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## Maintenance Gardener Category of the Pest Control Business License

### Overview

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**Date established** November 13, 2000

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**Enforcement Letter** ENF 2000-043

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**Distribution** County Agricultural Commissioners

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**Referrals** If you have any questions pertaining to this document, please contact your Senior Pesticide Use Specialist liaison.

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### Approval

original signed by

David Duncan, Acting Chief  
Pesticide Enforcement Branch  
(916) 445-3871

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**Background** This letter states the Department of Pesticide Regulation’s position and interpretation of three areas relating to the maintenance gardener category of the pest control business license – scope of pest control, incidental, and for hire and consent to apply pesticides.

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## Overview, Continued

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**Prior documentation**

This letter supercedes:

- ENF 75-031,
  - ENF 78-071,
  - Manual of Procedural Guidance for Pesticide Enforcement Personnel (page 21), and
  - Any other previous policies, positions, or interpretations that may be in conflict.
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**Attachments**

The three sections are outlined in topic sections as follows:

<b>Topic</b>	<b>Section</b>
Scope of Pest Control	1
Incidental	2
For Hire and Consent to Apply Pesticides	3

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cc: Mr. Daniel J. Merkley, Agricultural Commissioner Liaison (w/Attachments)

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# Section 1

## Scope of Pest Control

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**Background** Food and Agricultural Code (FAC) section 11704 provides a special pest control business license category for a person who is regularly engaged in the business of maintenance gardening and who wants to include pest control as only an incidental part of the gardening service provided.

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**Pest control limitations** The pest control done under the maintenance gardener (MG) license category is limited to ornamental and turf plantings that are:

1. Indoors;
2. In commercial parks; and
3. Surrounding structures.

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**DPR's position** It is the Department of Pesticide Regulation's (DPR's) position that there is no gain in public or environmental protection in attempting to exclude any landscaped areas from this list. It is not clear what, if any, landscaped, outdoor, non-commercial park areas remote from structures (including dwellings) conceivably might be excluded by this list. Therefore, it is DPR's position that the MG license applies to all landscaped areas.

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## Section 2

### Incidental

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**Background** Pest control is an important, although usually minor, part of the maintenance of an ornamental or turf planting. As used in FAC section 11704, the term “incidental” has common dictionary meanings of “minor items that are not particularized” or “being likely to ensue as a chance or minor consequence.”

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**Pest control limitations** A licensed MG is not limited to only occasional use of pesticides, however. A licensed MG can apply pesticides incidental to the gardening services for each of its customers. The law requires only that the pest control be incidental to (a minor or small part of) the MG’s general gardening work. The MG may be required to document that the primary purpose of the services it provides is maintenance gardening.

If pest control is too great a part of the MG’s services, the MG may no longer qualify for the MG license category, but must obtain a “full” Pest Control Business License.

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## Section 3

### For Hire and Consent to Apply Pesticides

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**Background** The use of pesticides, in the case of landscape maintenance, may not be specifically mentioned in a contract. In many cases, particularly for residential customers, there may not even be a written contract. When entering into an oral contract, the customer may say something like, “Keep the place looking good,” or “Keep the weeds out of the flower beds,” but not mention how the MG should accomplish these tasks and not mention the use of pesticides.

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**For hire** There is no “tolerance” for pest control being done incidental to the gardening service before the MG license is needed. To escape the need for a MG license, the MG must do ABSOLUTELY NO pest control for hire.

Unless pest control or use of pesticides is expressly excluded by the customer, pest control done on a MG customer’s property can be considered part of the service for which a MG is paid a fee, and, therefore, can be considered to be done “for hire.” Pest control services need not be specifically itemized in a contract or on an invoice to be considered “for hire.”

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**Implied consent** Title 3, California Code of Regulations, section 6616 prohibits the application of a pesticide without the consent of the owner or operator of the property.

When a MG uses pesticides in ornamental or turf plantings on the property of one of its customers, one can assume that the MG has implied consent from the customer/operator of the property to apply pesticides and that the pest control was done for hire. However, these assumptions can be rebutted.

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## Overview, Continued

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### **Rebut the assumptions**

A statement from the customer/operator of the property saying that consent to apply pesticides has never been formally given when the MG has, in fact, applied pesticides to perform pest control activities on that customer's property, may not, by itself, be sufficient to rebut the assumption that the property operator had implied consent to the use of pesticides.

To rebut the assumptions that the operator of the property gave implied consent to use pesticides and that the pest control was done for hire, a letter, contract provision, or other evidence must demonstrate that an express prohibition against pesticide use was in place at the time of the application or that the MG's duties did not include the application of pesticides or did not include pest control services.

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### **County agricultural commissioner's role**

The county agricultural commissioner may want to limit probing into the issue of consent to apply pesticides to those rare cases where there is a complaint or other evidence that the MG violated an express oral or written prohibition regarding the use of pesticides on a particular property.

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