

RIGHTS OF WAY FAQ'S

This document has been developed to provide guidance to the public relative the processes and requirements of when an herbicide is applied to a Right of Way ("ROW) for vegetation management pursuant to M.G.L. c. 132B, Section 6B and the regulation promulgated thereunder at 333 CMR 11.00.

VEGETATION MANAGEMENT PLANS AND YEARLY OPERATIONAL PLANS

1. What is a Vegetation Management Plan ("VMP")?

A VMP is a five-year plan that an entity charged with maintaining a ROW in the Commonwealth must develop and submit to MDAR for approval if such maintenance intends to include the use of pesticides. The VMP provides information regarding how vegetation management may be performed on a ROW. This plan is a generalized and sets the framework for ROW management for a consecutive five-year period.

2. Does the public have an opportunity to review and comment on the VMP?

Yes. Prior to any decision on a VMP, notice is published in the Environmental Monitor and applicable regional newspaper publications and a public hearing is held at which anyone may attend and provide comments. Additionally, there is a 45-day comment period where anyone can submit their comments to MDAR for its review. This information, along with information provided by a Rights-of-Way Advisory Panel established in accordance with 333 CMR 11.00, provides MDAR with additional information that is used in making a final decision on the VMP. This may include approval, request for modifications, or denial of the VMP.

3. What is a Yearly Operational Plan ("YOP")?

A YOP is a more specific plan that is submit to MDAR for its review and approval before any activity under the VMP may take place. This would include information specific to the use of pesticides and the location of any such application. The YOP compliments the VMP and outlines what the entity will do for that specific year.

4. Does the public have an opportunity to review and comment on the YOP?

Yes. Prior to MDAR approving a YOP, the public has 45 days to provide comments to MDAR.

EXECUTION OF THE PLANS

1. How is the public made aware of when herbicide applications will take place?

The entity making the application must provide notice in a newspaper no less than 48 hours prior to the application.

2. How does the entity making the application identify and mark the sensitive areas prior to the application?

There are many ways sensitive areas are marked. These include but are not limited to the following: meeting with municipal or governing bodies, site visits/surveys, walking the ROW ahead of treatment crews, flagging, GIS, maps.

3. How does the entity identify private wells?

There are many ways that private wells are identified. This includes but is not limited to the following: MDAR's private well registry, city/town records, GIS maps/records, surveying of the treatment area, and public input. It should be noted that MDAR does not have authority over private wells and questions related to such should be directed to the Massachusetts Department of Environmental Protection or the local municipality.

4. Is the applicator/entity required to keep records?

Under 333 CMR 10.00, a pesticide applicator is required to keep records that indicate things such as what was used, when, and where. Additionally, the applicator is required to submit their annual usage to MDAR every year. The entity who submitted the VMP or YOP may keep additional records, such as service records, management records etc., but they are not required.

5. How do pesticide applicators avoid herbicide drift?

The pesticide regulations do not contain wind speed or wind direction restrictions but rather such factors to consider may be included on the pesticide product label, which must be followed in order to be considered in compliance with the law. However, the regulations do specify that an individual cannot make an application that would pose an unreasonable adverse effect and to use only appropriate methods/equipment when making applications. MDAR follows up on every complaint related to pesticide use to make a determination as to whether the facts demonstrate a violation occurred and will take appropriate action when required by law.

Applicators should be monitoring weather conditions and taking every precaution to avoid drift.

6. How does MDAR ensure that the VMP/YOP are being followed?

The ROW Coordinator performs routine and unannounced inspections of ROW applications throughout the year. They are scheduled accordingly with the following considerations:

- Last time an inspection was conducted with the company or submitted of the VMP/YOP
- If it is the first time a city/town/utility etc. has submitted a VMP/YOP
- Previous inspections/enforcement actions
- Priorities in other areas such as but not limited to:
 - Complaints not related to ROW applications
 - Inspections to ensure compliance with new legislative mandates
 - Inspections to ensure compliance with new policies put in place by Subcommittee, Board or MDAR
 - Inspections mandated by EPA