



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

BOARD OF PESTICIDES CONTROL

February 24, 2023

9:00 AM Board Meeting

MINUTES

Adams, Carlton, Ianni, Jemison, Lajoie

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves

2. Minutes of the December 2, 2022 and January 11, 2023 Regular Board Meetings, and the January 20, 2023 Emergency Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Lajoie: Moved and seconded to approve the minutes of the December 2, 2022 and January 11, 2023 Regular Board Meetings, and the January 20, 2023 Emergency Board Meeting**
- **In Favor: Unanimous**

3. Report on 2022 Work Accomplished and Request for Funds for Mosquito Monitoring from the Integrated Pest Management Program

The Integrated Pest Management Program is reporting work accomplished in 2022 and requesting funds to assist with ongoing efforts for mosquito surveillance, identification, and continued outreach around vector-borne diseases.

Presentation By: Hillary Peterson, DACF IPM Specialist

Action Needed: Discussion and determination if the Board wishes to fund this request

- Peterson gave a presentation to update the Board on mosquito monitoring efforts. She briefly explained the history of the program. In 2013 legislation was passed that required the Department to develop a written response plan in case mosquito-borne diseases were found at high levels. In 2016 and 2017 there was a federal grant to conduct monitoring. Since then the BPC has been funding the program. Peterson stated that this year they were very lucky to have assistant Michael Galli, who had experience with mosquito taxonomy.
- Peterson explained that there were six monitoring sites in Kennebec and Waldo counties. Resting boxes and CO2 monitoring traps were the methods used for sampling. Department staff worked in collaboration with the Maine Medical Research Center Institute. Mosquitoes were sorted, identified, and sent weekly to the Maine Health and Environmental Testing Laboratory for analysis. From there information was entered into databases online for further analysis. No samples were positive for EEE, WNV, or Zika.
- Peterson stated that some program updates were made last year, including moving the workflow to Microsoft Teams and One Drive, which helped with communication, collaboration, and staying up to date on standard operating procedures. She added that they also took video clips about how to do each part of the sampling process and would be putting those together in a training video for the next person hired, which should help with consistency.
- The total request was for \$10,310.40 for the upcoming year. Peterson stated they would stick with the same rate and temp agency for twenty hours per week. They plan to use the Department vehicle to save money.
- Adams asked if this was the same amount that was in the 2022 budget.
- Patterson replied that it was about the same.
  - **Ianni/Lajoie: Moved and seconded to accept meeting minutes**
  - **In Favor: Unanimous**

4. Staff Memo: Status of Commercial Category 7C in Chapter 31

Demand has recently increased for commercial applicator certification in category 7C and the related subcategories. As a result of this increased demand, staff have reviewed the subcategories and the types of applications conducted under this certification—primarily powered application of disinfectants for the management of human disease. Staff have identified ways by which the category 7C and the related subcategories may be reorganized to better address current approaches to pesticide application.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Discuss and determine next steps

- Pietroski explained that the BPC had 28 categories for commercial applicators and 14 commodities for private applicators. Staff were continuously working to keep manuals and exams up to date for each of those. He said staff were hoping to combine the three 7C certification subcategories into one category since paper mill demand was decreasing and staff had not given a swimming pool exam for a long time. Pietroski stated that it would help to maintain one manual and exam instead of three.

- Patterson stated that Maine had more categories than other states in the country so consolidating the 7C subcategories would help to reduce staff workload while having little impact on the enforceability of the certification requirements. She added that this would require rulemaking.
- There was a discussion about swimming pool certification and Pietroski explained that most of those applicators became certified through a national certification specifically for swimming pools and spas.
- Patterson explained the exemption for swimming pool applicators and how it allowed for them to receive specific relevant knowledge.
  - **Jemison/Carlton: Moved and seconded to combine 7C categories into one category**
  - **In Favor: Unanimous**

5. Staff Memo: Residential Property

At its February 25, 2022 meeting, the Board discussed further defining the term “Residential Landscapes” in the context of Chapter 41, Section 6. Currently in rule, the term “sensitive areas likely to be occupied” includes residential properties, but residential is not defined. The Board requested information on all potential rulemaking concepts at its January 11, 2023 meeting. To aid in facilitating continued discussion of rulemaking concepts, staff have prepared a summary of definitions that could be used for “residential landscapes”.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Discuss and determine next steps

- Boyd explained to the Board that item number one in the memo of potential items for rulemaking discussed defining residential landscape in either Chapter 10 or Chapter 41 of rule. She stated that there were definitions from a couple of sources that the Board could consider. Staff also needed direction on defining the boundaries of a residential area.
- Ianni mentioned that the definition should clarify how to consider mixed-use properties.
- Adams brought up the question of where a residential property should begin and end.
- Jemison stated that when he thought about this it brought to mind the drift rule. He added that a residence would seem to be defined as the area owned by the said property owner, including the building, landscape, etc.
- Patterson stated that there had been a question about landowners with a significant amount of land. For example, whether the entire property of someone with 150 acres would be considered residential.
- Ianni suggested they should also discuss differentiating when the land was donated to a conservation trust.
- There was discussion about putting this item into policy or rule.
- Randlett stated that he believed it should be in rule, but the Board could do an interim policy in the meantime.

- Adams stated that he would like to see input from stakeholders on this. He said a line needed to be drawn somewhere regarding the definition of residential, but it was hard to say where.
- Patterson suggested that the Board could choose to hold a stakeholder information gathering meeting.
- Carlton said he agreed with Adams.
- Lajoie stated that he thought it was the boundary of the term residential that they needed to figure out.
- Adams asked staff to come back with additional information.

6. Review and Discussion of Potential Rulemaking Topics

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. Since rulemaking is expensive and time consuming the Board generally tries to group rulemaking initiatives. The staff will present a timetable of possible hearing dates and a list of rulemaking ideas which the Board or staff has previously identified.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Determine whether to initiate rulemaking and schedule a hearing

- Boyd detailed the rulemaking document submitted to the Board. She explained that the items included both routine technical and major substantive changes. The first item addressed adding a more specific definition for ‘residential landscape’ and that it would likely be a routine technical change.
- Randlett stated that it should be added in Chapter 10 if the Board decided to move forward with rulemaking for this item.
- Staff will come back with more information about defining ‘residential landscape’.
- Boyd stated that the second item was to incorporate the policy ‘Proper Identification of Proper Treatment Site by Commercial Applicators’ into rule.
- Randlett stated that this would create an enforcement option if applicators failed to satisfy one of the recommended options from the Board.
- The Board decided to move forward with this item.
- Patterson stated that they would need to clarify the section at the end of the policy.
- Randlett agreed that it would need to be tightened up. He added that they could possibly state another option for property identification would be acceptable if it were approved by the Board in writing.
- There was discussion amongst the Board about requiring the homeowner to be present or requiring a prior visit to the site before an application.
- Patterson stated that applicators were not always visiting a property before making an application.

- Lajoie suggested getting some feedback from applicators to see where they stood on this.
- Aaron Dostie, with The Turf Doctor, LLC said that they had over 6,000 customers and most identification was done online with GPS, coupled with identifying the meter box number. He added that he found the guidelines in place were sufficient to identify the correct property and since this had been Board policy it had become almost a fireable offense for their company. Dostie concluded that he felt that the current policy was good, and it came down to management within the companies.
- Adams stated that it sounded like there was not an objection to moving this to rule.
- Dostie stated that he did not have any objections and there were very few properties that did not have a meter box.
- The Board decided to move forward with moving this policy into rule.
- Boyd stated that the third item considered rodenticidal baits and the notification registry. She added that this change could be major substantive because it dealt with notification. Boyd stated that although this type of application was exempt from notification of individuals on the notification registry it was not exempted from self-initiated notification.
- Patterson stated that if an individual lived within 500' feet of a neighbor and asked for notification, the neighbor would be required to disclose this type of application.
- The Board discussed this change.
- Adams stated that he was leaning towards yes on this one but preferred self-notification.
- Randlett stated that it was not exactly clear from statute whether it would be a major substantive change. He would need to find out for sure.
- Ianni asked if Randlett could summarize the difference in timing between routine technical and major substantive rulemaking.
- Randlett stated that routine technical changes to rule did not require legislative approval, but major substantive did. He stated that routine technical changes could be adopted as rule at the end of the comment period, but major substantive rule changes could only be provisionally adopted. Major substantive changes needed to wait for legislative approval and then returned to the Board for final adoption.
- The Board expressed interest in possibly moving forward with this item.
- Boyd explained that the fourth item had to do with amending Category 7C because there was confusion regarding which category covered which types of applications.
- The Board decided to move forward with this topic.
- Boyd told the Board that topic five dealt with expanding reasons to allow for reciprocity in emergency situations, which currently was only for aerial applications.
- Adams stated that he did not see this as an important issue. If an individual needed someone to come from out of state to make an application, they could hire a local licensed applicator to be on site.
- The Board said no on this subject.

- Boyd stated that topic six concerned unmanned aerial vehicles that applied pesticides. She added that the Board might want to consider adding language requiring Federal Aviation Administration certification for both commercial and private applicators.
- Patterson noted that other states require proof that an individual is certified by the Federal Aviation Administration to do this work.
- The Board decided to move forward with this subject for rulemaking.
- Boyd stated that topic number seven was related to the state plan and the new certification and training requirements. This concerned minimum age requirements of non-certified applicators applying restricted-use pesticides.
- The Board agreed to move forward with this requirement to reflect EPA requirements.
- Boyd stated that while reviewing that state plan staff saw inconsistencies between Chapter 31 and Chapter 32 regarding requirements for hosting recertification meetings. Item number eight would require rosters for private applicator certification meetings.
- The Board decided to make this a policy rather than move forward with rulemaking.
- Patterson asked for clarification that staff should continue as they had been.
- Adams responded in the affirmative.
- Boyd stated that topic nine was major substantive and involved updating and modernizing Chapter 41 Section 5 regarding *Bt* corn.
- Jemison stated that he was in favor of moving forward on this. He added that he did not think it would be that hard and that those in the regulated community would support the change. Jemison stated that the rule was written in 2006 and things had changed so much that it no longer pertained in 2023. He stated that he could work with staff on language.
- The Board decided to move forward with this topic.
- Boyd stated that the tenth item might be considered major substantive. It was about changing how rodenticidal baits were used and possibly adding requirements to use traps that prevent non-target poisonings. She added that the EPA was also considering additional restrictions on the use of rodenticidal baits.
- Patterson stated that if the proposed language changed how bait was placed in occupied buildings it would be major substantive. She added that changes to federal law were likely coming soon and those may make several of these products unavailable to unlicensed individuals.
- Adams stated that they needed to learn more about this first. He suggested adding this topic as a maybe and asked if staff could gather information from stakeholders.
- Carlton added that he was also interested in learning a bit more about it.
- Mike Peaslee, from Modern Pest Service, offered to be a contact for further information.
- Boyd stated that topic eleven would require the submission of annual use reports by electronic means. The BPC currently has the capability to receive reports electronically but does not require them to be submitted that way.

- Adams spoke about the time it takes to enter the information through the portal and asked about how much time this would save staff from entering the information.
- Patterson stated that it was unlikely that staff would enter the information moving forward because there were no funds for a temporary worker. The BPC would likely need to cut other parts of the program to do data entry for sales and use reporting.
- Lajoie stated it would be great if possible to use artificial intelligence to snap a photo and have the data entered.
- Patterson stated that when the functionality was added, staff tried to utilize optical character recognition, which would require all applicators to use the same form for reporting.
- Ianni asked what other states did to collect this data.
- Patterson responded that last year New York enacted a law to submit reports digitally, but they have several dedicated staff that does the work. She added that California has a little bit of different model where the counties review all applicator records and correct errors before the records are sent on to the state. Both of these states have not reported data out for multiple years.
- Adams stated that he was a maybe on this and wanted to see a fiscal note put on it. He asked when the last time this information was used in-house to establish data of some point.
- Boyd noted that there was currently a legislative request for a sales and use bill titled LR 182.
- Boyd stated that the last topic was about expanding reciprocity in emergency situations and outlining what those situations would be.
- The Board decided not to move forward on this topic.

7. Discussion of Staff Report Describing the Nature of Herbicide Applications on School Grounds in Maine

In 2021 and 2022, the Board of Pesticides Control collected records from all applicators who applied herbicides on school grounds for 2020 and 2021. The provided report is a continuation of work completed to support the Board's Medical Advisory Committee and it further summarizes the data collected. Staff will present the report.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/discuss provided information, provide guidance

- Bryer stated that data in this document was taken from a Board records request. She added that the Board had seen some of this data before, but this most recent memo included the full two years of data. Bryer pointed out use patterns in the memo, including the most common products used, sites, and target pests.
- Ianni stated that her initial reaction was that the applications were not needed. They were not addressing pests that were a public health risk. Ianni asked about IPM coordinator training and how staff addressed notices of warning to schools.

- Patterson responded that training requirements for IPM coordinators were listed in Chapter 27. She added that, historically, the Board had avoided assessing financial penalties against schools given their already limited financial resources, but that was always something the current Board could make a different decision about.
- Adams stated that he felt like this completed the MAC's work on this subject matter for now.
- Patterson stated that one point that had not been addressed was a localized risk assessment about the potential for exposure, relative risk, and use patterns for each active ingredient.
- Bryer stated that they initially identified 45 ingredients and planned to do a risk assessment on all of those, but if staff focused on 15 chemicals that would reduce the effort and still give a good overview of what was being used.
- Adams stated that he was not hearing why there was a need to move forward more with this.
- Patterson suggested that the Board might consider hearing from Hilary Peterson about schools and IPM Coordinator guidance documents. She added that could help explain how applications were currently being made.
- Adams agreed to invite Peterson to a future meeting.

8. Staff Memo: Clarify the Definition of Adjuvants to Include/Exclude Colorants

In 2022, the Board's authority was expanded to include the regulation of spray adjuvants. Staff recently received a request for clarification of the definition of spray adjuvant and the inclusion or exclusion of colorants in that definition.

Presentation By: Megan Patterson, Director

Action Needed: Review/discuss provided information, provide guidance

- Patterson stated that staff received an email asking if colorants were considered spray adjuvants when used for the purpose of seeing where the product was applied.
- Adams stated his position was that they did fall under that umbrella.
- Randlett directed Board members to review the current definition to decide whether a colorant fit into the definition as a similar type of agent to a spray adjuvant.
- Jemison stated that he saw adjuvants as products used to make a pesticide more effective and that a colorant's sole purpose was to show where a product had been applied.
- Adams stated that knowing where spray landed did relate to effectiveness of a treatment because it demonstrated whether there was adequate coverage.
- Randlett stated that his job was to make sure the Board's interpretation was legally defensible. He asked to have something in the record describing the Board's interpretation.
- Ianni asked what considering colorants as adjuvants would entail.
- Adams responded that manufacturers of colorants would be required to register the product and part of that would include stating whether or not the products included PFAS.



- Patterson stated that this could potentially be a burden to applicators if they needed to keep application records on these products.
- The Board conducted an informal vote on whether a colorant would fit into the definition of an adjuvant. Carlton, Lajoie, and Jemison were of the position that it did not fit in the definition because it did not aid in the efficacy of the applied product. Ianni and Adams stated they felt it did fit the interpretation.

9. Other Old and New Business

a. BPC Letter re LD 2019 and Container Rulemaking

- Patterson outlined efforts the Board had taken and outlined some potential movements forward that might not be pre-empted by federal law. She stated that the Board should be receiving a letter of response from the ACF Committee in the near future. Patterson stated that the ACF Committee would likely require emergency rulemaking.
- Adams stated he was glad to hear the ACF Committee would be giving them specific requests and direction.

b. Update on 2023 pesticide product registration renewal progress

- Patterson stated that the BPC was still about 4,000 product registrations short of the number registered annually and many companies had sought an extension until February 28, 2023. She added that products could still be registered after that date if companies so chose. Patterson stated that companies had expressed concern about their proprietary information and that it might not be securely protected.
- Graham Zorn, representative of Crop Life America and RISE said this all stemmed from LD 264. He stated that companies started with very severe concerns about the idea of putting confidential statements of formula out into the world. Zorn stated that they had come a long way regarding the affidavit questions. He told the Board that there was a lot of concern about confidential business information (CBI) and that asking if a product contained any specific ingredient, was potentially CBI. He asked if this information would be protected under Maine's trade secrets law.
- Patterson stated that there had been changes made to the portal and the affidavit questions. Staff also provided the opportunity to provide context to the affidavit questions.
- Zorn stated that there had been technical issues getting through the registration process, particularly with entering info about the supplier of a particular component. There was not the ability to enter more than one supplier per component. Zorn stated that some members had time-out issues which made it difficult to continue the registration. He told the Board that part of the ask in the letter was for an additional extension.
- Randlett stated that the Board would not normally publish information unless they received a request through Maine's Freedom of Access Act (FOAA). He added that CSF information would be off-limits from that request. Randlett explained the two ways to protect information that might be considered trade secrets. He said if the Board made a determination to disclose affidavit answers pursuant to FOAA, they would notify the

registrants and give them an opportunity to provide additional information or to file lawsuits with the appropriate court to delay its exposure.

- There was discussion amongst the Board about whether to provide an additional extension beyond February 28, 2023. They also decided against entering emergency rulemaking to remove the CSF requirement from rule. Board members had concerns about being burdens to the agricultural community.
- Adams stated that they had no way of knowing if they took action today whether the remainder of the product registrations would be submitted.
- The Board decided to wait until February 28 and reconsider an extension.

c. Update on LD 8—An Act to Increase Support for the Modernization of the Board of Pesticides Control by Increasing the Annual Pesticide Registration Fee

d. Report from the University of Maine to BPC and ACF Committee on Pesticide Safety Education and Training in 2022

e. Other items?

10. Schedule of Future Meetings

April 7, 2023 is the next tentative Board meeting date. The Board will decide whether to change and/or add dates.

- Adams stated that he wanted to consider a March meeting.

11. Adjourn

- **Lajoie/Ianni: Moved and seconded to adjourn at 12:45 PM**
- **In Favor: Unanimous**



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

**BOARD OF PESTICIDES CONTROL**

**March 15, 2023**

**1:30 PM Board Meeting**

**MINUTES**

Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves

2. Update on 2023 Pesticide Product Registration Renewal Progress

At the February 24, 2022, meeting, the staff provided an update on progress made toward the annual renewal of pesticide product registrations. Since that meeting, staff have further modified the MEPERLS software to accommodate registrant requests for functionality. Those modifications were available to registrants beginning March 3, 2023. To support use of the new functionality, staff have permitted an additional three-week registration extension which is scheduled to end on March 21, 2023. At this time, many products, including numerous pesticides commonly used in agriculture and vegetation management remain unrenewed. Staff have been fielding inquiries from manufacturers, distributors, agricultural producers, golf course superintendents, vegetation management professionals, special interest groups, commodity groups, legislators and others regarding the status of product registration. Staff will now provide an update on additional progress made toward registration renewal, outstanding issues, and possible pathways forward.

Presentation By: Megan Patterson, Director

Action Needed: Discuss and determine next steps

- Patterson stated that there were still a significant number of products that had not been registered and she expected registration numbers to be down some this year. Instead of a typical annual loss of 1,000 product registrations it might be 1,500-2,000. Some companies had concerns about the registration process and changes were implemented in MePERLS to accommodate those concerns. Staff had also made space for confidential business

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
WWW.THINKFIRSTSPRAYLAST.ORG

information (CBI) claims to be provided. Patterson said staff would be working through the process of reviewing these claims with Mark Randlett.

- Adams asked if the CBI review process was just beginning.
- Patterson stated that staff needed to design the review process first and were coming up with a rubric which had been sent to the Assistant Attorney General's office for review.
- Lajoie stated that the Board had been very accommodating to companies and asked for an update on Syngenta.
- Patterson responded that Syngenta expressed concern about submitting their confidential statements of formula (CSF) through the State's secure portal. Other concerns were about the affidavit questions. Regarding affidavit questions, registrants wanted to be able to add comments to their responses so BPC accommodated and created a text field. The affidavit question language was also modified to address industry requests.
- Lajoie stated that he felt the BPC had gone above and beyond to accommodate registrant requests and did not see any reason for an additional extension.
- Patterson asked if it was the Board's wish to allow for another extension or find another way to deal with registration.
- Adams stated that some members of the ACF committee said constituents had expressed concern because they could not get the products they needed.
- There was Board discussion about which companies had not yet registered products. Board members commented that they had not heard any legitimate reasons to lengthen the extension.
- Patterson stated that Syngenta did reach out and propose that they could comply by letting BPC staff access CSF information through their secure portal. She added that staff had been trying to work with registrants to find a way forward. There were a few large companies that had not moved forward with registration.
- Tomlinson stated that she was not sure another extension would make a difference. She added that there were also lists of registered pesticide products that staff was required to publish this month.
- Patterson explained that the two lists staff was obligated to publish were herbicides registered for aquatic uses and another list for all neonicotinoids labeled for use in residential settings.
- Ianni stated she believed they should move on and not extend this any further because she did not see what an extension would grant the registrants or us.
- Eric Venturini, director for the Wild Blueberry Commission of Maine, stated that the lack of registered products seemed like it was going to have a real and tremendous impact. He said that the last time he checked there was about ten percent of the products they normally used that were registered. Venturini said this would restrict growers from using cutting edge IPM that they had worked with over decades to respond to pest management issues. He added that it was the Board's responsibility to resolve this issue and urged them to cut back the barriers to registration. He stated that CSFs could not be made publicly available

so why collect them, and there was also a bill in the legislature to change Maine's current definition of PFAS.

- Brad Mitchell, a Syngenta representative, stated that the company would be registering products in the coming weeks. He added that it would not be the full cadre of products registered as in previous years. Mitchell stated that with the deadline, they would likely be unable to ship products in time for growers to use them.
- Sharon Treat, MOFGA legal representation, asked what the Board was doing that the registrants were opposed to. She added that what was being asked was less specific than what would be required by DEP. Treat said she was not sure what the Board could do to change the outcome here if the registrants had an objection to saying whether their product contained PFAS or was in a container from which PFAS might leach.
- Adams stated that he still had not heard anything from Board members about needing the existing extension to be extended. He added that they had instruction from ACF to try not to create a barrier for constituents and farmers that needed these products.
- Patterson stated that staff would continue to try to reach out to these companies and find out if there was something specific that could be remedied. She added that some companies had made claims of CBI in regard to their responses to the affidavit questions. Patterson stated that staff were preparing a process for reviewing those claims.
- Treat asked if the process to establish a CBI review was going to be applied to the affidavits. She said that raised significant concerns because that information was intended to be public information on the part of the legislature. Treat said she was unclear about the authority the Board had to keep information such as that from the public based on claims of CBI.
- Patterson responded that staff would make the review process as public as allowed. She added that the BPC did understand the information collected in the affidavits was intended to be public and did not, at the time of rulemaking, realize the BPC would receive claims of CBI for these products. Patterson said she expected to have a rubric soon to make it clear what was being considered when those claims were reviewed and staff would also take input from Board members.
- Randlett noted that companies had a right in statute to claim CBI. He added that the Board's obligation was to go through the steps to review the information in accordance with the statute.

### 3. Legislative Response to the BPC Letter Regarding LD 2019 and Container Rulemaking

At the May 6, 2022, meeting, the Board first discussed LD 2019 and associated container rulemaking responsibilities. In a good-faith effort to complete this directive, the Board continued to engage in robust discussions of the topic at three additional meetings. At its October 21, 2022, meeting, the Board discussed issues of federal preemption challenges and directed staff to compose a letter to the Legislature's Committee on Agriculture, Conservation and Forestry (ACF Committee) seeking additional guidance. In November 2022, Board staff met with the bill sponsor and now ACF Committee chair to explain the forthcoming letter and the Board's efforts to date. Following receipt of the BPC letter, the

Board's legal counsel was invited to speak with the ACF Committee. The Board has now received a response and directive from the ACF Committee.

Presentation By: Megan Patterson, Director

Action Needed: Discuss and determine the next steps

- Patterson explained the contents of the letter received from the ACF committee in response to the letter BPC wrote asking for guidance regarding container rulemaking. She stated that the ACF committee wanted action and completion of rulemaking prior to the end of the legislative session
- The Board discussed what additional rules they could put in place to further prohibit the contamination of products.
- Patterson asked Representative Osher if the Board was understanding the letter correctly- that it was speaking to containers that contain PFAS. She asked if it was talking about intentional or unintentional addition.
- Representative Osher responded that that question needed to go to the ACF committee.
- Adams stated that he had been told that fluorinated packaging was being phased out and companies were currently working through existing inventory. He asked Mitchell if that was correct.
- Mitchell replied that he did not know that for sure. He added that they would like to participate in the rulemaking process and ensure it was consistent with the previously stated preemption clause.
- Discussion was had regarding how to go about rulemaking to satisfy the ACF committee's request.
- Bryer spoke to contamination at the federal level and stated that ingredients not noted were considered impurities and were required to be reported within 30 days of discovery. She added that there was not research to back the idea that all fluorinated containers cause PFAS.
- Bohlen commented that the Board needed to act or go back to the ACF committee and say why they believed it did not make sense in a fairly coherent way. He added that with the tight timeline the Board needed to pick a path forward- either go to the committee or start rulemaking. Bohlen stated that he did not think there was a consensus around anything at the moment.
  - **Jemison/Carlton: Moved and seconded to send Board members to speak with the ACF committee**
  - **In Favor: Unanimous**

#### 4. Review and Discussion of Potential Rulemaking Topics

At its January 11, 2023, meeting, the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023, meeting, staff provided a list of rulemaking ideas identified by Board members and staff. Since rulemaking is expensive and time-consuming, the Board generally tries to group rulemaking initiatives. The staff will present a summary of the February discussion and a timetable of possible hearing dates for Board consideration.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Determine how to approach rulemaking and possibly schedule a hearing

- Boyd stated that staff needed more guidance moving forward and she explained to the Board the timeline for the different types of rulemaking. She added that the first item the Board had expressed interest in moving forward with was the definition of ‘residential landscape’.
- Patterson explained that one of the reasons staff brought this back was because it was impractical for the Board to take on all of these items simultaneously. Staff asked the Board to prioritize the highest priority items and the others could be addressed at a later date. Patterson stated that the cost of entering into rulemaking each time was approximately \$2,000.
- There was Board discussion about taking up the topic of defining ‘residential landscapes’ in Chapter 10. Ianni stated that she thought clearly identifying what ‘residential landscapes’ consisted of was important because there were so many different combinations of residential landscapes.
- There was further discussion about ways to lump the items together and Patterson stated that staff could come back at the next meeting with some ways the rules could be grouped.
- Boyd explained that item number two was about incorporating the ‘Positive Identification of Proper Treatment Site’ policy into rule.
- Adams and Jemison stated they would like to move forward with item number two. There was discussion about whether this should be completed as emergency rulemaking or not.
- Bohlen suggested first taking up items that the Board could handle relatively rapidly, like those required by the EPA and a couple of other topics on the housekeeping end. He stated they could also look at items that were in the same chapter.
- Boyd stated that item number three dealt with amending rules regarding notification of rodenticidal baits. Item number ten was also related to this same topic.
- The Board decided to wait on those items. Adams suggested adding item number four to the agenda for next meeting. Item number four addressed combining the three 7C categories into one exam and manual.
- The Board had discussion that item number six regarding UAVs could become fairly involved. Some states identify them as equivalent to aerial applications and required proof of FAA certification.

- Carlton stated that that topic could become very involved and suggested delaying it for the time being.
- Boyd said that item number seven would address the minimum age requirements for non-certified individuals making applications. The age requirement would be eighteen years old for non-family non-certified applicators and sixteen years old for family non-certified applicators. This was already federal law, and the BPC would simply be adopting it by reference.
- Adams requested that this be added to the April meeting.
- The next item discussed was Chapter 41, Section 5 relating to *Bt* corn. Adams stated that he thought it would be easy to move forward, but it could also be delayed.
- Patterson commented that what was in rule was dated and did not align with existing agricultural practices.
- Adams requested that this be put on the agenda for the April meeting.
- Boyd stated that item eleven would take longer because it would be major substantive. It addressed a possible requirement for the digital submission of annual reports.
- Patterson suggested that staff could hold a stakeholder information gathering meeting to see if there was support for this.
- Adams responded that he was inclined to table this until they had more information on exactly how it would be implemented.
- Patterson said that staff could give an estimate of what it cost to hire temporary staff to enter the existing records. At this point in time, the BPC would not have the capacity to hire temporary staff to enter this information in the future.
- Bohlen stated that it seemed like there was work to do before starting preliminary meetings on this topic.
- Adams stated he would like to move forward on items two, four, seven and nine for the April meeting.
- There was discussion about posting and when public hearings would need to be held. Patterson said staff could bring back a timeline for rulemaking.

5. Other Old and New Business

a. Other items?

6. Schedule of Future Meetings

April 7, 2023, is the next tentative Board meeting date. The Board will decide whether to change and/or add dates.

7. Adjourn

- **Carlton/Jemison: Moved and seconded to adjourn at 3:32 PM**
- **In Favor: Unanimous**



**BOARD OF PESTICIDES CONTROL**  
**FOR THE PERIOD OF: JULY 01, 2023 - JUNE 30, 2024**  
**014-01A-0287-01 ESTIMATED CASH REPORT**

		CURRENT FISCAL YEAR 2023 (BY MONTH)												TOTAL
		Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Est. Mar-23	Est. Apr-23	Est. May-23	Est. Jun 23	
<b>BALANCE FORWARD</b>		<b>2,082,379.14</b>	<b>1,961,483.09</b>	<b>1,791,676.81</b>	<b>1,600,234.14</b>	<b>1,485,352.18</b>	<b>1,550,435.22</b>	<b>2,252,212.39</b>	<b>2,263,611.00</b>	<b>2,198,410.10</b>	<b>2,340,493.25</b>	<b>2,225,335.25</b>	<b>2,093,815.49</b>	
<b>Revenues:</b>														
1407	REG INSECT & FUNGICIDES	19,200.00	11,520.00	10,560.00	11,360.00	185,120.00	812,640.00	180,960.00	92,800.00	290,080.00	26,080.00	13,280.00	17,120.00	1,670,720.00
1448	SPECIAL LICENSES & LEASES	8,320.00	5,420.00	4,240.02	6,970.00	17,440.00	35,030.00	19,980.00	10,675.00	11,000.01	12,755.00	12,685.00	10,490.00	155,005.03
1959	REGISTRATION FEE	-	-	-	-	-	-	-	-	-	-	-	-	-
2206	FED GRANTS FOR PUB HEALTH	-	-	-	-	-	-	-	-	-	-	-	-	-
2631	REGISTRATION FEES	-	-	-	-	-	-	-	-	-	-	-	-	-
2637	MISC SERVICES & FEES	-	-	-	-	-	-	-	-	-	-	-	-	-
2651	SALE LABELS CARTONS	-	-	-	-	-	-	-	-	-	-	-	-	-
2669	SALE MAILING LISTS	-	-	-	-	-	-	-	-	-	-	-	-	-
2671	SALE OF PROMOTIONAL ITEMS	-	-	-	-	-	-	-	-	-	-	-	-	-
2681	OVERPAYMENTS TO BE REFUNDED	-	-	-	-	-	-	-	-	-	-	-	-	-
2686	MISC-INCOME	-	-	-	-	-	-	-	-	-	-	-	-	-
2690	RECOVERED COST	-	-	-	100.00	-	-	-	-	-	-	-	-	100.00
2934	TRANS FROM GENERAL FD SURPLUS	-	-	-	-	-	-	-	-	-	-	-	-	-
2952	ADJ TO PRIOR YEAR BAL/UNALLOCT	-	-	-	-	-	-	-	-	-	-	-	-	-
2953	ADJ OF ALL OTHER BALANCE FWD	185.12	-	-	-	-	-	-	-	-	-	-	-	185.12
2955	ADJ OF PERS SERV BALANCE FWD	-	-	-	-	-	-	-	-	-	-	-	-	-
2968	REG TRANSFER UNALLOCATED	-	-	-	-	(25,000.00)	-	-	-	-	-	-	-	(25,000.00)
2978	DICAP TRANSFER	(20,232.63)	(18,120.06)	(23,805.51)	(25,752.19)	(15,182.77)	(13,736.53)	(18,652.64)	(24,122.07)	(20,404.72)	(19,563.19)	(18,975.65)	(19,551.47)	(238,099.42)
2979	TRANSFER FOR INDIRECT COST	-	-	-	-	-	-	-	-	-	-	-	-	-
2981	LEGIS TRANSFER OF REVENUE	-	-	-	-	-	-	-	-	-	-	-	(200,000.00)	(200,000.00)
<b>TOTAL REVENUES</b>		<b>7,472.49</b>	<b>(1,180.06)</b>	<b>(9,005.49)</b>	<b>(7,322.19)</b>	<b>162,377.23</b>	<b>833,933.47</b>	<b>182,287.36</b>	<b>79,352.93</b>	<b>280,675.29</b>	<b>19,271.81</b>	<b>6,989.35</b>	<b>(191,941.47)</b>	<b>1,362,910.73</b>
<b>Expenditures:</b>														
31	SALARIES AND WAGES	-	-	-	-	-	-	-	-	-	-	-	-	-
32	SALARIES AND WAGES	59,625.23	95,865.99	72,288.46	58,440.40	58,587.26	60,690.39	94,190.37	62,793.58	63,183.19	63,183.19	63,183.19	63,183.19	815,214.44
33	SALARIES AND WAGES	7,032.80	10,500.32	7,196.34	7,003.99	7,317.33	3,700.00	-	789.20	6,841.52	6,841.52	6,841.52	6,841.52	70,906.06
34	SALARIES AND WAGES	-	-	-	-	-	-	-	-	-	-	-	-	-
36	SALARIES AND WAGES	672.70	1,729.86	5,646.51	1,216.14	799.19	597.72	896.58	597.72	692.20	692.20	692.20	692.20	14,925.22
38	SALARIES AND WAGES	110.00	709.38	-	-	220.00	275.00	-	275.00	385.00	385.00	385.00	385.00	3,129.38
39	FRINGE BENEFITS	38,790.10	37,560.19	26,838.40	23,640.64	23,654.87	38,140.57	56,373.28	37,869.31	32,088.30	37,869.31	37,869.31	37,869.31	428,563.59
40	PROF. SERVICES, NOT BY STATE	3,049.60	6,522.76	5,278.26	6,142.82	7,282.39	4,149.77	5,860.14	6,387.40	4,675.53	4,051.97	7,825.51	6,605.02	67,831.17
41	PROF. SERVICES, BY STATE	-	-	-	-	-	-	-	-	-	-	-	-	-
42	TRAVEL EXPENSES, IN STATE	192.00	29.55	47.57	18.99	25.53	-	47.27	503.44	200.56	-	-	92.35	1,157.26
43	TRAVEL EXPENSES, OUT OF STATE	-	-	-	1,644.01	828.68	104.00	-	(1,062.64)	-	-	266.86	-	1,780.91
44	STATE VEHICLES OPERATION	-	-	-	-	-	-	-	-	-	-	-	-	-
45	UTILITY SERVICES	-	-	-	-	-	-	-	-	-	-	-	-	-
46	RENTS	-	1,111.71	2,869.30	194.24	70.18	2,495.92	2,544.80	862.23	862.23	895.52	-	2,475.95	14,382.08
47	REPAIRS	-	-	-	-	-	-	-	-	-	-	-	-	-
48	INSURANCE	-	3,483.00	150.00	-	-	-	4.61	174.00	-	-	-	-	3,811.61
49	GENERAL OPERATIONS	671.83	900.44	793.02	306.18	1,199.01	3,239.25	423.54	15,807.34	4,195.51	1,993.47	2,286.05	726.40	32,542.04
50	EMPLOYEE TRAINING	-	-	-	-	131.34	-	-	-	-	-	-	15.00	146.34
51	COMMODITIES - FOOD	-	-	-	-	59.87	-	-	-	-	-	-	-	59.87
53	TECHNOLOGY	10,435.49	-	49,934.18	-	(9,014.51)	10,520.95	-	10,435.49	10,435.49	10,288.40	10,435.49	23,165.16	126,636.14
54	CLOTHING	-	-	-	-	-	-	-	-	-	-	-	-	-
55	EQUIPMENT AND TECHNOLOGY	220.62	243.27	523.86	245.80	219.88	416.32	329.51	110.08	355.31	303.74	306.99	319.79	3,595.17
56	OFFICE & OTHER SUPPLIES	-	46.98	115.40	2,365.23	195.85	20.97	143.67	489.30	54.41	-	250.99	432.56	4,115.36
58	HIGHWAY MATERIALS	-	-	-	-	-	-	-	-	-	-	-	-	-
63	GRANTS TO CITIES AND TOWNS	-	-	-	-	-	-	-	-	-	-	-	-	-
64	GRANTS TO PUB AND PRIV ORGNS	-	-	-	-	-	-	-	-	6,432.00	-	-	-	6,432.00
67	ASSISTANCE AND RELIEF GRANT	-	-	-	-	-	-	-	-	-	-	-	-	-
72	EQUIPMENT	-	-	-	-	-	-	-	-	-	-	-	-	-
82	ADMINISTRATIVE CHARGES AND FEE	-	(20.00)	-	-	(20.00)	-	-	-	20.00	-	-	20.00	-
85	TRANSFERS	7,568.17	9,942.77	10,755.88	6,341.33	5,737.32	7,790.62	10,074.98	8,522.38	8,170.89	7,925.50	8,166.00	8,947.89	99,943.72
90	CHARGES TO ASSETS AND LIAB.	-	-	-	-	-	14.82	-	-	-	-	-	-	14.82
<b>TOTAL EXPENDITURES</b>		<b>128,368.54</b>	<b>168,626.22</b>	<b>182,437.18</b>	<b>107,559.77</b>	<b>97,294.19</b>	<b>132,156.30</b>	<b>170,888.75</b>	<b>144,553.83</b>	<b>138,592.14</b>	<b>134,429.82</b>	<b>138,509.11</b>	<b>151,771.34</b>	<b>1,695,187.18</b>
<b>CURRENT CASH BALANCE</b>		<b>1,961,483.09</b>	<b>1,791,676.81</b>	<b>1,600,234.14</b>	<b>1,485,352.18</b>	<b>1,550,435.22</b>	<b>2,252,212.39</b>	<b>2,263,611.00</b>	<b>2,198,410.10</b>	<b>2,340,493.25</b>	<b>2,225,335.25</b>	<b>2,093,815.49</b>	<b>1,750,102.69</b>	<b>1,750,102.69</b>



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

JANET T. MILLS  
 GOVERNOR

AMANDA E. BEAL  
 COMMISSIONER

To: Board Members  
 From: Staff  
 Re: Review of Rulemaking Concepts  
 Date: February 24, 2023

At the February 24, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts. Staff have compiled the Board's responses to rulemaking concepts that had interest in moving forward. The Board identified 4 items of interest, which must be voted on to move forward in initiating rulemaking. The potential rulemaking are categorized by the following criteria:

Required C&T	Required by federal rule change
Housekeeping	Fairly minor and should require very little discussion.
Incorporate Policy	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.

The fourth column designates type of rulemaking (see Title 7 Section 610(6)):

RT	Routine Technical
MS	Major Substantive

The first column corresponds to the attached reference documents.

The second column details the actionable item.

The third column provides a purpose for the rulemaking.

The fourth column provides notes on the Board's discussions at the February 24, 2023 Board meeting

The fifth column provides a detailed description of the potential rulemaking concept.

A complete list of possible rulemaking chapters to include 10, 20, 28, 31, 32, 41, 50.

MEGAN PATTERSON, DIRECTOR  
 90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
 WWW.THINKFIRSTSPRAYLAST.ORG

2	Chapter 20, Section 7(A)	<p>The Board expressed interest in incorporating policy into rule.</p> <ul style="list-style-type: none"> <li>• See “Chapter 20: Positive Identification of Proper Treatment Site by Commercial Applicators” Policy.</li> </ul> <p>The Board may want to consider also adding additional methods for proper site identification while reviewing this policy.</p>	Incorporating Policy	Yes, may need to discuss additional methods	RT
4	Chapter 31(2)(VII)(c)(1)(2)(3) and Chapter 31(3)(VII)(c)(1)(2)(3)	<p>Staff have identified issues with 7C category licensure. See memo “Revisions of 7C categories to reflect licensure”. The Board may want to consider changing these categories by:</p> <ul style="list-style-type: none"> <li>• Combining all categories to 7C: Biocide, Disinfectant, Pools and Spas, Mold Remediation, and Water Damage Restoration</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• Amending category 7C1 to remove disinfectants to “Biocide Treatments”</li> <li>• Amending category 7C3 to include disinfectants to “Mold Remediation, Water Damage Restoration, and Disinfectants”</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• Adding new category: 7C4 Disinfectants</li> </ul> <p>Currently, there is confusion regarding which certification category is needed for commercial application of disinfectants. If these sections are changed, competency standards should also change to reflect categories.</p>	Housekeeping	Yes, combine all categories into 7C	RT
7	Chapter 32, section 2 (A)(1)	<p>This was identified when staff revised the state plan. Excerpt from state plan:</p> <p>To address 40 CFR § 171.201 (see reference document), the State of Maine, Board of Pesticides Control will, at the</p>	Required C&T	Yes	RT

		<p>earliest opportunity, initiate rulemaking to address the minimum age requirements for noncertified applicators who are a minimum of 16 years old and who may apply restricted use pesticides under the direct supervision of a private applicator who is an immediate family member. The State of Maine Board of Pesticides Control will also, at the earliest opportunity, initiate rulemaking to address the minimum age requirements for noncertified applicators who are a minimum of 18 years old and who may apply restricted use pesticides under the direct supervision of a private applicator. Until rulemaking occurs, the Board of Pesticides Control will continue to enforce the above-listed minimum age requirements under their delegated authority to enforce FIFRA.</p> <p>These amendments may require creation of a new section to address noncertified applicators.</p>			
9	Chapter 41, Section 5	<p>A Board member expressed interest in updating and modernizing Chapter 41, Section 5, which addresses plant incorporated protectants. Staff need additional guidance on concepts the Board might want addressed in this section.</p>	Requires Discussion	Staff are looking at Jemison's suggested notes	MS

**TIMELINE FOR ROUTINE TECHNICAL RULEMAKING**

<b>TIMELINE FOR ROUTINE TECHNICAL RULES</b>		<b>Date of Board vote</b>		<b>4/7/2023</b>
<b>Step</b>	<b>Timeline</b>	<b>Date</b>		<b>Notes</b>
Send forms to SOS	Monday prior to week of posting	4/10/2023		
Hearing	17 - 24 days after posting	4/27/2023	5/4/2023	
Last Day of Written Comments	10 days after public hearing	5/7/2023	5/14/2023	
Review comments with AAG and the Board to move forward	Likely an emergency meeting	5/14/2023	5/21/2023	*Estimated for a week to review and compile comments, then the Board will need to vote to approve the comments before they move forward.
AAG reviews and signs for final adoption	150 days from comment deadline (within 90 for emergency)	5/28/2023	10/18/2023	*Maximum time needed to review is 150 days, minimum is set to a week. Subject to change given AAG's comments.

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY****026 BOARD OF PESTICIDES CONTROL****Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE**

---

**SUMMARY:** This chapter describes special limitations placed upon the use of (1) aldicarb (Temik 15G) in proximity to potable water bodies; (2) trichlorfon (Dylox, Proxol); (3) hexazinone (Velpar, Pronone), (4) aquatic herbicides in the State of Maine; (5) plant-incorporated protectants; (6) neonicotinoids (dinotefuran, clothianidin, imidacloprid, thiamethoxam); and (7) chlorpyrifos (Dursban, Lorsban).

---

**Section 1. ALDICARB (TEMIK®)**

The registration of aldicarb (Temik 15G) is subject to the following buffer zone requirements:

- A. Aldicarb (Temik 15G) shall not be applied within 50 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in the range of one to ten parts per billion (ppb). The 50 foot buffer would be mandatory for one year with a required retesting of the water at the end of the period.
- B. Aldicarb (Temik 15G) shall not be applied within 100 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in excess of 10 ppb. The 100 foot buffer would be mandatory for one year with a required retesting of the water at the end of this period.

**Section 2. TRICHLORFON (DYLOX, PROXOL)**

The registration of trichlorfon (Dylox, Proxol) is subject to the following requirements:

- A. Trichlorfon shall only be used for control of subsurface insects on turf.
- B. Prior to application the target pest must be identified and the severity of the infestation must be determined, including the extent of the damage.
- C. Only infested areas shall be treated with trichlorfon. Broadcast treatments of the entire turf area are prohibited.
- D. Following application, the trichlorfon must be watered into the soil with at least ½ inch of water and according to the label directions. The applicator must assure that the appropriate watering will take place prior to re-entry by any unprotected person.

**Section 3. HEXAZINONE (VELPAR, PRONONE)**

The registration of hexazinone is subject to the following limitations and conditions.

**A. Licenses Required**

No person shall use or supervise the use of any pesticide containing the active ingredient hexazinone unless they have obtained an applicators license in accordance with 22 M.R.S. §1471-D.

**Section 4. AQUATIC HERBICIDES**

The registration of pesticides for which there is an aquatic herbicide use on the product label shall be subject to the following limitations and conditions.

**A. Board Publication of List**

The Board of Pesticides Control will publish by May 23, 2003 and by March 15th of each year thereafter a list of herbicide products registered in Maine for which the manufacturer has verified that there is an aquatic use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of aquatic vegetation. Pesticides labeled solely for use in aquariums and antifouling paints, are specifically exempt from this list.

**B. Licenses Required**

- I. Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. No person shall:
  - a. Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or
  - b. Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.
- III. Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

**C. Disclosure**

The Board will make a disclosure form available to dealers distributing any aquatic herbicides identified on the Board's annual listing. The Board requests that dealers present to customers the disclosure form that advises purchasers that, (1) an aquatic discharge license must be obtained from the Maine Department of Environmental Protection before any application may be made to any surface waters of the State as defined in 38 M.R.S.A. Section 361-A(7) including any private ponds that may flow into such a body of water at any time of year, (2) that Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection on the use of aquatic herbicides are available.

**D. Records and Reporting**

Dealers distributing any aquatic herbicides identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

**E. Use of Best Management Practices**

Aquatic herbicides applied to private ponds and not subject to an aquatic discharge permit may only be applied consistent with Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection.

**Section 5. PLANT-INCORPORATED PROTECTANTS**

The registration, distribution and use of plant-incorporated protectants are subject to the following limitations and conditions:

**A. Definitions**

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

**B. License Required**

No person shall distribute any plant-incorporated protectant without either a general use pesticide dealer license or a (restricted or limited use) pesticide dealer license from the Board.

**C. Dealer Requirements**

Dealers distributing plant-incorporated protectants are subject to the following requirements:



- I. General use and (restricted or limited use) pesticide dealers shall notify the Board of their intent to distribute plant-incorporated protectants on all initial license and license renewal application forms provided by the Board.
- II. General use and (restricted or limited use) pesticide dealers shall maintain sales records showing the list of the names and addresses of all purchasers of plants, plant parts or seeds containing plant-incorporated protectants. These records must be made available to representatives of the Board for inspection at reasonable times, upon request, and must be maintained for two calendar years from the date of sale.
- III. Any general use and (restricted or limited use) pesticide dealer who discontinues the sale of plant-incorporated protectants shall notify the Board in writing and shall provide the Board, upon request, with all records required by Section 5(C)II of this chapter.

**D. Grower Requirements**

- I. All users of plant-incorporated protectants shall maintain the records listed below for a period of two years from the date of planting. Such records shall be kept current by recording all the required information on the same day the crop is planted. These records shall be maintained at the primary place of business and shall be available for inspection by representatives of the Board at reasonable times, upon request.
  - a. Site and planting information, including town and field location, a map showing crop location and refuge configuration in relation to adjacent crops within 500 feet that may be susceptible to cross-pollination;
  - b. Total acres planted with the plant-incorporated protectant and seeding rate;
  - c. Total acres planted as refuge and seeding rate;
  - d. Detailed application information on any pesticide applied to the refuge as described in Section 1(A) of Chapter 50, "Record Keeping and Reporting Requirements"; and
  - e. Planting information for each distinct site including:
    - i. date and time of planting; and
    - ii. brand name of the plant-incorporated protectant used.
- II. There are no annual reporting requirements for growers.

**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.
- II. Dealers distributing Bt-sweet corn shall only sell the seed in quantities large enough to plant one acre or more.

**F. Confidentiality**

Any person providing information to the Board in connection with the record-keeping and reporting requirements of Section 5 of this chapter may designate that information as confidential in accordance with 7 M.R.S.A. §20.

**Section 6. NEONICOTINOIDS (DINOTEFURAN, CLOTHIANIDIN, IMIDACLOPRID, OR THIAMETHOXAM )**

The registration of pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam for which there is an outdoor ornamental plant or turf use on the product label shall be subject to the following limitations and conditions.

**A. Definitions**

- I. “Emerging Invasive Invertebrate Pests” means any invertebrate, including its eggs or other biological material capable of propagating that species that occurs outside of its eco-region and its introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health, to include:
  - a. Species both known now and unknown now but showing up at a later date;
  - b. Species that occur outside of their eco-region (level III) as defined by EPA; and
  - c. Species on a Board approved list.
- II. “Ornamental Plants” means shrubs, trees and related vegetation excluding turf and lawn, in and around residences.

**B. Board Publication of Product List**

The Board of Pesticides Control will publish within 30 days of adoption and by March 15th of each year thereafter a list of insecticide products containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam registered in Maine for which the manufacturer has verified that there is an outdoor ornamental plant or turf use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of invertebrate pests on outdoor ornamental plants or turf. Pesticides labeled solely for use in preserving wood, managing indoor pests, managing structural pests within five (5) feet of a human dwelling, and treating pets are specifically exempt from this list.

**C. Licenses Required**

- I. No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. Unless exempted under Chapter 41, Section 6 (C) (IV) no person shall purchase, use or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.
- III. No person shall distribute any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.
- IV. Registered pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use described in Chapter 41, Section 6 (C) (II) where by:

- a. The applicator obtains an emergency permit from the Board; or
  - b. The use of these products is for management of emerging invasive invertebrate pests on ornamental plants in outdoor residential landscapes.
- V. No person shall use any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing for the purposes of managing turf and lawn in outdoor residential landscapes.

**D. Records and Reporting**

Dealers distributing any pesticides containing dinotefuran, clothianidin, imidacloprid or thiamethoxam identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

**E. Emergencies**

The Board's staff may grant an emergency permit authorizing neonicotinoid use in compliance with Sections 6(C) of this chapter if the restrictions in this chapter prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists as outlined in Chapter 51(VII)(B)(1).

- I. No variance may be granted if the emergency is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
- II. If the staff does not grant the variance, the applicator or the person requesting the pesticide application may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemption".

**F. Emergency Use Permits**

Emergency use 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;
- 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;
- VII. The approved pest species for which the application is being made as defined in policy or by the board; and
- VIII. 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 surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). 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 conditions described in their 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.

**Section 7. CHLORPYRIFOS (DURSBAN, LORSBAN)**

The registration of chlorpyrifos (Dursban, Lorsban) is subject to the following limitations and conditions.

- A. No person shall use or supervise the use of any pesticide containing the active ingredient chlorpyrifos unless they have obtained a private or commercial applicator's license from the Board, possess the pesticide in the State before January 1, 2022, and obtain a temporary use authorization permit from the Board.
- B. 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 brand name of the pesticides to be applied;
  - III. The date on which the pesticides were purchased;
  - IV. The approximate quantity of the pesticides possessed;
  - V. The purpose for which the pesticide application(s) will be made; and
  - VI. The duration for which the applications will take place or until the product is gone.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if:
  - I. The permit application is received prior to December 31, 2022;
  - II. The applicant possesses a valid pesticide applicator license issued by the State;
  - III. The pesticides proposed for use were purchased prior to January 1, 2022;

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 conditions described in their 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:

5 M.R.S.A. §§ 8051 *et seq.*

7 M.R.S.A. §§ 601-610

22 M.R.S.A. §§ 1471-A, 1471-B, 1471-C, 1471-D, 1471-M

EFFECTIVE DATE:

March 8, 1981 (Captan)

AMENDED:

May 7, 1981 (Trichlorfon)

January 2, 1984 (Aldicarb)

May 8, 1988 (Trichlorfon)

August 5, 1990 (Captan)

August 17, 1996 (Hexazinone)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 3(B)(II)

CONVERTED TO MS WORD:

March 11, 2003

AMENDED:

May 12, 2003 - Section 4 added

NON-SUBSTANTIVE CORRECTIONS:

June 24, 2003 - summary only

AMENDED:

February 2, 2004 - Section 4, 1st paragraph and sub-section A, filing 2004-31

April 30, 2007 – filing 2007-154

February 3, 2008 – filing 2008-36

July 16, 2009 – filing 2009-253 (final adoption, major substantive)

May 3, 2012 – filing 2012-99 (final adoption, major substantive)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – Section 3, filing 2014-283

September 20, 2022 – filing 2022-181

**MAINE BOARD OF PESTICIDES CONTROL**  
**POLICY CONCERNING POSITIVE IDENTIFICATION OF**  
**PROPER TREATMENT SITE BY COMMERCIAL APPLICATORS**

**AS REQUIRED BY CHAPTER 20**

**ADOPTED December 5, 2014**

At its October 24, 2014 meeting, the Board adopted amendments to Chapter 20 requiring that “commercial applicators making outdoor treatments to residential properties must implement a system, based on Board-approved methods, to positively identify the property of their customers.” This policy lists approved methods of positive identification of the proper treatment site.

To ensure that their employees only treat the property of persons who have requested service, commercial applicators making outdoor treatments to residential properties must develop and implement a system to positively identify the property of their customers. This system must be used prior to making any applications. Applicators that contract for multiple applications must update their information at least annually to confirm the customer still resides in the same location, the identification is still valid, and the customer still desires service. Applicators are encouraged to use multiple identification checks. Examples of appropriate positive identification methods include the following:

1. Obtain the customer’s electric meter number in advance of the treatment, list it on the work order or invoice, and require the applicator to check for that number before initiating the treatment.
2. Visit the customer in advance of the treatment, and using a global positioning system (GPS), identify the coordinates of each property to be treated. Include the coordinates on the work order or invoice, equip the applicator with a GPS unit, and require that employee to check for those coordinates before initiating any treatment.
3. Visit the customer in advance of the treatment and take a digital time/date stamped photo of the home and any distinctive features of the property. Include the photo on the work order or invoice and require the applicator to carefully check the photo before initiating any treatment.
4. Visit the customer in advance of the treatment and attach a company logo or other unique identifying tag on the property. Include the location of the logo/tag on the work order or invoice and require the applicator to carefully check for its presence before initiating any treatment.

The Board encourages the development and implementation of other effective systems not included above.

Applicators are advised that the Board will seek maximum penalties, up to and including license suspension, for incidents where the wrong property is treated and the applicator cannot show that a positive identification system has been followed.



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

5

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

## Memorandum

To: Board of Pesticides Control  
From: Pamela J. Bryer, Ph.D. | Pesticides Toxicologist  
Subject: Forestry Herbicide Use Via Aerial Application Water Quality Sampling Plan

April 7, 2023

---

### **Summary:**

Environmental sampling associated with Executive Order (EO) 41 did not occur as scheduled in 2022 due to a lack of allocated funding. BPC proposes the following plan for the 2023 spray year that would meet the requirements of the EO 41 using funds consolidated from the BPC's EPA Program Partnership Grant.

### **History:**

EO 41, *An Order Establishing the Governor's Review of the Aerial Application of Herbicides For Forest Management* (available at this link:

<https://www.maine.gov/future/sites/maine.gov.governor.mills/files/inline-files/EO41%20FY2021.pdf>) contained the following language:

#### **"Section 1 B.**

Development of a surface water quality monitoring effort to focus on aerial application of herbicides in forestry to be conducted in 2022."

### **Rationale:**

In order to understand the potential for off-target drift of herbicides during aerial application, BPC is currently planning a two-pronged approach that includes drift and water sampling.

**Drift sampling-** Five cleared lots set to be sprayed in 2023 will be selected for intensive study. The lots are to be representative of a typical aerial spray in terms of acreage, geography, and forest practices. At each location, staff will set up air particle counters and residue sample collectors. The sample collectors will be positioned at the forest edge, 25 feet, 100 feet, and 250 feet in all directions around the lot. A minimum of four collectors will be set along the length of each side at each of the distances mentioned in order to adequately represent the lot's edges. These replicates will be pooled and an

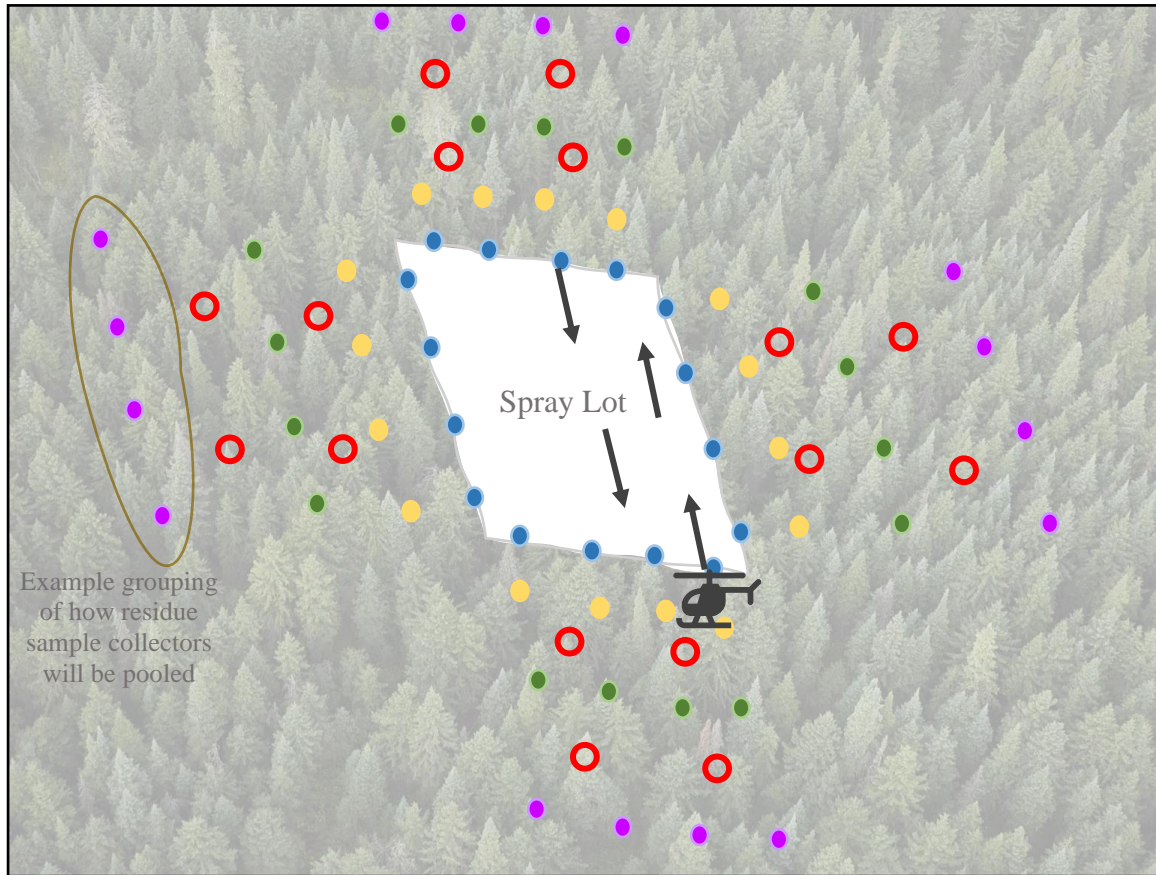
MEGAN PATTERNSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
WWW.THINKFIRSTSPRAYLAST.ORG



average concentration will be for each distance calculated. This sampling plan is intended to describe the distance into the areas surrounding the sprayed plot where pesticide residues can be found. See the figure below for a graphical representation of this sampling plan.



- Residue sample collector (water sensitive paper) @ 0 feet
- Residue sample collector (water sensitive paper) @ 25 feet
- Residue sample collector (water sensitive paper) @ 100 feet
- Residue sample collector (water sensitive paper) @ 250 feet
- Drift particle collector

The drift sampling plan includes measuring drift with particle counters which allow for continuous sampling of the air for hours following the application. These units will be repeatedly deployed at each site.

The residue sample collectors will be collected as pools wherein all four collectors on each side at a given distance will be condensed into one sample. Pooling these residue collectors allows the BPC to reduce analytical costs while maintaining good coverage. Residue data captured at different distances within the canopy allows a test of the current buffer distance to water established in BPC regulations.

### **Water sampling-**

Currently only limited data exist to describe patterns of presence or absence of pesticide residues in rivers and streams of northern Maine. This part of the project aims to describe the current status of herbicide pesticide detections surrounding forested landscapes.

Early in summer 2023, submitted aerial spray plans will be surveyed and combined into a master map. DACF managed boat launches will be superimposed on the planned spray locations map. Boat launch areas will be sampled as they provide a public access opportunity that allows for testing of herbicide residues in areas where people recreate. Samples will be taken to represent both those boat launches within watersheds containing aerial forestry activities and those that do not contain known aerial locations based on the 2022 application year. This sampling plan is intended to cover as much ground and variation as possible and represents a range-finding study intended to better understand the scope of the issue.

### **Basic Estimated Budget**

#### Equipment Costs

Drift particle counters (16 units, \$225 each)	\$3,600
Water sensitive papers (7 units, \$67 for 50 +shipping)	\$510
Deployment hardware (stakes, ties, etc)	\$250
Sample collection containers	\$100

#### Laboratory Analytical Costs

Pooled residue samples -multiresidue (80 samples, \$450 each)	\$36,000
Pooled residue samples -glyphosate (80 samples, \$250 each)	\$20,000
Water samples -multiresidue (50 samples, \$250 each)	\$22,500
Water samples -glyphosate (50 samples, \$250 each)	\$12,500

#### Travel

Two weeks for two staff:	
Housing @ GSA rate (\$98/day)	\$1,960
Meals @ GSA rate (\$59/day)	\$1,180
Mileage (3,000 miles)	\$1,380

**Total estimated project cost** **\$99,980**



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

6

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

Date: March 30, 2023  
To: Board of Pesticides Control Members  
From: Mary Tomlinson | Pesticides Registrar  
Subject: Clarification of Distribution

---

### Background:

Maine pesticide rules permit products no longer registered in Maine to continue to be distributed with certain restrictions. Chapter 20, Section 1(D) states:

“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.”

Recent inquiries have highlighted confusion as to who qualifies as a retailer, and what does “obtained” mean when selling and using products that are no longer registered. Does an out of state company warehousing product already purchased, but stored out of state until the end user needs it, qualify as a retailer? Does “obtained” mean in “possession of” the product by the retailer or end user or does it include “purchased” when registered, but not delivered until after cancellation?

The intent of Chapter 20 is to reduce the amount of unregistered pesticides in Maine that may result in improper disposal causing increased risk to humans and environmental contamination. By permitting retailers and ends users continued sales and use of pesticides no longer registered in Maine, the risk of improper disposal and associated costs of disposal of obsolete pesticides is reduced. Limiting who can sell these pesticides reduces stockpiling by distributors who sell to retailers. Chapter 20 may also reduce dumping of unregistered pesticides into the channels of trade by companies outside of Maine.

Staff proposes the following clarifications of the language in Chapter 20, Section 1(D):

1. A retailer is a store or warehouse in Maine that sells direct to the end user, not to another retailer or other dealer in the state. Unless a company has a storefront or a warehouse located in Maine and sells directly to the end user, it is not a retailer.
2. Distribution into Maine from any company or warehouse outside the state, including virtual stores, is prohibited when a product is no longer registered or is in discontinuance.

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
WWW.THINKFIRSTSPRAYLAST.ORG

3. Product that was registered when received and held in stock by retailers within Maine may continue to be distributed until stock is depleted. New product may not be shipped into Maine after the registration expires on Dec. 31 each calendar year.
4. "Obtained" means the retailer or end user in Maine took possession of the pesticide when the pesticide was registered. Product purchased, but not received when registered, may not be shipped into Maine.
5. Pesticides manufactured in Maine may no longer be produced once registration is canceled. However, sales of product in inventory may be sold direct to the end user until supplies are depleted.



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

7

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

## MEMORANDUM

Date: March 28, 2023

To: Board of Pesticides Control Members

From: Mary Tomlinson | Pesticides Registrar

Subject: Potential Cancellation of SLNs

---

### BACKGROUND

In order for a Special Local Need (SLN), Section 24(c) registration to be approved and remain active through its registration period, the EPA Section 3 pesticide product on which the SLN is based must maintain a current registration in Maine. In addition, the SLN application must also be submitted through the registration portal with the payment of the annual renewal fee.

To date, seven SLNs are in jeopardy of cancellation either because they were never submitted through the registration portal and have not paid the renewal fees or because the product was not renewed for 2023.

Staff is in the process of contacting the affected companies to confirm commitment to maintain the Section 24(c) registrations in Maine for the 2023 registration year.

The impacted Section 24(c) registrations are:

1. **EPA SLN NO. ME-040001**, BASF, *Arsenal Applicators Conc.*, EPA Reg. No. 241-299, to allow increased surfactant rate when used in combination with glyphosate for Jack pine, black spruce, red spruce, and white spruce release, **expires Dec. 31, 2023**
2. **EPA SLN NO. ME-100003**, United Phosphorus Inc., *Asulox Herbicide*, EPA Reg. No. 70506-139, to control bracken fern in wild blueberry fields, **expires Dec. 31, 2024**
3. **EPA SLN NO. ME-130001**, Gowan Company, *Gowan Malathion 8 Flowable*, EPA Reg. No. 10163-21, for use on blueberries to control spotted wing drosophila, **expires Dec. 31, 2023**

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
WWW.THINKFIRSTSPRAYLAST.ORG

4. **EPA SLN NO. ME-140002**, Syngenta Crop Protection, LLC, *Dual Magnum*, EPA Reg. No. 100-816, for use in asparagus, bell pepper, cabbage, carrots, garden beets, dry bulb onions, green onions, spinach, Swiss chard, pumpkin to control weeds, **expires Dec. 31, 2024**
5. **EPA SLN NO. ME-170002**, Loveland Products Company, *Malathion 8 Aquamul*, EPA Reg. No. 34704-474, for use on blueberries to control spotted wing drosophila, **expires Dec. 31, 2023**
6. **EPA SLN NO. ME-170003**, Syngenta, *Callisto Herbicide*, EPA Reg. No. 100-1131, to control broadleaf weeds in lowbush blueberries during bearing and nonbearing years, **expires Dec. 31, 2027**
7. **EPA SLN NO. ME-210001**, Dow AgroSciences LLC, *Corteva Agrisciences Milestone Herbicide*, EPA Reg. No. 62719-519, for control of herbaceous broadleaf weeds and woody plants in conifer forest site preparation sites, **expires Dec. 31, 2027**.



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

Memorandum

To: Board of Pesticides Control

From: John Pietroski | Manager of Pesticide Programs | Maine Board of Pesticides Control

Subject: Elongate Hemlock Scale

Date: April 7, 2023

---

Staff received a request to add Elongate Hemlock Scale (EHS) to the policy on “Approved Invasive Invertebrate Pests On Ornamental Vegetation In Outdoor Residential Landscapes For Neonicotinoids Exemption”. EHS is an invasive insect.

The BPC was contacted by a commercial applicator who has previously used neonicotinoids to treat for EHS. Addition of EHS to the above policy will allow applicators to use neonicotinoids for the purpose of managing EHS in outdoor ornamental vegetation in residential landscapes. Pests not listed in the above policy may not be managed through the application of neonicotinoids in residential landscapes unless an emergency use permit is obtained from the Board.

According to the Maine Forest Service, “*EHS—Fiorinia externa Ferris*, is a serious exotic pest of eastern hemlock (*Tsuga canadensis*). It also can be found on fir, spruce and other conifers. EHS attacks the surface of the hemlock needle and sucks out the fluid. This process causes the needles to turn yellow and drop prematurely.

*Distribution in US: South to Georgia and South Carolina, west to Ohio, Michigan and Minnesota and, north to southern New York and New England (including southern NH and ME).*

*Infestations of EHS on planted trees have been found from Kittery to Mount Desert. To date, forest infestations in the absence of planted trees have only been found in Kittery and Frye Island. It is very probable that EHS is established in Maine's forests outside of these areas.”*

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
WWW.THINKFIRSTSPRAYLAST.ORG

**Towns with known infestations:**

County	Town	EHS Status
Cumberland	Cape Elizabeth, Casco, Freeport, Portland, Scarborough, Yarmouth	known on planted trees
Cumberland	Brunswick, Frye Island, Gorham, Falmouth	moved from planted trees, now established in forest
Hancock	Mount Desert	moved from planted trees, now established in forest
Hancock	Sedgwick	known on planted trees
Sagadahoc	Bath, Topsham	known on planted trees
York	Kittery	widely established in forest
York	Berwick, Kennebunk, Kennebunkport, Ogunquit, Old Orchard Beach, Saco, Wells, York	known on planted trees

The United States Department of Agriculture lists dinotefuran as an active ingredient used to treat EHS.

The BPC currently has three invasive insects as part of this policy:

Asian long-horned beetle (*Anoplophora labripennis*)

Emerald ash borer (*Agrilus planipennis*)

Hemlock woolly adelgid (*Adelges tsugae*)





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

JANET T. MILLS  
 GOVERNOR

AMANDA E. BEAL  
 COMMISSIONER

**MAINE BOARD OF PESTICIDES CONTROL POLICY ON  
 APPROVED INVASIVE INVERTEBRATE PESTS ON  
 ORNAMENTAL VEGETATION IN OUTDOOR RESIDENTIAL  
 LANDSCAPES FOR NEONICOTINOIDS EXEMPTION**

Adopted August 5, 2022

**BACKGROUND**

On August 5, 2021, the Board adopted Section 6 of Chapter 41 which limits the use of dinotefuran, clothianidin, imidacloprid, and thiamethoxam in outdoor residential landscapes to only certified private or commercial applicators. However, these active ingredients may be used for the management of emerging invasive invertebrate pests on ornamental vegetation or in emergency situations with an approved permit obtained from the Board. On February 18, 2022, the Board recommended compiling a list of approved emerging invasive invertebrate pests that meet this definition. On August 5, 2022, the Board approved the following list of emerging invasive invertebrate pests in accordance with CMR 01-026 Chapter 41: Special Restrictions on Pesticide Use.

**POLICY**

Any person who seeks a variance from Chapter 41 Section 6 may only do so for the following emerging invasive invertebrate pests as defined in Chapter 41 Section 6 (I):

Asian long-horned beetle (*Anoplophora glabripennis*)  
 Emerald ash borer (*Agilus planipennis*)  
 Hemlock woolly adelgid (*Adelges tsugae*)

This list of species is only to be used in the context of emerging invasive invertebrate pests in outdoor residential landscapes on ornamental vegetation. If an emergency situation exists as outlined in CMR01-26 Chapter 51(VII)(B)(1) for species not on this list, emergency permits must be obtained from the Board prior to use of products with dinotefuran, clothianidin, imidacloprid, or thiamethoxam as active ingredients in residential landscapes.

**Proposed Administrative Consent Agreement  
Background Summary**

**Subject:** B D Grass & Sons  
117 Grass Road  
Blaine, ME 04734

**Date of Incident(s):** August 17, 2021

**Background Narrative:** On August 17, 2021, the BPC was contacted by Maine DEP regarding an anonymous report they received about stained pavement on the Chapman Road in Chapman, ME that was determined to be a pesticide released from a vehicle owned by B D Grass & Sons. The agricultural follow-up use inspection conducted determined that Makaze herbicide (EPA Reg.#34704-890) had been applied to a fallow field adjacent to the pesticide release area where a partly open valve on the spray support truck released undiluted Makaze herbicide along 1,940+/- ft. combined length of field road and Chapman Road (a paved public way), upon leaving the application area.

**Summary of Violations:** CMR 01-026, Chapter 50, Section 2 (C)(I) requires that applicators call the Board to report a spray incident as soon as practicable after emergency health care has been obtained for injured parties and efforts have been initiated to contain any spills.

**Rationale for Settlement:** B D Grass & Sons, upon taking action and responding to the spill did not subsequently notify the Board about the spray incident as required.

**Attachments:** Proposed Consent Agreement

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL

IAN 27 2023

In the Matter of:  
B D Grass & Sons  
117 Grass Road  
Blaine, Maine 04734

ADMINISTRATIVE CONSENT  
AGREEMENT  
AND  
FINDINGS OF FACT

Ck# 27680  
Date: 1-24-23  
Amt: \$1000-

This Agreement by and between B D Grass & Sons (hereinafter called the "Grower") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:


1. That the Grower produces agricultural crops for commercial purposes at a business that utilizes pesticides.
2. That a Board inspector received a call from Jesse Clark, Oil & Hazardous Materials Responder II, Maine Department of Environmental Protection on August 17, 2021, regarding a report from an anonymous caller of stained pavement on the Chapman Road in Chapman that was determined to be a pesticide from a vehicle owned by B D Grass Farms of Monticello, Maine.
3. That a Board inspector conducted an agricultural follow-up use inspection at the Grower's facility on August 19, 2021, in response to an accidental release of pesticide on the Chapman Road in Chapman, Maine on or about August 17, 2021.
4. That from the inspection described in paragraph three, it was determined that Makaze herbicide (EPA Reg.#34704-890) had been applied to a fallow field adjacent to the pesticide release area where a partly open valve on the spray support truck released undiluted Makaze herbicide along 1,940+/- ft. combined length of field road and Chapman Road (a paved public way), upon leaving the application area.
5. That the Grower confirmed that his sprayer support truck had accidentally released Makaze herbicide, EPA Reg.#34704-890 creating the stain from a pesticide tote on the truck.
6. That CMR 01-026, Chapter 50, Section 2 (C)(I) requires that applicators call the Board to report a spray incident report as soon as practicable after emergency health care has been obtained for injured parties and efforts have been initiated to contain any spills.
7. That the incident on August 17, 2021, is a reportable spray incident per CMR 01-026, Chapter 50, Section 2 (C)(II).
8. That the circumstances described in paragraphs one through seven constitute a violation of CMR 01-026, Chapter 50, Section 2 (C) (I).
9. That the Grower expressly waives:
  - A. Notice of or opportunity for hearing;
  - B. Any and all further procedural steps before the Board; and
  - C. The making of any further findings of fact before the Board.

10. That this Agreement shall not become effective unless and until the Board accepts it.

That in consideration for the release by the Board of the cause of action which the Board has against the Grower resulting from the violation referred to in paragraphs eight, the Grower agrees to pay a penalty to the State of Maine in the sum of \$1,000.00. (Please make checks payable to Treasurer, State of Maine).

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

B D GRASS & SONS

By:  Date: 1/24/23

Type or Print Name: Neil A

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Megan Patterson, Director

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General



JANET MILLS  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

MEGAN PATTERSON  
DIRECTOR

## Compliance Verification Statement

1-3-2023

Individual	Brent Grass	Inspection	210817KRB03
Company		Numbers	210819KRB01
or Store	B D Grass and Sons	Inspection	8-17-21
Name		Dates	8-19-21
<hr/>			
Address	117 Grass Road		
Town	Blaine	State	ME Zip 04734

I verify that I have taken steps to correct the violations of:

- Failure to report pesticide spill/ spray incident.

B-D Grass  
Owner or Company Representative Signature

1/24/23  
Date:

[Signature]  
Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Alexander Passafiume  
Mosquito Deleto  
26 Twitchells Way  
Sandown, NH 03873

**Date of Incident(s):** June 5, 2020 & January 30, 2020

**Background Narrative:** In early June 2019 Board staff were contacted about a possible unlicensed company advertising mosquito control services under the name Mosquito Deleto. The following investigation identified a number of properties where Mosquito Deleto had made pesticide applications for mosquito control in the Windham area. During an inspection with Mr. Passafiume on June 19, 2019, it was determined that Mosquito Deleto did not have any licensed applicators. A Stop, Sale, Use, Removal Order (SSURO) was issued on the remaining inventory of EcoVia EC Insecticide (25b exempt) until proper licensing requirements were met. An inspection with a pesticide dealer in Portland, ME revealed that Mr. Passafiume had purchased additional EcoVia EC two days after the issuance of the SSURO. An applicator record check conducted with Mr. Passafiume on January 30, 2020 demonstrated that Mosquito Deleto continued to make commercial pesticide applications in Maine following the inspection and issuance of the SSURO on June 19, 2019.

**Summary of Violations:** Any person making a pesticide application that is a custom application, including any application for which compensation is received (for-hire applications), as defined under 22 M.R.S. § 1471-C(5-A), must either be a certified commercial applicator or be working under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.

Commercial applicators making pesticide applications, must keep complete and up to date pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).

CMR 01-026 Chapter 28 Section 3(B) requires that when outdoor mosquito applications are made, the treated area must be posted prior to making the pesticide application.

**Rationale for Settlement:** Mosquito Deleto was an unlicensed commercial pesticide application company in 2019 and failed to maintain pesticide application records and properly post application sites. Mosquito Deleto is no longer an operating entity in Maine and Mr. Passafiume no longer works in pesticide application and does not reside in Maine. A portion of the penalty been suspended so long as compliance is maintained for ten years.

**Attachments:** Proposed Consent Agreement

**STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION, AND FORESTRY  
BOARD OF PESTICIDES CONTROL**

Alexander Passafiume )  
Mosquito Deleto )  
26 Twitchells Way )  
Sandown, NH 03873

ADMINISTRATIVE CONSENT AGREEMENT  
AND  
FINDINGS OF FACT

This Agreement, by and between Alexander Passafiume, doing business as Mosquito Deleto (hereinafter called the "Applicator") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the during 2019, the Applicator operated as a commercial pesticide applicator offering services in Maine.
2. That on June 5, 2019, Board staff was contacted about the Applicator's roadside signs on Route 114 in Gorham, Maine, advertising the business name and phone number. The caller said the Applicator was also advertising pest control services on Facebook and was thought to be an unlicensed business.
3. That on June 18, 2019, by talking to the property owner at 37 Woldbrook Drive in Windham and collecting the door hanger left by the Applicator, a Board inspector discovered that the Applicator made a pesticide application to at that owner's residence on June 7, 2019.
4. That a Board inspector conducted a follow up inspection with the business owner Alexander Passafiume on June 19, 2019.
5. That during the inspection described in paragraph four, the inspector documented that the Applicator was not licensed as a commercial pesticide applicator in the State of Maine. The inspector also documented that the Applicator applied EcoVia EC insecticide to the lawn and property perimeter of the residential property at 520 Gray Road in Windham on June 17, 2019, to control mosquitoes.
6. That during the inspection described in paragraph four, the Board inspector asked Passafiume if he had made any other pesticide applications. Passafiume stated he had not.
7. That during the inspection described in paragraph four, the Board inspector discussed the licensing requirements for making for-hire commercial pesticide applications in the State of Maine, and that any subsequent applications made by the Applicator prior to attaining the required licensure would violate Maine pesticide laws.
8. That during the inspection described in paragraph four, the Board inspector placed a Stop Sale, Use and Removal Order on the container of EcoVia EC insecticide in the Applicator's possession at the time.
9. That on June 24, 2019, a Board inspector conducted an inspection at SiteOne Landscape Supply in Portland, Maine. During the course of the inspection, documentation was obtained demonstrating that the Applicator purchased fifteen, 64-ounce containers of EcoVia EC insecticide, two days after the initial Board inspection.
10. That on January 30, 2020, a Board inspector conducted a follow up inspection with the Applicator in response to evidence that the Applicator continued making mosquito applications during the 2019 season without becoming fully certified to do so in the State of Maine. During the course of this inspection, documentation was obtained

demonstrating that the Applicator had 43 customers during the 2019 mosquito season, and that commercial pesticide applications continued following the June 19, 2019, inspection and the Issuance of a Stop Sale, Use and Removal Order.

11. That Facebook advertising reviewed and documented by a Board inspector indicated that the services offered by the Applicator would include five applications over the course of the mosquito season.
12. That any person making a pesticide application that is a custom application, including any application for which compensation is received (for-hire applications), as defined under 22 M.R.S. § 1471-C(5-A), must either be a certified commercial applicator or be working under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
13. That the applications documented in paragraphs three, five and ten above were applications for which compensation were received and, therefore, they were custom applications under 22 M.R.S. § 1471-C(5 & 5-A).
14. That the Applicator did not employ a master applicator, and no one from the business had a commercial pesticide applicator's license at the time the applications described in paragraphs three, five, and ten were made.
15. That the circumstances described in paragraphs one through fourteen constitute multiple violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A).
16. That commercial applicators making pesticide applications, must keep complete and up to date pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
17. That from a review of the Applicator's records collected on June 19, 2019, and January 30, 2020, it was concluded that the application records were incomplete.
18. That the circumstances described in paragraph seventeen constitute multiple violations of CMR 01-026 Chapter 50, Section I(A).
19. That CMR 01-026 Chapter 28 Section 3(B) requires that when outdoor mosquito applications are made, the treated area must be posted prior to making the pesticide application.
20. That the applications described in paragraphs three, five and ten were not posted in compliance with CMR 01-026 Chapter 28 Section 3(B), and as such, constitute multiple violations of that requirement.
21. That the Board has regulatory authority over the activities described herein.
22. That the Applicator expressly waives:
  - a. Notice of or opportunity for hearing;
  - b. Any and all further procedural steps before the Board; and
  - c. The making of any further findings of fact before the Board.
23. That this Agreement shall not become effective unless and until the Board accepts it.
24. That, in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violations referred to in paragraphs fifteen, eighteen and twenty, the Applicator agrees to pay to the State of Maine a penalty of \$10,000, with \$8,500 of the penalty suspended, provided that the



Applicator does not commit any violations of Maine pesticide law over a ten-year period beginning on the effective date of this agreement. The unsuspended portion of the penalty shall be paid in three, \$500 installments, due March 1, April 1 and May 1, 2023. (Please make checks payable to Treasurer, State of Maine).

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

ALEXANDER PASSAFIUME, APPLICATOR

By:  Date: 2/27/2023

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Megan Patterson, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General

**BOARD OF PESTICIDES CONTROL**  
**APPLICATION FOR VARIANCE PERMIT**  
**(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Gustave S Nothstein Cell: (207) 441-4521  
Name Telephone Number

Maine Department of Transportation, Bureau of Maintenance & Operations  
Company Name

16 State House Station Augusta Maine 04333-0016  
Address City State Zip

II. Area(s) where pesticide will be applied:

- Selected State maintained roads and other transportation facilities such as buildings, maintenance lots, bridges, and railroads, and adjacent areas within the right of way thereof.
- Selected target plants include: evergreen trees up to 3 feet high and deciduous trees up to 6 feet high; grasses and weeds in guardrail areas, in pavement cracks, invasive plants; plants that present a health risk; or other plants necessary to control for transportation purposes.

III. Pesticide(s) to be applied:

The following products or equivalents may be used as the only product in the mix or in various combinations and concentrations.

Garlon 4 Ultra	(triclopyr)	62719-527
Garlon XRT	(triclopyr)	62719-553
Escort XP	(Metsulfuron methyl)	432-1549
MSM_60	(Metsulfuron methyl)	81927-7
Arsenal Powerline	(imazapyr)	241-431
Krenite S	(fosamine ammonium)	42750-247
Various brands	(glyphosate)	
Oust XP	(sulfometuron methyl)	432-1552
SFM 75	(sulfometuron methyl)	81927-26

IV. Purpose of pesticide application:

- Control of woody brush on roadsides to maintain safety clear zones, sight distances, enhance winter solar access to pavement, and provide snow storage.
- Control of grasses and weeds in cracks in pavement in preparation for asphalt surface treatments.
- Control of grasses and weeds in guardrail areas to enhance sight distances, visibility of and access to structures, signs, and other devices.
- Control of invasive plants
- Control of plants that present a health risk to department or contract workers.
- Control of other plants necessary to control for transportation purposes.

V. Approximate dates of spray application: April 15, 2023 to December 31, 2023

VI. Application Equipment:

- Hypro 10 gpm diaphragm piston pump hydraulic sprayer with handgun or equivalent, 100 to 700 gallon tanks.
- 1800 gallon patrol truck mounted spray apparatus with Hypro Hydraulic Centrifugal pump
- Low pressure, low application rate, side mounted off center nozzles for roadside weed control spraying.
- Low pressure, low application rate, no drift raindrop nozzle. for guardrail application.

- Backpack and hand pump sprayers.

**VII. Standard(s) to be varied from:**

Chapter 29 - Section 6. Buffer Requirement Part (A)

**VIII. Reason for variance:**

To provide control of brush, annual, or perennial plants growing within a distance from 25 feet to 10 feet from waters as defined in the regulation. Brush and other plants targeted for control will be those which impede visibility of the road, signs, guardrail, entrances, and other structures; cause shading of the road surface; are considered an invasive plant; are a health risk: or other plants necessary to control for transportation purposes.

**IX. Method to assure equivalent protection:**

- 1) Roadside brush control: use large nozzle disc size for enlarged droplet size, use a tank mix particulating agent for enlarged droplet size, use sticker-spreader-extender to adhere spray materials to ground or leaf surface and make rain fast, use pump pressure of 25-125 psi to maintain spray stream trajectory of less than 40 feet, use low volatile chemicals at lowest effective rates, maintain notification signage on spray trucks, offer no-spray agreements. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.
- 2) Roadside broadleaf weeds: use low pressure of 30 to 100 psi, low volume per acre techniques with side mounted off center nozzles that produce large droplets over a controlled spray pattern of 6 to 20 feet, use a slow ground speed of 15 mph or less, use a sticker extender to adhere spray materials to the ground or leaf surfaces and make rain fast, use low volatile chemicals at lowest effective rates, maintain notification signage on spray trucks, offer no-spray agreements. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.
- 3) Cracks in pavement, guardrail, invasive plants, plants that are a health risk, or other plants: use a low pump pressure of 25 to 50 PSI; use a tank mix particulating agent for enlarged droplet size, use a spray gun and spray nozzles that will produce raindrop size particles with no fine particle sizes that can drift away from target, use non-volatile chemicals at lowest effective rates, use a sticker-spreader-extender to adhere spray materials to ground or leaf surface and make rain fast, maintain notification signage on spray trucks. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.

Signed: 

Date: February 10, 2023

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

**OR E-mail to: [pesticides@maine.gov](mailto:pesticides@maine.gov)**

**BOARD OF PESTICIDES CONTROL**  
**APPLICATION FOR VARIANCE PERMIT**  
**(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. BRIAN CHATEAUVERT (413) 562-5681  
Name Telephone Number

RWC, INC.  
Company Name

PO BOX 876, 248 LOCKHOUSE RD WESTFIELD, MA 01086-0876  
Address City State Zip

II. BRIAN CHATEAUVERT CMA3046/6A 6B  
Master Applicator (if applicable) License Number

11 STONEGATE CIRCLE WILBRAHAM, MA 01095  
Address City State Zip

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to [pesticides@maine.gov](mailto:pesticides@maine.gov)**

IV. **Area(s) where pesticide will be applied:**

Pan Am Railways-48' pattern (24' each side center of track)

Belfast Moosehead Lake Railroad – 24' pattern (12' each side center of track)

Presque Isle Industrial Council – 24' pattern (12' each side center of track)

Maine – State owned Railroad Tracks – 48' pattern (24' each side center of track)

Sappi Fine Paper Mill, Hinckley, Maine – 24' pattern (12' each side center of track)

Eastern Maine Railroad – 48' pattern (24' each side center of track)

Turner Island LLC Railroad, S. Portland, Maine – 24' pattern (12' each side center of track)

Maine Northern Railway – 48' pattern (24' each side center of track)

V. **Pesticide(s) to be applied:** Various combinations: Polaris AC Complete (228-570), Escort XP (432-1549), Opensight (62719-597), Esplanade 200SC (432-1516), Milestone (62719-519), Oust XP (432-1552), Oust Extra (432-1557), Diquat SPC 2L (228-675), Payload (59639-120), Semera(91234-129), Glyphosate (228-365, 542-343, 524-529) in 30-60 gallons of water per acre.

VI. **Purpose of pesticide application:** the ballast, shoulder and areas adjacent to shoulder sections of the right-of-way (diagrams of typical spray patterns enclosed) must remain weed, grass and brush free for just some of the following reasons:

- a. To allow for proper inspection of tie fastenings, switches & rails
- b. To maintain proper drainage
- c. To allow for inspection of trains
- d. To remove health and safety hazards
- e. To improve working conditions
- f. To reduce fire hazards
- g. To improve visibility at road crossings

- VII. **Approximate dates of spray application:** May 1<sup>st</sup> through September 30, 2023
- VIII. **Application Equipment:** Hy-rail Truck Equipment with fixed mounted booms approximately 18 inches above the rail for weed and grass control and brush booms with fixed direct spray and mini wobbler tips.
- IX. **Standard(s) to be varied from:**  
Chapter 29 Section 6A, I to V – Buffer requirements (prohibiting pesticide applications within 25 feet of the high water mark).
- X. **Method to ensure equivalent protection:**  
The railroads patrolmen have track charts which show rivers, streams, ponds, road crossings, etc. He normally is in a track vehicle running ahead of the spray unit and through the use of radio communication, gives a warning signal where there are culverts, bridges with running water underneath and other sensitive areas adjacent to the track. RWC, Inc. has mounted in cab controlled gutters on the rear of our equipment to assure that no pesticides drip or enter the waterways of the State of Maine when going over the bridges. RWC, Inc. will leave a buffer of ten feet (10') from lakes, rivers, streams and surface waters and in the case of a public water supply will only apply Glyphosate, for a distance of one half mile before the site and one half mile beyond. Within the ten foot (10') buffer, alternative methods will have to be employed to control vegetation. RWC, Inc. will use drift control agents to reduce the chance of drift and enlarged droplet size continue using nozzles that enlarge droplet size, continue to use sticker-spreader-extender to adhere spray materials to ground or leaf surface, continue to use low volatile chemical, continue to monitor weather conditions and cancel applications when rainfall is predicted. RWC will conduct the applications in a manner which protects surface water as defined in Chapter 29, Section 6A.

Signed: Brian S. Chuteauvert Date: 1/27/2023

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**  
**OR E-mail to: [pesticides@maine.gov](mailto:pesticides@maine.gov)**

FIGURE 1  
RAILROAD AREAS REQUIRING VEGETATION CONTROL

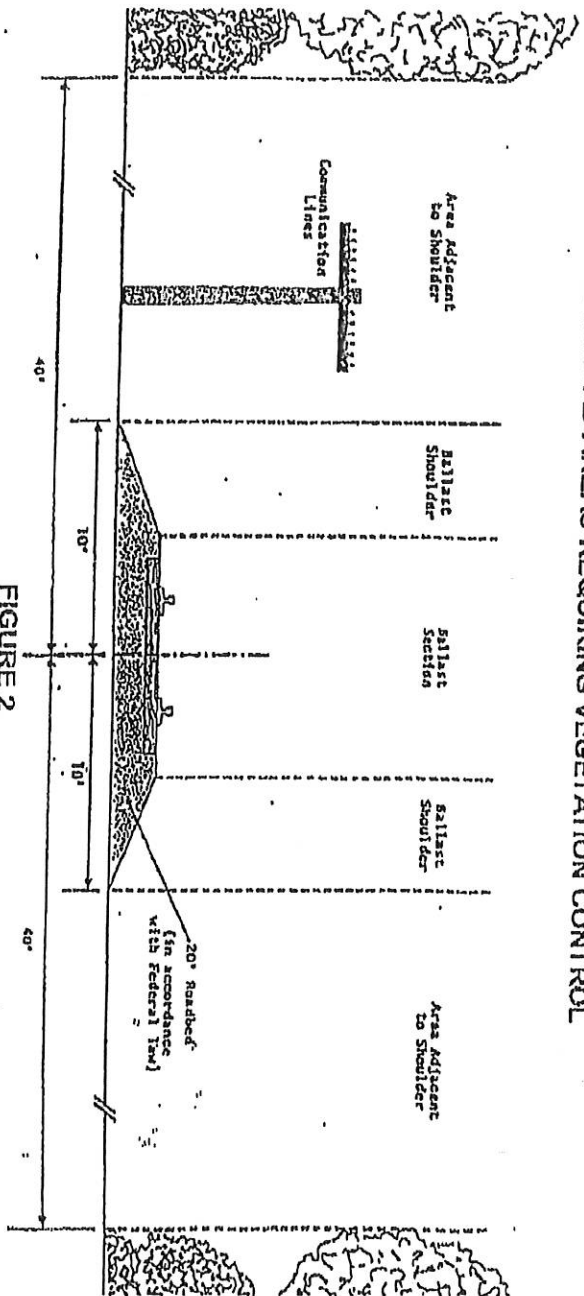
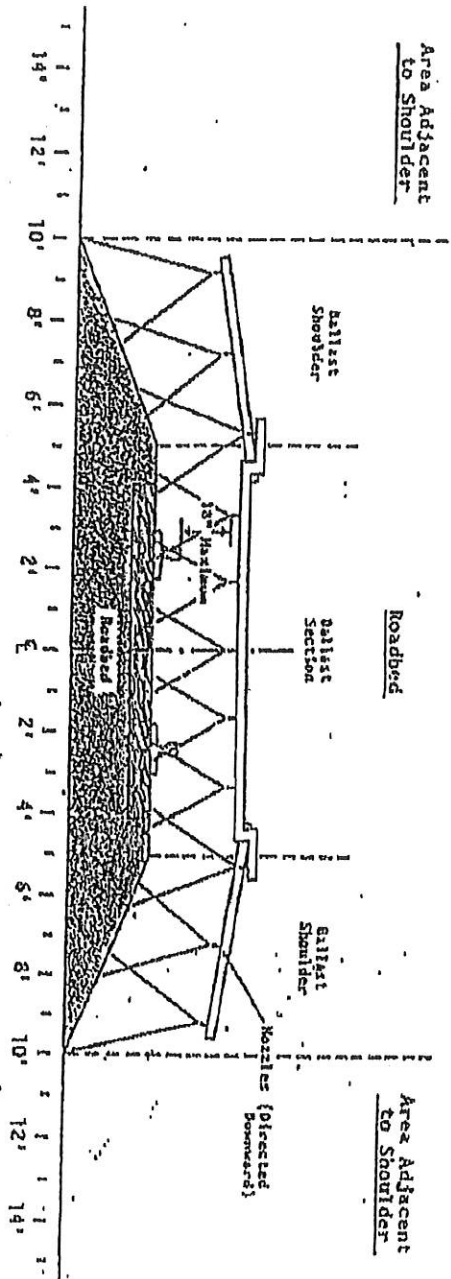


FIGURE 2

Note: Spray can be controlled to selectively treat all portions (Ballast, Shoulder, and Adjacent Area) or any of the individual portions alone.



---

**From:** Heather Spalding <heathers@mofga.org>  
**Sent:** Monday, March 20, 2023 7:06 PM  
**To:** Patterson, Megan L (AGR) <Megan.L.Patterson@maine.gov>  
**Cc:** Pesticides <Pesticides@maine.gov>  
**Subject:** Letter Regarding PFAS Affidavits and Confidentiality

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Dear Director Patterson,

Attached is a letter from MOFGA regarding recent BPC discussions about PFAS affidavits and confidentiality. I hope you will include this letter in the board packet being prepared for the upcoming BPC meeting on April 7.

Thank you very much for your consideration.

Respectfully,  
Heather Spalding

Heather Spalding  
Deputy Director & Senior Policy Director  
Maine Organic Farmers and Gardeners Association (MOFGA)  
she/her/hers

[heathers@mofga.org](mailto:heathers@mofga.org)  
207-505-5569 (cell)  
207-568-6006 (direct line)  
207-568-4142 (main office)

US Mail:  
MOFGA  
PO Box 170  
Unity, ME 04988

Physical location of Common Ground Education Center:  
294 Crosby Brook Rd, Unity, ME

[www.mofga.org](http://www.mofga.org) | [Facebook](#) | [Instagram](#) | [YouTube](#)

[Become a member today](#)



March 20, 2023

Director Megan Patterson and Board Members  
Maine Board of Pesticides Control  
28 State House Station  
Augusta, ME 04333-0028

Dear Director Patterson and members of Maine's Board of Pesticides Control,

We are writing to follow up on the Board of Pesticides Control meeting of March 15, 2023, where you discussed several issues important to members of the Maine Organic Farmers and Gardeners Association (MOFGA).

MOFGA has a strong interest in the Board's effective implementation of legislation providing for information and protections relating to perfluoroalkyl and polyfluoroalkyl substances (PFAS) in pesticides. We testified in support of this legislation, LD 264 and LD 2019 (Public Law 2022, Chapter 673), and provided comments during the Board's rulemaking. MOFGA has been on the front lines helping farmers dealing with the devastating consequences of this contamination, including by fundraising and administering with the Maine Farmland Trust an [emergency relief fund](#) as a bridge to the State's efforts to stand up publicly funded assistance.<sup>1</sup> Over the past year, many more Maine farms have been found to be contaminated with PFAS (56 farms at last count, and investigations are still underway). The seriousness of the PFAS threat to public health is now widely recognized, with the federal Environmental Protection Agency proposing to set enforceable drinking water standards for several common PFAS as [close to zero](#) as is measurable.<sup>2</sup>

It is in this context that we write to address several issues that were discussed by the Board and staff at the March 15 meeting. Specifically, we wish to provide comments on:

- (1) The validity of chemical industry claims of Confidential Business Information (CBI) with regard to the mandatory affidavits for registering products attesting that the pesticide has or has never been stored, distributed, or packaged in a fluorinated container; and attesting that the pesticide formulation does or does not contain PFAS;<sup>3</sup>

---

<sup>1</sup> <https://www.mofga.org/pfas/pfas-emergency-relief-fund/>

<sup>2</sup> <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas>

<sup>3</sup> Chapter 20, §1.F





- (2) The process that the Board will follow in assessing chemical industry claims of CBI with regard to the mandatory affidavits;
- (3) The appropriateness of the definition of PFAS in the Board's regulation and why the Board should not make changes to it; and
- (4) Whether initiating a rulemaking to prevent contamination of pesticides with PFAS from migrating from containers, as the Legislature has directed, would be useful and warranted.

### **PFAS affidavits are public records.**

During the rulemaking proceeding on the Chapter 20 amendments, several organizations, including MOFGA, testified that the Board should make clear that the required PFAS affidavits were intended by the Legislature to be public information, and that they meet the definition of a "public record" under Maine's Freedom of Access Law.<sup>4</sup> The Board agreed, and in its Summary of Comments it repeatedly stated that it "intends to make affidavits public records" and that while valid claims of CBI may be warranted for the Confidential Statement of Formula, "affidavits themselves will be public documents and will describe whether a PFAS known to the manufacturer is in the product or if it is stored in an HDPE container." [see Attachment]<sup>5</sup> Director Patterson's February 18, 2022 memorandum to the Board reporting on the public comments summarized as follows:

*"Many commenters asked that PFAS reporting-related affidavits in Chapter 20 be made public. Commenters correctly identified that the proposed affidavit information will be considered public information. If it is the Board's preference, staff could prepare and post an annual summary of the results of affidavit reporting. Implementation of this request would not require rulemaking. Staff will be asking the Board if the proposed rule should or should not be modified."*

The Board was correct in determining that the affidavits in question are "public records" and not subject to any exemption in Maine's Freedom of Access Law. Maine law broadly defines "public records" to mean "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in

---

<sup>4</sup> 5 MRSA §400 et al, §402, Definition of Public Record, <https://www.mainelegislature.org/legis/statutes/1/title1sec402.html>

<sup>5</sup> Summary of Comments Received Regarding 130th Legislature, LD 264, Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State, Board of Pesticides Control CMR26-01 Chapter 20, [https://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/Feb22/5-Summary-of-public-comments.pdf](https://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/Feb22/5-Summary-of-public-comments.pdf).

connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business,” with limited exceptions.<sup>6</sup>

None of the listed exceptions to the public records definition are remotely relevant to the PFAS affidavits with the possible exception of 5 MRSA §402.3.A, “Records that have been designated confidential by statute”. No such confidentiality designation can be found, however, in any of the legislation that the Board relied on in support of its regulations requiring the affidavit information, LD 264 and LD 2019.

### **PFAS affidavits are not “trade secrets”.**

Perhaps the companies seeking to keep information about PFAS in their products out of public view are relying on Maine trade secrets law. That law does not, however, support any claim of confidentiality for these general affidavits. Maine law defines trade secrets as follows:

10 MRSA §1542.4. Trade secret.

*“Trade secret” means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, that:*

*A. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and*

*B. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.*

The Board-required PFAS affidavits do not meet the definition of a protected “trade secret.” Whether a pesticide has PFAS in it as an ingredient or as a contaminant resulting from the manufacturing process is “readily ascertainable” by testing these products, and the same is true for PFAS migrating into pesticides from fluorinated containers. Indeed, the Legislature was prompted to investigate the presence of PFAS in pesticides after EPA and private sector testing revealed PFAS in pesticides stored in fluorinated containers in 2021.<sup>7</sup> Subsequent studies have confirmed the presence of PFAS in pesticides migrating from containers<sup>8</sup> as well as PFAS in pesticides most likely as an ingredient or manufacturing process contaminant.<sup>9</sup>

---

<sup>6</sup> 5 MRSA §402.3, <https://www.mainelegislature.org/legis/statutes/1/title1sec402.html>

<sup>7</sup> EPA research: <https://www.epa.gov/pesticides/pfas-packaging>; PFAS Found in Widely Used Insecticide, <https://peer.org/pfas-found-in-widely-used-insecticide/>; see also March 22, 2022 letter from EPA provided to the Board at its April 1, 2022 meeting, [https://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/Apr22/6c-EPA%20letter-to-fluorinated-hdpe-industry\\_03-16-22\\_signed.pdf](https://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/Apr22/6c-EPA%20letter-to-fluorinated-hdpe-industry_03-16-22_signed.pdf)

<sup>8</sup> *Directly Fluorinated Containers as a Source of Perfluoroalkyl Carboxylic Acids*; Heather D. Whitehead and Graham F. Peaslee; Environmental Science & Technology Letters Article ASAP DOI: 10.1021/acs.estlett.3c00083.

<sup>9</sup> Steven Lasee, Kaylin McDermett, Naveen Kumar, Jennifer Guelfo, Paxton Payton, Zhao Yang, Todd A. Anderson, Targeted analysis and Total Oxidizable Precursor assay of several insecticides for PFAS,

Moreover, as Pesticide Toxicologist Pam Breyer has reported to the Board, many PFAS chemicals are listed in [public databases](#) as ingredients in pesticides<sup>10</sup> and container-caused contamination is widespread.<sup>11</sup> Nearly 70 percent of all pesticides introduced into the global market from 2015 to 2020 contained PFAS chemicals or related compounds.<sup>12</sup>

### **FIFRA doesn't require secrecy.**

Perhaps the corporations refusing to file the required PFAS affidavits are looking to federal law to prevent public disclosure. 7 MRSA §607.5-A of Maine's pesticide law links the confidentiality of registration data, and potential exclusion from the public records provisions of Maine's Freedom of Access Act, to EPA's determination of confidentiality under federal law.<sup>13</sup> Data submitted to the Board for registration of a pesticide, including formula, test results and "other necessary information" required by the Board (as described in 7 MRSA §607.3-5) would be considered confidential if EPA made a determination of confidentiality for the same data under the trade secrets provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 USC §136h.<sup>14</sup>

This section of FIFRA protects from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." FIFRA limits the types of data that may be claimed as confidential, however. Safety and efficacy data (such as studies submitted to the EPA) on registered or previously registered pesticides are not considered confidential business information and must be made available to the public. Nonetheless, the following information is excluded from public disclosure:

- information that discloses manufacturing or quality control processes;
- information that discloses methods for testing and measuring the quantity of deliberately added inert ingredients; and

---

Journal of Hazardous Materials Letters, Volume 3, 2022, 100067, ISSN 2666-9110,  
<https://doi.org/10.1016/j.hazl.2022.100067>. PFOS was detected in 6 out of 10 tested insecticide formulates (3.92–19.2 mg/kg). Non-targeted techniques suggested additional PFAS species in 7 out of 10 insecticides.

<sup>10</sup> Staff Memo: Feasible Definition of PFAS in Pesticide Products, October 8, 2021,

[https://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/Oct21/5-Staff%20Memo%20on%20PFAS%20Definition.pdf](https://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/Oct21/5-Staff%20Memo%20on%20PFAS%20Definition.pdf);

see also Global Database of PFAS (OECD),

<https://www.oecd.org/chemicalsafety/risk-management/global-database-of-per-and-polyfluoroalkyl-substances.xlsx>

<sup>11</sup> Memorandum to Board, PFAS Container Contamination Updates, October 21, 2022,

[https://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/Oct22/3a-2022%20PFAS%20October%20Memo%20Tox.pdf](https://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/Oct22/3a-2022%20PFAS%20October%20Memo%20Tox.pdf)

<sup>12</sup> Pesticides Are Spreading Toxic 'Forever Chemicals,' Scientists Warn,

<https://www.scientificamerican.com/article/pesticides-are-spreading-toxic-forever-chemicals-scientists-warn/>;

*Revisiting pesticide pollution: The case of fluorinated pesticides*, Environmental Pollution

Volume 292, Part A, 1 January 2022, 118315, <https://doi.org/10.1016/j.envpol.2021.118315>

<sup>13</sup> A separate provision makes the improper disclosure for personal advantage of confidential information such as formulas and financial information a prohibited act, 7 MRSA §606.2.C.

<sup>14</sup> 7 U.S. Code § 136h. Protection of trade secrets and other information, accessed:

<https://www.law.cornell.edu/uscode/text/7/136h>

- information that discloses the identity or percentage quantity of deliberately added inert ingredients.<sup>15</sup>

Public disclosure of the PFAS affidavits required by Board's rule does not fall into any of these exceptions. The affidavits don't include any specific data or reveal any detail about manufacturing processes or testing methods. Even requiring disclosure of PFAS in inert ingredients or as the result of contamination during manufacturing would not reveal whether the PFAS were intentionally added or inadvertent, and no formula or percentage is required to be disclosed. In any event, EPA has not specifically designated this general type of PFAS reporting as CBI under FIFRA, which Maine law requires in order to invoke this exception.

Public disclosure of PFAS in pesticides serves an important purpose, given the larger context of the Board's PFAS rulemaking, including the public health issues, the extent of PFAS contamination that is now documented and the harm it has caused to farmers and the State as a whole, and related legislation being implemented by other Maine departments.

#### **The Board's CBI evaluation process should be open for public comment.**

At its March 15, 2023 meeting, Board staff announced that they will be establishing a process to review industry claims of CBI, not only with regard to the submission of pesticide formulas, but also to evaluate claims that the PFAS affidavits are CBI. As we have discussed, there is no legal basis for the industry claim that the yes-or-no PFAS affidavits are protected information they can keep from the public. If the Board persists in setting up a process to review the chemical industry's affidavit claims, then that process should be open to public participation. MOFGA and other interested parties should have an opportunity to submit information about why these affidavits should be public information under Maine's Freedom of Access and pesticide laws.

#### **The Board should stick with the definition of PFAS it already adopted in rule.**

The pesticide industry continues to pressure the Board to change the definition of PFAS in its rules<sup>16</sup> so that any regulations will only apply to a small subset of PFAS. The Board has no choice in this matter; its PFAS definition is required by law, part of LD 2019 enacted in 2022.<sup>17</sup> Maine uses this definition in multiple laws, and the Department of Environmental Protection

---

<sup>15</sup> See EPA webpage, Pesticide Registration Manual: Chapter 15 - Submitting Data and Confidential Business Information at: <https://www.epa.gov/pesticide-registration/pesticide-registration-manual-chapter-15-submitting-data-and-confidential> (accessed January 6, 2022)

<sup>16</sup> Chapter 20, §1.A, "Perfluoroalkyl and Polyfluoroalkyl Substances" or "PFAS" means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

<sup>17</sup> Section 1 of LD 2019 states: 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. See, <https://legislature.maine.gov/statutes/7/title7sec604.html>

is proceeding with rulemaking to require immediate disclosure of PFAS ingredients in products and a phase-out of all PFAS in products by 2030, using this same definition. Maine's definition has been adopted by other states regulating PFAS, and is consistent with the definition used by the European Chemicals Agency and the Organization for Economic Co-operation and Development (OECD).<sup>18</sup>

**Regulations implementing the ban on PFAS contaminants from containers are warranted.**

We understand that rulemaking proceedings can be involved and expensive, and that the Board is reluctant to initiate another rulemaking unless it is clearly warranted. MOFGA agrees with the Legislature's Agriculture, Conservation and Forestry Committee, as expressed in the committee's recent letter, that regulations implementing the ban on PFAS contamination from fluorinated containers is warranted. We think further clarification will be helpful to both the regulated community, farmers and farm workers, and the public. The broad ban in law provides no details about testing, enforcement or the connection to the container affidavits required by BPC rule. Given the clear-cut science establishing PFAS leaching from fluorinated containers into pesticides, we believe the Board should establish a rebuttable presumption in its regulations that pesticides in such containers are contaminated with PFAS. The burden would then be on the manufacturers to establish through testing or other evidence that their products are not contaminated; or they can switch to alternative packaging.

Thank you for the opportunity to provide these comments.

Respectfully,



Sharon Anglin Treat, Attorney  
on behalf of MOFGA



Heather Spalding, Deputy Director  
MOFGA

---

<sup>18</sup> OECD, Reconciling Terminology of the Universe of Per- and Polyfluoroalkyl Substances: Recommendations and Practical Guidance Series on Risk Management No.61, [https://one.oecd.org/document/ENV/CBC/MONO\(2021\)25/en/pdf](https://one.oecd.org/document/ENV/CBC/MONO(2021)25/en/pdf). See also OECD Portal on PFAS: <https://www.oecd.org/chemicalsafety/portal-perfluorinated-chemicals/>

## ATTACHMENT

**Excerpts of “Summary of Comments Received Regarding 130th Legislature, LD 264, Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State Board of Pesticides Control CMR26-01 Chapter 20”** relating to affidavits as public records, see full document: [https://www.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/Feb22/5-Summary-of-public-comments.pdf](https://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/Feb22/5-Summary-of-public-comments.pdf)

“All reports and affidavits produced by the BPC are already public documents.” [in response to comments from Patricia Rubert-Nason – Maine Sierra Club; Sarah Woodbury – Director of Advocacy for Defend Our Health; and Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy that “Required affidavits submitted by registrants should be publicly available.”]

“The BPC recognizes that during the implementation of LD 1503 affidavits were not withheld and intends to make affidavits public records.” [in response to comments of Sharon Treat, IATP, that “Affidavits should not be withheld from the public, as the committee that led the implementation of LD 1503 voted to not keep documents and affidavits confidential.”]

“Information in the CSF itself is confidential business information (CBI) under federal law FIFRA §10(a). Affidavits themselves will be public documents and will describe whether a PFAS known to the manufacturer is in the product or if it is stored in an HDPE container.” And “BPC acknowledges the concern regarding transparency of the affidavits. BPC will consider changing the rule to incorporate this sentiment.” [In response to comments from Sarah Woodbury that “The rule should unequivocally state the affidavits are public and accessible records. While this may be the intent of the proposed language, ambiguity should be eliminated by separately listing the three required items or adding a sentence explicitly clarifying the public nature of the affidavits.]

“BPC agrees that the CSF is confidential and that the affidavits will be public documents.” [In response to comment from Heather Spalding, MOFGA, that “CSF is confidential but affidavits can be made public.”]