

NOTICES

DEPARTMENT OF AGRICULTURE

Order of Quarantine Phorid Fly

Recitals

A. Phorid Fly, *Megaselia halterata*, is an organism that has been detected in the Commonwealth. The phorid fly reproduces in dark, damp areas such as mushroom production houses.

B. The Phorid Fly feeds on decomposing materials such as carrion and nutrient rich soil amendments and substances. It also lays its eggs in soil, where the larvae feed on the roots of healthy plants, making it detrimental to plants, plant products and crops.

C. The organism *Megaselia halterata* (Phorid Fly) has been determined by the Department to be an organism that is capable of causing physical damage to plants or plant products, and economic injury to the mushroom industry of this Commonwealth, and it is hereby declared a "plant pest."

D. The organism *Megaselia halterata* (Phorid Fly) causes mushroom yield losses due to the larvae of Phorid Fly feeding on the mycelia or carpophores, and due to other pests and diseases for which the Phorid Fly serves as a vector. Infestations of Phorid Flies carry green mold, resulting in *agaricus* mushrooms exhibiting browning reactions, and are vectors for secondary invaders such as *Penicillium*. Mushroom crop losses in Pennsylvania since the onset of these Phorid Fly induced diseases are estimated annually to be in the millions of dollars.

E. The Plant Pest Act (act of December 16, 1992, P.L. 1228, No. 162) (3 P.S. §§ 258.1—258.27) (Act) empowers The Department of Agriculture (Department) to take various measures to detect, contain and control 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 (3 P.S. §§ 258.18, 258.19 and 258.21).

F. The Act provides the Department authority to "...establish quarantines...to prevent the dissemination of plant pests within this Commonwealth. 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..." (3 P.S. § 258.21(a)).

G. The areas or zones of the Commonwealth in which the plant pest, *Megaselia halterata* (Phorid Fly), has been detected or confirmed and adjacent areas that are quarantined are set forth in Article I, 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, *Megaselia halterata* (Phorid Fly), is later detected or confirmed and adjacent areas shall be added to this Order of Quarantine through an addendum delineating the areas or zones to be added to this Order of Quarantine. Such 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 (3 P.S. § 258.21), and with the Recitals previously listed incorporated into this Order of Quarantine by reference, the Department hereby Orders the following:

(1) *Establishment of Quarantine.* A quarantine is hereby established for the plant pest *Megaselia halterata* (Phorid Fly) in the following areas and zones: 1. Kennett Township and 2. New Garden Township. Additional areas and zones required to comply with this Order may be added pursuant to an addendum to this Order of Quarantine as set forth in Paragraph G. of the "Recitals" to this Order of Quarantine.

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

(a) To establish provisions to suppress and control the plant pest *Megaselia halterata* (Phorid Fly).

(b) To establish requirements and parameters to which individuals and persons owning or operating mushroom production facilities and houses, within the areas and zones covered by this Order of Quarantine, and any future addendum hereto, shall adhere.

(c) To establish treatment provisions for all mushroom production facilities and houses within the areas and zones 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 Act.

(b) *Best Management Practice (BMP)* – Those standards and requirements set forth in this Order of Quarantine that assist in the control and containment of the plant pest *Megaselia halterata* (Phorid Fly).

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

(d) *Department.* The Department of Agriculture of the Commonwealth.

(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 *Megaselia halterata* (Phorid Fly).

(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, crops, plants or plants products.

(i) *Uninfested*. No known populations of *Megaselia halterata* (Phorid Fly).

(4) *Authority of Department*. As authorized at sections 18 and 19 of the Act, (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 zones established in this Order of Quarantine, or any subsequent addendums hereto, to survey, collect samples, investigate, determine compliance with and carry out eradication or control measures where necessary.

Article II. Requirements for Treatment.

All mushroom houses within the areas and zones established by the Order of Quarantine must be treated using Best Management Practices in a manner that controls the plant pest *Megaselia halterata* (Phorid Fly). The following standards shall be followed:

(1) Mushroom houses and any building in which mushrooms are grown or cultivated shall be treated using Best Management Practices as set forth in Attachment A, which is incorporated herein and made a part of this Order of Quarantine.

(2) The Department may approve, in writing through the issuance of a treatment order or through addendum to this Order of Quarantine, an alternative treatment method for control of the plant pest *Megaselia halterata* (Phorid Fly) by the property owner or person in charge of the premises.

Article III. Inspections.

The Department, during normal business hours, may enter onto and inspect the land and premises, including mushroom houses and any building in which mushrooms are grown or cultivated, along with mushroom soil, planting medium and other medium on which the plant pest *Megaselia halterata* (Phorid Fly) may breed or exist for purposes of enforcement of this Order of Quarantine and the provisions of the Act and its attendant regulations.

Article IV. Surveys, Order of Treatment, Duty to Treat and Monitoring

(1) *Surveys and Monitoring.*

(a) *Surveys*. The Act (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 (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 *Megaselia halterata* (Phorid Fly).

(b) *Monitoring*. The Department will continue to survey and monitor all mushroom production related properties within the areas and zones of Quarantine, including any in areas or zones added thereto by Addendum, until such time as the Order of Quarantine for an area or zone is rescinded. During such time, as authorized by sections 18 and 19 of the Act, (3 P.S. §§ 258.18 and 258.19(a)) the Department of Agriculture or its agents may enter onto any premises, during normal business hours, within the areas or zone established in this Order of Quarantine or any subsequent addendums hereto, to survey, collect samples, investigate, determine compliance and require control measures where necessary.

(2) *Treatment Requirements.* As set forth in the Recitals to this Order of Quarantine the organism, *Megaselia halterata* (Phorid Fly), has been declared a plant pest. Allowing for the establishment of a quarantine order, surveys and treatment orders (3 P.S. §§ 258.18, 258.19 and 258.21). Under section 19(a) of the 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." (3 P.S. § 258.19(a)) Under Section 19(b) of the Act, "If the department finds a pest situation that does not justify the procedures specified in subsection (a), it may issue, in writing to the owner or person in charge, a treatment order... The premises shall be under quarantine until the control or eradication measure as specified have been completed and approved by the department..." (3 P.S. § 258.19(b)) Pursuant thereto, the Department has set forth treatment measures in this Order of Quarantine but, has the authority to amend or supplement such treatment measures in any treatment order that may be issued to the owner or person in charge of a premise on which the plant pest *Megaselia halterata* (Phorid Fly) is found to exist.

(3) *Duty to Treat; Reporting of Megaselia halterata* (Phorid Fly). The property owner or person in charge of any premises subject to this Order of Quarantine shall implement and engage in the treatment standards established in Article II of this Order of Quarantine and any requirements set forth in a Treatment Order issued by the Department. A Treatment Order issued under this Order of Quarantine will only be issued for treatment of mushroom houses and any building in which mushrooms are grown or cultivated, along with mushroom soil, planting medium and other medium within those houses and buildings, on which the plant pest *Megaselia halterata* (Phorid Fly) may breed or exist and will not include an order for destruction of crops, plants or plants products.

(4) *Duty to Report the Megaselia halterata* (Phorid Fly). The owner or person in charge of any premises subject to this Order of Quarantine shall report the existence of Phorid Flies on the property to the Department and shall immediately implement the treatment standards established in Article II of this Order of Quarantine and any requirements set forth in a Treatment Order issued by the Department. Immediately upon completion of a grow cycle the owner or person in charge of the premises shall file, with the Department, a Notice of Intent to treat mushroom houses. The Notice of Intent to treat shall be filed with the Department 24-hours prior to treatment. The Notice of Intent filing shall include the name of the owner and person in charge, number of houses to be treated, premise location and individuals responsible for management and treatment of the premises. Such report may be filed to RA-AGPhorid@pa.gov.

(5) *Continuing Obligation.* The obligation of the property owner or person in charge to treat and report shall continue so long as the plant pest *Megaselia halterata* (Phorid Fly), including its eggs or larvae, is present on the property.

(6) *Noncompliance.* If the property owner or person in charge does not comply with the treatment provisions of this Order of Quarantine or any Treatment Order issued by the Department, 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. (3 P.S. § 258.19). Failure of any person to comply with a provision of this Order of Quarantine, a Treatment Order issued by the Department, or any provision of the Act or regulations shall result

in that person being ineligible to receive any Department provided financial assistance established for the purpose of mitigation and control of the Phorid Fly.

Article V. Recordkeeping

(1) *General Documentation and Recordkeeping.* The following records shall be kept:

(a) Documentation of each treatment required under Article II of this Order of Quarantine shall be kept for each separate treatment.

(b) The documentation must be for each separate mushroom house and building in which mushrooms are grown or cultivated. Each record must contain the following information:

(i) The date and time of each treatment.

(ii) The house or building and all materials treated and the type of treatment.

(iii) For mushroom houses subject to Article II. (1) of this Order of Quarantine, the exact house or building treated, length of treatment, temperature of house or building during treatment and the treatment undertaken during each phase of the Best Management Requirements set forth in Attachment A.

(iv) For treatments undertaken pursuant to Article II. (2) of this Order of Quarantine, the type of treatment undertaken as required by the treatment order or addendum to this Order of Quarantine issued by the Department.

(v) The name of the person(s) that treated the regulated article.

(2) *Inspection and Maintenance of Records.*

(a) The owner or person in charge shall allow the Department access to the property and to all records during normal business hours, to inspect records required to be kept under this Order of Quarantine or any Treatment Order issued by the Department.

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

Article VI. No Preclusion of Powers

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

(2) This Order of Quarantine shall not preclude the routine inspection, sampling, and testing of regulated articles by the Department.

Article VII. Penalties, Cooperation, Effective Date

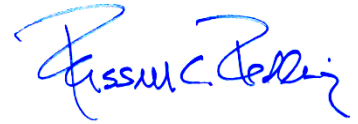
(1) *Violations.* In accordance with the provisions of section 258.22 of the Act (3 P.S. § 258.22) it shall be unlawful to violate or fail to comply with any provision of the Act, regulations or this Order of Quarantine or any Treatment Order issued by the Department.

(2) *Criminal and Civil Penalties.* In accordance with the provisions of the Act, at sections 258.23 and 258.24 (3 P.S. §§ 258.23 and 258.24), a person who violates this Order of Quarantine may face summary criminal prosecution carrying up to 90 days imprisonment and a

fine of up to \$300 with respect to each 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.

Article VII. Effective Date.

This Order of Quarantine is effective upon signature and shall be published in the *Pennsylvania Bulletin* and shall remain in effect until rescinded by subsequent order.

A handwritten signature in blue ink, appearing to read "Russell C. Redding". The signature is stylized and cursive.

RUSSELL C. REDDING