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NOTICES

DEPARTMENT OF AGRICULTURE

Order of Quarantine and Treatment; Spotted Lanternfly

Recitals

[48 Pa.B. 3094]

[Saturday, May 26, 2018]

A. This order rescinds and replaces all previous orders and addendums thereto.

B. Spotted lanternfly, *Lycorma delicatula*, is a new pest to the United States and has been detected in the Commonwealth. This is a dangerous insect to forests, ornamental trees, orchards and grapes and is not native to the Commonwealth or the United States. It is not yet widely prevalent or distributed within or throughout the Commonwealth but it has been found in numerous counties since its first appearance in the Commonwealth.

C. The plant pest *Lycorma delicatula* (Spotted lanternfly) has been determined by the Department to be dangerous and destructive to the agriculture, horticulture and forests of this Commonwealth and is hereby declared a "public nuisance."

D. The Plant Pest Act (Act) (act of December 16, 1992, P.L. 1228, No. 162) (3 P.S. §§ 258.1 — 258.27) empowers The Department of Agriculture (Department) to take various measures to detect, contain and eradicate plant pests. These powers include the authority to establish quarantines to prevent the spread of plant pests within this Commonwealth, to make surveys to determine the existence, distribution and damage caused by the plant pest, to collect samples and to prescribe treatment for control of the plant pest (act of December 16, 1992, P.L. 1228, No. 162, §§ 18, 19 and 21) (3 P.S. §§ 258.18, 258.19 and 258.21)

E. Under the authority of section 258.20 of the Act (related to pests declared public nuisance) (act of December 16, 1992, P.L. 1228, No. 162, § 20) (3 P.S. § 258.20) the Department may declare a plant pest to be a public nuisance when the Department determines a plant pest to be dangerous or destructive to the agriculture, horticulture or forests of this Commonwealth. For the reasons set forth in Paragraphs B and C above, the Department declared and continues to declare *Lycorma delicatula* (Spotted lanternfly) to be a public nuisance.

F. Once a plant pest is declared a nuisance, "It shall be unlawful for any person knowingly to permit any plant pest so declared to exist on his premises or to sell, offer for sale, give away or move any plants, plant products or other material capable of harboring the pest." (act of December 16, 1992, P.L. 1228, No. 162, § 20) (3 P.S. § 258.20)

G. When a pest or pests that have the potential to cause serious damage to agriculture are found in any geographic area, the area and any adjacent areas as the Department deems necessary shall be quarantined. (act of December 16, 1992, P.L. 1228, No. 162, § 20) (3 P.S. § 258.21(a))

H. The areas or zone of the Commonwealth in which the plant pest, *Lycorma delicatula* (Spotted lanternfly), has been detected or confirmed and adjacent areas that are quarantined are set forth in Article 1, Paragraph 1 (related to Establishment of Quarantine) of this Order of Quarantine. Any new place or area of the Commonwealth in which the plant pest, *Lycorma delicatula* (Spotted lanternfly), is later detected or confirmed and adjacent areas shall be added to

this Order of Quarantine through an addendum delineating the areas or zone to be added to this Order of Quarantine. As is this Order, such an addendum shall be published in the *Pennsylvania Bulletin* and enforcement of this Order of Quarantine with regard to that area or zone shall become effective immediately upon such publication in the *Pennsylvania Bulletin*.

Order

Article I. General Provisions

Under authority of section 21 of the Act (act of December 16, 1992, P.L. 1228, No. 162, § 21) (3 P.S. § 258.21), and with the Recitals previously listed incorporated into this Order of Quarantine and Treatment by reference, the Department hereby Orders the following:

1) *Establishment of Quarantine*. A quarantine is hereby established for the plant pest *Lycorma delicatula* (Spotted lanternfly), which has been declared a public nuisance. The areas or zone of the Commonwealth covered by this Order of Quarantine are the following: Berks, Bucks, Carbon, Chester, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Philadelphia, and Schuylkill Counties and any other area or zone delineated in an addendum to this Order of Quarantine as set forth in Paragraph H. of the "Recitals" to this Order of Quarantine.

2) *Purpose of Quarantine*. The purpose of this Order of Quarantine and Treatment is as follows:

a) To establish provisions to control and eradicate the plant pest *Lycorma delicatula* (Spotted lanternfly).

b) To establish requirements and parameters under which individuals and persons may move regulated articles within and from the areas and zone covered by this Order of Quarantine, and any future addendum hereto.

c) To establish treatment provisions for all properties within the areas and zone subject to this Order of Quarantine and any future addendum hereto.

3) *Definitions*.

a) *Agent, inspector or deputy*. A representative of the Department of Agriculture duly appointed by the Secretary of Agriculture to carry out the provisions of the Plant Pest Act.

b) *Control*. The reduction of the population of a plant pest to an acceptable level as determined by the Secretary of Agriculture or his agents.

c) *Department*. The Department of Agriculture of the Commonwealth.

d) *Eradication*. The elimination or removal of a pest from a defined geographic area.

e) *Person*. An individual, partnership, association, firm, corporation, limited liability corporation, state agency, municipality or other governmental unit or agency or any other legal entity.

f) *Plant pest*. An organism, including other plants, causing or capable of causing injury or damage to plants or plant products. In this case, specifically *Lycorma delicatula* (Spotted lanternfly).

g) *Secretary*. The Secretary of Agriculture of the Commonwealth.

h) *Treatment order*. A written document specifying certain measures to be taken to control or eradicate a plant pest, including destruction of appropriate plants or plants products.

4) *Regulated Articles and Limitations Imposed.* The plant pest established by this Order of Quarantine—*Lycorma delicatula* (Spotted lanternfly)—along with any material or object that may carry or spread the plant pest (the plant pest and its eggs and nymphs can exist on and be spread through conveyance of any object to which it may attach) are considered regulated articles under this Order of Quarantine and may not be moved out of or within the quarantined area unless done in accordance with Articles II through IV of this Order of Quarantine. The following list provides examples of regulated articles but is not an all-inclusive list. Any object capable of carrying the plant pest—*Lycorma delicatula* (Spotted lanternfly)—shall be considered a regulated article under this Order of Quarantine.

- a) Any living life stage of the Spotted lanternfly, *Lycorma delicatula*.
- b) All plants and plant parts. This shall include, but is not limited to, all live or dead trees, nursery stock, budwood, green lumber, firewood, logs, perennial plants, garden plants and produce, stumps, roots, branches, mulch, and composted and uncomposted chips, bark, and yard waste.
- c) Outdoor industrial and construction materials and equipment, concrete barriers or structures, stone, quarry material, ornamental stone or concrete, construction, landscaping and remodeling waste.
- d) Packing materials, such as wood crates or boxes.
- e) Outdoor household articles including recreational vehicles, lawn tractors and mowers, mower decks, grills, grill and furniture covers, tarps, mobile homes, tile, stone, deck boards, mobile fire pits, any equipment, trucks or vehicles not stored indoors.
- f) Conveyances of any type, whether utilized for movement of the materials previously listed or personal use, and any trailers, wagons or other equipment attached thereto.
- g) Any other article, materials or means of conveyance when it is determined by an inspector to present a risk of spread of any life stage of Spotted lanternfly, *Lycorma delicatula*.

5) *Authority of Department.* As authorized by sections 18 and 19 of the Plant Pest Act, (act of December 16, 1992, P.L. 1228, No. 162, §§ 18, 19(a)) (3 P.S. §§ 258.18 and 258.19(a)) the Department of Agriculture or its agents may enter onto any premises within the areas or zone established in this Order of Quarantine and Treatment, or any subsequent addendums hereto, to survey, collect samples, investigate, determine compliance and carry out eradication or control measures where necessary.

Article II. Requirements for Movement of Regulated Articles Within or From a Quarantined Area

1) *Compliance Checklist required for individuals not conducting business.* A regulated article, including any vehicle or conveyance, delineated in Article I Paragraph 4 of this Order of Quarantine, may only be moved within or from the Quarantine Zone with a valid checklist certificate issued by the Department. The valid signed checklist certificate shall move with the regulated article(s). The checklist certificate is a form available in blank from the Department's website and is to be completed by the individual.

2) *Compliance Agreements Required.* Compliance Agreements are only required under the following conditions:

a. *Required by Other States or Countries.* To the extent required by another State or Country for the shipment of goods, the Department will require such persons to enter into a Compliance Agreement.

b. *Compliance Agreement in Place.* Any person having a Compliance Agreement in place with the Department at the time of issuance of this Quarantine Order shall continue to operate

under the parameters of that Compliance Agreement until such time as that person has been issued a Permit under the conditions of this Quarantine Order.

3) *Permit required for persons conducting business requiring the movement of any regulated article within or from the Quarantine Zone.*

a. *Permit Required.* Any person conducting business requiring the movement of any regulated article within or from the Quarantine Zone, shall be required to obtain a Permit from the Department in the manner set forth herein.

b. *Movement of Regulated Articles Without a Permit Prohibited.* A person conducting business may not move any regulated article within or from the Quarantine Zone without a permit.

c. *Permit Process and Requirements.* A Person required to obtain a Permit for movement of regulated articles within or from the Quarantine Zone shall comply with the following:

i. The owner, manager, supervisor or other person(s) with authority to bind the entity and train other employees (hereinafter "designated employee(s)") shall take training provided by the Department, Penn State Cooperative Extension or others, who have participated in a Train the Trainer course approved by the Department and shall have passed an examination, administered by an employee or agent of the Department, demonstrating they have an understanding and knowledge of the pest and of the procedures necessary to prevent the spread of the pest.

ii. Upon successful completion of the training and passing the required test, the designated employee(s) shall be responsible for training other employees of that entity and documenting such training.

iii. In conjunction with taking the examination, the designated employee(s) shall record, preserve, maintain and provide to the Department as needed, at a minimum, the following information:

1. The name, telephone number, and e-mail address of the designated employee taking the required test.

2. The legal name, address, business telephone number and e-mail address of the primary business location of the permit holder.

3. The number of vehicles and conveyances utilized and for which a Permit certificate is needed.

4. An attestation that the permit holder shall comply with all requirements of this Order of Quarantine and of the permit.

iv. *Additional Information.* The Secretary may request, in writing, additional information, if necessary, from the permit holder, for the purpose of evaluating the potential risk to the Commonwealth.

v. Any employee responsible for driving any vehicle or conveyance, or handling, shipping, packaging or loading any regulated article shall be trained by a designated employee who has taken the training, passed the permit exam and been issued a permit. Multiple employees in a business may take the permit training and examination if the business deems that necessary to build sufficient training capacity within their organization.

vi. All regulated articles, including conveyances and vehicles, shall be inspected and all egg masses and other life stages of the Spotted lanternfly shall be removed and destroyed prior to being moved within or out of the Quarantine Zone. A record of such inspection shall be kept and recorded as set forth in Article IV of this Quarantine Order.

vii. Regulated articles, other than the vehicles and conveyances themselves, shall be packaged and safeguarded sufficiently, such as within a closed container, shrink wrap, tight tarp or similar covering, to maintain isolation from the domestic environment during storage or transportation.

d. *Issuance of Permit.* Upon receipt of all required information as outlined in section c.(iii) above, and the successful completion of the training and testing requirements of this Quarantine Order, the Department will:

i. Issue Permits to the person that has successfully completed the testing and training, with sufficient copies to display in each business location and vehicle.

ii. Authorize any designated employee compliant with section c.(i), and issued a permit in accordance with the provisions of this Quarantine Order, to train other employees of the business or entity.

e. *Maintenance of Permit*

i. *Term of Permit.* Permits shall be valid for one year from the date of issuance, with extensions permissible upon notice by the Department. A Permit shall be required until such time as the Quarantine Order is rescinded by the Department.

ii. *Change of Information.* A Permit holder shall, prior to or immediately upon a change of information, provide the Department with notice of and describe any change to Permit information previously submitted.

f. *Display of Permit and Certificate.* The Permit issued to the person, business or other entity, shall be displayed, in a visible and conspicuous place, at each business, entity or individual location to which it was issued and a permit issued by the Department shall be placed in each vehicle or conveyance when being operated.

g. *Subcontractors and Agents.* A person required to have a Permit shall assure any subcontractor or agent of that person has also obtained the proper Permit(s) as applicable, prior to subcontracting with that person or allowing that person to act as a subcontractor or an agent, for activity within the Quarantine Zone.

Article III. Other Movement Provisions for Business

1) *Movement of a regulated article through a Quarantine Zone without a Permit.* A regulated article, including any vehicle or conveyance, may be shipped through the Quarantine Zone without a Permit or compliance agreement if the regulated article and the vehicle and conveyance originates outside the Quarantine Zone and all of the following criteria are met:

a. The points of origin and destination are outside of the Quarantine Zone established by this Order of Quarantine and Treatment and are indicated on a waybill accompanying the regulated article.

b. No point of origin is within an area of the Commonwealth or other State, Commonwealth or District where the presence of the plant pest Spotted Lanternfly, *Lycorma delicatula*, has been confirmed by a federal, state or other regulatory agency.

c. If moving during the period of April through December, the regulated article is moved into the Quarantine Zone in an enclosed vehicle or conveyance or is completely covered, such as by a tarp or full shrink wrapping, to prevent exposure to the plant pest Spotted lanternfly, *Lycorma delicatula*. The covering must be kept on the regulated article until leaving the Quarantine Zone and thereafter be inspected, decontaminated, or destroyed.

d. The regulated article, including the vehicle and conveyance, is moved directly through the Quarantine Zone without stopping (except for refueling or for traffic control devices or

conditions) and has been stored, packed or handled only at locations outside the Quarantine Zone.

2) *Federal Requirements for Interstate Movement of Articles*. This Order of Quarantine is distinct from, and in addition to, any Federal statute, regulation or quarantine order addressing the movement of articles from the quarantined area or this Commonwealth.

3) *Movement of Articles from other areas where Spotted lanternfly is known to be established*. If any other area inside or outside of this Commonwealth is determined by a federal, state or other regulatory agency to have the plant pest Spotted lanternfly, *Lycorma delicatula*, present, movement from that area into the Commonwealth shall require a Permit issued under the provisions of this Order of Quarantine and Treatment or a Department approved Permitting process or other Program carried out by the State, Commonwealth or District of origin.

Article IV. Recordkeeping

1) *General Documentation and Recordkeeping*. Documentation of proper and required inspections, such as those set forth at Article II, paragraph 3.c.vi. of this Order of Quarantine and Treatment and compliance measures taken when shipping regulated articles, including vehicles and conveyances within or from the Quarantine Zone, shall be kept by each permitted individual, employee or person conducting activity within the Quarantine Zone. These inspection records shall include recording of any living life stage finds and method utilized for destruction of the pest.

2) *Specific Documentation and Recordkeeping for Business*.

a. The Permittee shall allow the Department during normal business hours to inspect records and protocols relevant to Permittee's adherence to the Permit requirements and this Quarantine Order.

b. Documentation shall be kept listing each individual trained by the Permit holder's designated employee(s) as per Article II, section 3).c.

c. Incoming and outgoing shipment records are to detail the kind and quantity of regulated article shipped, shipper name, date of shipment, source or destination information, and corresponding inspection treatment and mitigation records.

d. Inspection, treatment and mitigation records, including dates and outcomes, shall be kept in accordance with applicable state and federal requirements.

e. Records required under the Permit and this Quarantine Order are to be maintained for a minimum of two (2) years with copies provided to the Department upon request.

Article V. No Preclusion of Powers

1) This Quarantine Order does not affect, preclude or prevent the Department from enforcement of all statutory and regulatory authority.

2) This Quarantine Order shall not preclude the routine inspection, sampling, and testing of regulated articles by the Department or by the proper authorities in other States and Commonwealths, such as State Departments of Agriculture or similar authority, where the regulated articles may be shipped, nor does it preclude rejection, stop-sale or other regulatory action as a result of any positive samplings, tests or findings.

3) A person holding a Permit or subject to a Compliance Agreement shall allow the Department to enter Participant's premises during normal business hours for the purpose of: conducting inspections and collecting samples to test for the presence of Spotted lanternfly; inspecting records related to this Quarantine Order; and interviewing employees to inquire about training on Spotted lanternfly practices or compliance with this Order or any part thereof.

4) In cooperation with the Department, a person holding a Permit or subject to a Compliance Agreement shall undertake treatment and mitigation procedures, as the Department determines to be necessary based on available science and research, in order to slow the spread or eradicate Spotted lanternfly from the Participant's premises in a manner which minimizes the risk of spreading Spotted lanternfly in accordance with the standards established below.

Article VI. Surveys, Order of Treatment and Monitoring

1) *Surveys.* The Plant Pest Act (Act) (act of December 16, 1992, P.L. 1228, No. 162) (3 P.S. §§ 258.1—258.27) empowers the Department to take various measures to detect, contain and eradicate plant pests. These powers include the authority, under section 18 of the Act, to conduct surveys to determine the existence, distribution and severity of damage caused by a plant pest. (act of December 16, 1992, P.L. 1228, No. 162, § 18) (3 P.S. § 258.18). Pursuant to that authority the Department has been conducting and will continue to conduct surveys within the Commonwealth for the plant pest, Spotted lanternfly, *Lycorma delicatula*.

2) *Treatment Requirements.* As set forth in the Recitals to this Order of Quarantine and Treatment the plant pest Spotted Lanternfly, *Lycorma delicatula* has been declared a public nuisance. Once a plant pest is declared a nuisance, "It shall be unlawful for any person knowingly to permit any plant pest so declared to exist on his premises. . . ." (act of December 16, 1992, P.L. 1228, No. 162, § 20) (3 P.S. § 258.20) Furthermore, under section 19 of the Plant Pest Act, "If the secretary determines that a serious pest situation exists in any part of this Commonwealth, any necessary eradication or control measures may be taken. Prior to carrying out any treatment procedure, the department shall notify the property owner in writing. Any agent of the department is authorized to enter the premises during reasonable hours to carry out the eradication or control measures." (act of December 16, 1992, P.L. 1228, No. 162, § 19(a)) (3 P.S. § 258.19(a)) Pursuant thereto, the Department issues this Order of Treatment as written notice of the Department's requirement that property owners, within the areas and zone established in this Order of Quarantine and Treatment and any future addendums hereto, are required to take the following treatment actions.

a) Property Owner Responsibilities and Requirements:

i) The property owner shall be responsible for controlling or eliminating any life stage of the plant pest *Lycorma delicatula* (Spotted lanternfly) on the property.

ii) Control procedures may include tree banding, pesticide application, or removal of *Ailanthus altissima* trees, or any combination thereof, to reduce the available host of the Spotted lanternfly and to decrease the population of Spotted lanternfly. All control procedures will conform with methods approved by the Department, in addition to all applicable federal, state, and municipal laws and ordinances.

iii) Control work may be done by the property owner or by a contractor hired by the property owner. Where a contractor is hired, the contractor shall be fully insured and properly licensed, including pesticide applicator licensing.

iv) At the discretion of the Department and subject to availability of the necessary resources, the Department may request and the property owner may consent to the Department carrying out the necessary control measures on the owner's property.

b) *Continuing Obligation:* The obligation of the property owner to control the plant pest Spotted lanternfly, *Lycorma delicatula*, shall continue so long as the plant pest Spotted lanternfly, *Lycorma delicatula*, exists on the property and such obligation shall continue until the Department has rescinded this or any subsequent Order of Quarantine and Treatment.

3) *Monitoring by the Department.* The Department will continue to survey and monitor all properties within the areas and zone of Quarantine or areas identified as having Spotted lanternfly, including any added hereto by Addendum, until such time as the Order of Quarantine and Treatment for an area or zone is rescinded. During such time, as authorized by sections 18

and 19 of the Plant Pest Act, (act of December 16, 1992, P.L. 1228, No. 162, §§ 18, 19(a)) (3 P.S. §§ 258.18 and 258.19(a)) the Department of Agriculture or its agents may enter onto any premises within the areas or zone established in this Order of Quarantine and Treatment, or any subsequent addendums hereto, to survey, collect samples, investigate, determine compliance and carry out eradication or control measures where necessary.

4) *Noncompliance*. If the property owner or person in charge does not comply with the treatment provisions of this Order, the Department may carry out the control measures, and all expenses associated with the treatment shall be paid to the Department by the person failing to comply. (act of December 16, 1992, P.L. 1228, No. 162, § 19) (3 P.S. § 258.19)

Article VII. Penalties, Cooperation, Effective Date

1) *Violations*. In accordance with the provisions of section 258.22 of the Act (act of December 16, 1992, P.L. 1228, No. 162, § 22) (3 P.S. § 258.22) it shall be unlawful to violate or fail to comply with any provision of the Act, regulations or this Order of Quarantine.

2) *Criminal and Civil Penalties*. In accordance with the provisions of the Act, at sections 258.23 and 258.24 (act of December 16, 1992, P.L. 1228, No. 162, §§ 258.23, 258.24) (3 P.S. §§ 258.23 and 258.24), a person who violates this Order of Quarantine may face summary criminal citation, which may carry a fine of up to \$300 per violation. In addition, a person who violates this Order of Quarantine may be assessed a civil penalty of up to \$20,000 with respect to each violation.

3) *Revocation*. Revocation of a Permit or Compliance Agreement. Any Permit or any Compliance Agreement may be canceled orally or in writing by the Department whenever the Department determines that the holder of the Permit or Compliance Agreement has not complied with a provision of the Act, regulations, Permit, Compliance Agreement or this Order of Quarantine. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.

4) *Unauthorized duplication/production of Permit or Compliance Agreement*. Any duplication or reproduction of any Permit or Compliance Agreement issued by the Department or of a Department approved Permit or other program document issued by another State, Commonwealth or District, is a violation of this Order of Quarantine and will be subject to the penalties established in this Article VII.

5) *Cooperation with other agencies*. As authorized by section 258.26 of the Act (act of December 16, 1992, P.L. 1228, No. 162, § 258.26) (3 P.S. § 258.26), the Department will consult with other State agencies, Federal agencies, The Pennsylvania State University, and the Pennsylvania State University Cooperative Extension with respect to the most efficacious measures to survey for and detect Spotted lanternfly, *Lycorma delicatula* to slow the spread or eradicate these plant pests.

6) *Effective Date*. This quarantine is effective upon signature and shall be published in the *Pennsylvania Bulletin* and shall remain in effect until rescinded by subsequent order.

RUSSELL C. REDDING,
Secretary

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