13.03: Exclusions from Pesticide Application
(1) General.

(a) Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board shall not be made to private property which has been designated for exclusion from such application by a person living on or legally in control of said property.

(b) Designation for exclusion from Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board may be made by supplying the clerk of the municipality in which such lands lie with a certified letter providing the name, address, and telephone number (if any) of the person requesting the exclusion, the address of the property to be excluded, and a description of the types of pesticide application programs for which exclusion is requested.

(c) Designation for exclusion may be made prior to March 1st of each year and shall be effective from April 1st of that year through March 31st of the following year.

(d) A designation for exclusion made by a tenant shall not be deemed to limit the right of the landlord to apply, or authorize the application of, pesticides to that land if by the express or implied terms of the written or oral rental agreement the owner retains the right to apply or authorize the application of such pesticides.

(e) 333 CMR 13.03 shall not be deemed to limit the right of an easement holder to apply pesticides to land which is subject to the easement if the easement expressly or implicitly includes the right to apply pesticides.

(f) A designation for exclusion made by a joint owner, tenant in common, or owner of a condominium unit shall not be deemed to limit the right of any other joint owner, tenant in common, condominium unit owner or condominium association to apply or authorize the application of pesticides to land if by the express or implied terms of the deed, condominium agreement or other agreement governing such land such other joint owner, tenant in common, condominium unit owner or condominium association retains the right to apply or authorize the application of such pesticides.

(2) Marking Areas for Exclusion. All areas designated for exclusion from Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board shall be marked as follows:

(a) Applications by Aircraft. The person requesting exclusion shall clearly mark boundaries or areas to be excluded with helium filled balloons or other marking methods previously approved by the Department. Such balloons or other marking materials shall be provided by the Contracting Entity. The Contracting Entity shall appropriately mark the excluded areas on the maps required under 333 CMR 13.04(5) and on maps used by

the pilots who shall be alerted by the Contracting Entity of the markings delineating the excluded area.

(b) Ground Applications. The person requesting exclusion shall mark the boundaries or areas to be excluded at least every 50 feet with orange surveyor's tape or another Department-approved marking device which clearly defines the area of exclusion. These markings shall be made known to the Contracting Entity, who shall be responsible for communicating the details of their marking to those who will carry out the application.

(3) Requests for exclusion shall not be honored in those cases in which:

(a) The Commissioner of Public Health has certified that the application is to be made to protect the Public Health;

(b) The Commissioner of the Department of Conservation and Recreation has certified that the application is necessary to contain an infestation of a recently introduced pest; or

(c) The Commissioner of the Department of Agricultural Resources has certified that the application is necessary to contain an infestation of a pest which is a significant threat to agriculture.