

CHAPTER 23

LYMANTRIA DISPAR DISPAR

Authority

N.J.S.A. 4:1-11.1, 4:7-15 through 4:7-35, and 4:7-36 through 4:7-42.

Source and Effective Date

Effective: May 25, 2022.
See: 54 N.J.R. 1165(a).

Chapter Expiration Date

Chapter 23, Lymantria Dispar Dispar, expires on May 25, 2029.

Chapter Historical Note

Chapter 23, Gypsy Moth, was adopted as R.1983 d.267, effective July 5, 1983. See: 15 N.J.R. 370(a), 15 N.J.R. 1093(b). Pursuant to Executive Order No. 66(1978), Chapter 23, Gypsy Moth, expired on June 6, 1988.

Chapter 23, Gypsy Moth, was adopted as R.1988 d.323, effective July 18, 1988. See: 20 N.J.R. 845(a), 20 N.J.R. 1688(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Gypsy Moth, was readopted as R.1993 d.305, effective May 28, 1993. See: 25 N.J.R. 1627(a), 25 N.J.R. 2686(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Gypsy Moth, was readopted as R.1998 d.190, effective March 26, 1998. See: 30 N.J.R. 507(a), 30 N.J.R. 1401(a).

Chapter 23, Gypsy Moth, was readopted as R.2003 d.219, effective April 28, 2003. See: 35 N.J.R. 495(a), 35 N.J.R. 2175(a).

Chapter 23, Gypsy Moth, was readopted as R.2008 d.317, effective September 25, 2008. See: 40 N.J.R. 2621(a), 40 N.J.R. 5959(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 23, Gypsy Moth, was scheduled to expire on September 25, 2015. See: 43 N.J.R. 1203(a).

Chapter 23, Gypsy Moth, was readopted, effective August 19, 2015. See: 47 N.J.R. 2352(a).

Chapter 23, Gypsy Moth, was readopted with technical changes, effective May 25, 2022. Chapter 23 was renamed Lymantria Dispar Dispar, effective June 20, 2022. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. VOLUNTARY SUPPRESSION PROGRAM

2:23-1.1 Applicability
2:23-1.2 Spray priorities
2:23-1.3 Local government participation
2:23-1.4 The Department of Agriculture participation
2:23-1.5 Notification requirements
2:23-1.6 (Reserved)

SUBCHAPTER 1. VOLUNTARY SUPPRESSION PROGRAM

2:23-1.1 Applicability

The conditions in this subchapter are applicable to voluntary participants in the Lymantria dispar dispar suppression program.

Notice of readoption with technical change, effective June 2, 2022.
See: 54 N.J.R. 1165(a).

2:23-1.2 Spray priorities

(a) If it becomes necessary to protect trees in residential and recreational areas, the following set of priorities have been established by the Department of Agriculture:

1. Forested communities with at least 10 homes per 50 acres, defoliated once, and expecting heavy defoliation the following spring.
2. Municipal and county recreational areas defoliated once, and expecting heavy defoliation the following spring.
3. Forested communities with five homes per 50 acres defoliated once, and expecting heavy defoliation the following spring.
4. Forested communities with at least 10 homes per 50 acres, or recreational areas not defoliated yet but expecting heavy defoliation next spring.
5. Watershed areas defoliated once and expecting heavy defoliation the following spring.
6. Uninhabited, high-value timber forests defoliated once and expecting heavy defoliation next spring.

Amended by R.1993 d.305, effective June 21, 1993.
See: 25 N.J.R. 1627(a), 25 N.J.R. 2686(a).

2:23-1.3 Local government participation

(a) Spraying will only be done on a voluntary basis with local governments that agree to fully accept the following conditions for participation in their aerial spray program:

1. Request, in writing, an egg mass survey to determine status of the Lymantria dispar dispar infestations in residential and recreational forests.
2. Arrange for financing the total cost of treatments and make contractual agreement with the spray vendor, either provided by the State or obtained by local bidding.
3. Assist in the administration and coordination of the spray programs, providing a town coordinator and all necessary labor to mark spray block boundaries.
4. Adopt a resolution declaring the Lymantria dispar dispar a "Public Nuisance." The public must be notified in advance, pursuant to the Senator Byron M. Baer Open

Public Meetings Act, N.J.S.A. 10:4-9, of the date, time, and place that the Lymantria dispar dispar resolution will be discussed. A copy of this notice must be sent to the Department of Agriculture.

5. Notify to the occupants by a properly served notification of the intent of the spray program. Spraying will only be done between the hours of 5:30 A.M. to 2:00 P.M., and 5:00 P.M. to 8:00 P.M. Each school district, within a participating municipality, shall agree upon and designate a normal student commuting time, not to exceed one hour, during which no spraying will be performed. In the event that the proposed spray area(s) encompass more than one school district in the municipality, the municipal governing body shall designate the one-hour spray shut down time, with the approval of the affected school districts. Failure of the affected school districts to approve the designated shut down time shall result in the ineligibility of the municipality to participate in the aerial spray program.

6. A "contact" person(s) shall be selected by the municipality so that residents may call to obtain the latest information on the aerial spray application, especially if spraying is postponed. The telephone number of the "contact" person shall be made known to the town residents.

7. Notify all affected school districts and bordering municipalities by first class mailing at least 21 days prior to the proposed date of treatment outlining the proposed treatment date, material to be used, along with the name and phone number of a local municipal contact person to answer further questions concerning the spray operations.

8. In addition to the resolution, a responsible municipal official shall certify to the Department of Agriculture that these notices have been served. No work will begin until certification is filed with the Department of Agriculture.

9. To give, on behalf of the Department of Agriculture, the notices required by N.J.A.C. 2:23-1.5.

10. Submit to the Department of Agriculture a copy of the spray vendor's invoice and proof of payment within 60 days following the Statewide completion of the Lymantria dispar dispar aerial suppression program.

Amended by R.1988 d.323, effective July 18, 1988.

See: 20 N.J.R. 845(a), 20 N.J.R. 1688(a).

Deleted "between 7:30 A.M. and 8:30 P.M." and substituted "during normal student ... local school district".

Amended by R.1993 d.305, effective June 21, 1993.

See: 25 N.J.R. 1627(a), 25 N.J.R. 2686(a).

Amended by R.1996 d.464, effective October 7, 1996.

See: 28 N.J.R. 3207(a), 28 N.J.R. 4417(a).

Amended by R.2003 d.219, effective May 19, 2003.

See: 35 N.J.R. 495(a), 35 N.J.R. 2175(a).

In (a), substituted "2:00 P.M." for "12:00 Noon" in the second sentence, deleted the third sentence and rewrote the fourth sentence in 5, added 7 and recodified former 7 through 9 as 8 through 10.

Notice of readoption with technical change, effective June 2, 2022.

See: 54 N.J.R. 1165(a).

2:23-1.4 The Department of Agriculture participation

(a) If any of the conditions contained in N.J.A.C. 2:23-1.3 are not adhered to by the local government, the Department of Agriculture will not participate in the program.

(b) If the conditions in N.J.A.C. 2:23-1.3 are met, the Department agrees to:

1. Conduct surveys to determine the size and location of areas requiring treatment. Biological evaluation of all proposed treatment areas will be performed before insecticide application is initiated.

2. Develop spray contracts and contact reputable applicators for competitive bidding.

3. Select the most efficacious non-chemical insecticide (*Bacillus thuringiensis*), specify types of application aircraft, and specify proper timing of aerial application depending on foliage size (about 30 percent of full leaf expansion of the majority of oak species found in the proposed spray block), larval size (about ½ inch), air temperatures greater than 39 and less than 81 degrees Fahrenheit, no precipitation forecast for four hours of adequate drying time immediately following spray application, and winds under 10 miles per hour.

4. Inform all participating local governments of the date of Statewide completion of the suppression program. This notification shall be provided in writing within 10 days of Statewide completion of the suppression program and shall serve as official notification to the local government of completion of the aerial suppression program.

5. Request financial assistance for local governments to reduce treatment costs.

6. Assist in the administration and coordination of the program.

7. If personnel are available, monitor the aerial application of the specified insecticide, inspect mixing equipment and spray aircraft to ensure that the specified dosage rate is applied.

Amended by R.1993 d.305, effective June 21, 1993.

See: 25 N.J.R. 1627(a), 25 N.J.R. 2686(a).

Amended by R.1996 d.464, effective October 7, 1996.

See: 28 N.J.R. 3207(a), 28 N.J.R. 4417(a).

2:23-1.5 Notification requirements

(a) Pursuant to N.J.S.A. 4:7-39, proper notification of all occupants who reside on the lands selected for treatment is required by doing the following:

1. Two newspaper notices are required to be placed in two newspapers having the best likelihood of informing the public. One notice is to be posted in the legal section and the other posted as a display ad. Both notifications shall appear at least seven days apart, the first of which shall be no earlier than 21 days prior to the proposed date of treat-

ment or other action, and the second of which shall, be no later than seven days prior to the proposed date thereof. All newspaper notifications shall contain the necessary information specified by the New Jersey Department of Environmental Protection's Community and Area Wide Pesticide notification requirements found at N.J.A.C. 7:30-9.10 through 9.16;

2. Mailing a notice by regular first class mail to the occupant of each affected parcel of property not later than 10 days prior to the proposed date of treatment or other action; and

3. Mailing a notice by first class mail to all bordering school districts and municipalities no later than 21 days

prior to the proposed date of treatment or other action. This mailing shall include the proposed treatment date, the material to be used and the name and phone number of a local municipal contact person to answer questions concerning the spray operation.

Amended by R.2003 d.219, effective May 19, 2003.
See: 35 N.J.R. 495(a), 35 N.J.R. 2175(a).
In (a), rewrote 1 and added 3.

2:23-1.6 (Reserved)

Repealed by R.1993 d.305, effective June 21, 1993.
See: 25 N.J.R. 1627(a), 25 N.J.R. 2686(a).
Section was "Beekeepers".

