

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 27: STANDARDS FOR PESTICIDE APPLICATIONS AND PUBLIC NOTIFICATION IN SCHOOLS

SUMMARY: This rule establishes procedures and standards for applying pesticides in school buildings and on school grounds. This rule also sets forth the requirements for notifying school staff, students, visitors, parents and guardians about pending pesticide applications.

Section 1. Definitions

- A. **Integrated Pest Management.** For the purposes of this rule, Integrated Pest Management (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:
- (1) understanding the system in which the pest exists,
 - (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control,
 - (3) monitoring pests and natural enemies,
 - (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and
 - (5) systematically evaluating the pest management approaches utilized.
- B. **School.** For the purposes of this rule, School means any public, private or tribally funded:
- (1) elementary school,
 - (2) secondary school,
 - (3) kindergarten or
 - (4) nursery school that is part of an elementary or secondary school.
- C. **School Building.** For the purposes of this rule, School Building means any structure used or occupied by students or staff of any school.

- D. **School Grounds.** For the purposes of this rule, School Grounds means:
- (1) land associated with a school building including playgrounds, athletic fields and agricultural fields used by students or staff of a school, and
 - (2) any other outdoor area used by students or staff including property owned by a municipality or a private entity that is regularly utilized for school activities by students and staff. School grounds do not include land utilized primarily for non-school activities, such as golf courses and museums.
- E. **Integrated Pest Management Coordinator.** An employee of the school system or school who is knowledgeable about integrated pest management and is designated by each school to implement the school pest management policy.
- F. **School Session.** For the purposes of this rule, school is considered to be in session during the school year including weekends. School is not considered to be in session during any vacation of at least one week.

Section 2. Requirements for All Schools

- A. All public and private schools in the State of Maine shall adopt and implement a written policy for the application of Integrated Pest Management techniques in school buildings and on school grounds.
- B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:
- (1) complete Board-approved IPM Coordinator overview training within one month of his/her first appointment as an IPM Coordinator and obtain Board documentation thereof;
 - (2) complete Board-approved IPM Coordinator comprehensive training within one year of his/her first appointment as an IPM Coordinator and obtain Board documentation thereof;
 - (3) obtain at least one hour of Board-approved continuing education annually;
 - (4) maintain and make available to parents, guardians and staff upon request:
 - a. the school's IPM Policy,
 - b. a copy of this rule (CMR 01-026 Chapter 27),
 - c. a "Pest Management Activity Log," which must be kept current. Pest management information must be kept for a minimum of two years from date of entry, and must include:

- i. the specific name of the pest and the IPM steps taken, as described under Section 5C of this rule; and
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.
- (5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and
- (6) ensure that any applicable notification provisions required under this rule are implemented as specified.
- C. By September 1, every school shall inform the Board of the identity and the contact information for the IPM Coordinator. This requirement can be fulfilled through a Board approved reporting system.

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:
 - (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,
 - (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
 - (3) application of paints, stains or wood preservatives that are classified as general use pesticides.
- B. The following pesticide uses are exempt from the requirements of Section 4 of this rule:
 - (1) pesticides injected into cracks, crevices or wall voids,
 - (2) bait blocks, gels, pastes, granular and pelletized materials placed in areas inaccessible to students,
 - (3) indoor application of a pesticide with no re-entry or restricted entry interval specified on its label but entry to the treated area is restricted for at least 24 hours.

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).
- D. School education facilities utilized for agricultural or horticultural education, and not normally used by the general school population, such as, but not limited to, greenhouses, nursery plots or agricultural fields, are exempt from the application limitations contained in Section 5E and notification provisions contained in Section 4B(1) provided that parents, staff and students are informed about the potential for pesticide applications in such areas. The posting requirements contained in Section 4B(2) must be complied with. In addition, students entering treated areas must be trained as agricultural workers, as defined by the federal Worker Protection Standard.

Section 4. Notification

- A. A notice shall be included in the school's policy manual or handbook describing the school's IPM program including that a school integrated pest management policy exists and where it may be reviewed, that pesticides may periodically be applied in school buildings and on school grounds and that applications will be noticed in accordance with Section 4B hereof. This notice shall describe how to contact the IPM Coordinator and shall also state that the school's IPM Policy, a copy of the *Standards for Pesticide Applications and Public Notification in Schools* rule (CMR 01-026 Chapter 27), and the Pest Management Activity Log, are available for review.
- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
 - (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.
 - (2) In addition to the notice provisions above, whenever pesticide applications not exempted by Section 3 are performed in a school building or on school grounds, a sign shall be posted at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least forty-eight hours following the application. Posting of the notification signs as required by this rule satisfies the posting requirements of Chapter 28 of the Board's rules (CMR 01-026 Chapter 28).

- a. The signs shall:
 - i. be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue, red or green).
 - ii. bear the word CAUTION in 72 point type,
 - iii. bear the words PESTICIDE APPLICATION NOTICE in 30 point type or larger,
 - iv. state any reentry precautions from the pesticide labeling in at least 12 point type,
 - v. state the approximate date and time of the application in at least 12 point type, and
 - vi. state the name of the company or licensed applicator making the pesticide application and a contact telephone number in at least 12 point type,
- b. The signs for indoor applications must:
 - i. be at least 8.5 inches wide by 11 inches tall,
 - ii. state the trade name and EPA Registration number(s) of the pesticide(s) to be applied in at least 12 point type,
 - iii. state the location of the application in at least 12 point type, and
 - iv. state the reason(s) for the application in at least 12 point type.
- c. The signs for outdoor applications must:
 - i. be at least 5 inches wide by 4 inches tall,
 - ii. be made of rigid, weather-resistant material that will last at least ninety-six (96) hours when placed outdoors,
 - iii. bear the Board designated symbol (see appendix A), and
 - iv. state a date and/or time to remove the sign.

Section 5. Integrated Pest Management Techniques

- A. All pest management activities shall be undertaken with the recognition that it is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. In all cases, applications should be conducted in a manner to minimize human risk to the maximum extent practicable using currently available technology.

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- B. All pest management activities should be conducted using appropriate elements of integrated pest management as described in the latest Cooperative Extension or Department of Agriculture training manuals for pest management in and/or on school property. Pest management activities should also be conducted in accordance with the Best Management Practices for Athletic Fields & School Grounds, or other applicable Best Management Practices approved by the Board.
- C. Prior to any pesticide application the following steps must be taken and recorded:
- (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.
- D. When a pesticide application is deemed necessary, the applicator must comply with all the requirements of CMR 01-026 Chapter 31–Certification and Licensing Provisions/Commercial Applicator. The applicator must also take into account the toxicity of recommended products and choose lowest risk products based on efficacy, the potential for exposure, the signal word on the pesticide label, the material safety data sheet, other toxicology data and any other label language indicating special problems such as toxicity to wildlife or likelihood of contaminating surface or ground water.
- E. Indoor pesticide use must be limited to placement of baits and wall void or crack and crevice and pool and spa disinfectant treatments unless the pest threatens the health and safety of persons in the buildings as determined by the school's integrated pest management coordinator.
- F. Pesticide applications must not be conducted when people are in the same room to be treated except that applicators may set out bait blocks, pastes or gels when only informed staff members are present. When space, spot, surface or fumigation applications are conducted the ventilation and air conditioning systems in the area must be shut off or the entire building must be evacuated. Applications should be planned to occur on weekends or vacations to allow maximum time for sprays to dry and vapors to dissipate.
- G. Outdoor applications should be scheduled so as to allow the maximum time for sprays to dry and vapors to dissipate and shall not occur when unprotected persons are in the target area or in such proximity as to likely result in unconsenting exposure to pesticides. Applications must also be conducted in accordance with all other applicable Board rules designed for minimizing pesticide drift and posting of treated sites. Spot treatments should be considered in lieu of broadcast applications.

Section 6. Requirements for Commercial Pesticide Applicators Making Applications in School Buildings or on School Grounds

- A. Prior to conducting a pesticide application not exempted in Section 3 in a school building or on school grounds, commercial pesticide applicators shall obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.
 - B. Commercial pesticide applicators shall, within one business day of each pesticide application, provide the IPM Coordinator with a written record of the application including the date, time, location, trade name of the product applied, EPA Registration number and the name of the licensed applicator. If the product has no EPA Registration number then the applicator will provide a copy of the label.
 - C. Commercial pesticide applicators shall inform the IPM Coordinator about any pest monitoring activity and results. If it is acceptable to the IPM Coordinator, this may be achieved by recording them in the Pest Management Activity Log.
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STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X

EFFECTIVE DATE:

August 30, 2003, filing 2002-408 accepted October 24, 2002.

AMENDED:

July 5, 2005 – filing 2005-266

March 4, 2007 – Section 3(C), filing 2007-67

August 29, 2013 – filing 2013-188 (Final adoption, major substantive)

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 29: STANDARDS FOR WATER QUALITY PROTECTION

SUMMARY: These regulations establish standards for protecting surface water. This chapter establishes a fifty-foot setback from surface water for mixing and loading of pesticides, sets forth requirements for securing containers on sprayers and cleaning up spills occurring within the setback zone, establishes restrictions on pesticide applications to control browntail moths near marine waters and requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near waters of the State.

Section 1. Protecting Waters of the State during Pesticide Mixing and Loading Operations

- A. No person shall mix or load any pesticides or fill a sprayer or mix tank within fifty (50) feet from the high water mark of any surface waters of the State as defined in 38 M.R.S.A. §361-A(7).
- B. No person shall use a pump that pumps pesticide concentrate or formulation or any hose that has been in contact with pesticide solution to draw liquid from any surface waters.
- C. All pesticide pumping systems that come in contact with any surface waters shall be equipped with an anti-siphoning device.

Section 2. Securing Pesticide Product Containers and Mix Tanks on Sprayers, Nurse Vehicles and Other Support Vehicles during Transportation

No person shall transport any pesticide unless it is secured so as to prevent release of pesticides onto the vehicle or from the vehicle. All tanks, liquid containers, cartons and bags must be securely held so they may not shift and become punctured or spilled.

Section 3. Cleaning up Pesticide Spills within Setback Zone in Section 1

Any person who spills a pesticide within fifty (50) feet from the high water mark of any surface water shall take immediate steps to recover the pesticide by the most efficient means available and remove all contaminated soil to prevent water contamination.

Section 4. Exemptions

The following persons are exempt from Section 1(A) regarding mixing and loading within fifty (50) feet of the high water mark of any surface water:

- A. Applicators with a variance approved by staff for an impervious mixing/loading pad with containment features. Applications for a variance must be submitted to the Board on or before December 31, 1999;
- B. Applicators using chemigation equipment specified on labels to draw water from their tail-water ponds;
- C. Commercial applicators using small individually packaged concentrates to mix no more than five (5) gallons for use in non powered equipment; and
- D. Commercial applicators making aquatic applications from boats and barges.

Section 5. Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters

Pesticide applications for control of browntail moths within 250 feet of the mean high tide mark adjacent to coastal waters and extending upriver or upstream to the first bridge are subject to the requirements of this section:

A. Exemptions

The prohibitions and restrictions in Section 5 do not apply to biological pesticides, to the injection of pesticides directly into the soil or shade and ornamental trees or to the application of pesticides by licensed commercial pesticide applicators using non-powered equipment.

B. Prohibitions and Restrictions

- I. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark.
- II. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.
 - a. Only products with active ingredients specifically approved by the Board for this purpose may be applied.
 - b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
 - c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
 - d. Applications may not be made when the wind is blowing toward marine waters.
 - e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:
- I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15-minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
- I. The name, address and telephone number of the applicant;
 - II. The area(s) where pesticides will be applied;
 - III. The type(s) of pesticides to be applied;
 - IV. The purpose for which the pesticide application(s) will be made;
 - V. The approximate application date(s);
 - VI. The type(s) of application equipment to be employed; and
 - VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:

- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
- II. Demonstrate an appropriate balance of risk and benefit; and
- III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the procedures described in his variance request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

April 14, 1999

AMENDED:

February 3, 2008 – filing 2008-35 (except that the major substantive language of Section 6, which was undergoing legislative review)

May 1, 2008 - filing 2008-154, including Section 6's final adoption

CORRECTIONS:

February, 2014 – agency names, formatting



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**MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY TO
DELEGATE AUTHORITY TO THE STAFF TO APPROVE REQUESTS FOR
VARIANCE FROM CMR 01-026 CHAPTER 29 FOR CONTROL OF PLANTS
THAT POSE A DERMAL TOXICITY HAZARD**

Adopted November 18, 2011

BACKGROUND

In September 1995, the Board delegated the authority to approve repeated requests for variance from the sensitive area identification requirements of CMR 01-026 Chapter 22. Since that time, the Board delegated similar authority for certain variance requests for broadcast pesticide applications within the 25-foot untreated buffer zone required by CMR 01-026 Chapter 29.

In Chapter 29, applications to control arthropod vectors of human disease and stinging insects are exempted, but applications to control vegetation that causes public health issues are not.

Recently, a variance request was submitted for control of poison ivy. There was urgency to the request, since it involved an infestation that blocked the landowner's only access to the waterfront. However, due to the timing, the request had to wait five weeks to be considered at the next Board meeting. The Board granted the variance and asked the staff to develop a policy to allow the staff to approve similar requests in the future with an emphasis on Best Management Practices (BMPs). For BMP information, applicants can be directed to the Board's *GotPests?* website, where there are seven fact sheets that provide excellent management information.

The staff recommends the following interim policy:

POLICY

The Board delegates the authority to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of plants that pose a dermal toxicity hazard. Those plants may include, but are not limited to:

- Wild Parsnip (*Pastinaca sativa*)
- Giant Hogweed (*Heracleum mantegazzianum*)
- Poison Ivy (*Toxicodendron radicans*)
- Poison Oak (*Toxicodendron toxicarium*)
- Poison Sumac (*Toxicodendron vernix*)
- Poison Hemlock (*Conium maculatum*)

The variance must include agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland.



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**MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY TO
DELEGATE AUTHORITY TO THE STAFF TO APPROVE REQUESTS FOR
VARIANCE FROM CMR 01-026 CHAPTER 29 FOR CONTROL OF INVASIVE
PLANTS**

Adopted December 13, 2013

BACKGROUND

In September 1995, the Board delegated the authority to approve repeated requests for variance from the sensitive area identification requirements of CMR 01-026 Chapter 22. Since that time, the Board delegated similar authority for certain variance requests for broadcast pesticide applications within the 25-foot untreated buffer zone required by CMR 01-026 Chapter 29.

On November 18, 2011, an interim policy was approved by the Board to permit staff to approve Chapter 29 requests for variances to control vegetation that pose a dermal toxicity hazard. However, no policy exempts applications to control invasive vegetation.

Several requests for variances to control invasive vegetation within twenty-five feet of surface water have recently been received and granted by the Board. Invasive plants are a common problem near surface water, involve an increasing variety of species, are difficult to eradicate, and easily re-establish. Because management is complex and requires a multi-year approach the Board directed the staff to develop a policy that allows the staff to approve multi-year variance requests provided that the request:

- includes specific pesticide use strategies designed to minimize contamination of surface water
- incorporates a long term control plan that includes re-vegetation of the site and consideration of appropriate best management practices (BMPs) specific to the target invasive species.

For BMP information and fact sheets, applicants can be directed to the Board's *GotPests?* website, <http://www.maine.gov/dacf/php/gotpests/index.html>.

POLICY

The Board delegates the authority to the staff to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of invasive plants. "Invasive plants" may include, but are not limited to: plants listed by the Invasive Plants Atlas of New England website, http://www.eddmaps.org/ipane/ipanespecies/current_inv.htm.

The request for a variance must include a detailed description of the area, photographs showing the area and relation to water, an agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland. The variance must also include a multi-year control strategy, a plan for re-vegetation of the site, and demonstrate knowledge of efficacy and appropriate practices. The variance may be granted for up to a three year period, conditional upon compliance with all variance requirements.