THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

Department of Agricultural Resources
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Legal Notice

Pursuant to the provisions of the Rights-of-Way Management Regulations, 333 CMR 11.00, in order to apply herbicides to control vegetation along railroad rights-of-way, a 5-year Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) must be approved by the Department of Agricultural Resources (DAR). Therefore, notice of receipt of a YOP and procedures for public review is hereby given, as required by Section 11.06 (3).

A YOP for New England Central Railroad Company, prepared by Keith L. Morris and Michael F. Gragnolati, Environmental Consultants from Leeds, Massachusetts, has been submitted to the DAR.

Municipalities included in New England Central Railroad Company's YOP for treatment of rights-of-way with herbicides for the calendar year 2013 are:

Amherst
Belchertown
Erving
Leverett
Monson
Montague
Northfield
Palmer
Sunderland

The consultants have submitted the following commentary on New England Central Railroad Company's YOP:

The intended vegetation control program will be consistent with the VMP, as approved by the DAR. Herbicides shall be applied to the roadbed by a spray truck, in accordance with the guidelines set forth in the VMP and the YOP. The herbicides to be applied, Razor or Razor Pro and Arsenal Powerline, are recommended for use in "sensitive areas" by the Department of Environmental Protection, and the DAR. No herbicides shall be applied within a Zone I of a public groundwater source, within 100' of any Class A public surface water source, within 100' of any tributary or associated surface water body where the tributary or associated surface water body runs within 400' of a Class A surface water source, or within 10' of any tributary or associated surface water body where the tributary or associated surface water body is at a distance greater than 400' form a Class A surface water source, within a lateral distance of 100' for 400' upstream, on both sides of the river, of any Class B Drinking Water Intake, a 50-foot radius around a private well, 10' from the edge of standing or flowing water or wetlands, within 10' of the mean annual high water line or any River, or within 10' of any certified vernal pool (pursuant to 333 CMR 11.04: Sensitive Area Restrictions). Applications of herbicide shall commence after the approval of the YOP by the DAR, following public review and comment. It is anticipated that herbicide application will occur in May/June, 2012. The YOP contains: maps locating rights-of-way and sensitive areas; the name of the herbicides proposed for use, including application rates, carriers and adjuvants; application techniques and

alternative control measures; material safety data sheets and herbicide fact sheets as approved by the DAR; the names of the applicator and YOP supervisor; methods used to identify and mark sensitive areas on the right-of-way; procedures for handling, mixing, and loading of herbicides; and identification of target vegetation in accordance with 333 CMR 11.06(2). Additionally, the YOP contains emergency/contingency measures and local, state and federal emergency contact telephone numbers.

The applicant has described in its YOP, on site loci, the rights-of-way that have been scheduled for treatment:

Public Review

The YOP may view at the DAR's website at http://www.mass.gov/agr/pesticides/rightofway/plans.htm .

The DAR in particular seeks the verification of sensitive area locations reported in the YOP. The DAR itself has a limited ability to survey the geography, land use, and the water supplies in all the communities through which the rights-of-way are located. Municipalities, however, have most of this information readily available, and the particular knowledge with which to better certify the sensitive areas in their communities. Therefore, the DAR requests and urges, the assistance of the "affected" municipalities in reviewing the completeness and accuracy of the maps contained in the submitted document. The DAR has established the following procedures for this review:

- A copy of this notice and the web site address where the final YOP can be viewed will be sent by the applicant to the Conservation Commission, Board of Health (or designated health agent), and to the head of the government (Mayor, City Manager, Chair or Board of Selectmen) of each municipality where herbicides are to be applied along the rights-of-way during the calendar year 2013. Municipal agencies and officials will have forty-five (45) days following receipt of the YOP to review the maps contained in the document that indicates the location of "Sensitive areas not readily identifiable in the field" for inaccuracies and omissions. Sensitive areas shall be defined as in section 11.02 a-f.

- Municipal agencies and officials are requested to notify the appropriate official(s) in their municipality qualified to certify the accuracy of sensitive area locations as indicated on the maps. The maps should be "corrected" and returned to the applicant. Also, a copy of the maps with these corrections indicated should be sent to the DAR at the address listed below within the forty-five (45) day review period. If a city or town needs additional time to carry out this review, it should send a written request for an extension to the DAR and cite why there is "good cause" for requesting additional time.

All corrections will be required to be made by the applicant, and corrected maps sent back to the city/town before the YOP can be considered "approved" by the DAR for vegetation maintenance in that municipality. Any dispute regarding corrections made by municipal authorities, on the part of the applicant, should be indicated in writing to the DAR and to the city/town that requested the dispute changes within fifteen (15) days of receipt of that request. The DAR will decide whether or not the YOP should be approved without the requested changes.

The final twenty-one (21) days of public review period can serve concurrently to provide public notification as required by section 11.07 of the Rights-of-Way Management regulations; if the applicant has an approved VMP and if all necessary modifications to the YOP have been made and approved by the DAR. Additionally, herbicide applications to rights-of-way in 2013 are subject to a "newspaper notification" requirement.

A failure by the city/town to respond to the applicant's submission of this YOP within the forty-five (45) day public review period will be considered by the DAR to indicate agreement by the municipal officials with the sensitive area demarcations as provided by the applicant in their YOP.

Any questions or comments on the information provided in this Legal Notice and the procedures established for the municipal review as outlined above, should be addressed to:

Michael McClean
Pesticide Bureau
Massachusetts Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, MA 02114-2151

Any additional questions or comments on any information provided as a part of the proposed YOP, should be addressed in writing to:

New England Central Railroad Company
2 Federal Street
Saint Albans, Vermont 05478

A copy should be sent to Mr. Michael McClean, at the address indicated above.

Comment period ends at the close of business – Friday, May 3, 2013