

Vegetation Management Plan (VMP) Town of Belchertown, MA 2026-2030



Submitted: December 2025

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333 CMR 11.00 Rights-of-Way Management Regulation

1.0 Introduction

The Vegetation Management Plan (VMP) for the Town of Belchertown is designed to establish a five-year program to control vegetation along facilities considered rights-of-way (ROW) in compliance with the Rights-of-Way Management Regulations (333 CMR 11.00) as promulgated by the Massachusetts Department of Agricultural Resources (MDAR). ROWs according to CMR 333 11.02 include any “roadway or thoroughfare on which public passage is made and any corridor of land over which facilities such as railroads, power lines, pipelines, conduits, channels or communication lines or bicycle paths are located.” This Vegetation Management Plan will seek to implement a set of standards to achieve vegetation management in the safest and most environmentally conscious manner.

The Town of Belchertown is in Hampshire County, Massachusetts. Belchertown is in the Eastern portion of Hampshire County about ten miles east of Amherst and ten miles west of Ware. The Town of Belchertown is approximately 55.4 square miles, 52.7 square miles is land and 2.7 square miles of that being water. Belchertown’s current population consists of 15,350 residents. The Town of Belchertown is rich in history dating back to the late 1700s with industry. Belchertown was the largest buggy producing town in Massachusetts. The Town has a rich heritage of farming boasting over one hundred farms at one point in our history. The town hosts a variety of activities including hiking trails, biking on rail trail, scenic roadways for adventures whether by foot or by vehicle. The Town of Belchertown is adjacent to the Quabbin Reservoir. With its rolling hills, Dike and Dam it is a beautiful area for sightseeing wildlife to include Deer, Bobcat, Bear and Bald Eagles.

2.0 Statement of Goals and Objectives

This VMP is intended to establish criteria for the Town of Belchertown to control vegetation along municipal ROWs in compliance with the Rights-of-Way Management Regulations (333 CMR 11.00) as promulgated by the MDAR all while implementing an Integrated Vegetation Management (IVM) approach.

The primary objective of this VMP is to provide the public with safe and unobstructed ROWs while minimizing reliance upon herbicides. Vegetation management and subsequent maintenance is necessary along public ROWs, including roads, sidewalks, bike paths (also called shared-use paths) trails, storm water drainage infrastructure, parks and cemeteries- to manage unwanted vegetation that may pose a public nuisance, result in safety hazards, or cause damage to structures and infrastructure. The Town of Belchertown maintains considerable public infrastructure and must perform routine vegetation management along approximately 150 center lane miles of roadways, drainage, and approximately 17 public facilities also including two parks, nine cemeteries and the town common. In addition, Belchertown has an estimated 30.5 miles of drainpipe in its stormwater system, along with other infrastructure such as 136 outfalls, 1,259 catch basins, and 366 manholes comprising of the towns overall stormwater system infrastructure, which also includes culverts and other components

The goal of the program is to manage undesirable vegetation while maximizing environmental protection and minimizing the use of herbicides. Only herbicides listed on the current ROW Sensitive Areas Materials List will be used <https://www.mass.gov/orgs/massachusetts-department-of-agricultural-resources>. monitoring and inspection will aid in the success of the VMP which is expected to:

- Manage target vegetation within the ROWs while ensuring the protection of sensitive areas and the environment.
- Reduce the amount of herbicide product applied over time.
- Decrease the frequency of herbicide applications.
- Ensure vegetation management activities are conducted in a safe and effective manner and in compliance with regulations.

Management Tactics

The decision to use one or a combination of vegetation management techniques will depend on the site-specific situation. The management techniques selected will control target vegetation in the most environmentally sensitive and efficient manner.

This VMP will serve as technical guidance for individuals involved in ROW vegetation management and as an accessible source of information for residents and public officials.

3.0 Target Vegetation

Targeted vegetation will be species that fall into the categories described below. The Town of Belchertown will submit a Yearly Operational Plan (YOP) for MDAR approval which will specify the herbicide(s) to be used, target species and application locations.

Hazard Vegetation

Vegetation considered to be a hazard includes plants or/ plant species that pose a risk to public safety or that impede movement along public ways. Hazard vegetation may obscure sight lines, and vehicular movement, create windfall hazards, and cause winter shading (causing ice/reduced melting).

Noxious Vegetation

This category includes vegetation that could cause problems to the general public, employees or contractors. Generally, it includes poisonous plant species and those with thorns. Noxious vegetation poses a risk to safety and health often due to dermal contact with plants that are poisonous. Target vegetation in this category is poison ivy and other noxious vegetation within 10 feet of the edge pavement.

Detrimental Vegetation

Detrimental vegetation applies to all vegetation that can destroy or compromise the function of infrastructure by growing in cracks along the roadway, pavement/bridge joints, medians/traffic islands, drainage structures/drainage ways, trails and bike paths.

Invasive Vegetation

Invasive plants can aggressively colonize areas along ROWs, blocking site distances and compromising infrastructure. Many invasive plants, such as Japanese knotweed and common Reed (phragmites), are difficult to control using mechanical means alone. Mechanical methods can also result in spreading these plants to new locations. In addition, invasive plants pose a threat to biodiversity of naturalized areas. Herbicides are the most effective method of treatment for many invasive plants.

Invasive plants include those listed on the Massachusetts Prohibited Plant List. Located at <https://www.mass.gov/service-details/Massachusetts-prohibited-plant-list> and those voted as invasive, likely invasive, and potentially invasive by the MA Invasive Plants Advisory Group.

4.0 Vegetation Management Methods and Actions to Minimize Herbicides

Vegetation management methods will include both non-chemical techniques and chemical application where necessary. Vegetation management may involve the following methods:

- Physical Control – street sweeping, sealing cracks, resurfacing.
- Mechanical Control – hand cutting, mowing, selective trimming.
- Chemical Control – foliar herbicide treatments, cut stump surface treatment.

The management methods selected will be chosen based on a variety of factors with the goal of achieving a long-term vegetation management program.

Physical

Physical management methods will be primarily on pavement maintenance. Pavement maintenance will consist of street sweeping, and general ROW repairs including crack sealing, resurfacing, and installing new sidewalks. This helps to eliminate weeds by preventing seeds from imbedding in pavement cracks. The Town also completes routine street sweeping. The buildup of sediment and other material can provide a medium for plant growth. Regular street sweeping can help eliminate this material from accumulating as a base for weed establishment

Mechanical

Mechanical management methods may include hand cutting, mowing, and or/ selective trimming.

Hand-Cutting

Hand-cutting consists of the mechanical cutting of target species using chainsaws and brush saws. Target species are cut as close to the ground as practical. Hand-cutting is used to protect environmentally sensitive sites. It is also used on target vegetation greater than twelve feet in height. Hand Cutting is used on those restricted sites where terrain, site size or environmental sensitivity renders mowing impossible or impractical. Hand-cutting may be conducted at any time during the year.

Mowing

Mowing consists of the mechanical cutting of target vegetation using push mowers, large rider mowers, rear deck mowers, brush mowers, over the rail boom mowers and line trimmers. Selection of the specific equipment is based on terrain, target vegetation species, size and density of the target vegetation area, and equipment availability. Mowing will be used in areas where terrain and target stem size allows safe and efficient use of the above machinery. Mowing will be the principal method for vegetation management along road shoulders and where herbicide use is prohibited. Mowing will be conducted seasonally when weather conditions allow.

Selective Trimming

Selective trimming consists of the mechanical pruning of encroaching limbs of tall trees that may block roadway, sidewalk, and trail, and bike path access. Trimming will be accomplished using aerial lifts via trucks or tractors, or by climbing crews if terrain or obstruction prevents equipment access

Chemical

Chemical management may include foliar treatment and/or cut stump surface treatments. Selected chemicals are limited to those listed on the MDAR Rights of Way Sensitive Area Materials List.

Foliar Treatment

The application of herbicides per label requirements, to the leaves, stems, needles or blades of target vegetation. The equipment consists of backpack and vehicle mounted sprayers. Both use low pressure at the nozzles per 333 CMR 11.02. Foliar applications take place when the leaves are fully developed in the spring until early fall and the beginning of leaf abscission-i.e., when leaves begin dropping.

- Hand-held backpack sprayers, hand-pump or motorized backpack sprayers or squirt bottles are used for spot treatments along ROWS for small woody material.
- Poison ivy or other noxious vegetation- Must be growing within 10 feet of a Right-of-Way. Spot treatment will be made using low volume sprayers.
- Herbaceous species – Spot treatment of grass growing along guardrails or in cracks where mowing or cutting is not practical.
- Low Growth- Terrain prevents mowing or hand cutting. Also used on rapid growing species.

Preemergence Treatment

The use of pre-emergence herbicide using the same equipment described in the foliar treatments above. Pre-emergence applications are used where season long vegetation control requires vegetation free conditions, such as along curbing, sidewalks, under guardrails/guides, and on paved traffic islands. This method is used from early spring to early fall. Pre emergence treatments are limited in use by label.

Cut-Stem Treatment

Cut-stem treatments consist of mechanical cutting of target species, immediately followed by herbicide treatment applied with a squirt bottle, a hand-held pump sprayer, or painted on the freshly cut surface of the stump. Treatment will include spraying the root collar area, sides of the stump, and the outer portion of the cut surface, including the cambium, until thoroughly wet, but not to the point of runoff. Cut-stump application can be effective during the dormant period, however, it may not be effective during times of sap flow during the months of February through early April, as flowing sap will limit the herbicide from being absorbed into the stump down to the roots. All herbicides will be applied to freshly cut stems to be effective.

Low Volume Basal Herbicide Treatments

Involves the application of an oil soluble herbicide mixed with an oil carrier instead of water. The basal mixture is then applied directly to the bark of the woody plants less than 6 inches in diameter.

Monitoring

All ROWs proposed for chemical management will be visually surveyed by the Town of Belchertown DPW Highway Department prior to any scheduled treatment program. Monitoring will be conducted by the DPW Highway Department on foot and/or by vehicle. Monitoring of areas may result from request from the public. All monitoring records will be maintained by the DPW Highway Department.

Record Keeping

A log of areas surveyed will be maintained by the DPW Highway Department for future planning and reference. Areas maintained through chemical and mechanical management will be recorded. Logs will be kept at the DPW Highway Department office.

5.0 Justification of Herbicide Use

As discussed in this VMP, physical and mechanical methods are sufficient to manage most plants that interfere with traffic, visibility and safety. However, chemical treatment is necessary where topography, access, growth, and reproductive characteristics, or concerns regarding the worker safety limit the potential for management by physical or mechanical methods.

Chemical management may be the preferred method or only method of management for plants that pose a health hazard for the technician in the field. Poison ivy, for example is extremely hazardous to handle and re-sprouts after cutting, making it difficult to achieve cost-effective management along roadsides and put worker safety at risk due to high-speed traffic. Mowing has proven not to be an effective strategy for species such as poison ivy. The climbing characteristics of poison ivy over stone walls, up tree trunks, and around guardrails/guiderails, make mechanical management impractical for safety and economic reasons.

Mowing will manage most herbaceous species. Herbicide applications, however, are necessary where mechanical management is not feasible due to location, stem density, and/or height. Although herbaceous species are more often a desirable vegetative cover along public ways, in areas where it is difficult and sometimes dangerous to remove by mechanical treatment methods, herbicides are used. These areas include, but are not limited to, cracks in asphalt, along guardrails/guiderails, paved traffic islands, sidewalks, and curbs. In these instances, herbaceous species are considered target vegetation.

Woody vegetation growing along the ROW is managed by a variety of techniques. Pruning or ground cutting using hand tools or chainsaws are typically used to manage large woody vegetation. Depending upon the species of plant removed and its proximity to other vegetation, these stumps may be treated with an herbicide to prevent re-sprouting.

Small woody plants that are growing over obstacles, or have a viny growth, and /or grow very rapidly can be managed with foliar application of herbicides.

Invasive plant management is usually required along ROWs for sight distances and to prevent destruction of infrastructure. Treatment can allow native, more stable vegetation to establish. Managing invasive plants via mechanical means can be ineffective and depending on the species, may encourage the spread of an existing population or inadvertently result in the introduction of a new population. In these situations, the use of herbicide can be most effective method of managing outbreaks and or new populations of invasive plants.

6.0 Identification of Sensitive Areas

Sensitive areas are defined within the 333 CMR 11.00 as areas within the ROWs in which public health and environmental concerns warrant special protection to further minimize risks of unreasonable adverse effects of herbicides. These include public groundwater sources, Class A public surface water sources, associated surface water bodies, tributaries, Class B drinking water intakes, private wells, state listed species habitat, wetlands, waters over wetlands, riverfront areas, verified vernal pools, inhabited areas and agricultural areas. Sensitive areas will be identified throughout the use of existing data and verified, when necessary, in the field. The Town of Belchertown Draft Sensitive Areas Base map is located in the Appendix Section of this VMP.

Sensitive Areas Base map

There are several readily available sources of information that can be used to develop a draft sensitive areas base map. These sources include:

- Massachusetts Department of Environmental Protection (MassDEP) Water Supply Maps (1:25000)
- Aerial Photographs
- MassDEP Wetlands Conservancy Maps (scale 1:1000).
- Municipal Maps and records including those from the Belchertown Heath Department to identify private water supplies
- Regional Planning Agency maps and records
- U.S. Fish and Wildlife Service National Wetlands Inventory Maps
- Ortho Photo Information-MassDEP (1:5000)
- Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program (NHESP)
- Available MassGIS Maps
- Town Maps, records or institutional Knowledge
- Correspondence, meetings, and input- from the Chief Elected Official, Board of Health, Conservation Commission, public water suppliers, and the public.
- Identification of Treatment Areas

With the sensitive areas base map complete, the Belchertown DPW Highway Department staff will identify and mark the proposed treatment zones on the base map. Belchertown DPW Highway Department staff will visually survey treatment zones in the field for any additional sensitive areas not already on the base map. Sensitive areas identified in the field that are not already on the base map will be added or adjusted as needed. Similarly, treatment zones located within the sensitive areas will be adjusted according to the Sensitive Areas Restrictions listed in Table 1. An updated base map will be developed, as needed.

Field Verification of Sensitive Areas

Belchertown DPW Highway Department staff will identify the treatment areas in the field, All treatment areas will be identified and marked on the sensitive areas maps. Sensitive areas in the vicinity of the treatment areas will be confirmed during this field effort and any additional sensitive areas identified in the field or corrections will be applied to the base map. Treatment areas located within the limited spray areas will be adjusted according to the Sensitive Areas Restrictions listed in Table 1.

Table 1. Sensitive Area Restrictions			
Sensitive Area	No Spray Areas	Limited Spray Areas	Where Identified
Wetlands and Water over Wetlands	Within 10 feet (unless provisions of 333 CMR 11.04(4)(c) are followed	10-100 Feet: 12 months elapse between applications: Selective low pressure, using foliar techniques or cut stem-applications	YOP maps and identify on site
Certified Vernal Pool	Within 10 feet	10 feet to the outer boundary of any Certified Vernal Pool Habitat: 12 Months must elapse between applications: Selective low pressure, using directed spray or cut-stem applications	YOP Maps and identify on site
Public Ground Water Supply	Within 400 feet (Zone 1)	Zone II Or IWPA (Interim Wellhead Protection Area which is the Primary Recharge Area) 24 months must elapse between applications: Selective chemical, using directed spray or cut-stem applications	YOP Maps
Public Surface Water Supply	Within 100 feet of any Class A public surface water source	100 feet to the outer boundary of Zone A: 24 months must elapse between applications: Selective chemical , using directed spray or cut-stem applications	YOP Maps
	Within 10 feet of any tributary or associated surface water body located outside of the Zone A	10 feet to the outer boundary of the Zone A: 24 months must elapse between applications: Selective chemical, using directed spray or cut-stem applications	

	Within 100 feet of any tributary or associated surface water body located within the Zone A of a Class A public Surface water source		
	Within a Lateral distance of 100 feet for 400 feet upstream of any Class B Drinking Water Intake	Within a lateral distance of between 100-200 feet for 400 feet upstream of intake: 24 months must elapse between applications: Selective chemical, using directed spray or cut-stem applications	

Private Water Supply	Within 50 feet	50-100 feet: 24 months must elapse between applications: Selective chemical, using directed spray or cut-stem applications	In YOP will list and identify on site
Surface Waters	Within 10 feet from mean annual high water line	10 feet from the mean annual high-water line and the outer boundary of the Riverfront Area: 12 months must elapse between applications: Selective chemical, using directed spray or cut-stem applications	In YOP will list and identify on site
Agricultural and Inhabited Areas	N/A	0-100 feet: 12 months must elapse between applications: Selective chemical, using directed spray or cut-stem applications	YOP Maps and identify on site
State-listed Species Habitat		No application within habitat area except in accordance with a YOP approved in writing by the Division of Fisheries and Wildlife	YOP Maps 1

7.0 Operational Guidelines for Applicators Relative to Herbicide Use

As required by MDAR regulations, individuals applying herbicides to ROWs must hold a valid Core license as long as an individual with a Category 40 pesticide certification from MDAR is physically onsite during the entirety of the application. The applicator(s) will be Town Staff and/or a certified contractor working under the supervision of the Town of Belchertown. All applicators and their supervisors will have a copy of the VMP and YOP accessible to them in the field at all times for reference during the herbicide application. A Daily Vegetation Management Report form will be filed at the end of each day with the individual supervising the YOP. This will include the following information:

- Applicator name and pesticide license.
- Weather conditions during application.
- Identification of site/work area.
- Type of equipment and hours used.
- Method of application.
- Target vegetation.
- Herbicide, amount/concentration used.
- Identification of surfactants and amount/concentration used.
- Unusual conditions or incidents noted.
- Public inquiries noted.
- Recording/verification of sensitive areas.
- Miles of roadway treated.
- Total amount of herbicide used.

- Man hours (actual spray hours) vs. total herbicide used.

In addition to the applicable rules and regulations, applicators will adhere to the following operational guidelines:

Weather

Herbicide applications will be restricted during certain adverse weather conditions, such as rain or wind. Herbicide applications will not be conducted during periods of moderate or heavy rainfall. Foliar applications can be effective in light mist situations; however, any measurable rainfall that creates leaf runoff will wash the herbicide off target vegetation. If foliar applications are interrupted by unexpected rainfall, the treatment will not resume until the rain ends and active leaf runoff has ceased.

To minimize off target drift, the applicator will comply with the following restrictions:

- During periods of wind, which are strong enough to bend the tops of the main stems of trees on the roadside, the applicator will periodically observe the application of the foliar treatment to ensure that there is no significant movement of the herbicide. If the applicator can see the herbicide moving off target, the application will immediately stop until the wind has subsided enough to permit further applications.
- Herbicide solution to be used for a foliar application may contain low drift agents. Low drift agents may be added to the foliage herbicide solutions as per the low drift agent label. In moderate wind conditions, as per label recommendations, more low drift agent may be added, at the discretion of the applicator to manage increased drift.
- Foliar treatment will not be made to target vegetation that exceeds twelve feet in height.

Equipment Calibration

Foliar application equipment will be Calibrated prior to application and in accordance with manufacturer's recommendations. Applicator nozzles will be adjusted to apply a coarse spray pattern.

Equipment will be adjusted to deliver an herbicide solution that minimizes herbicide overspray or drift. Herbicide solutions will be delivered at low pressures not to exceed 60 psi.

Sensitive Area restrictions

In defined sensitive areas, there exists a no-spray area where herbicide use is prohibited and a limited spray area where herbicide use is allowed under certain conditions. In places around sensitive areas where herbicide use is allowed, only the minimum labeled rate of application for the management of target species shall be applied.

8.0 Alternative Land Use Options

Every effort will be given for alternative land use options. However, there are specific criteria to be met for adoption of alternative land use options. The alternative land use option must effectively manage vegetation as required for ROW access and safety and must not damage the ROW and or harm the environment.

9.0 Remedial Plan to Address Spills and Related Accidents

All mixing and loading of herbicides will be conducted at the facility where the herbicides are stored. This will be a town facility if the application is completed by a Town employee, or offsite, if the application is being completed by an outside contractor. Only the amount of herbicide necessary to carry out the vegetation management, based on monitoring results, will be mixed daily to ensure that there will be no waste and will minimize potential problems. The vehicles carrying out the spray operations will be equipped with absorbent, activated charcoal, leak-proof containers, a broom and a shovel, in case of minor spills. A log of herbicides on the vehicle will be kept in the vehicle. Herbicide labels and fact sheets will be carried on-site by the applicator.

Spills requiring action, include but are not limited to herbicides, fuels, oils and other motor/hydraulic fluids. As soon as any spill is observed, immediate action will be taken to contain the spill and protect the spill area. The cause of the spill must be identified and secured. Spill containment will be accomplished by covering the spill with absorptive clay or other absorptive material or, for large spills, building clay or soil dikes to impede spill progress. Until completely remediated, the spill area will be protected by the placement of barriers and by the delineation of the spill area by crew members. If a fire is involved, care will be taken to avoid breathing fumes from any burning chemicals.

Minor spills of liquid herbicide will be remedied by soaking up the spill with absorption clay or other absorptive material and placing it in leak-proof containers, removed from the site and disposed of properly. Minor spills involving dry herbicides, such as granular, will be swept up or shoveled up directly in leak proof containers, removed from the site and disposed of properly. All contaminated soil will be placed in leak-proof containers, removed from the site and disposed of properly. Any minor spill will be reported to the MDAR, Division of Crop and Pest Services.

Major spills will be handled in a similar manner as minor spills per label requirement, except in cases where the spill cannot be contained and/or removed by the crew. In this case, the MassDEP Emergency Response Unit and the MDAR, Division of Crop and Pest Services must be contacted for any reportable spill.

Emergency first responders (including, but not limited to, fire and police) shall be immediately notified of a major spill and/or any size incident deemed a possible risk to public health, safety and the environment.

MassDEP will be contacted when there is a spill of a reportable quantity, regardless of major or minor spill status and in accordance with 310 CMR 40.0000 Massachusetts Contingency Plan.

In the event of a spill, information on safety precautions and clean up procedures may be gathered from (but not limited to) the sources listed in Table 2.

Table 2. Emergency Resources

Resource	Location/Phone Number
Herbicide Safety Data Sheet (SDS)	Approved YOP

Herbicide Manufacturer • Corteva Agriscience (formerly Dow/Dupont) • NuFarm • Bayer	(800) 992-5994 (877) 325-1840 (866-99-BAYER)
MDAR, Division of Crop and Pest Services Clayton Edwards	(617)-626-1700
Massachusetts Department of Environmental Protection Emergency Response	(888)-304-1133
Department of Public Health Environmental Toxicology Program	(617)-624-5286
Massachusetts Poison Control Center 24- hour Hotline	(800)-222-1222
Town of Belchertown Highway Department	(413)-323-0415
Town of Belchertown Fire Dept.	(413)-323-7571 or 911
Town of Belchertown Police Dept.	(413)-323-6685 non-emergency or 911
Town of Shelburne Board of Health	(413)-625-0300 Ext. 8
Chem-Trec	(800)-262-8200
National Pesticide Information Center	(800)-858-7378
National Animal Poison Control Center	(800)-426-4435

10.0 Notification Procedures

Once approved, a copy of the VMP will be provided to the Town of Belchertown Town Manager or Selectboard Chairperson, Board of Health, and Conservation Commission. Upon approval of the VMP and YOP and 21- days in advance of the application of herbicide to a ROW, the Town will notify MDAR, Board of Health, and water supplier, Selectboard Chairperson, Town Manager, and the Conservation Commission of the application. Notification will include method and location of application, herbicide fact

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11.0 Monitoring Plan

On an annual basis, the Town will evaluate the success of the Vegetation Management Program. The goal of this monitoring plan is to evaluate the relative success of vegetation control efforts. Following application after an appropriate period of time, treatment areas will be revisited. The survivorship or regrowth of nuisance vegetation will be recorded and evaluated at an annual meeting to determine whether the program is meeting its goals. Discussion items at this annual meeting will include where the herbicide was used, where it worked and how much herbicide was used per lane mile. Recommendations on location and use will be reflected in the next year's YOP as applicable.

12.0 Qualifications of Individual Developing and Submitting a Plan

I have been serving as the Town of Belchertown Buildings, Maintenance & Grounds Division Supervisor for approximately 25 years. Currently I oversee and direct 10 employees within my division. I am responsible for the overall maintenance of 28-town buildings and 200+ acres of grounds/open space. I organize the town's buildings and grounds maintenance projects, and I am responsible for maintaining and improving upon the efficiency and effectiveness of these areas for Belchertown to include recreational and school fields, conservation trails, nine cemeteries, athletic fields and town properties.

I have worked extensively with public entities, numerous outside vendors and contractors. Additionally, I oversee the annual roadside and brush cutting/maintenance in the town ROWs. I prepare specifications for the purchase of materials, supplies and equipment and maintain inventory along with managing projects to ensure contract needs are met.

I currently retain a contractor's license, hoisters license and pesticide license.

Appendices:

- List of Approved Herbicide Ingredients and Products for use in ROW Sensitive Areas as specified by the Massachusetts Department of Agricultural Resources (MDAR). This list and more resources from MDAR can be found at this link: [Rights of Way Sensitive Area Materials List/Mass.gov](#).
- Sensitive Area Restrictions -Control Strategies for Sensitive Areas (333 CMR 11.04)
- Belchertown Priority Habitats and Estimate Habitats – NHESP
- MassDEP WPA Form 5- Order of Conditions/Generic Order of Conditions § 104-0972
- Belchertown DPW – Annual Vegetation Spraying Guardrail/Curbline- State Street/ Rte 202
- Rights of Way Management – Pesticide Board: 333 CMR 11.00

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

Active Ingredient Factsheets:

[Aminopyralid](#)

[Glyphosate](#)

[Indaziflam](#)

[Imazapyr](#)

[Metsulfuron Methyl](#)

[Sulfometuron Methyl](#)

[Fosamine Ammonium Factsheet](#)

[Triclopyr Factsheet](#)

[Paclobutrazol Factsheet](#)

Products

Active Ingredient

Product Names (EPA #)

Use Restrictions

Registrant

Milestone (62719-519) (Product Review)

[Aminopyralid](#)

Opensight (62719-597) (Product Review)

Corteva Agriscience LLC'

Fosamine Ammonium

[Krenite S \(42750-247\)](#)

Lowest Labeled Rate*

Albaugh, Inc.

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

[Glyphosate](#)

Ranger Pro Herbicide (524-517)

Lowest Labeled Rate for all
Glyphosate products

[Roundup PRO Concentrate \(524-529\)](#)

[Roundup PRO \(524-475\)](#)

Bayer Cropscience LP

Glyphomax Plus (62719-322)

Corteva Agriscience LLC

[Rodeo](#)

Corteva Agriscience LLC

[Aquaneat Aquatic Herbicide \(228-365\)](#)

Nu Farm Americas

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

While Rodeo, and Aquaneat all have aquatic uses, approval for their use as sensitive materials does NOT mean that they can be used for aquatic weed control, or directly applied to water, as part of a rights of way management program. Products are subject to the no-spray and limited spray provisions of 333 CMR 11.04.

[Imazapyr](#)

[Arsenal \(241-346\)](#)

3 pints/acre every 3rd year OR

[Arsenal Powerline \(241-431\)](#)

2 pints/acre every other year

Polaris AC Complete Herbicide (228-570) (Product Review)

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

for all Imazapyr Products

[Polaris Herbicide \(228-534\)](#)

Nu Farm Americas

Esplanade 200 SC (432-1516) (Product Review)

Bayer Environmental Sciences

Indaziflam

Esplanade 200 SC (101563-144)(Product Review)

Envu, Environmental Sciences, U.S, LLC.

[Metsulfuron Methyl](#)

[Escort XP \(432-1549\)](#)

Lowest Labeled Rate for all
Metsulfuron Methyl Products*

Bayer CropScience

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

[Escort XP \(101563-167\)](#)

Envu, Environmental Sciences, U.S, LLC.

[Patriot Selective Herbicide, \(228-391\)](#)

Nu Farm Americas

[Metsulfuron Methyl](#)

[Oust Extra \(432-1557\)](#)

[Sulfometuron Methyl](#)

Bayer Environmental Science

Lowest Labeled Rate*

[Oust Extra, \(101563-173\)](#)

Envu, Environmental Sciences, U.S, LLC.

[Paclobutrazol](#)

[Cambistat \(74779-3\)](#)

Lowest Labeled Rate*

Rainbow Tree care

[Sulfometuron Methyl](#)

[Oust XP \(432-1552\)](#)

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

Lowest Labeled Rate for
all Sulfometuron Methyl Products*

Bayer CropScience

Oust XP (101563-168)

Envu, Environmental Sciences, U.S, LLC.

Spyder Selective Herbicide (228-408)

Nu Farm Americas

Triclopyr, Butoxy Ethyl Ester

Garlon 4 (62719-40)

The lowest of the following rates:

Corteva Agriscience LLC

Rights of Way Sensitive Area Materials List
List of Approved Herbicide Active Ingredients and Products
Active Ingredient Factsheets:

1. Between 10 feet and 50 feet of the resource: Lowest labeled rate* or 0.5 [Garlon 4 Ultra \(62719-527\)](#) pints per acre

2. Between 50 feet and the boundary of the limited spray zone: Lowest labeled rate* or 3 pints per acre Corteva Agriscience LLC

Active Ingredient	Product Names (EPA #)
Use Restrictions	Registrant

* **Lowest labeled rate** the minimum labeled rate of the pesticide product for the appropriate site, pest and application method

Sensitive Area Restrictions

333 CMR 11.04

CONTROL STRATEGIES FOR SENSITIVE AREAS

Sensitive Area	Minimum Buffer Zone (feet)	Control Method	Time Restriction Code
Public Ground Water Supplies	400'	Mechanical Only	None
Primary Recharge Area	Designated buffer zone or 1/2-mile radius	Mechanical, Recommended Herbicides*	1
Public Surface Water Supplies (Class A & Class B)	100'	Mechanical Only	None
	100'-400'	Recommended Herbicides	1
Tributary to Class A Water Source, within 400' upstream of water source	100'	Mechanical Only	None
	100'-400'	Recommended Herbicides	1
Tributary to Class A Water Source, greater than 400' upstream of water source	10'	Mechanical Only	None
	10'-200'	Recommended Herbicides	1
Class B Drinking Water Intake, within 400' upstream of intake	100'	Mechanical Only	None
	100'-200'	Recommended Herbicides	1
Private Drinking Water Supplies	50'	Mechanical Only	None
	50'-100'	Recommended Herbicides	2
Surface Waters	10'	Mechanical Only	None
	10'-100'	Recommended Herbicides	2
Rivers	10' from mean annual high-water line	Mechanical Only	None
	10'-200'	Recommended Herbicides	2
Wetlands	100' (treatment in wetlands permitted up to 10' of standing water)**	Low-pressure Foliar, CST, Basal Recommended Herbicides	1
Habitated Areas	100' (for high-pressure foliar only)	Recommended Herbicides	2
Agricultural Area (Crops, Fruits, Pastures)	100' (for high-pressure foliar only)	Recommended Herbicides	2
Certified Vernal Pools	10'	Mechanical Only	None
Certified Vernal Pool Habitat	10'-outer boundary of habitat	As recommended by NHESP in their permit process, no treatment without written permission	
Priority Habitat	As recommended by NHESP in their permit process, no treatment without written permission		



BELCHERTOWN

Priority Habitats and Estimated Habitats

Priority Habitats, for use with the MA Endangered Species Act Regulations (321 CMR 10)
 Estimated Habitats, for use with the MA Wetlands Protection Act Regulations (310 CMR 10)
 Effective August 1, 2021



Natural Heritage & Endangered Species Program
 100 Water Street, Room 200, Springfield, MA 01103
 Tel: (413) 783-6300 Fax: (413) 783-6301

State Symbols:
 State Fish: Atlantic Salmon
 State Bird: Pilgrimage Wren
 State Flower: Mayflower
 State Tree: American Elm
 State Mammal: Fish-eating Bird
 State Insect: Monarch Butterfly
 State Reptile: Eastern Hognose Snake
 State Amphibian: Spotted Salamander
 State Shell: Quahog

Priority Habitat of Rare Species

Project or Activity falls within Priority habitat only
 - You must file directly with NHESP pursuant to Massachusetts Endangered Species Act (MESA)

Examples of projects: single family home, subdivision, commercial building, encroaching or driveway/road, beaver dam removal, etc.

Some projects or activities may be exempt from MESA
 filing, see 321 CMR 10.04

Priority Habitat of Rare Species and also Estimated Habitat of Rare Wildlife

Project or Activity is within BOTH Estimated Habitat and Priority Habitat
 is a Notice of Intent (NOI) under wetlands regulations required?

Yes
 Send copy of NOI to NHESP and
 must also file under MESA
 (streamlined MESA-NOI filing option available)
 No
 MESA filing only (see Priority Habitat details at ehs)

filing, see 321 CMR 10.04

- * Certified Vernal Pools (as of July 20, 2021)
- Town Boundary
- Transportation:
 - Interstate
 - U.S. Highway
 - State Route
 - Non-numbered Route
 - Railroad

5

MASSACHUSETTS
 DEPARTMENT OF FISHERIES & WILDLIFE
 100 Water Street, Room 200, Springfield, MA 01103
 Tel: (413) 783-6300 Fax: (413) 783-6301



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 - Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
MassDEP File #:104-0972
eDEP Transaction #:786964
City/Town:BELCHERTOWN

REL # 15-38

A. General Information

1. Conservation Commission BELCHERTOWN
2. Issuance a. ☒ OOC b. ☐ Amended OOC
3. Applicant Details
- | | | | |
|--------------------|----------------------------|--------------|----------|
| a. First Name | STEVEN | b. Last Name | WILLIAMS |
| c. Organization | DEPARTMENT OF PUBLIC WORKS | | |
| d. Mailing Address | 290 JACKSON STREET | | |
| e. City/Town | BELCHERTOWN | f. State | MA |
| | | g. Zip Code | 01007 |
4. Property Owner
- | | |
|--------------------|--------------|
| a. First Name | b. Last Name |
| c. Organization | |
| d. Mailing Address | |
| e. City/Town | f. State |
| | g. Zip Code |
5. Project Location
- | | | | |
|------------------------|----------------------------------|----------------|------------|
| a. Street Address | VARIOUS LOCATIONS IN BELCHERTOWN | | |
| b. City/Town | BELCHERTOWN | c. Zip Code | 01007 |
| d. Assessors Map/Plat# | N/A | e. Parcel/Lot# | N/A |
| f. Latitude | 42.27882N | g. Longitude | 72.399799W |
6. Property recorded at the Registry of Deed for:
- | | | | |
|-----------|----------------|---------|---------|
| a. County | b. Certificate | c. Book | d. Page |
| HAMPSHIRE | | VARIOUS | VARIOUS |
7. Dates
- | | | |
|-------------------------------|---|---------------------------------|
| a. Date NOI Filed : 9/17/2015 | b. Date Public Hearing Closed: 10/26/2015 | c. Date Of Issuance: 11/11/2015 |
|-------------------------------|---|---------------------------------|
8. Final Approved Plans and Other Documents
- | | | | | |
|---|----------------------|---------------------------------------|------------------------|-----------|
| a. Plan Title: | b. Plan Prepared by: | c. Plan Signed/Stamped by: | d. Revised Final Date: | e. Scale: |
| GENERIC NOTICE
OF INTENT FOR
ROADWAY
MAINTENANCE | FUSS & O'NEILL | ERIK V. MAS,
PROFESSIONAL ENGINEER | September 2015 | |

B. Findings

Special Conditions:

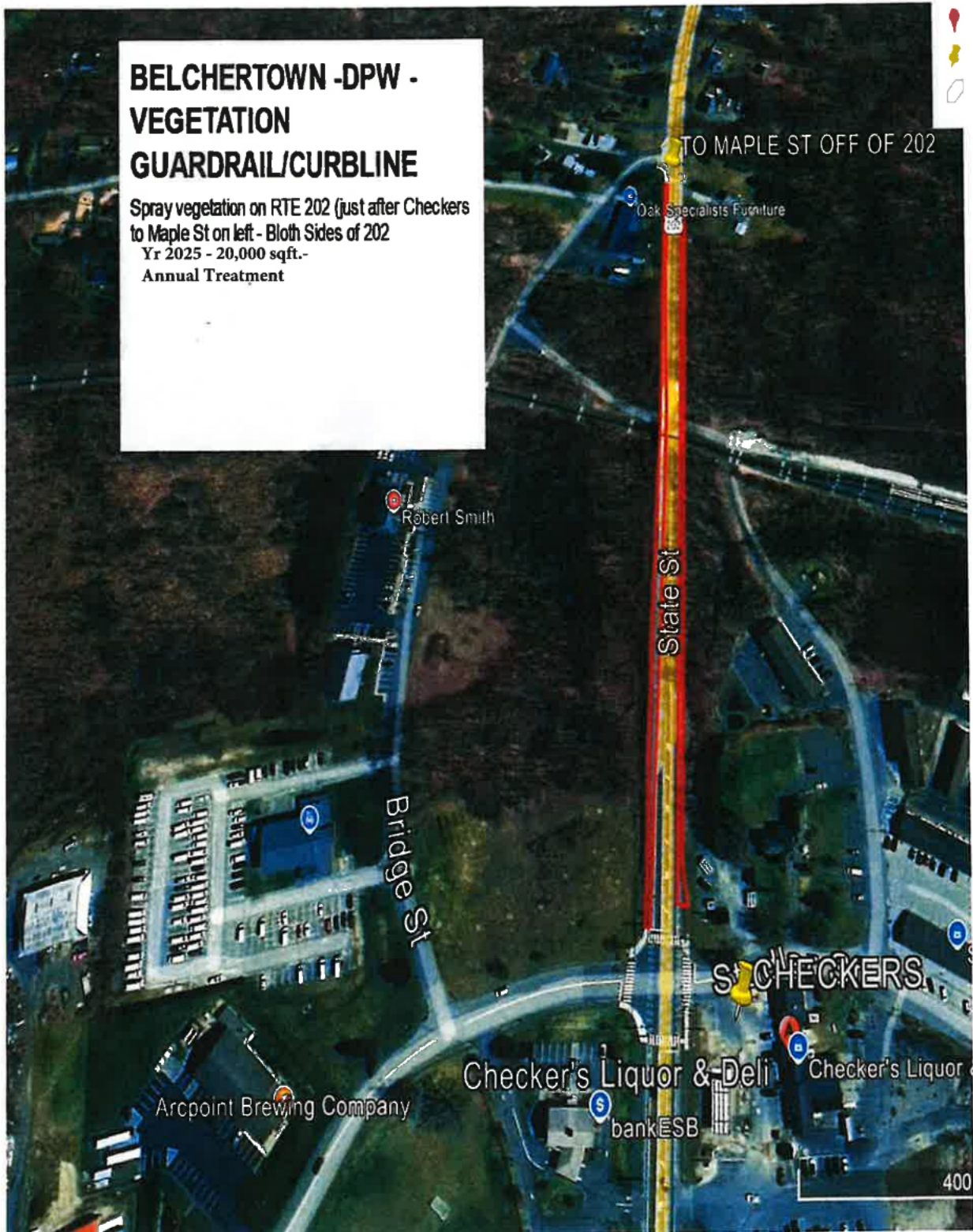
This Order of Conditions permits the routine maintenance of town-wide roadway activities. All activities will be performed as stated in the Notice of Intent entitled "Bundled Notice of Intent for Roadway Maintenance" dated October 2015 and prepared by Fuss & O'Neill and as required in this Order of Conditions. All of the proposed roadway maintenance activities will maintain the existing hydrologic and hydraulic site conditions. **No work is allowed under this GOOC within any area mapped by the Natural Heritage and Endangered Species Program, (Estimated Habitats of Rare Wildlife and Certified Vernal Pools), other than routine street sweeping and routine annual mowing of paved roadways within 4 ft. of the edge of the pavement. All other activities will require filing with Natural Heritage Endangered Species program.** Prior to the start of any work, an on site meeting will be held with the Commission and the DPW superintendent. The Belchertown DPW will notify the Conservation Commission of the location of the proposed activity at least 14 days prior to commencement of work. The DPW will conduct a site visit with the Conservation Commission and its agent prior to commencement of work. This on-site meeting will include a summary of the proposed activity to ensure that this activity meets the criteria for work under the Generic Order, provide the start and anticipated completion date, and identify any site-specific concerns that must be addressed. The DPW will notify the Conservation Commission of any change made or intended to be made to the work plan. The DPW will also notify the Conservation Commission within 24 hours of work completion. All work will be conducted within the Town's right-of-way. If the Town will need to undertake work on property other than the public way, the Town will obtain written permission from the private property owner prior to commencing any work on said private property. **Repair and replacement of existing culverts associated with Intermittent and Perennial Streams are included in this Order of Conditions.** This GOOC includes culvert replacement activities involving both intermittent and perennial stream crossings. Proposed culvert replacements will be reviewed and approved by the Conservation Commission pursuant to special conditions identified in the Order of Conditions. Prior to conducting any culvert replacement work, the DPW will notify the Conservation Commission in writing of the proposed culvert replacement, including documentation that the crossing complies with the Massachusetts Stream Crossing Standards to the maximum extent practicable pursuant to 310 CMR 10.53(8). All authorized culvert maintenance, repair, and replacement activities will maintain the existing culvert hydraulic capacity, inverts, slope, end treatment and roadway width. **At the onsite meeting, the Conservation Commission shall determine if the proposed work meets the criteria of maintenance work, as described and listed in the Generic NOI.** This Order of Conditions will also be issued under the Belchertown Wetlands Bylaw, BWR 10:00.

20. **Prior** to the commencement of any work on the site:

- a. the Belchertown Conservation Commission office shall be notified, in writing, at least 72 hours, in advance of the date upon which site work is to begin (323-0405);
- b. the border of the Wetland Resource Area on the site shall be clearly marked in the field by stakes or flags placed at 25 foot intervals;
- c. Erosion and sediment controls shall be installed as per guidelines contained within the Generic Notice of Intent and in all locations required by the Conservation Commission. Erosion and sediment controls may include staked haybales, straw wattles, silk socks and/or silt fencing, or other methods deemed necessary by the Conservation Commission. Erosion and sediment controls may be required by the Conservation Commission as follows:
 - ☐ erosion checks along the toes of embankments or slopes;
 - ☐ temporary earth berms to act as sediment traps in areas of extreme runoff;
 - ☐ temporary check dams across ditches and swales;

BELCHERTOWN -DPW - VEGETATION GUARDRAIL/CURBLINE

Spray vegetation on RTE 202 (just after Checkers
to Maple St on left - Both Sides of 202
Yr 2025 - 20,000 sqft.-
Annual Treatment



333 CMR: PESTICIDE BOARD

333 CMR 11.00: RIGHTS OF WAY MANAGEMENT

Section

- 11.01: Purpose
- 11.02: Definitions
- 11.03: General Provisions
- 11.04: Sensitive Area Restrictions
- 11.05: Vegetation Management Plan (VMP)
- 11.06: Yearly Operational Plan (YOP)
- 11.07: Public Notification
- 11.08: Notice of Modification and Revocation
- 11.09: Right-of-appeal
- 11.10: Penalties
- 11.11: Rights-of-way Advisory Panel

11.01: Purpose

The purpose of 333 CMR 11.00 is to establish a statewide and uniform regulatory process which will minimize the uses of, and potential impacts from herbicides in rights-of-way on human health and the environment while allowing for the benefits to public safety provided by the selective use of herbicides. Specific goals of 333 CMR 11.00 are to:

- (1) Ensure that an Integrated Pest Management (IPM) approach to vegetation management is utilized on all rights-of-way covered by 333 CMR 11.00.
- (2) Establish standards, requirements and procedures necessary to prevent unreasonable risks to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.
- (3) Ensure ample opportunity for public and municipal agency input on potential impacts of herbicide application to rights-of-way in environmentally sensitive areas.
- (4) Establish a mechanism for public and municipal review of rights-of-way maintenance plans.

11.02: Definitions

For the purposes of 333 CMR 11.00, unless the context clearly requires otherwise, the following definitions shall apply:

Agricultural Area includes, but is not limited to, actively cultivated gardens, greenhouses, orchards, fields, pastures, and other areas under cultivation or agricultural management.

Applicant, any person representing any federal, state or local government or agency, utility, railroad or pipeline, that intends to maintain a right-of-way in the Commonwealth by application of herbicides.

Associated Surface Water Body, as identified on the most current available maps prepared by the Department of Environmental Protection, any body of water that is hydrologically connected to a Class A surface water source.

Ballast, the coarse gravel or crushed rock on which the ties, tracks and switching, signaling and communication devices of a railroad are laid.

Broadcast, any non-selective herbicide application technique which results in application to all vegetation within a target area.

Certified Vernal Pool, a confined basin depression, certified and mapped by NHESP pursuant to the provisions of 310 CMR 10.57(2)(a)5. and 6., which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations.

11.02: continued

Certified Vernal Pool Habitat, that vernal pool habitat which has been certified and mapped by NHESP pursuant to the provisions of 310 CMR 10.57(2)(a)5. and 6. or, in the event that such habitat has not been mapped, the area extending 100 feet horizontally outward from the boundary of any Certified Vernal Pool.

Class A Waters, waters which are designated as a source of public water supply, as defined in 314 CMR 4.05(3)(a).

Class B Drinking Water Intakes, intakes to Class B waters suitable as sources of public water supply with appropriate treatment, as defined at 314 CMR 4.05(3)(b) and as identified on the most current available maps prepared by the Department of Environmental Protection.

Department, the Department of Agricultural Resources.

FIFRA, the Federal Insecticide, Fungicide and Rodenticide Act, Public Law 92-516.

Foliar Treatment, any technique which applies herbicide to leaves of target vegetation.

Inhabited Area, any area where people generally live, work or gather, including, but not limited to, any residence, school, hospital, park or recreational facility.

Interim Wellhead Protection Area (IWPA), for public water systems using wells or well fields that lack a Department of Environmental Protection-approved Zone II, an interim wellhead protection area, as that term is defined in the Massachusetts drinking water regulations, 310 CMR 22.02, and as identified on the most current available maps prepared by the Department of Environmental Protection, shall apply. Generally, this is a ½-mile radius for sources whose approved pumping rate is 100,000 gallons per day or greater. For smaller sources, the radius in feet is determined by multiplying the approved pumping rate in gallons per minute by 32 and adding 400.

Limited Application Waiver, a waiver from the requirements of 333 CMR 11.05 and 11.06, granted at the Department's sole discretion pursuant to 333 CMR 11.03(14), when the reason for the application is emergency public health or safety or when the application is for one time only.

Limited Spray Area, any area that is both within a Right-of-Way and within:

- (a) any Zone II or IWPA;
- (b) a distance of between 100 feet and 400 feet of any Class A Surface Water Source;
- (c) a distance of between ten and 200 feet of any tributary or associated surface water body where the tributary or associated surface water body runs outside the Zone A for the Class A surface water source;
- (d) a lateral distance of between 100 and 200 feet for 400 feet upstream, on both sides of the river, of a Class B Drinking Water Intake;
- (e) a distance of between 50 and 100 feet of any identified Private Well;
- (f) a distance of between 10 and 100 feet of any Wetlands or Water Over Wetlands;
- (g) a distance of between ten feet from the mean annual high water line of any river and the outer boundary of the Riverfront Area;
- (h) a distance of between ten feet from any Certified Vernal Pool and the outer boundary of any Certified Vernal Pool Habitat; and
- (i) a distance of 100 feet of any Agricultural or Inhabited Area.

Low Pressure, pressure under 60 pounds per square inch (psi).

Maps, United States Geological Survey maps of scale 1:25,000 or other maps, as determined by the Department, which are of such accuracy and scale to provide sufficient detail so that sensitive areas can be delineated.

NHESP, the Natural Heritage and Endangered Species Program within the Massachusetts Division of Fisheries and Wildlife.

11.02: continued

No-spray Area, any area that is both within a Right-of-Way and within:

- (a) any Zone I;
- (b) 100 feet of any Class A Surface Water Source;
- (c) 100 feet of any tributary or associated surface water body where the tributary or associated surface water body runs within 400 feet of a Class A surface water source;
- (d) ten feet of any tributary or associated surface water body where the tributary or associated surface water body is at a distance greater than 400 feet from a Class A surface water source;
- (e) a lateral distance of 100 feet for 400 feet upstream, on both sides of the river, of a Class B Drinking Water Intake;
- (f) 50 feet of any identified Private Well;
- (g) ten feet of any Wetlands or Water Over Wetlands;
- (h) ten feet of the mean annual high-water line of any river; and
- (i) ten feet of any Certified Vernal Pool.

Person, an individual, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or its political subdivisions, administrative agencies, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agent or assignee, or a group of persons.

Person Aggrieved, any person who, because of an act or failure to act by the Department may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of the interests identified in 333 CMR 11.00. Such person must specify in writing sufficient facts to allow the Department to determine whether or not the person is in fact aggrieved.

Private Well, any private drinking water supply identified by the local Board of Health, the well owner or the Department of Agricultural Resources.

Private Well Registry, a registry of private wells located within 100 feet of a right-of-way which is maintained by the Department of Agricultural Resources. Homeowners must notify the Department by completing a registration form which is available directly from the Department or online at the Department website.

Public Water Supplier, as defined at 310 CMR 22.02(1), any person who owns or operates a public water supply system.

Public Ground Water Source, a source of water for a Public Water Supply System, as that term is defined in the Massachusetts drinking water regulations at 310 CMR 22.02.

Right(s)-of-way (ROW), any roadway, or thoroughfare on which public passage is made and any corridor of land over which facilities such as railroads, powerlines, pipelines, conduits, channels or communication lines or bicycle paths are located.

Rights-of-way Advisory Panel, a panel established to advise the Department on issues relating to 333 CMR 11.00 and to fulfill specific functions as detailed within 333 CMR 11.05 and 11.11.

River, a river as defined at 310 CMR 10.04 and as identified on the most current available maps prepared by the Department of Environmental Protection.

Riverfront Area, a riverfront area as defined at 310 CMR 10.58(2) and as identified on the most current available maps prepared by the Department of Environmental Protection. In general, this term shall mean the area between the mean annual high-water line of a perennially flowing river and a parallel line 200 feet away.

Selective Application, any application of herbicides, in such a manner that the delivery to the target vegetation is optimized and delivery to non-target vegetation and the environment is minimized.

11.02: continued

Sensitive Areas, as defined in 333 CMR 11.04, any areas within Rights-of-Way, including No-Spray and Limited-Spray Areas, in which public health, environmental or agricultural concerns warrant special protection to further minimize risks of unreasonable adverse effects.

State-listed Species, any species on the Massachusetts list of Endangered, Threatened, and Special Concern Species as described in the Massachusetts Endangered Species Act (M.G.L.c. 131A; 321 CMR 10.02).

State-listed Species Habitat, the Estimated Habitats of Rare Wildlife (310 CMR 10.59 and 10.37) and the Priority Habitats for State-listed Species (321 CMR 10.02) as shown on the most recent edition of the Massachusetts Natural Heritage Atlas prepared by NHESP.

Stem Treatment, any technique including, but not limited to, stump, basal, stem, injection, banding, frill, or girdle and any other technique which delivers herbicide at low pressure to the stump, base or stem of the target vegetation.

Surface Water Source, any lake, pond, reservoir, river, stream or impoundment designated as a public water supply in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, as identified on the most current available maps prepared by the Department of Environmental Protection.

Target Vegetation, any plant species which has the potential to interfere with the operation and safety of the right-of-way.

Touch-up Application, any limited application of herbicides following an initial treatment, which is necessary to achieve the desired vegetation control.

Tributary, as identified on the most current available maps prepared by the Department of Environmental Protection, any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A surface water source, as defined in 314 CMR 4.05(3)(a).

Vegetation Management Plan (VMP), a long term management plan for the applicant's right-of-way system which describes the intended program for vegetation control over a five year period.

Vernal Pool, *see* Certified Vernal Pool.

Water Over Wetlands, the ocean or any estuary, lake or pond as defined at 310 CMR 10.04.

Wetlands, any of the following areas as defined in 310 CMR 10.02(1)(a), (b), (c) and (f):

- (a) Any bank, the ocean
- any freshwater wetland, any estuary
- any coastal wetland, any creek
- any beach, bordering any river
- any dune, on any stream
- any flat, any pond
- any marsh, or any lake
- or any swamp;
- (b) Land under any of the water bodies listed in 333 CMR 11.02: Wetlands(a); and
- (c) Land subject to tidal action.

11.02: continued

Wetlands Determination, a written determination of the boundaries of Wetlands and boundaries of areas within 100 feet of Wetlands in accordance with the regulations of the Department of Environmental Protection (DEP) at 310 CMR 10.05(3)(a)1. and 2. 310 CMR 10.03(6)(b) requires applicants not eligible for a public utility exemption to submit these determinations with their VMPs if they will apply herbicides within 100 feet of wetlands and will not submit a Notice of Intent under M.G.L. c. 131, § 40, the Wetlands Protection Act. In order to obtain a Wetlands Determination, the applicant should submit a request to the conservation commission on maps of a scale that will enable the conservation commission or Department of Environmental Protection to find and delineate the boundaries of Wetlands and buffer zones within the vicinity of the right-of-way herbicide management area. To be considered "valid", the Wetlands Determination should be made no sooner than six months immediately prior to the submission of the Vegetation Management Plan. The Wetlands Determination shall cover the period of the Vegetation Management Plan only and shall expire at the end of the five year period of that Vegetation Management Plan.

Yearly Operational Plan (YOP), the yearly operational plan which describes the detailed vegetation management operation for the calendar year consistent with the terms of the long term Vegetation Management Plan.

Zone A, as identified on the most current available maps prepared by the Department of Environmental Protection, the protective land area for a Surface Water Source, Class A water source, Tributary, or Associated Surface Water Body defined in 310 CMR 22.02 as:

- (a) the land area between the Class A surface water source and the upper boundary of the bank;
- (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a); and
- (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a Tributary or Associated Surface Water Body.

Zone I, as identified on the most current available maps prepared by the Department of Environmental Protection and as defined at 310 CMR 22.02, the protective radius required around a public water supply well or wellfield. For public water system wells with approved yields of 100,000 gallons per day (gpd) or greater, the protective radius is 400 feet. Tubular wellfields require a 250 foot protective radius. Protective radii for all other public water system wells are determined by the following equation: Zone I radius in feet = $(150 \times \log \text{ of pumping rate in gpd}) - 350$.

Zone II, as identified on the most current available maps prepared by the Department of Environmental Protection and as defined at 310 CMR 22.02, the aquifer recharge area for a public water supply well or wellfield.

11.03: General Provisions

- (1) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way unless appropriately certified by the Department, or licensed by the Department and working under the on-site supervision of an appropriately certified applicator.
- (2) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way except in accordance with a Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) as approved by the Department. The YOP shall be available at the work site at all times during herbicide applications and be made available to the Department and municipal officials including the Conservation Commission and Board of Health upon reasonable request.
- (3) No person shall handle, mix or load an herbicide concentrate on a right-of-way within 100 feet of a sensitive area.
- (4) The perimeter of any sensitive areas which are not readily identifiable on the ROW shall be identified with a clearly visible marker system, consistent with the VMP, prior to any herbicide application.

333 CMR: PESTICIDE BOARD

11.03: continued

- (5) No foliar application of herbicides shall be used to control vegetation greater than 12 feet in height except for side trimming.
- (6) No herbicide shall be applied when the wind velocity is such that there is a high propensity to drift off target and/or during measurable precipitation, and no person shall apply herbicides in such a manner that results in drift into any No-spray Area.
- (7) No person shall apply herbicides by aircraft for the purpose of clearing or maintaining a right-of-way.
- (8) No touch-up applications shall be carried out except under the following conditions:
 - (a) Touch-up applications must occur within 12 months of the initial application.
 - (b) All applicable public notification procedures of M.G.L. c. 132B, § 6B, as outlined in 333 CMR 11.07(1) and (3), are followed.
 - (c) No more than 10% of the initially identified target vegetation on the applicant's right-of-way in any municipality may be treated and the total amount of herbicide applied in any one year shall not exceed the limits specified by the label or Yearly Operational Plan.
 - (d) The Department may impose such additional restrictions or conditions on the use of herbicides as it deems necessary to protect public health and the environment.
- (9) The Department will maintain mailing lists of individuals and groups desiring to obtain notices on various aspects of the Program.
- (10) No person shall apply any herbicide identified as a Potential Ground Water Contaminant pursuant to 333 CMR 12.00 to a right-of-way.
- (11) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way unless that person has obtained the most current available map of public ground water sources from the Department of Environmental Protection.
- (12) No person shall use an herbicide for the purpose of clearing or maintaining a right-of-way unless that person has done one or more of the following:
 - (a) obtained a current list of identified Private Wells within 100 feet of the right-of-way from the Board of Health, or
 - (b) obtained a current list of all private wells, within 100 feet of the right of way from the Department of Agricultural Resources private well registry; or
 - (c) followed an alternative Private Well identification method outlined in an approved YOP.
- (13) The applicator shall provide any employee of any state agency, or authority as defined in M.G.L. c. 3, § 39, when such employee is, within a right-of-way, using pesticides, supervising the use of pesticides, or present during the use of pesticides, with personal protective equipment and clothing. Applicators should note that other federal or state laws or regulations pertaining to pesticide applications may require this personal protective equipment to include protections according to Material Safety Data Sheets (MSDS's), the product label, and any other supporting technical data supplied by the manufacturer.
- (14) Notwithstanding the provisions of 333 CMR 11.03(2) or other provisions of 333 CMR 11.00, the Department may, at its sole discretion, issue Limited Application Waivers to applicants wishing to apply herbicides to clear or maintain rights-of-way without VMPs or YOPs, but only under the following conditions:
 - (a) The applicant must demonstrate either:
 - 1. that the application will not occur more than once in a five-year period unless a VMP and a YOP are prepared and all other requirements of 333 CMR 11.00 are met; or
 - 2. that the application is necessary to protect public health or safety.
 - (b) The applicant must still adhere to all public notification requirements established at 333 CMR 11.07(1) and (3).
 - (c) The applicant must provide the Department with a letter establishing the concurrence of the chief elected official or board of selectmen of the municipality where the application is to be made.

11.03: continued

- (d) The applicant may only use herbicides on the Department's "Herbicides Recommended for Use in Sensitive Areas List."
- (e) If the application could impact Wetlands, the Department recommends that the applicant send a copy of its application for a Limited Application Waiver to the Department of Environmental Protection's Division of Wetlands and Waterways no less than 21 days before the proposed application.
- (f) It should be noted that, with certain exceptions for public utilities, wetlands regulations at 310 CMR 10.03(6)(b) currently require Wetlands Determinations prior to any application within 100 feet of a Wetland.

Limited Application Waivers shall be issued solely at the Department's discretion, and the Department may impose such additional restrictions or conditions on the use of herbicides as it deems necessary to protect public health and the environment.

11.04: Sensitive Area Restrictions

(1) General. In any sensitive area:

- (a) No more than the minimum labeled rate of herbicide for the appropriate site, pest, and application method shall be applied.
- (b) Herbicides shall only be applied selectively by low pressure, using foliar techniques or basal or cut-stump applications, or other method approved for use by the Department.
- (c) No person shall apply herbicides for the purpose of clearing or maintaining a right-of-way in such a manner that results in drift to any area within ten feet of standing or flowing water in a wetland; or area within 400 feet of a public drinking water supply well; or area within 100 feet of any Class A surface water used as a public water supply; or area within 50 feet of a Private Well.
- (d) Only herbicides specified by the Department as acceptable for use in sensitive areas pursuant to the Cooperative Agreement executed between the Department of Agricultural Resources and the Department of Environmental Protection on July 1 and 2, 1987, or future amendments thereto, shall be used in sensitive areas. Applicants proposing to use an herbicide which has been registered for use on rights-of-way but has not yet been evaluated pursuant to the provisions of the Cooperative Agreement may request that such herbicides be evaluated pursuant to said provisions. For an herbicide that has been evaluated pursuant to the provisions of the Cooperative Agreement, applicants proposing to use such herbicide in a manner inconsistent with the terms and conditions of use imposed in the guidelines may request a modification or waiver of such terms or conditions. A request for such modification or waiver shall provide a detailed rationale for use, with all relevant data including but not limited to environmental fate, efficacy and human health effects of the proposed herbicide. Such herbicides and/or uses shall be subject to the evaluation standards adopted by the Departments of Agricultural Resources and Environmental Protection in the Cooperative Agreement.

Commentary. Applicants not eligible for the public utilities exemption from the Wetlands Protection Act outlined at 310 CMR 10.03(6)(a), who wish to apply pesticides registered for use in Massachusetts to rights-of-way, may choose to apply herbicides determined to be suitable for use in sensitive areas in accordance with the provisions of the Cooperative Agreement mentioned above or, alternatively, such applicants may proceed pursuant to the provisions of 310 CMR 10.00 as authorized by M.G.L. c. 131, § 40.

- (e) The Department may impose such additional restrictions or conditions on the use of herbicides within or adjacent to sensitive areas as it determines necessary to protect human health or the environment. Such changes may be proposed by a municipal agency or individual during the public comment period.
- (f) In the event of a question or dispute as to which setback applies to a sensitive area, the most restrictive setback shall apply.

(2) Water Supplies.

(a) Public Ground Water Sources.

- 1. No herbicides shall be applied within a Zone I.
- 2. No herbicides shall be applied within a Zone II or IWPA unless:

11.04: continued

- a. A minimum of 24 months has elapsed since the last application to the site; and
- b. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.

(b) Class A Public Surface Water Sources, Associated Surface Water Bodies, Tributaries and Class B Drinking Water Intakes.

- 1. No herbicides shall be applied within 100 feet of any Class A public surface water source.
- 2. No herbicides shall be applied within 100 feet of any tributary or associated surface water body located within the Zone A of a Class A public surface water source, or within ten feet of any tributary or associated surface water body located outside of the Zone A of the Class A public surface water source.
- 3. No herbicides shall be applied within a lateral distance of 100 feet for 400 feet upstream of any Class B Drinking Water Intake.
- 4. No herbicides shall be applied within a distance of between 100 feet from any Class A surface water source and the outer boundary of any Zone A, or within a distance of between ten feet and the outer boundary of the Zone A for any tributary or associated surface water body located outside of the Zone A of a Class A surface water source, or within a lateral distance of between 100 and 200 feet for 400 feet upstream of a Class B Drinking Water Intake, unless:
 - a. A minimum of 24 months has elapsed since the last application to the site; and
 - b. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.

(c) Private Wells.

- 1. No herbicides shall be applied within 50 feet of an identified Private Well.
- 2. No herbicides shall be applied within a distance of between 50 feet and 100 feet of an identified Private Well, unless:
 - a. A minimum of 24 months has elapsed since the last application to the site; and
 - b. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.

(3) State-listed Species Habitat.

- (a) Any person proposing to apply an herbicide within any State-listed Species Habitat who does not have a current Yearly Operational Plan approved in writing by the Division of Fisheries and Wildlife pursuant to 321 CMR 10.14(12), shall submit all necessary materials required for review pursuant to 321 CMR 10.18.
- (b) The management of vegetation within existing utility rights-of-way shall be exempt from the requirements of 321 CMR 10.18 through 10.23, provided that the management is carried out in accordance with a Yearly Operational Plan approved in writing by the Division of Fisheries and Wildlife, pursuant to 321 CMR 10.14(12).
- (c) No person shall apply an herbicide within State-listed Species Habitat unless the application is approved by the Division of Fisheries and Wildlife pursuant to 333 CMR 11.04(3)(a) and (3)(b), and such approval is submitted to the Department.

(4) Wetlands, Waters Over Wetlands, Riverfront Areas, and Certified Vernal Pools.

- (a) No herbicide shall be applied on or within ten feet of a Wetland or Water Over a Wetland, within ten feet of the mean annual high-water line of any River, or within ten feet of any Certified Vernal Pool.
- (b) No herbicide shall be applied on or within a distance of between ten feet and 100 feet of any Wetland or Water Over a Wetland, within a distance of ten feet from the mean annual high-water line of any River and the outer boundary of any Riverfront Area, or within a distance of ten feet from any Certified Vernal Pool and the outer boundary of any Certified Vernal Pool Habitat unless:
 - 1. A minimum of 12 months has elapsed since the last application to the site; and
 - 2. Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.
- (c) Notwithstanding 333 CMR 11.04(4)(a) and (b), public utilities providing electric, gas, water, telephone, telegraph and other telecommunication services (and other applicants, if consistent with all relevant provisions of the Massachusetts Wetlands Protection Act and its regulations in effect at the time of application) may apply herbicides on or within ten feet of a Wetland in accordance with the following conditions:

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1. Submission of a study, the design of which is subject to prior approval by the Departments of Agricultural Resources and Environmental Protection, evaluating impacts of the proposed vegetation management program utilizing herbicides on or within ten feet of Wetlands, and comparing those impacts to those which would result if only non-chemical control methods were used in these areas. The study must detail vegetation management practices and use patterns specific to those used by the type of entity submitting the study; and
 2. A finding by the Department, after consultation with the Rights-of-way Advisory Panel, that the proposed vegetation management program utilizing herbicides on or within ten feet of Wetlands will result in less impacts to the Wetlands than mechanical control.
 3. Notwithstanding the above, no herbicides shall be applied on or within ten feet of any standing or flowing water in a Wetland.
- (5) Inhabited and Agricultural Areas. No foliar herbicide shall be applied within 100 feet of any Inhabited Area or any Agricultural Area unless:
- (a) A minimum of 12 months has elapsed since the last application to the site; and
 - (b) Herbicides are applied selectively by low pressure, using foliar techniques or basal or cut-stump applications.

11.05: Vegetation Management Plan (VMP)

- (1) General.
 - (a) Unless otherwise specified by the Department, all VMPs should be submitted by the applicant no later than September 1st prior to the calendar year of the proposed first year of maintenance. All approved VMPs shall be effective for a five year period unless otherwise modified, or revoked by the Department.
 - (b) The VMP shall be presented on forms and/or format approved by the Department.
- (2) Requirements. The VMP shall include, but not be limited to, the following:
 - (a) General statement of goals and objectives of the VMP.
 - (b) Identification of target vegetation.
 - (c) Intended methods of vegetation management and rationale for use, including vegetation control techniques, equipment proposed for use, timing of applications and alternative control procedures.
 - (d) Discussion of justification for proposed herbicide applications, including a description of the alternative control methods considered and the reasons that they were rejected.
 - (e) Methods, references and sources for identifying sensitive areas and control strategies proposed for sensitive areas. Applicants should note that the Department of Environmental Protection regulations at 310 CMR 10.03(6)(b) require Wetlands Determinations for applicants that are not eligible for a public utility exemption.
 - (f) Operational guidelines for applicators relative to herbicide use.
 - (g) Identification and qualifications of individuals developing and submitting a plan.
 - (h) A detailed description of the IPM Program, showing how it will minimize the amount and frequency of herbicide application.
 - (i) Description of alternative land use provisions or agreements that may be established with individuals, state, federal or municipal agencies that would minimize the need for herbicides, including the rationale for accepting or denying any reasonable request made by any individual.
 - (j) Description of a remedial plan to address spills and related accidents.
 - (k) For state agencies and authorities as defined in M.G.L. c. 3, § 39, a description of the applicant's policy to eliminate or, if necessary, reduce the use of pesticides for any vegetation management purpose along roadways, and a demonstration that, for the proposed application, the costs of non-chemical vegetation control significantly outweigh the benefits.
- (3) Public Notice, Review and Comment.
 - (a) Upon receipt of the proposed VMP, the Department shall schedule and hold appropriate regional public hearings affording all interested parties the opportunity to comment, both at the hearings and in writing to the Department, on the proposed plan.

11.05: continued

- (b) At least 21 days prior to the public hearings, the Department shall publish notice of the hearings in the *Environmental Monitor* and regionally located newspapers, and send notice to municipalities covered by the plan and to the appropriate mailing list. The notice will include locations where copies of the VMP can be reviewed.
 - (c) The public shall have no less than 45 days, starting from publication of the *Environmental Monitor* notice, to comment upon proposed VMPs, unless the Department extends the comment period for good cause.
 - (d) Wherever a chief elected official, Board of Health or Conservation Commission in a municipality covered by the proposed VMP requests a copy of the proposed plan, the applicant shall, at least 21 days prior to the end of the public comment period, respond to this request. The response must either include a copy of the proposed VMP, or an Internet address where the VMP may be viewed and a note that a hard copy will be provided promptly upon further request.
- (4) Disposition of VMP.
- (a) 25 copies of the proposed VMP shall be submitted to the Department. The Department shall distribute copies of the proposed VMP to each member of the Rights-of-way Advisory Panel. The Department may, at its sole discretion, allow electronic presentation of the VMP in lieu of some or all of the 25 copies that would otherwise be submitted pursuant to 333 CMR 11.05(4).
 - (b) Within 30 days of the end of the public comment period unless extended for good cause, the Rights-of-way Advisory Panel shall review the VMPs and recommend in writing to the Department approval, denial or modification of each VMP; if necessary, the Advisory Panel may request additional information from the applicant.
 - (c) Within 21 days of the end of the Rights-of-way Advisory Panel review period, unless extended by the Department for good cause, the Department will notify the applicant and the Advisory Panel in writing one of the following:
 - 1. request for additional information or modification;
 - 2. denial of VMP; or
 - 3. approval of VMP.
 - (d) The VMP may be modified, withdrawn or amended by the applicant through a written request sent by certified mail to the Department.
 - (e) Resubmission of a denied VMP, updating of a VMP, or a significant amendment to an approved VMP shall be processed according to 333 CMR 11.05.
 - (f) The applicant must send a copy of the approved VMP, or an Internet address where the VMP may be viewed and a note that a hard copy will be provided promptly upon further request, to the chief elected official, Board of Health, and Conservation Commission in each municipality covered by the plan.
- (5) Time for Action. Non-action by the Department on a VMP within the time specified in 333 CMR 11.05 does not constitute approval of the submitted plan. In the event that the Department fails to notify the applicant of a decision within the time specified in 333 CMR 11.05(4) and upon written request from the applicant, the Commissioner must issue a finding within ten days of receipt stating the reason for the delay and providing an estimated completion date.

11.06: Yearly Operational Plan (YOP)

- (1) General.
 - (a) The applicant is responsible for the accuracy and completeness of all information submitted with the YOP. The YOP shall be consistent with the objectives of the VMP and shall describe the intended operational program for that calendar year.
 - (b) The YOP shall be presented on forms and in a format approved by the Department.
- (2) Requirements. The YOP shall include but not be limited to the following:
 - (a) Maps locating the rights-of-way and sensitive areas not readily identifiable in the field;
 - (b) Herbicides proposed including Environmental Protection Agency (EPA) Registration numbers, application rates, carriers and adjuvants;
 - (c) Herbicide application techniques and alternative control procedures proposed.
 - (d) The name, address and phone number of the company which will perform any herbicide treatment;

11.06: continued

- (e) Identification of target vegetation;
 - (f) The name, address and phone number of the individual representing the YOP applicant;
 - (g) Description of methods used to flag or otherwise designate sensitive areas on the right-of-way;
 - (h) Herbicide Fact Sheets as approved by the Department; and
 - (i) Procedures and locations for handling, mixing and loading of herbicide concentrates.
- (3) Public Notice, Review and Comment.
- (a) Upon submittal of the YOP for approval, the Department will publish a notice in the *Environmental Monitor*. Said notice shall be provided by the applicant and shall include the information on the municipalities through which the rights-of-way pass, a brief description of the intended program, and the procedure for public review and comment. The Department shall send notification of the publication to the applicant and the appropriate mailing list.
 - (b) Upon submittal of the YOP to the Department, the applicant shall provide by certified mail under separate cover to the Board of Health, Conservation Commission, chief elected municipal official, and where applicable, the Massachusetts Water Resources Authority and Massachusetts Department of Conservation and Recreation, a copy of the proposed YOP (or an Internet address where the proposed YOP may be viewed and a note that a hard copy will be provided promptly upon request) and the *Environmental Monitor* notice for the municipality or municipalities in which the herbicide treatment is proposed. Community water suppliers shall receive electronic information or a one page notification by mail which provides details about where to receive more information. The applicant shall maintain copies of the packet sent to municipalities and certified mail receipts. The applicant shall make copies of the packet, certified mail receipts, and any further correspondence regarding hard copies of YOPs in lieu of Internet viewing, available to the Department upon request.
 - (c) The Department shall allow a 45-day comment period on proposed YOPs, unless extended for good cause, commencing with the publication of the notice in the *Environmental Monitor* and receipt of the proposed YOP and *Environmental Monitor* notice by each municipality.
 - (d) The Department may approve, deny or modify YOPs after the 45-day comment period has expired.
- (4) Disposition of YOP.
- (a) The applicant shall submit the YOP to the Department at least 90 days prior to the proposed commencement of application to allow completion of the comment and review period.
 - (b) The Department shall review the YOP to ensure that the YOP is consistent with the approved VMP. Any inconsistencies or deficiencies will be noted by the Department and returned with the YOP to the applicant.
 - (c) Where practical, the Department shall approve or deny the YOP within 90 days of receipt. The Department will provide notice of the decision to the applicant, municipal agencies and commentators in writing.
 - (d) The approved YOP in conjunction with the VMP shall govern the application of herbicide for a period not to exceed 12 months in accordance with other laws and regulations of the State and Federal governments and impose such conditions as necessary to minimize the risk of adverse effects on human health and the environment.
- (5) Time for Action. Non-action by the Department on a YOP within the time specified in 333 CMR 11.06(4) does not constitute approval of the submitted plan. In the event that the Department fails to notify the applicant of a decision within the time specified and upon a written request from the applicant, the Commissioner must issue a finding within ten days of receipt stating the reason for the delay and providing an estimated completion date.

11.07: Public Notification

(1) At least 21 days in advance of application of herbicide to a right-of-way in any city or town, the applicant shall notify the Department, the board of health, and the local public water supplier and, by registered mail, the Mayor, City Manager or Chairman of the Board of Selectman, and the conservation commission in the municipality where the right-of-way lies. The notice shall include the following information: the approximate dates on which such herbicide application shall commence and conclude, provided however, that said application shall not commence more than ten days before nor conclude more than ten days after said approximate dates; the method and locations of application; a Department-approved Herbicide Fact Sheet on the active ingredient(s) of the herbicide(s) used; the EPA registration number(s) for the herbicide(s) used; the name, title, business address and phone number of the certified commercial applicator or licensed applicator, or the contractor, employer or employees responsible for carrying out the application. Where specific information required for this notice is already contained in the current YOP that is on file with the local official, the applicant may incorporate the appropriate pages of the YOP by reference in its notice to that official, indicating that these pages are also directly available from the applicant upon request.

(2) This public notice may run concurrently with the public notice and comment period in 333 CMR 11.06(3), provided that the notice is distributed at least 21 days prior to the herbicide application, and that, prior to the herbicide application, the public notice and comment period has closed and the Department has granted YOP approval without modifications. When the Department's final approval requires modifications or application dates are selected after YOP approval, separate notice under 333 CMR 11.07(1) is required.

(3) At least 48 hours prior to the application referred to in 333 CMR 11.07(1), the applicant must publish a conspicuous notice in at least one newspaper of general circulation in the city or town where the right-of-way lies. The notice must appear in the local section of the newspaper and measure at least four by five inches in size. The notice shall contain the following information: the method and locations of pesticide application; the approximate dates on which the pesticide application shall commence and conclude, provided that the applications shall not commence more than ten days before nor conclude ten days after said approximate dates; a list of potential pesticides to be used; a description of the purpose of the application; and the name, title, business address and phone number of a designated contact person representing the applicant from whom any citizen may request further information. The notice should apply only to the calendar year in which the notice is published. Upon request the notice must be made available to the Department.

11.08: Notice of Modification and Revocation

(1) The Department may suspend approval of any VMP or YOP, by written notice to the applicant and applicator, halting the application of herbicide to that right-of-way of the YOP. After 21 days if the applicant does not request a hearing, the Department may revoke or modify the VMP and YOP, if it finds:

- (a) that the terms, conditions or restrictions thereof, are being violated or are inadequate to avoid unreasonable adverse effects on the environment or on human health; or
- (b) that the applicant has made a false or misleading statement or has not provided information requested by the Department or Rights-of-way Advisory Panel; or
- (c) that the applicant has violated any provision of the Massachusetts Pesticide Control Act or FIFRA, or any regulations, standards, orders or license issued under either.

(2) Upon notice of revocation or modification, the applicant may modify the YOP by written request to the Department. Applications to modify the YOP shall be submitted in the manner set forth in 333 CMR 11.06 and disposed of in the manner set forth in 333 CMR 11.06. The Department may waive all or part of the requirement if it determines that the proposed changes do not significantly change the terms of the approved YOP.

333 CMR: PESTICIDE BOARD

11.09: Right-of-appeal

Any person aggrieved by the decision of the Department to approve, deny, modify or revoke a VMP or YOP may request an adjudicatory hearing. The request for a hearing must be received by the Department within 21 calendar days after receipt of the decision. The request should state clearly and concisely the facts of the proceeding, the reasons the decision is alleged to be inconsistent with 333 CMR 11.00 and the relief sought by the adjudicatory hearing. The adjudicatory hearing before the Pesticide Board shall be conducted in accordance with the informal rules of adjudicatory proceeding as set forth in M.G.L. c. 30A.

11.10: Penalties

Any person who violates any provision of 333 CMR 11.00 shall be subject to the criminal and civil penalties set forth in M.G.L. c. 132B, § 14.

11.11: Rights-of-way Advisory Panel

(1) A Rights-of-way Advisory Panel shall be established to advise the Department on issues relating to 333 CMR 11.00 and to fulfill specific functions as detailed within 333 CMR 11.00.

(2) The Department shall request that the following members participate on the Rights-of-way Advisory Panel: the Commissioners/Secretaries or his/her designee of the Department of Environmental Protection, the Department of Public Health, and the Executive Office of Transportation; and a representative, respectively, from each of the following, all to be appointed by the Department Commissioner: the Massachusetts Association of Conservation Commissions, the Massachusetts Association of Health Boards, the Massachusetts Department of Conservation and Recreation, and an Environmental Advocacy Organization Representative, a member of the University of Massachusetts Extension who is well versed in weed science and Integrated Pest Management of weeds, a representative of the Massachusetts Railroad Association, a representative of a utility company and a commercial pesticide applicator.

(3) Non-agency representatives shall remain on the panel for a term of five years. Any member absent from two or more consecutive meetings may be removed from the Advisory Panel at the discretion of the Commissioner of the Department, and a replacement requested from the representative agency, industry group, or association.

(4) The Advisory Panel shall meet at least once each year, and shall hold further meetings upon the request of the Department of Agricultural Resources or at the request of any two members of the Advisory Panel.

(5) All Advisory Panel members shall serve without compensation.

REGULATORY AUTHORITY

333 CMR 11.00: M.G.L. c. 132B.