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## MAINE BOARD OF PESTICIDES CONTROL POLICY REGARDING THE TREATMENT OF ADJUVANTS AS PESTICIDES

Adopted XXXX

### BACKGROUND

Recently, LD 2019 “An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances” (PL 2022 c.673) was approved by the 130th Maine Legislature in 2022. Under this law, adjuvants were added to the definition of pesticides and must now be registered within the State of Maine. The Board has discussed several policies related to spray adjuvants, which have been consolidated below. The purpose of this policy is to clarify the Board’s decisions regarding the treatment of “spray adjuvants” in the state of Maine. This policy clarification incorporates three topics:

Inclusion of Colorants: At the February 24, 2023 Board meeting, the Board discussed a staff memo regarding added colorants and if they are considered pesticides under the new state definition. An informal vote was taken, and the majority of Board members stated that colorants did not fit into the definition of adjuvants given that they do not increase the efficacy of the applied product.

Currently held stock: At the July 21, 2023 Board meeting, the Board discussed a staff memo regarding the distribution of spray adjuvant products. The Board voted to adopt the proposed policy that would treat adjuvant products in possession of dealers, distributors, and end users the same as pesticides in Chapter 20, Section 1. D.

Recordkeeping: There is also a need to review recordkeeping and reporting requirements for adjuvants. Staff have included proposed language for this section of the policy below.

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## **POLICY**

### **Definition**

Under state law, “spray adjuvants” are included in the definition of “pesticide” and are defined under Title 7 §604(31-A) as:

31-A. Spray adjuvant. "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent that is intended to be used with any other pesticide as an aid to the application or the effect of it and that is in a package or container separate from that of the other pesticide.

### **Colorants and Water**

Adjuvants that are labeled as added colorants for pesticides are not considered spray adjuvants in Maine.

### **Distribution**

Spray adjuvant products that were in the possession of dealers, distributors, and end users when PL 2022 c. 673 became effective on August 8, 2022 will be included as “pesticides no longer registered in Maine” under Chapter 20, Section 1(D).

#### **Chapter 20, Section 1. D.**

*Retailers and end users of pesticides no longer registered in Maine may continue to sell and use those items provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other Federal law.*

### **Recordkeeping**

Spray adjuvants considered to be pesticides in the State of Maine must be included in recordkeeping and reporting requirements as stated in Chapter 50. In records and reports, the term “Primary Functioning Agent (PFA)” will be used in place of “active ingredient” on records where the active ingredient is required. Likewise, for recordkeeping activities, the term “Constituents Ineffective As Spray Adjuvants (CIASA)” will be used in spray adjuvants to replace of the terms “Other” or “Inert” typically used in pesticides.

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-TWO

—  
H.P. 1501 - L.D. 2019

**An Act To Require the Registration of Adjuvants in the State and To  
Regulate the Distribution of Pesticides with Perfluoroalkyl and  
Polyfluoroalkyl Substances**

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 7 MRSA §604, sub-§22-A** is enacted to read:

**22-A. Perfluoroalkyl and polyfluoroalkyl substances or PFAS.** "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" has the same meaning as in Title 32, section 1732, subsection 5-A.

**Sec. 2. 7 MRSA §604, sub-§25**, as amended by PL 2005, c. 620, §3, is repealed and the following enacted in its place:

**25. Pesticide.** "Pesticide" means:

A. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests;

B. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and

C. Any substance or mixture of substances intended to be used as a spray adjuvant.

"Pesticide" includes a highly toxic pesticide.

**Sec. 3. 7 MRSA §604, sub-§31-A** is enacted to read:

**31-A. Spray adjuvant.** "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent that is intended to be used with any other pesticide as an aid to the application or the effect of it and that is in a package or container separate from that of the other pesticide.

**Sec. 4. 7 MRSA §606, sub-§1**, as amended by PL 2021, c. 105, §§1 to 3, is further amended to read:

**1. Unlawful distribution.** A person may not distribute in the State any of the following:

- A. A pesticide that has not been registered pursuant to the provisions of this subchapter;
- B. A pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect that change and if that change will not violate any provision of FIFRA or this subchapter;
- C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and rules adopted under this subchapter;
- D. A pesticide that has not been colored or discolored pursuant to section 610, subsection 1, paragraph D;
- E. A pesticide that is adulterated or misbranded or any device that is misbranded;
- F. A pesticide in containers that are unsafe due to damage; or
- G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient;
- H. A pesticide that has been contaminated by perfluoroalkyl and polyfluoroalkyl substances; or
- I. Beginning January 1, 2030, a pesticide that contains intentionally added PFAS that may not be sold or distributed pursuant to Title 38, section 1614, subsection 5, paragraph D.

**Sec. 5. 7 MRSA §606, sub-§2**, as amended by PL 2005, c. 620, §5, is further amended to read:

**2. Unlawful alteration, misuse, divulging of formulas, transportation, disposal and noncompliance.** A person may not:

- A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or rules adopted under this subchapter;
- A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter;
- B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling;
- C. Use for that person's own advantage or reveal, other than to the board or proper officials or employees of the state or federal executive agencies, to the courts of this State or of the United States in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board to contain or relate to trade secrets or commercial

or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

D. Handle, transport, store, display or distribute pesticides in such a manner as to endanger human beings or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides;

E. Dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any water supply or waterway;

F. Refuse or otherwise fail to comply with the provisions of this subchapter, the rules adopted under this subchapter, or any lawful order of the board; ~~or~~

G. Apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board; or

H. Use or cause to be used any pesticide container inconsistent with rules for pesticide containers adopted by the board.

**Sec. 6. Board of Pesticides Control; rules.** The Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall adopt rules regulating pesticide containers as authorized in the Maine Revised Statutes, Title 7, section 606, subsection 2, paragraph H no later than January 1, 2023. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 7. Appropriations and allocations.** The following appropriations and allocations are made.

**AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF  
Office of the Commissioner 0401**

Initiative: Provides allocations for position technology and STA-CAP costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
All Other	\$0	\$11,502
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$11,502</b>

**Pesticides Control - Board of 0287**

Initiative: Provides allocations for one Environmental Specialist III position, one part-time Environmental Specialist II position, one part-time Office Associate II position and associated All Other costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
POSITIONS - FTE COUNT	0.000	1.000
Personal Services	\$0	\$168,311
All Other	\$0	\$10,500
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$178,811</b>

**AGRICULTURE, CONSERVATION AND  
FORESTRY, DEPARTMENT OF  
DEPARTMENT TOTALS**

	<b>2021-22</b>	<b>2022-23</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$190,313</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$190,313</b>