VIRGINIA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

VIRGINIA EMERALD ASH BORER TEMPORARY QUARANTINE FOR ENFORCEMENT OF THE VIRGINIA PEST LAW

Statutory authority: § 3.1-188.23 of the Code of Virginia (1950), as amended

§ 1. **Declaration of quarantine.**

A quarantine is hereby established to regulate the movement of certain articles capable of transporting the highly destructive pest of ash (Fraxinus spp.) known as the emerald ash borer, *Agrilus planipennis* (Fairemaire) into uninfested or unregulated areas of the state, unless such articles comply with the conditions specified herein.

§ 2. **Purpose of quarantine.**

The emerald ash borer is an introduced beetle that specifically attacks and kills ash trees. It has become established in Fairfax County, Virginia, and has the potential to spread to uninfested counties by both natural means and humans moving infested articles. The purpose of this quarantine is to prevent the artificial spread of the emerald ash borer to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the emerald ash borer.

§ 3. **Definitions.**

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Certificate" means a document issued by an inspector or any other person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Emerald ash borer" means the live insect known as the emerald ash borer, *Agrilus planipennis* (Fairemaire), in any life stage (egg, larva, pupa, adult).

"Infestation" means the presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the emerald ash borer is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the Commissioner to enforce the provisions of the quarantine or regulation.

"Limited permit (permit)" means a document issued by an inspector or other person operating in accordance with a compliance agreement to allow the movement of regulated articles to a specific destination.

"Moved (Move, Movement)" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Person" means any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

"Virginia Pest Law" means the statute set forth in Article 6 (§3.1-188.20 et seq.) of Title 3.1 of the Code of Virginia.

§ 4. **Regulated articles.**

A. The following articles are regulated under the provisions of this quarantine, and shall not be moved out of any regulated area within Virginia, except in compliance with the conditions prescribed in this quarantine:

(1) The emerald ash borer in any life stage.

(2) Firewood of all hardwood (non-coniferous) species.

(3) Ash (*Fraxinus* spp.) nursery stock.

(4) Green (non-heat treated) ash lumber.

(5) Other living, dead, cut, or fallen material of the genus *Fraxinus*, including logs, stumps, roots, branches, and composted and uncomposted wood chips.

§ 5. **Regulated areas.**

The following areas in Virginia:

The entire counties of:

Arlington
Fairfax
Fauquier
Loudoun
Prince William

The entire independent cities of:

Alexandria
Fairfax City
Falls Church
Manassas
Manassas Park

§ 6. **Conditions governing the intrastate movement of regulated articles.**

A. Movement within Regulated Areas – Movement of a regulated article solely within the regulated area is allowed without restriction.

B. Any regulated article may be moved intrastate from a regulated area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §7 and §10 of this quarantine.

(2) Without a certificate or limited permit, if:

(a) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(b) The regulated article, if moved through the regulated area during the period of April 1 through September 30, is moved in an enclosed vehicle or is completely covered to prevent access by the emerald ash borer; and

(c) The regulated article is moved directly through the regulated area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the emerald ash borer; and

(d) The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

(3) With a limited permit issued by the Commonwealth if the regulated article is moved:

(a) By a state or federal agency for experimental or scientific purposes;

(b) Under conditions, specified on the permit, which the Commissioner has found to be adequate to prevent the spread of the emerald ash borer; and

(c) With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or

attached to the regulated article itself, if the regulated article is not in a container.

§ 7. **Issuance and cancellation of certificates and limited permits.**

A. Certificates may be issued by an inspector or any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

(1) The articles have been examined by the inspector and found to be apparently free of the emerald ash borer;

(2) The articles have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, their movement does not present a risk of spreading the emerald ash borer;

(3) The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and

(4) The regulated article is eligible for unrestricted movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated articles.

B. Limited permits may be issued by an inspector for the movement of regulated articles to specific destinations within Virginia if:

(1) The regulated article is apparently free of emerald ash borer, based on inspection; or the article has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the Virginia Department of Agriculture and Consumer Services, prevents the article from presenting a risk of spreading the emerald ash borer; or

(2) The regulated article is to be moved intrastate to a specified destination under conditions which specify the limited handling, utilization, processing or treatment of the articles, when the inspector determines that such movement will not result in the spread of the emerald ash borer because the life stage(s) of the insect will be destroyed by such specified handling, utilization, processing or treatment; and

(3) The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the emerald ash borer; and

(4) The regulated article is eligible for interstate movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated article.

C. Certificates and limited permits for use for intrastate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the intrastate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph A. of this section. A person operating under a compliance agreement may issue a limited permit for intrastate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph B. of this section.

D. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow.

§ 8. **Compliance agreements and cancellation.**

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this quarantine. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow.

§ 9. **Assembly and inspection of regulated articles.**

A. Any person (other than a person authorized to issue certificates or limited permits under §7) who desires to move a regulated article intrastate accompanied by a certificate or limited permit shall apply for inspection as far in advance as possible, but at least 5 business days before the services are needed.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and comply with this quarantine. The regulated article shall be safeguarded from infestation.

§ 10. **Attachment and disposition of certificates and limited permits.**

A. A certificate or limited permit required for the intrastate movement of a regulated article must be attached, at all times during the intrastate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate and/or limited permit must be retained by the sender of the article(s) at the place of origin.

§ 11. **Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and emerald ash borers as provided in the Virginia Pest Law under which this quarantine is issued.

§ 12. **Non-liability of the department.**

The Virginia Department of Agriculture and Consumer Services shall not be liable for any costs incident to inspections required under the provisions of the quarantine and regulations, other than for the services of the inspector.

This Temporary Quarantine becomes effective on July 21, 2008, and shall continue for a period not to exceed 90 days.

Issued on July 21, 2008 in Richmond, Virginia

Todd P. Haymore
Commissioner