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## **SUBCHAPTER 10. PESTICIDE USE**

### **7:30-10.1 Restriction of pesticide use**

(a) Upon determination that a specific use of any pesticide or group of pesticides consistent with the Federal registered label or labels presents a significant risk of harm, injury or damage, the Department may place restrictions on such use of the pesticide or group of pesticides as deemed necessary by the Department.

(b) All applications performed with any pesticide on which the Department has imposed restrictions as authorized by (a) above, shall be done in accordance with both the pesticide label directions and any additional restriction. If the federal registered label is more stringent or revised by US EPA to be more stringent than the restrictions imposed by the Department, then the more stringent label shall take precedence, consistent with effective dates of such more stringent requirement as may be provided by the US EPA.

### **7:30-10.2 Pesticide use and/or application**

(a) No person shall use or apply a pesticide in a manner inconsistent with its Federal or State registered label or labeling, or restrictions as provided for in this chapter. The following activities shall not constitute a violation of the label or labeling:

1. Applying a pesticide at any dosage, concentration or frequency less than that specified on the label or labeling, unless the label or labeling specifically prohibits this;
2. Applying any pesticide against a target pest not specified on the label or labeling, provided that the application is made to the site, crop or animal specified on the label or labeling; unless the US EPA or the Department, where authorized, has required that the pesticide shall only be used for pests specified on the label, or pests specified in Department rules;
3. Employing any method of application, except aerial, pursuant to N.J.A.C. 7:30-10.6(x), and chemigation, not prohibited by the label or labeling;
4. Mixing a pesticide or pesticides with a fertilizer when such a mixture is not prohibited by the label or labeling; or
5. Any use of a pesticide in conformance with Sections 5 or 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 .U.S.C. §§ 136(c) and 136(p), respectively).

(b) No person shall transport, handle, store, mix or load any pesticide or pesticide container in a manner that causes:

1. Harm, injury or damage to persons, property or the environment; or
2. A significant risk of harm, injury or damage.

(c) No person shall apply pesticides in a manner that causes:

1. Harm, injury or damage to persons, property or the environment; or
2. A significant risk of harm, injury or damage.

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- (d) No person shall directly apply any pesticide to a non-target site.
- (e) No person shall make any application of a pesticide unless he or she takes reasonable precautions, before, during and after the application, to minimize exposure of individuals or the environment to the pesticide and ensure the safety of any individuals or the environment consequently exposed. Such precautions shall include, but not be limited to, transmittal from the applicator to the exposed and/or potentially exposed individual of precautionary label statements relevant to such individuals or the environment.
- (f) No person applying a pesticide shall permit drift or other movement of the pesticide to infringe on a non-target site, under circumstances where such infringement should be reasonably foreseeable.
- (g) No person shall clean or rinse containers or application equipment which holds or has held a pesticide in a manner that causes harm, injury or damage to persons, property or the environment, or a significant risk of harm, injury or damage.
- (h) No person shall add water to any pesticide handling, storage, or application equipment via a hose, pump, or other equipment unless such hose, pump, or other equipment is fitted with an effective valve or device to prevent backflow of pesticides or liquids containing pesticides into water supply systems, streams, lakes, other sources of water or other areas.
- (i) No person shall mix or apply or use a pesticide unless a readable copy of the registered label for the pesticide which is being mixed or applied is available at the application or mixing site.
- (j) No person shall apply or use pesticides on a field or any other area used for agricultural purposes when persons other than those involved in the application or evaluation of the applied pesticide are within the boundaries of the target site to which the pesticide is being applied; unless such persons have appropriate protective clothing and/or equipment as required by the labels or labeling of the pesticides being applied.
- (k) No person shall perform a community or areawide pesticide application for gypsy moth control during normal student commuting times, as determined by the local school district, within two miles of a school including part or all of grades K through 8 and within two and one-half miles of a school including part or all of grades 9 through 12. Provisions of this subsection shall not apply on those days when a school is not in session.
- (l) No person shall make a commercial application of a fumigant unless at least one applicator certified and licensed in the appropriate category or subcategory which allows fumigation, such as those described in N.J.A.C. 7:30-6.2(a)1i-Category 1A Plant, (a)3ii-Category 3B Turf, (a)7iii-Fumigation, or (a)7iv-7D Food processing is present at the application location for the "duration of the application" as defined in N.J.A.C 7:30-1.2 The licensed applicator does not have to be present during the entire retention period.
  - 1. A certified and licensed applicator need not be present at the opening of fumigated transportation modules, such as rail cars, truck trailers, or ships, if the following

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requirements are met:

- i. The person or persons opening the transportation module have been trained in the use of respirators and/or SCBA (Self-Contained Breathing Apparatus) appropriate to avoid exposure to fumigants and also how to dispose of any residues properly, and
  - ii. The transportation module has been in transit for a time in excess of the normal fumigant holding time.
2. The use of fumigants covered by categories 12A and 12B are exempt from (l) above.

(m) No person shall make an application of a pesticide containing diazinon to sod farms, golf courses, or other turf areas greater than three acres, or to other general turf areas of three acres or less that evidence indicates are frequented by waterfowl.

(n) No person shall make an application of any pesticide, except for rodenticides, insect baits and antimicrobial agents, in or around a day care facility, during normal operating hours, as set by the facility administration. After normal operating hours, or for the exceptions in (n)1 and 2 below, applications can be made in areas where children will not contact treated areas until ventilation requirements and the numerical re-entry time prescribed on the label have been met, or if there is no numerical re-entry time prescribed on the label, until seven hours have passed.

1. Recreational fields which are not used by the children during normal operating hours may be treated during normal operating hours;
2. Structures that are separate from any structure used by the children during normal operating hours and which shall not be used by the children during normal operating hours may be treated during normal operating hours.
3. This subsection is not applicable to public health officials during the normal course of their duties.

(o) No person shall make an application of a TBT antifoulant paint unless applied:

1. Within a commercial boat yard; and
2. To vessels which exceed twenty-five meters (82.02 feet) in length or which have aluminum hulls.

(p) Pursuant to N.J.A.C. 7:50-6.87(c), no person shall use any herbicide on any road or public utility right-of-way within the Pinelands unless necessary to protect an adjacent agricultural activity. Should N.J.A.C. 7:50-6.87(c) be amended, then such amended regulation shall take precedence.

### **7:30-10.3 Rodent baiting**

(a) No person shall use any rodent bait, unless it has been placed in tamper-resistant bait boxes pursuant to (b) and (c) below, or in locations not accessible to children, pets, domestic animals or non-target wildlife.

(b) No person shall use or otherwise possess any pesticide in any rodent bait box or bait tray unless:

1. The bait box is secured against tampering when placed in areas accessible to pets, domestic animals, non-target wildlife or children; and

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- i. The bait box or tray has attached to the exterior, a copy of the registered label of the pesticide; or
- ii. The bait box or tray has attached to the exterior a readable label with the following information about the pesticide contained therein:
  - (1) The brand or trade name;
  - (2) The EPA registration number;
  - (3) The name and percentage of active ingredient(s) in the bait box; and
  - (4) An appropriate signal word, that is, Danger-Poison, Warning, or Caution.
- (c) For purposes of interpretation of (b) above, a bait box shall be considered tamper-resistant when:
  1. It has met the standards for tamper-resistant bait boxes used by the EPA in PR-Notice 94-7, incorporated herein by reference; or
  2. The bait box containing the pesticide is in a secure storage area; or
  3. The bait box is under the direct observation of a pesticide applicator.
- (d) After the application has been completed or the contract has been terminated, all accessible bait shall be removed by the applicator or applicator business.

#### **7:30-10.4 Restrictions on use of termiticides**

(a) No person shall make a commercial application of a pesticide for control of termites unless at least one applicator certified and licensed in the termite subcategory as described in N.J.A.C. 7:30-6.3(a)7ii is present at the application location for the duration of the application and within line of sight of the person making the application. This requirement shall not apply to the monitoring and maintenance of termite baiting stations or the placement of pesticide active ingredient therein by a properly trained and licensed commercial pesticide operator, working under the direct supervision of a responsible commercial pesticide applicator certified in the termite subcategory.

(b) No person shall apply any termiticide, using equipment designed for pressurized application without first pressurizing the application equipment and inspecting for leaks, including, but not limited to, observation of the tank, pump, hose, fittings, and injection apparatus. Any leak detected during this inspection shall be repaired prior to starting the application. If any leaks are detected during application, the application shall immediately cease until the leak has been repaired and the spill soaked up with an absorbent material. Provisions of N.J.A.C. 7:30-9.17 and 9.18 shall also apply.

(c) All pressurized termiticide application equipment shall be equipped with a properly operating pressure gauge, accurate to within plus or minus five psi. Provisions of this subsection do not apply to hand-held pressurized tank type sprayers which may be used for control of swarming termites with pesticides labeled for this use.

(d) No person shall add water to any termiticide application equipment unless adequate provision is made for prevention of backflow as stated in N.J.A.C. 7:30-10.2(h).

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(e) When treating a structure with a termiticide, hoses acting as the conduit between the tank holding the termiticide and the injection apparatus shall be routed through the structure in the manner most likely to minimize the potential for contamination should a hose rupture during treatment. Whenever possible, keep hoses outside of the structure being treated.

(f) Voids in foundation walls may be left untreated when deemed appropriate, in the experience of the applicator and after review of the structure and evidence of damage or infestation therein, to effect a successful treatment. If the foundation wall voids are treated, the treatment shall be performed consistent with label directions and the provisions of (g) below.

(g) No person shall make an application of any pesticide labeled for termite control, except termiticide baits, into voids of foundations unless done pursuant to the following restrictions listed by foundation type:

1. When hollow block, brick, and tile foundations are treated, the applicator shall:
  - i. Check any basement or crawlspace interior after treatment for potential seepage or spill;
  - ii. If a seepage or spill is observed, the spill shall be absorbed and cleaned to manufacturer's specifications immediately;
  - iii. Other clean-up procedures, to be determined by the Department when discovered or reported pursuant to N.J.A.C. 7:30-9.17, may be required in addition to absorption of the termiticide; and
  - iv. A reasonable precaution taken pursuant to N.J.A.C. 7:30-10.2(e) may be the sealing of any visible cracks, holes, or other openings prior to the application of any pesticide to prevent infiltration of pesticides into basements or crawlspaces.
2. Rubble and stone foundations shall:
  - i. When the mortar is in good condition, have test holes drilled, any of which reaching voids may be treated as consistent with label directions. Test holes not reaching voids shall be left untreated and shall be sealed along with the treated holes after application;
  - ii. When the mortar is in poor condition as determined by inspection or test application using water only, the inside wall shall be sealed with cement or equivalent covering prior to treatment, or the voids injected with a pesticide, other than an organo-chlorine, which is federally registered for this use;
  - iii. Be injected only with low pressure injection; and
  - iv. Be injected only in conjunction with active ventilation using fans inside the basement and/or crawlspace to remove solvent and pesticide vapors from the treated structure.

(h) No person shall make an application of any termiticide to a basement floor, unless applied pursuant to label directions and the following restrictions listed by structural floor type and/or condition:

1. Concrete slab floors with a French drain system shall be treated by low pressure injection beneath the slab and/or expansion joint with a pesticide, other than an organo-chlorine, labeled for this site.
  - i. If a sump is present and accessible, the sump pump shall be turned off until (h)1ii

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- below is carried out and (h)1iii, if necessary;
    - ii. Such a french drain system shall be checked for potential seepage or spill after treatment;
    - iii. If a seepage or spill is observed, the spill shall be absorbed and cleaned to manufacturer's specifications immediately; and
    - iv. Other clean-up procedures, to be determined by the Department when discovered or reported pursuant to N.J.A.C. 7:30-9.17, may be required in addition to absorption of the termiticide.
  - 2. Basement floors which are wet shall not be treated, unless it can be determined that the site of injection is above the level of the surrounding water table.
  - 3. Basement floors with a high local water table which is known to the person contracting for the termite treatment and communicated to the applicator shall not be treated, unless the floor can be treated with a non water soluble termiticide when the water table is below the level of the site of injection.
  - 4. Basement floors which have a sump pump pit in which there is standing water shall not be treated. Such a floor shall only be treated when the sump pit is pumped and then does not refill.
- (i) No person shall make an application of a termiticide, except termiticide baits, to a crawlspace unless applied pursuant to the following restrictions listed by structural type and/or other conditions:
- 1. Accessible crawlspaces with no heating unit (see definition of heating unit in N.J.A.C. 7:30-1.2) present shall be treated in a manner consistent with the State or federal label or labeling.
  - 2. Accessible crawlspaces with a heating unit present shall be treated consistent with (i)1 above. Any air intakes in the heating unit which draw air from the crawlspace shall be ducted to the exterior of the building, and seams on the ducts inspected for tightness of fit and taped or equivalently sealed as necessary. In addition, adequate cross-ventilation must be present or shall be provided prior to treatment with a minimum total ventilation opening size requirement of 1/150th of the square footage of the crawlspace surface. As an alternative, this crawlspace may also be treated as in (i)3 below.
  - 3. Accessible plenum crawlspaces shall be treated consistent with (i)1 above, but only with a termiticide which is labeled for this site and only in conjunction with active ventilation during and for 24 hours following the end of the plenum crawlspace treatment. Only low pressure injection shall be used. Immediately following treatment, cover treated soil with at least six mil polyethylene tarp or equivalent sheeting as may be approved by the Department. Occupants of the treated structure shall be advised to vacate during treatment and for the 24 hour aeration period.
- (j) No person shall make an application of a termiticide to an inaccessible space unless applied pursuant to the following restrictions:
- 1. Access shall be created to permit visual inspection of the area to be treated.
  - 2. If there is a minimum of two feet of clearance between the soil surface and the bottom of the floor joists, treatment may be made consistent with label directions using the access point in (j)1 above, provided that proper ventilation exists or can be

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provided pursuant to (i)2 above.

3. If there is less than two feet of clearance and if entry can be made into the area to be treated, soil may be removed to obtain adequate clearance and treatment may be made consistent with label directions, provided that proper ventilation exists or can be provided pursuant to (i)2 above; or
  - i. If the ceiling of the space is concrete and entry cannot be made, drill through the foundation walls from the exterior at an angle and rod beneath the soil surface, or drill vertically through the ceiling of the space and rod beneath the soil surface.

(k) No person shall make an application of a termiticide, except termiticide baits, to an interior or exterior slab unless applied in accordance with the following restrictions by slab type and/or other conditions:

1. Prior to treatment, inspect the structure containing the slab to determine the location of utility lines, sewer waste lines, water shut-off valves, radiant heat and hot water baseboard heat lines and any other conduits or ducts that may be contained therein.
2. When slabs are drilled from the inside, a device such as a drill stopper shall be used.
3. Each hole drilled through the slab shall be plugged immediately following treatment. Such plug may be temporary, until permanently sealed following completion of the job, with mortar or equivalent material.
4. Wood directly on slab construction (not on sleepers) shall be drilled and treated as in (k)2 and 3 above, except only low pressure injection shall be used and the quantity of termiticide pumped into each hole shall not be great enough to cause excess termiticide to emerge from adjacent holes.
  - i. Wood not directly on slab construction, such as on sleepers, shall be treated as in (j) above.
5. Slabs covering or containing air ducts shall be inspected. If ducts are made of cardboard or rusted metal, no treatment shall be made unless the air circulation ducts are securely and permanently filled at the duct openings with a concrete or equivalent plug.
6. Slabs covering or containing air ducts may be only be treated with a non-organochlorine termiticide without sealing of the duct openings and installation of an alternative air circulation/heating system provided:
  - i. There is evidence of an existing termite infestation in the structure;
  - ii. The exact location of the air ducts can be determined;
  - iii. Application under the slab is limited to gravity or low pressure injection;
  - iv. At least one member of the termite application crew is familiar with initial duct decontamination procedures;
  - v. Equipment necessary to facilitate initial clean-up, should accidental contamination occur, shall be present at the application location. The equipment shall include, but not be limited to, a wet/dry vacuuming system, spill absorbent material, at least five gallons of detergent, and filters of charcoal or comparable efficacious material sized for or capable of being readily adapted for use in the type ducts and/or heating system present; and
  - vi. The applicator or applicator business informs the contracting party for whom the termite treatment is to be performed in writing of the potential for contamination of

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the air ducts and resultant possible required modifications to the heating system as a part of the consumer information notice required pursuant to N.J.A.C. 7:30-9.12.

(l) Duct contamination resultant from a pesticide application shall be subject to clean-up under the provisions of N.J.A.C. 7:30-10.7 and to reporting and review under the provisions of N.J.A.C. 7:30-9.17.

(m) No person shall make a subterranean application of a termiticide, except termiticide bait, to a property in proximity to or on which wells and/or related water sources are located unless applied pursuant to the following restrictions:

1. If the well or other water source capable of being used is within the linear distance of the treatment site as provided in (m)4 below and if the well is sealed according to the specifications of the Division of Water Resources at N.J.A.C 7:9-9.9 then this subsection does not apply.
2. Do not treat any structure if a well, cistern, or spring, currently in use or capable of being used, is located within the foundation walls, except:
  - i. Subterranean application around the exterior perimeter of the foundation which surrounds the well, cistern or spring;
  - ii. If such a structure contains foundation walls exterior to those surrounding the well, cistern or spring, treatment may be made to those areas outside the foundation walls surrounding the well pursuant to (m)5 below;
  - iii. Foundation wall voids may be treated with a termiticide foam labeled for this site.
  - iv. The floor of the basement or crawlspace may be treated using the excavation technique as follows: remove soil of the interior perimeter, or pilings, from a trench from the grade level to the top of the footing, place it on polyethylene sheeting, mix the termiticide with it, permit to dry a minimum of 15 minutes, and replace the soil into the trench.
3. If a well is down grade (at a lower elevation) from the application site, and there is a structural conduit, such as a paved driveway, between the well and the application site, provision shall be made to block the conduit or dike the area around the well to prevent movement of the termiticide to the well should a spill occur.
4. If the well or other water source is more than 20 feet from the treatment site in sandy soil, or more than 100 feet in other soils, treatment shall be consistent with label directions.
5. If the well or other water source is located closer to the treatment site than as stated in (m)4. above, treat as follows:
  - i. The foundation wall voids shall not be treated, except that foundation wall voids more than two feet on either side of a water or sewer line may be treated with a termiticide foam labeled for the site.
  - ii. Foundation wall voids two feet or less on either side of a water or sewer line may be treated with a termiticide foam labeled for wall voids by removing the soil, at least 18 inches outside the foundation, along the water or sewer line and to a depth at least six inches below the water or sewer line; or, if the soil within two feet of the water or sewer line is covered by a fixed substrate such as concrete, remove the soil outside the fixed substrate, along the water or sewer line and to a depth at least six inches below the water or sewer line. Treatment shall be made while observing the newly

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dug hole for seepage. If such seepage occurs, treatment shall cease until all seepage is absorbed into the soil:

- iii. The soil outside the foundation within two feet of the water or septic lines shall not be treated, except as provided in (m)5iv or v below.
- iv. To treat the soil adjacent to the foundation within the linear distance specified in (m)4 above, other than that through or adjacent to which water or sewer lines run, dig a shallow trench adjacent to the foundation and flood it with termiticide. Allow the termiticide to seep downward with gravity. Do not rod under pressure; or remove soil from grade to top of footing, place it on polyethylene sheeting, mix the termiticide with it, permit to dry a minimum of 15 minutes, and replace the soil into the trench.
- v. Soil within two feet of the water or sewer lines shall be treated as provided in (m)5iv above, or as outlined in this subparagraph. As an alternate, remove the soil, at least 18 inches outside the foundation, along the water or sewer line and to a depth at least six inches below the water or sewer line. or, if the soil within two feet of the water or sewer line is covered by a fixed substrate such as concrete, remove the soil outside the fixed substrate, along the water or sewer line and to a depth at least six inches below the water or sewer line. Following either of the soil removal options above, the soil against the foundation wall shall be treated by gravity feed only, while observing the newly dug hole for seepage. If such seepage occurs, treatment shall cease until all seepage is absorbed into the soil. Soil within two feet of the water or sewer lines may also be left intentionally untreated as in (m) 5ii above.
- vi. Soil adjacent to the foundation which is covered by a concrete or other soil covering shall be treated by drilling through the covering surface at a maximum of one foot intervals and using a funnel to gravity feed the correct quantity of termiticide into each hole. Do not apply the termiticide under pressure.
- vii. If the soil beneath the basement floor must be treated, space treatment holes a maximum one foot apart and apply using a funnel as in (m)5vi above, except when using foam termiticides labeled for this site.
- viii. The use of foam in this subsection is considered to be equivalent to a gravity feed application.

(n) Retreatments with termiticides, except termiticide baits, are allowed only after five years have elapsed after a treatment, or when there is evidence of reinfestation subsequent to the initial treatment, or if there is a disruption of the pesticide barrier in the soil due to construction, excavations, or landscaping. In cases of disruption of the soil barrier, only those locations where this occurred may be retreated. In cases of evidence of termite infestations, the entire premises may be treated if:

- 1. The history of treatment of the structure is not known and cannot be readily determined; or
- 2. Live termites are found on or within the structure.

(o) For the purposes of interpretation of (n) above, previously reported damage shall not be accepted as evidence of re-infestation. For purposes of interpretation of (n)1 above, retreatment by the same person as originally performed the initial treatment shall presume knowledge of the history of treatment.

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(p) Prior to entering into any contract to apply a termiticide, the applicator or applicator business shall provide the contracting party with a copy of this section (N.J.A.C. 7:30-10.4) included with the consumer information required pursuant to N.J.A.C. 7:30-9.12. The applicator or applicator business may provide a summary in lieu of a copy of N.J.A.C. 7:30-10.4, subject to the approval of the summary by the Department.

1. When using a termiticide bait, a copy of N.J.A.C. 7:30-10.4 or approved summary need not be given to the contracting party.

(q) A diagram of the structure to be treated, depicting the lower level of the structure, the location of termite infestations, areas treated and any significant items such as location of known wells, drainage systems, streams and ponds which may be affected by the application shall become a part of the termite application records and shall be maintained by the applicator for a minimum of five years.

### **7:30-10.5 Additional restrictions on the use of organochlorine termiticides**

(a) If an organochlorine termiticide is used, it shall be used in accordance with the current Federally registered label or labeling, the preceding restrictions of N.J.A.C. 7:30-10.4(a) through (q) and the following additional restrictions of (a) through (k) below, whichever is most restrictive.

1. Exceptions from these additional restrictions may be granted at the Department's discretion if scientific evidence shows that the organochlorine termiticide(s) may be used without significant risk of harm, injury, or damage to persons, property or the environment.

(b) No organochlorine termiticide may be sprayed onto any interior surface exposed to the air or injected into wood structural elements in any post-construction termite application.

(c) No person shall make an application of a termiticide to soil along the exterior of a foundation wall by rodding or trenching unless:

1. The surface of the treated soil is covered with at least one-half inch of untreated soil, except in the erosion prone areas as provided in (c)4 below;
2. When backfilling a trench with soil removed prior to starting the application, the final layer of backfill is not added until all the termiticide puddles have been absorbed into the bottom of the trench;
3. Visible holes, cracks, and other above grade surface openings in the foundation wall which extend below the level of the outside grade are filled with mortar or other suitable material to the extent feasible prior to the application to prevent infiltration of pesticides into basements or crawlspaces; and
4. Soil in areas along a foundation obviously prone to erosion, such as soil immediately adjacent to a gutter downspout, shall have treated soil covered with enough untreated soil to prevent the erosion from reaching the treated layer, but in no case less than two inches of untreated soil.

- (d) The provisions of (c) above shall not apply to the extent that the soil removed by

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trenching is treated away from the site as provided in (k)5iv below; however, coverage with at least one-half inch or two inches of untreated soil is required as in (c)1 and 4 above.

(e) Voids in foundation walls may be left untreated when, in the experience of the applicator and after review of the structure and evidence of damage or infestation therein, leaving such voids untreated will effect a successful treatment. Upon selection of this option, with subsequent discovery of continued infestation necessitating treatment of the voids, treatment shall be performed consistent with label directions and the provisions of (f) below.

(f) No person shall make an application of an organochlorine pesticide into voids of hollow block, brick, and tile foundations unless done pursuant to the following restrictions:

1. The foundation shall be capped at the top of the foundation with cement, mortar, or other suitable material in such a manner as to completely seal the opening;
2. The foundation shall have all visible holes, cracks, and other openings sealed to the extent feasible prior to treatment;
3. The foundation shall have any paneling or other wall covering, as in the case of a finished basement, removed prior to treatment for inspection and sealing as in (f)2 above, or have a member of the termite application crew inside the basement during treatment observing for evidence of leaks. If a leak is observed by such crew member, application shall immediately cease, the spill be absorbed, the paneling or other wall covering removed, and any visible holes or cracks sealed prior to continuing treatment. If this second option is selected, other clean-up procedures, to be determined by the Department when discovered or reported pursuant to N.J.A.C. 7:30-9.17, may be required in addition to absorption of the termiticide; and
4. Rubble and stone foundations shall not be treated with an organochlorine pesticide.

(g) No person shall treat the void behind a brick, stone, or other veneer on the exterior of a structure with an organo-chlorine termiticide unless the injection hole is below the top of the foundation. If treatment is required above the foundation, application shall be made with a pesticide, other than an organo-chlorine, which is labeled for use at this site.

(h) No person shall make an application of any organochlorine termiticide to a basement floor, unless applied pursuant to the following restrictions listed by structural floor type and/or condition:

1. Exposed soil basement floors shall be treated by shallow trenching adjacent to the foundation, rodding or flooding the trench and backfill, and covering with at least two inches of untreated soil.
2. Wood basement floors over soil shall be treated by removal of the wood floor and treating the perimeter consistent with label directions and (h)1 above. Treated soil shall be covered with at least two inches of untreated soil or the entire soil floor covered with a concrete slab.
3. Concrete slab floors with an expansion joint more than one-quarter inch wide shall be treated by first sealing the expansion joint with cement, mortar, or equivalent material and then treating consistent with label directions.
4. Concrete slab floors with a French drain system shall be treated by low pressure injection beneath the slab and/or expansion joint with a pesticide, other than an

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organo-chlorine, labeled for this site. Such a french drain system shall be checked for potential seepage or spill after treatment. If a seepage or spill is observed, the spill shall be absorbed. Other clean-up procedures, to be determined by the Department when discovered or reported pursuant to N.J.A.C. 7:30-9.17, may be required in addition to absorption of the termiticide.

5. Basement floors which are wet shall not be treated, unless it can be determined that the site of injection is above the level of the surrounding water table.
6. Basement floors with a high local water table which is known to the person contracting for the termite treatment and communicated to the applicator shall not be treated, unless the floor can be treated when the water table is below the level of the site of injection.
7. Basement floors which have a sump pump pit in which there is standing water shall not be treated. Such a floor shall only be treated when the sump pit is completely dry.
  - (i) No person shall make an application of an organochlorine pesticide to a crawlspace unless applied pursuant to the following restrictions listed by structural type and/or other conditions:
    1. Accessible crawlspaces with no heating unit (see definition in N.J.A.C. 7:30-1.2) present and with exposed soil shall be treated by shallow trenching adjacent to the foundation, application consistent with label directions for trenching, and then coverage of the treated soil with a minimum of two inches of untreated soil.
    2. Accessible crawlspaces with no heating unit present and with the soil covered with a thin grout or equivalent material shall be treated consistent with label directions for treatment of slabs, unless the grout or equivalent material breaks up upon drilling, whereupon these areas shall be sealed with concrete or equivalent material in such a manner as to adequately close all holes, cracks, or seams resultant from the treatment. Coverage of the treated surface with a minimum of two inches of untreated soil is also acceptable.
    3. Accessible plenum crawlspaces shall not be treated with an organochlorine pesticide.
  - (j) No person shall make an application of an organochlorine pesticide to an inaccessible crawlspace.
  - (k) No person shall make an application of an organochlorine pesticide beneath a slab containing air ducts unless the air ducts are securely and permanently filled at the duct openings with a concrete or equivalent plug, any visible cracks or seams in the slab surface sealed, and the slab then treated consistent with label directions. The exterior soil may be treated with an organochlorine pesticide labeled for this site by rodding or trenching.

#### **7:30-10.6 Aerial application of pesticides**

- (a) All agricultural aircraft operations in New Jersey shall comply with those parts of 14 C.F.R. Part 137 – Agricultural Aircraft Operations not covered in this section. In the case of conflict, a regulation of 14 C.F.R. Part 137 – Agricultural Aircraft Operations shall take precedence over any of this section.

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1. An agricultural aircraft operator may be required to provide proof of current licensing as an agricultural aircraft operator in order to obtain a New Jersey pesticide applicator license.
- (b) The pilot of an agricultural aircraft shall, prior to any pesticide application, learn and confirm:
  1. The boundaries and exact location of the target area(s); and
  2. The identity of non-target areas and safety hazards located on or adjacent to the target area.
- (c) Spray and spreading equipment shall be thoroughly rinsed after each agricultural aircraft operation, except when the next application will be made using the same pesticide or, if another pesticide is to be used, it is compatible with that previously in the equipment and will not result in illegal residues or significant risk of injury or damage when applied to the new target site.
- (d) During pesticide application, the flow and mixture of the pesticide(s) shall be uniform and applied with spray or spreading equipment suited for the pesticide(s) used. Application equipment shall be properly calibrated, according to the manufacturers' specification for the equipment utilized, for the specific type of pesticide application being performed and proof of this proper calibration shall be maintained by the aerial pesticide applicator business and be provided, upon request, to the Department.
- (e) For interpretation of (d) above, participation of the individual aircraft in the Operation SAFE program, or its equivalent, as determined by the Department, shall presume proper equipment calibration; providing, the type of application(s) for which calibrated remains the same and the equipment set-up is not modified from that determined to be the most efficient under Operation SAFE, or its equivalent, as determined by the Department.
- (f) Participation of each aerial pesticide applicator business in the Operation SAFE program, or its equivalent, as determined by the Department, shall be mandatory; providing, the program addresses the type of application to be performed and providing the program is offered within New Jersey and for a sufficient time period to allow this participation.
- (g) Aircraft of the exact type and conformation, including, but not limited to, the application equipment utilized, shall also be considered to be properly calibrated if set-up to the specification determined from Operation SAFE, or its equivalent, as determined by the Department, to be the most efficient for that type aircraft; provided, this extension provision shall only apply to aircraft owned and operated by the aerial pesticide applicator business that has calibrated at least one of each type of aircraft under Operation SAFE or its equivalent, as determined by the Department.
- (h) The Department may require full participation of all aerial application aircraft if experience in working with the Operation SAFE program, or its equivalent, as determined by the Department, shows the need, as determined by the Department, to require the participation of each aircraft regardless of sameness of conformation.

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(i) All aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking and dissemination of pesticide on any non-target areas over which the flight is made.

(j) The shape of the tank or hopper of the spray or spreading equipment shall be such as to allow the complete drainage during flight and on the ground.

(k) Any emergency or accidental release of pesticide(s) from the aerial application or auxiliary equipment shall be subject to the reporting provisions of N.J.A.C. 7:30-9.17.

(l) All pesticides applied aurally as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the target, except for applications to forests and/or trees, such application height shall be within 50 feet above the target, and except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.

(m) All pesticides applied aurally as dry granules or pellets shall be released within 40 feet above the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.

(n) (Reserved)

(o) Aerial pesticide application for non-agricultural purposes may be performed on application sites of less than three acres provided the application site is part of a larger property or contiguous properties, which together make up three or more acres, and for which the owner's or owners' consent has been obtained. Consent may be verbal except when an occupied dwelling is within 100 feet of the target spray block. If such an occupied dwelling is within 100 feet of the target spray block, consent shall be in writing.

1. The written consent agreement shall include at a minimum:
  - i. The date of agreement;
  - ii. The location or designation of the consenting owner's property; and
  - iii. The signature of the owner of the consenting owner's property.
2. Consent shall remain valid until withdrawn.
3. Any consenting owner may withdraw consent by notifying, in writing, the party who requested the consent. Consent may be withdrawn at the end of the calendar year, or may be withdrawn at any time following a pesticide misapplication involving the consenting owner's property, cited under this chapter. Upon such notification, the previous consent shall be invalidated.
4. Copies of all written consent agreements shall be maintained by the aerial pesticide applicator or applicator business for three years.
5. The written consent agreements shall be immediately provided to the Department, upon request.

(p) Aerial pesticide application to an agricultural commodity may be performed on any size field; providing, the field being sprayed is part of a larger property of three or more acres

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wholly owned or controlled by the person contracting for the application.

(q) No pesticide shall be applied by aircraft within 300 feet horizontally of the premises of schools, hospitals, nursing homes, houses of religious worship, or any building, other than a private residence, which is used for business or social activities, if either the premise or the building is occupied by people, except:

1. Pesticide application within 100 feet of a building used for an agricultural business shall be allowed; providing only a general use pesticide is applied and warning is given prior to application so that doors and/or windows on the building are closed and the occupants thereof allowed time to vacate the building.

(r) No pesticide shall be directly sprayed by aircraft on the right-of-way of a public road, except when the right-of-way is included as the target site.

(s) No pesticide shall be deposited by aircraft within 100 feet of any private residence unless the aerial pesticide applicator and/or applicator business has written consent of an inhabitant of said private residence of legal age. The aerial applicator or applicator business may obtain the written consent directly, or the party who is contracting for the services of an aerial applicator business may obtain the written consent and forward it to the aerial applicator or applicator business for record keeping purposes. The consent agreement shall include:

1. The date of agreement;
2. The time period for which the consent is valid;
3. The location or designation of the private residence; and
4. The signature of the consenting inhabitant of the private residence.
  - i. Any consenting inhabitant may withdraw consent by notifying, in writing, the party which requested the consent. Consent may be withdrawn at the end of the calendar year or at any time following a pesticide misapplication involving the consenting inhabitant's property, cited under this chapter. Upon such notification, the previous consent shall be invalidated.
  - ii. Copies of all consent agreements shall be maintained by the aerial pesticide applicator and/or applicator business for three years; and
  - iii. Such copies shall be immediately provided, upon request, to the Department.

(t) No person may aerially apply any broad spectrum pesticide for non-agricultural purposes except for the following:

1. Pest control where the Department determines, with recommendations from Rutgers University, that no practical alternative is available.
  - i. If the Department determines that Rutgers University is unable to provide such recommendations, the Department may seek other expert advice as necessary.
2. Pest control where it can be shown that the pest has reached a stage of development, or where population pressure is such, that any non-broad spectrum pesticide is ineffective;
3. Environmental, health, or agricultural emergencies, as defined below:
  - i. "Agricultural emergency" for the purposes of this section means an occurrence of any pest, whether through population growth beyond economic injury levels, or through introduction of a foreign or exotic pest, which presents a significant risk of

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harm or injury to any agricultural commodity, as determined by the New Jersey Department of Agriculture and/or the United States Department of Agriculture (USDA) in concurrence with the Department.

- ii. "Environmental emergency" for the purposes of this section means the occurrence of any pest which presents a significant risk of harm or injury to the environment, including, but not limited to, exotic or foreign pests which may need preventive quarantine measures to avert or prevent that risk, as determined by the Department in concurrence with Rutgers University, and/or the New Jersey Department of Health and Senior Services.
- iii. "Health emergency" for the purposes of this section means the occurrence of any pest which presents a significant risk of harm or injury to the public health as determined by the New Jersey Department of Health and Senior Services in concurrence with the Department; and
- 4. Experimental work pursuant to N.J.A.C. 7:30-2.3.

(u) Where it has been determined that a situation described in (t)1 or 2 exists, then the applicator or applicator business shall petition the Department at least two working days prior to the proposed application for approval to use a broad spectrum pesticide.

- 1. Once the Department has confirmed that a situation described in (t)1 exists, then no further petition shall be needed to use broad spectrum pesticides aerially, until the following calendar year, or until a practical alternative becomes available earlier than the end of the calendar year.
- 2. Situations such as those described in (t)2 above shall be reviewed by the Department on a case by case basis, unless it can be determined that the pest population or development has resulted in a situation which is more general throughout larger areas of the state. Should this occur, the Department shall announce the situation and any limitations, geographic or otherwise, to the aerial use of broad spectrum pesticides.

(v) If it can be shown that an emergency application must take place without delay, the applicator or applicator business shall inform the Department of the application and provide justification for the application satisfactory to the Department no later than one working day after the application takes place.

(w) Where an application takes place pursuant to (t) above, and compliance with community or area-wide notification requirements pursuant to N.J.A.C. 7:30-9.10 is not possible due to the timing of the application, the applicator shall request a waiver from the provisions of N.J.A.C. 7:30-9.10, pursuant to N.J.A.C. 7:30-9.10(c).

(x) No person shall apply any pesticide by aerial application equipment, unless the pesticide is specifically labeled for aerial application.

(y) No person shall be exempt from any of the provisions of this section except under these conditions:

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1. During an emergency proclaimed by the Commissioner, specific aerial applicators may be exempted from all, or from specific regulations as deemed necessary by the Department to handle the emergency situation.
2. Any State, Federal, or public agency or aerial applicator under contractual agreement with such an agency, when conducting a pest control operation, shall be exempted from (l) through (o) and (q) through (s) above.
3. The provisions of (s) above shall not apply to any private residence that is occupied by the person contracting to have the spray performed and which is located on a property which includes the target site.

**7:30-10.7 Pesticide contamination clean-up**

(a) In situations involving misapplication of a pesticide, or where the Department determines an imminent hazard or significant risk of harm, injury or damage to persons or the environment would result, or in the case of a reportable pesticide spill, the Department may order the person responsible for the situation, misapplication or spill to return to the site location and conduct a clean-up to reduce or remove the pesticide to a level deemed acceptable by the Department. The clean-up procedure is to be in accordance with the methods approved by the Department and subject to follow up sampling by the Department or Department approved sampler to verify the efficacy of the clean-up.

(b) The person held responsible for the cleanup shall notify the Department when the cleanup has been completed and, upon request, provide to the Department copies of the analytical results of all samples collected to verify the efficacy of the cleanup.

(c) For purposes of (a) above, the basis for issuance of a clean-up order by the Department may include, but not be limited to:

1. Any application and/or spill of a persistent pesticide to a non-target site, as determined by review of the product's federal registered label or other use restrictions adopted under the authority of N.J.A.C. 7:30-10.1(a); or
2. Any application of a pesticide where evaluation of the pesticide use pattern, in conjunction with properties of the pesticide in addition to persistence, are deemed by the Department to present a significant risk of harm, injury or damage; or
3. Any application of a pesticide where the Department determines that the pesticide presents a significant risk to persons or the environment.

**7:30-10.8 Assessment of fees for sample analysis**

(a) In any situation involving a suspected misapplication or spill of a pesticide and where the sample(s) as collected during any inspection and sampling date define or help to define a violation of the Act or regulations promulgated thereunder or show the need for collection of additional samples to define the extent of the contamination as required by the Department to fully evaluate the procedures necessary to remedy said violation, a fee for all sampling may be assessed against the person responsible for the violative application or spill, such fee to reflect the actual cost incurred by the Department for the analyses of the sample(s).

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(b) A manufacturer of pesticide products shall be responsible for sample analysis fees when analysis of products collected at the manufacturer's facility indicate the samples are violative as misformulations.

- (c) Fees for pesticide sample analysis of formulations are as follows:
- |  |                 |
|--|-----------------|
| 1. Liquids, except detergents:             | \$600/sample.   |
| 2. Powders:                                | \$680/sample.   |
| 3. Aerosols, baits, traps, and detergents: | \$800/sample.   |
| 4. User dilution:                          | \$1,000/sample. |

(d) Fees for pesticide sample analysis of residues are as follows, reflecting a cost when utilizing existing Pesticide Laboratory methods, including residue scans:

- |                                       |                  |
|---------------------------------------|------------------|
| 1. Swab (surficial wipe):             | \$375.00/sample. |
| 2. Air (sorbent tube):                | \$375.00/sample. |
| 3. Water (Solid Phase Extraction):    | \$525.00/sample. |
| 4. Soil:                              | \$560.00/sample. |
| 5. Vegetation                         | \$560.00/sample. |
| 6. Commodity (Fruits and Vegetables): | \$725.00/sample. |
| 7. Filter Paper:                      | \$450.00/sample. |
| 8. Animal tissue:                     | \$725.00/sample. |

(e) The fee for a Phenoxy Acid Herbicide scan in any sample matrix shall be \$625.00/sample.

(f) Any sample requiring extra preparatory work or special analysis shall be charged \$300.00 per hour for the preparatory work, derivitization or special analysis in addition to the fees specified in (c), (d) or (e) above.

### **7:30-10.9 Submission of data on pesticide distribution or use**

(a) The Department may require the annual submission, from any person licensed to distribute or use pesticides in New Jersey, of information specifying the type and amount of pesticide applied or distributed by that person within a time interval as determined by the Department. The information shall be submitted on forms supplied by the Department and contain the following information:

1. The product name and EPA registration number of all pesticides applied or distributed within the time period specified;
2. The total quantity of each pesticide applied or distributed within such time period;
3. The site(s) of application or sale, including the crop, commodity, specific field, greenhouse or land area, including the municipality and county; and
4. The method of application (if applied).

(b) Additional information relating to the distribution or use of a specific pesticide or type of pesticide may be requested by the Department, at any time, when deemed necessary to evaluate a significant risk of harm, injury or damage to persons or the environment.