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DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
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AUGUSTA, MAINE 04333-0028

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August 26, 2009

Senator John Nutting  
Representative Wendy Pieh  
Committee on Agriculture, Conservation and Forestry  
100 State House Station  
Augusta, ME 04333-0100

**RE: Observations About LD 1293, An Act To Require Citizen Notification of Pesticide Applications Using Aerial Spray or Air Carrier Equipment**

Dear Senator Nutting and Representative Pieh:

The Maine Board of Pesticides Control (BPC) and staff have been analyzing the provisions of LD 1293 as we prepare to implement the law beginning in 2010. In addition, comments and questions concerning the law from the regulated community are being received at the Board's main office. As we digest and analyze this information, a number of observations on the likely effects of the bill have been brought to light. We believe it is appropriate to share these observations with the Committee as we work toward implementation. Some of the observations are minor, technical points that can be clarified through rulemaking, while others are more significant. We defer to the Committee's judgment as to whether any amendments are appropriate. Our observations are as follows:

- LD 1293 requires that mandatory written notice be provided to residents and managers of buildings on abutting properties 90 days in advance of pesticide applications made using aerial or air carrier equipment. The proximity of the conflicting land uses (spraying and human activity) is not a consideration as long as the properties with conflicting land uses abut each other. When either of the abutting properties is especially large – such as over 100 acres – this standard can result in notification obligations even though the spraying may be miles away from where any occupied buildings are located.
- The mandatory written notification must be sent to residents and managers of buildings on abutting properties. Growers have commented there is no practical way to determine who resides in or who manages a building, which will force them to visit each building to ascertain this information. The Board wonders if the written notice could be mailed to the “resident” at the address obtained through municipal tax maps?
- The statute does not consider whether buildings on abutting properties are normally occupied or not. It appears that if there is any building on an abutting property, growers will have a duty to identify a “building manager” to mail the mandatory notice to. The mailing to “resident” described above would lessen this burden, or the committee might wish to consider limiting the mandatory mailing to occupied buildings.
- Aerial and/or air carrier applications that can not be reasonably foreseen 90 days in advance will no longer be feasible. Examples include for-hire mosquito and tree spraying, and

emergencies created when unusually wet weather prevents growers from driving ground sprayers through their fields. An alternate approach to address this concern is to allow land managers two options under the mandatory notification section: 1) send the 90 day advance written notice, or 2) call all the abutters prior to any aerial or air carrier applications. Either option appears to fulfill the legislative intent.

- Similarly, wide area spray programs such as budworm, gypsy moth, browntail moth or potential mosquito spraying programs would also become difficult or impossible to administer because of the large number of properties involved, and because the final target areas often are not determined 90 days in advance. In addition, the statute does not contain an exemption for public emergencies, such as a potential outbreak of Eastern Equine Encephalitis (EEE) or West Nile Virus. The Board wants to be sure the committee is fully aware of its Chapter 51 rule, which already specifies notification requirements for non-agricultural, wide area aerial spray programs. Also, requirements similar to Chapter 51 may make more sense for commercial tree and mosquito applications made with air carrier equipment.
- Part of the information that must be included in the mandatory written notice section is the “pesticide application schedule”. Several concerns have arisen about this section:
  - Some growers have interpreted this to mean they must list the dates and products that will be applied. The BPC believes a more general schedule was contemplated by the legislature. Application timing is dependent on pest populations and phenology, so predicting application timing and products months in advance is neither realistic nor consistent with modern pest management strategies. Moreover, while growers have a general idea of what products may be applied, the precise list of products often changes as the season progresses.
  - The BPC has been receiving feedback from growers indicating they will simply copy the list of recommended pesticides options published by universities and/or Cooperative Extension, in order to ensure they are covered if their plans change. This would provide growers more flexibility, but might alarm abutters when they see such a long list of pesticides.
  - The mandatory written notification must be done once every three years, unless any of the information changes. The reality is that new products are being introduced all the time, and newer products generally have lower risks than the ones they replace. In order to use a new product, growers would need to re-mail the mandatory notice to residents and building managers on abutting properties, and then wait 90 days.
  - One alternative idea that has been discussed is that the mandatory written notice might convey a list of crop protection products typically used together with the approximate timing of the applications, and then direct neighbors to the published pest management guides on the internet for more detailed information about the products that may be applied. The Board believes that minor changes in the list of products that may be used will likely influence a neighbor’s decision to participate in the registry, and therefore should not require resending the mandatory written notice.
- Both the mandatory written notice and the notice provided under the registry specify that growers need to provide the scientific name of the pesticide. The scientific name of the pesticides won’t be meaningful to most people, it’s difficult to transcribe, and difficult to use in a search for additional information. The Board suggests that the common name of the active ingredient will be more workable and useful to the public.

- Registry participants must provide contact information including mailing address, phone number and email address. The Board suggests that the participants have an opportunity to specify their preferred means of notification. Many people have email accounts but only use them infrequently. Since a land manager may provide as little as 24 hour advance notice, an email to an account that is only checked once a week would not be useful.
- Telephone calls are also an acceptable means for notifying registry participants. The Board determined it was prudent to specify that phone calls must be answered by a responsible individual (and not very young children) or an answering machine in the existing registry covering suburban applications.
- The Board has discussed timeframes for being included on the citizen registry for any given year. It concluded the most workable plan is to set a deadline of March 15 for being included on the current year registry. This would allow the BPC staff time to distribute the registry prior to earliest agricultural spraying that may begin around mid April. A floating registry was discussed but ultimately dismissed as too labor intensive for both the regulated community and the BPC staff. For this reason, the Board is proposing to maintain the current option that allows rural resident to directly request notification of their agricultural neighbors. This provides a fall back option for anyone missing the annual registry sign-up deadline.

The Board recognizes the challenges the Committee faced in trying to enact comprehensive notification legislation during such a hectic legislation session. These observations and suggestions are conveyed more as “hindsight” with a goal of assisting the Committee in this challenging endeavor. Some of these details can be clarified through rulemaking, but the Board believes it is prudent provide its insight sooner rather later, because any rules adopted by the Board will not become effective until the legislature reviews them and authorizes final adoption

Thank you for the opportunity to provide input on this challenging issue. The Board will be promulgating rules to implement the registry during the fall with a goal of provisional adoption by January. Please feel free to contact Henry Jennings, the staff director, or me if you have any questions or comments.

Sincerely,

Carol Eckert, MD  
Chair  
Maine Board of Pesticides Control