (PMP) to correctly identify the pest so that viable alternatives can be implemented to correct and prevent these pests.**

Example C

A high school football coach sends a letter to the school principal regarding the current conditions of his athletic fields. The turf has a severe grub problem and the turf has died back making the playing surface unsafe for upcoming football games. In his letter, he is petitioning the school to seek an emergency waiver from the local Board of Health to control grubs.

The situation does not reflect an immediate human health problem. Further, chemical treatments later in the year may not remedy or prevent harm to football players in this particular instant. The damage has already been done and it is too late to intervene with chemicals. The damaged turf will need to be removed and replaced. Thereafter, a viable alternative would be to monitor and sample turf earlier in any given year to prevent damage that may occur later in any year.
In this kind of circumstance, a good Integrated Pest Management or IPM plan would anticipate this problem and recommend actions to prevent this problem in the future.

Key and Ultimate Responsibility

The key in determining any emergency pest situation will rely on the following criteria:

- ✓ The emergency pest situation must present an immediate threat to human health AND
- ✓ There must be no viable alternatives to the use of pesticides to address the pest problem

However, it should be acknowledged that schools are ultimately responsible for their employees and students. Therefore, if a school reasonably believes that more protection is warranted than otherwise allowed by the law, it would be prudent for local health authorities and the department to lend its support by facilitating approval of emergency waiver requests on a case-by-case basis. For example, this action may come into play when infected mosquitoes or human cases are confirmed positive for West Nile Virus has been found near the school.

EMERGENCY WAIVER APPLICATION

FOR PESTICIDE USE IN SCHOOLS, DAY CARE CENTERS, OR SCHOOL AGE CHILD CARE PROGRAMS

The school, day care center, or school aged child care program listed below has determined that a human health emergency pest problem exists making necessary the use of a pesticide(s) not otherwise allowed under the Massachusetts Pesticide Control Act. In addition. the emergency nature of the pest problem warrants exempting standard written notification until after the emergency treatment. Further, the school, day care center, or school-aged child care program listed below requests formal approval of a single-use waiver in accordance with above statute. (***Note: School refers to school, day care center, or school aged child care program***)

I. GENERAL INFORMATION (Applicant must complete-please print)

NAME OF SCHOOL: _____

ADDRESS: _____

CITY/TOWN: _____

TELEPHONE: _____

FAX NUMBER: _____

E-MAIL ADDRESS: _____

NAME OF PERSON REQUESTING EMERGENCY WAIVER:

_____

AN IPM PLAN IS ON FILE: **(effective 11-1-01)**? _____YES _____NO

****

II. EMERGENCY INFORMATION (Applicant should describe the emergency as well as any other method(s) used to solve the problem)

_____

_____

_____

Applicant must answer (yes or no) regarding the emergency situation

Does the pest problem pose an immediate threat to human health? _____YES _____NO

Are there any viable alternatives that could be used in place of pesticides?
to solve the pest problem? _____YES _____NO

FAX THIS FORM TO YOUR MUNICIPAL BOARD OF HEALTH OR TO THE DEPARTMENT OF AND AGRICULTURE AT (617) 626-1850. COPIES OF THIS *APPROVED* EMERGENCY WAIVER (pages 1 & 2) MUST BE MAINTAINED BY THE PEST MANAGEMENT PROFESSIONAL (PMP) AND BE IN THE POSSESSION OF THE PMP AT THE TIME OF TREATMENT.

III. APPLICANT COMMITMENT [(Applicant must describe potential cause of the pest problem and list future actions that will be used to prevent this problem (if applicable)]

_____

_____

_____

_____

Applicant must ensure all requirements listed below are met as a condition of this approval.

(Check List)

? -warning signs will be posted near and along perimeter of treatment

? warning signs will remain for at least 72 hours

? standard written notification provided prior to or after emergency

? emergency documentation maintained on site

****

(For Board of Health or Department of Agricultural Resources Use Only)

A SINGLE-USE WAIVER IS APPROVED FOR EMERGENCY PESTICIDE TREATMENT

Approved For: _____

Name of School

For Control of: _____

List Pest(s)

For the use of: _____

List Trade Name and Active Ingredient of Pesticide **EPA Reg #.**

Date Approved: _____

Approved by: _____ _____ ____/____/_____

Name **Title** **Date**

Telephone: (_____)_____ - _____ **Fax:** (____)_____ - _____

WARNING: This form must be signed and approved by the appropriate parties Board of Health(BOH) or Massachusetts Department of Agricultural Resources (DAR) before an application can take place.

FAX THIS FORM TO YOUR MUNICIPAL BOARD OF HEALTH OR TO THE DEPARTMENT OF AGRICULTURAL RESOURCES AT (617) 626-1850. COPIES OF THIS *APPROVED* EMERGENCY WAIVER (pages 1 & 2) MUST BE MAINTAINED BY THE PEST MANAGEMENT PROFESSIONAL (PMP) AND BE IN THE POSSESSION OF THE PMP AT THE TIME OF TREATMENT.