



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
 28 STATE HOUSE STATION
 AUGUSTA, MAINE 04333

PAUL R. LEPAGE
 GOVERNOR

WALTER E. WHITCOMB
 COMMISSIONER

To: Board Members
 From: Staff
 Re: Rulemaking
 Date: March 21, 2017

Based on your request at the February 17, 2017 meeting, we have grouped the potential rulemaking items by the following criteria:

- Housekeeping—Fairly minor and should require very little discussion.
- Incorporating Policies—Will require some discussion on whether and how to incorporate the policy in rule but the objective is already written in policy.
- Requires Discussion—Questions have been raised and a decision needs to be made on whether the rule needs to be amended. These will probably take the most time.

It's very difficult to understand these without all the background information so the after the table, each item is listed along with the relevant section of rule, the policy if applicable and the issue.

Chapter		
27 Section 2(B)(4)ii	Change wording “a list of pesticide applications conducted on school grounds” to clarify that all pesticide applications must be included in log	housekeeping
27 Section 2(B)(5)	Change wording from “made in school buildings and on school grounds” to clarify that it includes the exterior of buildings	housekeeping
27 Section 3(A)	Add insect repellents to the list of exemptions	housekeeping
27 Section 3(C)	Change wording “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...” to clarify that all applications are exempt not just mosquito control applications.	housekeeping

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28 Section 3(B)(2)(d)v	Clarify that the telephone number on the sign must be a working number	housekeeping
31 Section 2(A)(II) Section 3(B)(VII)c	Change Forest Pest Control to Forest Pest Management Change Disinfectant and Biocide Treatments to 1 Disinfectant and Biocide Treatments 2 Swimming Pool & Spa 3 Mod Remediation & Water Damage Restoration To align with exams	housekeeping
36	Certification and Licensing Provisions/Monitors and Spotters for Forest Insect Aerial Spray Program. Requirements were repealed in statute. Repeal entire chapter	housekeeping
50 Section 1(C)	Definition of “spray period” was repealed in Title 22 so Spray Period Records should not be required. Also if Chapter 36 is repealed there will be no monitors During discussion of removing the requirements for monitors and spotters, the Legislature suggested that the spray application maps should be provided to the BPC after application.	housekeeping Requires discussion
10 Section 2(P)(2)(d)ii	Incorporate Policy Concerning Denying Access to the Public for Seven Days to Areas “Open to Use by the Public”	Incorporate policy
26 Section 1(E)	Incorporate Interim Interpretative Policy on the Applicability of CMR 01-026 Chapter 26 (Clarify the definition of “occupied buildings” to mean fully enclosed indoor spaces inside building and that open air structures are not buildings for the purpose of the rule)	Incorporate policy
29 Section 6	Incorporate 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	Incorporate policy
29 Section 6	Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Invasive Plants	Incorporate policy Requires discussion
29 Section 5	Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters	Requires discussion
31 Section 1	Do unlicensed applicators have to be employees of the same company as the Master or Operator? Question has arisen around employees of temp agencies and volunteers. Clarify	Requires discussion
41	Refuge in a bag.	Requires discussion

HOUSEKEEPING

1) Chapter 36

Suggested Change

Repeal Chapter

Discussion

Requirements for monitors and spotters for forest insect aerial spray programs were repealed in statute because they are no longer necessary with the GPS equipment used by aircraft.

2) Chapter 31 Section 2(A)(II) and 3(B)(VII)(c)

Suggested Change

Change Forest Pest Control to Forest Pest Management

Change Category 7c Disinfectant and Biocide Treatments to

7c1 Disinfectant and Biocide Treatments

7c2 Swimming Pool & Spa

7c3 Mod Remediation & Water Damage Restoration

To align with exams

3) Chapter 27 Section 2(B)(4)(ii)

Section 2. Requirements for All Schools

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:

- (4) maintain and make available to parents, guardians and staff upon request:
 - 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.

Discussion

Is it unclear that applications made in and to school buildings are included in 2(B)(4)(ii)?

4) Chapter 27 Section 2(B)(5)

Section 2. Requirements for All Schools

- 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:
- 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

Discussion

Is it clear that applications made to the exterior of school buildings are included in Section 2(B)(5)?

5) Chapter 27 Section 3(A)

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.

Section 4. Notification

Section 5. Integrated Pest Management Techniques

Discussion

Should insect repellents be added to the list of exemptions?

6) Chapter 27 Section 3(C)

Section 3. Exemptions

- 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).

Section 4. Notification

- 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.

Section 5. Integrated Pest Management Techniques

- 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.

Discussion

Should Section 3(C) be amended to say that powered applications for control of the identified arthropod vector are exempt, rather than powered applications for mosquito control are exempt.

7) Chapter 28 Section 3(B)(2)(d)(v)

Section 3. Public Notice and Posting Requirements for Certain Pesticide Applications

B. Posting

2. Posting Requirements

- d. The sign must bear:
 - i. the word CAUTION in 72 point type;
 - ii. the words PESTICIDE APPLICATION in 30 point type or larger;
 - iii. the Board designated symbol;
 - iv. any reentry precautions from the pesticide labeling;
 - v. the name of the company making the pesticide application and its telephone number;
 - vi. the date and time of the application; and
 - vii. a date and/or time to remove the sign.

Discussion

Include language to indicate that the number in Section 3(B)(2)(d)(v) must be a working number, ie not where someone is going to get caught in a phone tree. It was also suggested that the person answering that phone should have knowledge of the application and can answer questions about it.

INCORPORATING POLICIES

1) Chapter 10 Section 2(P)(2)b

Section 2. Definitions

P. "Custom application" means an application of a pesticide:

2. To a property open to use by the public;
 - b. Property open to use by the public includes but is not limited to: shopping centers, office and store space routinely open to the public (i.e. rest rooms, self-service areas and display aisles), common areas of apartment buildings, occupied apartments, public pools and water parks, schools and other institutional buildings, public roads, organized recreational facilities, golf courses, campgrounds, parks, parking lots, ornamental and turf areas around condominiums, apartment buildings, stores malls and retail areas of greenhouses and nurseries if the public is allowed access before the pesticide restricted-entry or re-entry interval elapses.

Policy:

The Board determined that because indoor applications pose greater risks to building occupants, lodging places and apartment buildings should not be included as exemptions to areas open to the public. Therefore all pesticide applications to lodging places or apartment buildings must be made under the direct supervision of a licensed commercial applicator unless the public is excluded from the entire building for the full seven days.

Further Discussion based on Board meeting minutes:

Amending the language in Section 2(P)(2)b would make it clear that applications are "Custom applications" and subject to rule. There was mention of whether seven days is sufficient for indoor applications. Would necessitate amending section 2(P)(2)(d)ii. See next.

2) Chapter 10 Section 2(P)(2)(d)ii

Section 2. Definitions

P. "Custom application" means an application of a pesticide:

2. To a property open to use by the public;

d. Notwithstanding this definition, property shall not be deemed to be open for use by the public in the following cases:

ii. where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application;

Policy

The Board determined that because pesticide applications to recreational areas, trails and parks pose minimal risks, the exemption from consideration as a "property open to use by the public" is appropriate when the public is excluded from treated areas for seven days. Therefore pesticide applications under those circumstances will not require supervision by a licensed commercial applicator.

3) Chapter 26 Section 1(E)

Section 1. Definitions

E. Occupied Building. For the purposes of this regulation, Occupied Building means any public, private, commercial or institutional structure used or occupied by persons on a regular, long-term basis as a residence or for occupations. These include but are not limited to rented residential buildings, condominiums, licensed childcare facilities and nursery schools, and governmental, commercial and institutional buildings.

Policy

The Board determined that its intent in promulgating Chapter 26 was to regulate the use of pesticides in enclosed buildings in which reduced airflow affects dissipation of airborne pesticides. Consequently, the Board adopted an interim interpretation of the term "occupied buildings" to mean fully enclosed indoor spaces inside buildings.

4 and 5) Chapter 29 Section 6

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.

Policy 1

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.

Policy 2

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.

Discussion

Unless the rule requires it, Board will not receive any kind of notice/plan.

REQUIRES DISCUSSION

1) Chapter 50 Section 1(C)

Section 1. Records

- C. Spray Period Records for Major Forest Insect Aerial Spray Programs
 - I. Each monitor employed on a major public or private forest insect aerial spray application program shall prepare written spray period records describing each spray period.
 - II. The spray period records shall include the following information: Date and time of the spray period; Area actually sprayed; Pesticide used; Weather conditions before, during and immediately after spraying; Spray behavior, including visible drift to nontarget areas; and Notation of any reason why a spray period was terminated prior to completion of area. The records shall also include a map showing any nontarget areas that were sprayed.
 - III. The spray period records shall be made available for inspection by representatives of the Board as soon as practicable following the close of each spray period and, in any event, before the next spray period and before the end of the day. The spray records shall be maintained on file and available for inspection by representatives of the Board for a period of at least two years.

Discussion

- 1) Definition of “spray period” was repealed in Title 22 so it needs to be defined elsewhere or the requirement for reports should be removed.
- 2) If Chapter 36 is repealed, there is no definition of “monitor” (Section (C)(I)).
- 3) During the discussion of removing the requirement for monitors and spotters the Legislature suggested that the spray application maps should be provided to the BPC after application.

2) Chapter 31 Section 1

1. Individual Certification and Company/Agency Licensing Requirements

- A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
- B. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- C. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual’s certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
- D. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.
- E. Exemptions
 - I. Employing entities only performing post harvest treatments to agricultural commodities are exempt from master licensing requirements.

- II. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- III. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – Rules Relating to Public Swimming Pools and Spas Administered by the Maine Bureau of Health.
- IV. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- V. Adults applying repellents to children with the consent of parents/guardians.
- VI. Persons installing antimicrobial metal hardware.

Discussion

Do unlicensed applicators have to be employees of the same company as the Master of Operator?
 Questions have arisen around employees of temp agencies and volunteers.

3) Chapter 41

Section 5. PLANT-INCORPORATED PROTECTANTS

- E. Product-Specific Requirements
 - I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
 - a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.
 - b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
 - c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
 - i. the request must be made prior to planting of the Bt-corn crop;
 - ii. the request must identify the non-Bt-corn crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or

2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.
- d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.

Discussion

Section E(I)(c)(iii) How does this apply to refuge-in-a-bag? Does it need to be re-worded?

Chapter 29 Section 5

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.

Discussion

How does rule need to be amended to address current situation?