



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

PAUL R. LEPAGE
 GOVERNOR

WALTER E. WHITCOMB
 COMMISSIONER

To: Board of Pesticides Control Members
 From: Mary Tomlinson, Pesticides Registrar
 Re: EPA Special Local Need [24(c)] request to extend the use of Avipel Hopper Box (Dry) Corn Seed Treatment, ME-120002, to control depredation of sweet corn seed by grackles, black birds, and crows
 Date: May 3, 2017

Please find enclosed the above-referenced FIFRA Section 24(c) label and supporting documents for your consideration.

The Board approved a Section 18 for Avipel Hopper Box (Dry) Corn Seed Treatment, (active ingredient anthraquinone) to control depredation of sweet corn seed by grackles, black birds, and crows on February 24, 2012. The EPA subsequently denied the Section 18, but encouraged states to pursue a 24(c) registration. The Section 24(c) was issued on April 12, 2012.

This request is to extend the use through December 31, 2022. Avipel is a non-lethal alternative to other avian control methods and according to Richard Kersbergen, University of Maine Cooperative Extension Crop Specialist, has been highly effective in reducing crop losses due to bird depredation.

The package includes the additional following documents for review:

- ME-120002 Avipel (Dry) Hopper SLN label
- Cover letter from Doug Lawrence, Product Manager, Arkion Life Sciences
- Support letter from Richard Kersbergen, Ph.D., University of Maine Cooperative Extension
- Support letter from Lauchlin Titus, AgMatters LLC
- Container labels
- SDS

Please review these materials and contact me at (207) 287-7544 if you have any questions.

CAM LAY, DIRECTOR
 32 BLOSSOM LANE, MARQUARDT BUILDING



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

24(c) Special Local Need Registration SLN ME 120002
(For Distribution and Use Only Within the State of Maine)
 This SLN expires and must not be used or distributed after 12/31/2022

Avipel[®] Hopper Box (dry) Corn Seed Treatment
For Protection of Field and Sweet Corn Seed to discourage
consumption by Grackles, Black Birds and Crows.

ACTIVE INGREDIENT

9, 10-Anthraquinone 97.1%
OTHER INGREDIENTS 2.9%
Total 100%

KEEP OUT OF REACH OF CHILDREN

CAUTION

NOT A PLANT FOOD INGREDIENT

Active Ingredient: 9, 10-Anthraquinone

FIRST AID	
If inhaled:	<ul style="list-style-type: none"> • Move person to fresh air. • If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. • Call a Poison Control Center or Doctor for further treatment advice.
If on skin or clothing:	<ul style="list-style-type: none"> • Take off contaminated clothing. • Rinse skin immediately with plenty of water for 15-20 minutes. • Call a Poison Control Center or Doctor for treatment advice.
If in eyes:	<ul style="list-style-type: none"> • Hold eye open and rinse slowly and gently with water for 15-20 minutes. • Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. • Call a Poison Control Center or Doctor for treatment advice.
If swallowed:	<ul style="list-style-type: none"> • Call Poison Control Center or Doctor immediately for treatment advice. • Have person sip a glass of water if able to swallow. • Do not induce vomiting unless told to do so by the Poison Control Center or Doctor. • Do not give anything by mouth to an unconscious person.
<p>FOR MEDICAL EMERGENCIES INVOLVING THIS PRODUCT, CALL TOLL FREE 1-800-535-5053. HAVE THE PRODUCT CONTAINER OR LABEL AVAILABLE WHEN SEEKING TREATMENT ADVICE.</p>	
<p>See side panel for additional precautionary statements.</p>	

MANUFACTURED BY:
ARKION[®] LIFE SCIENCES LLC
 551 Mews Drive Suite J
 New Castle, DE 19720

EPA Establishment No.: 84123-TN-001

NET CONTENTS: 16.0 Ounces

DATE OF MANUFACTURE: _____

PRECAUTIONARY STATEMENTS

HAZARDS TO HUMANS AND DOMESTIC ANIMALS

CAUTION

Harmful if swallowed. Harmful if absorbed through skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling. Harmful if inhaled. Avoid breathing dust. Remove contaminated clothing and wash clothing before re-use. Causes moderate eye irritation. Avoid contact with eyes or clothing.

PERSONAL PROTECTIVE EQUIPMENT: When handling Avipel, use long-sleeved shirt and long pants, socks, shoes, chemical resistant gloves and goggles. Use a dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C), or a NIOSH approved respirator with any N,R,P or HE filter.

ENVIRONMENTAL HAZARDS:

Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA. Do not contaminate water by cleaning of equipment or disposal of waste. Apply this product only as specified on this label.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

I. GENERAL INFORMATION

When applied properly **Avipel** forms a bird repellent coating on corn seeds. Birds may sample treated seeds but they will avoid additional consumption. **Thorough, uniform and consistent coverage** is essential for full protection from bird depredation. Use only at the recommended labeled rate. Lower amounts may not give desired control.

DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling. Reformulation or repackaging of this product is prohibited. Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application. For any requirements specific to your State or Tribe, consult agency responsible for pesticide regulation.

The State Department of Agriculture must be informed immediately of any adverse effects that may result from the use of this product.

This label must in the possession of the applicator during the application of this product.

RATE: Field Corn and Sweet Corn seed: Apply Avipel Hopper Box (dry) at a rate of one scoop, 2.0 ounces of product per 25 pounds of seed (1.94 ounces a.i. per 25 pounds of seed) as a dry mixture in the planter box as a seed treatment just prior to planting. **Do not make more than one (1) application per acre per season.**

MIXING INSTRUCTIONS: Always apply Avipel Hopper Box (dry) to the corn seed and mix thoroughly before additional dry products, i.e. talc or graphite is applied to the seed. For best results, pour 25 pounds of corn seed into the seed hopper and then add 2.0 ounces (one scoop) of Avipel Hopper Box (dry) and mix thoroughly with a paddle or other suitable tool dedicated to mixing this product only. For each additional 25 pounds of seed add 2.0 ounces (one scoop) of Avipel Hopper Box (dry) and mix again to ensure all corn seeds are covered. **DO NOT MIX WITH BARE HANDS.** Use only at the recommended rate. Lower amounts may not give desired control.

Treated seed must be adequately dyed in accordance with 21 CFR 2.25 to prevent use as a food or feed item.

Agricultural Use Restrictions

Use this product only in accordance with its labeling and Worker Protection Standard, 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 4 hours. "Exception: if the product is soil-injected or soil-incorporated, the Worker Protection Standard, under certain circumstances, allows workers to enter the treated areas if there will be no contact with anything that has been treated." PPE required for early entry to treated areas that is permitted under the Worker Production Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is: coveralls, waterproof gloves, shoes plus socks, protective eyewear.

User Safety Recommendations: Users Should: Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet. Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing. Remove PPE immediately after handling the product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

Storage and Disposal:

Pesticide Storage: Store in a sheltered location away from food or feed.

Pesticide Disposal: Improper disposal of excess pesticide is a violation of Federal law. If these wastes cannot be disposed of by use according to label instruction, contact your State Pesticide or Environmental Control Agency or the Hazardous Waste representative at the nearest EPA Regional Office for guidance. Arkion[®] also can be contacted for guidance on the disposal of pesticide wastes.

Container and measuring scoop Disposal: Dispose of in a sanitary landfill or incinerator or, if allowed by state and local authorities, by burning. If burned, stay out of smoke.

CONDITIONS OF SALE AND WARRANTY:

Arkion[®] warrants that the product conforms to its chemical description and is reasonably fit for the purpose stated on the label only when used in accordance with label directions under normal conditions of use. Since timing, method of application, weather and ground conditions, mixture with other chemicals, and other factors affecting the use of this product are beyond our control, no warranty is given concerning the use of this product contrary to label directions, or under conditions which are abnormal or not reasonably foreseeable.

ARKION[®] MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

Handling, storage and use of the product by Buyer or User are beyond the control of Arkion[®] and Seller. Risks such as ineffectiveness or other directions will be assumed by the Buyer or User.

IN NO CASE WILL ARKION[®] OR SELLER BE HELD LIABLE FOR CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES RESULTING FROM THE HANDLING, STORAGE OR USE OF THIS PRODUCT, NOR HELD RESPONSIBLE FOR INJURY OR LOSS AS A RESULT OF THE HANDLING OR USE OF THIS PRODUCT.

The use of Avipel in agricultural applications is protected by US Patents 6,328,986; 5,885,604; 5,922,774

Avipel[®] and Arkion[®] are registered trademarks of Arkion[®] Life Sciences LLC, 551 Mews Drive, Suite J, New Castle, DE 19720 800/468-6324 and www.Arkionls.com



551 Mews Drive, Suite J
New Castle, DE 19720
302-504-7420
Fax: 302-655-3546
www.ArkionLS.com

May 2, 2017

Ms. Mary E. Tomlinson
Pesticide Registrar/Water Quality Specialist
Maine Board of Pesticide Control
28 State House Station
Augusta, ME 04333

Subject: Avipel SLN Label extension, to control Grackles and Black Birds depredation of corn seed.
We are recommending that a full five (5) renewal period be considered to reduce any further frustration.

Dear Mary Tomlinson:

Mary, as EPA continues to review the use of Avipel for corn seed treatment, both the liquid and hopper box labels because of the change in the review from biopesticides division to registration division. Arkion anticipates a return to biopesticides division over the next 12 months where the decision to issue a section 3 label for corn seed treatment will be made.

Mr. Mark Suarez is the current product manager in EPA for our portfolio and is anticipating the renewals and issuance of new SLNs this year. Please file your labels with him at the earliest convenient time for your office. You can reach Mark directly for further information: (Suarez.mark@epa.gov.)

It is anticipated that the renewal of these labels should be for multiple years and Arkion is recommending asking for the full 5 years to reduce any further frustration. Our company appreciates fully the amount of effort you have put into this process over the years and we anticipate a final resolution to the issue in the near future.

Regards,

Doug Lawrence
Product Manager
AQ - Agriculture Products
515/231-3944

Providing Tomorrow's Innovative Solution's Today®



Putting knowledge to work with the people of Maine

992 Waterville Road, Waldo, Maine 04915 ● 1-800-287-1426 / 207-342-5971 ● Fax: 342-4229
Richard.kersbergen@maine.edu

May 3, 2017

To: Mary Tomlinson, Maine Board of Pesticides Control

From: Richard Kersbergen, Extension Professor, Sustainable Dairy and Forage Systems

A handwritten signature in black ink that reads 'Richard Kersbergen'.

Re: Section 24c label for Avipel

I am writing to request a 5 year extension on the 24c for Avipel, distributed by Arkion. This product with the active ingredient 9,10-Anthraquinone, is labeled and used as a hopper box dry seed treatment to discourage consumption by birds.

Avipel has been an extremely successful product used by a majority of farmers in fields that have had serious predation by birds in corn crops. My area of expertise is forage crops for dairy farmers, so the product has been used as a seed treatment for silage corn.

A quick survey of distributors who sell this product has indicated that many producers who have tried to reduce costs by not using Avipel in the last few years have been discouraged by the loss of plants and seed, with the result of additional expense required for replanting the crop with Avipel applied to the seed. With corn seed prices increasing dramatically in the last few years, that can create serious economic hardship for producers who are already struggling with poor economic conditions in the dairy industry.

As noted earlier, Avipel is a taste deterrent and has been extremely effective. Last year, I visited a farm where I witnessed a 25 acre field with greater than 50% loss due to birds from corn seed not treated with Avipel. The field was replanted with the product and lost almost no plants. Another client I work with is an organic dairy farmer who used to grow corn silage, but has discontinued to grow it because in part, the bird predation was too severe (Avipel is not approved for use on organic farms) and alternative methods of control (balloons, flash tape and dead crows) were ineffective.

www.umext.maine.edu

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Cooperative Extension provides equal opportunities in programs and employment.
A Member of the University of Maine System

I have included a picture of some corn damage in 2016 on a field that I have been using for research at Gold Top Farm in Knox. As you can see, the row of corn pictured had 100% loss of plants and needed to be completely replanted. Not only did this add the cost of additional seed, it also reduced potential yield due to later than normal planting with a reduced value in terms of forage quality.

Avipel has become a product that is used judiciously by producers to protect their crops in fields with historical bird damage. I hope you will amend the 24c label for an additional 5 year period.

Please let me know if you have any questions.



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AgMatters LLC
Lauchlin W. Titus, CPAg, CCA
1063 Main Street
Vassalboro, ME 04989
Office 207 873-2108 Cell 207 314-2655
lauchlin@agmattersllc.com
www.agmattersllc.com

April 21, 2017

Re: Avipel usage

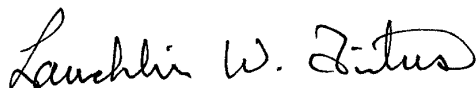
I am a private crop consultant, working with 60 farmer clients who farm a total of 13,000 of crops in Maine. Of this acreage, 5000 acres is field corn or sweet corn. I believe 100% of my clients who grow corn (40 of the 60) use Avipel to reduce bird pulling on some, if not all, of their acreage.

Avipel works extremely well. I have a client with one field that in the past has had close to 80% of the corn kernels pulled by crows and as a result needed to be replanted. The next year, with the use of Avipel, I observed in that field individual corn kernels on the soil surface (common at the end of rows as the planter is either going into or coming out of the soil) that sat there for at least 3 weeks and the birds would not touch it. There were crows in the trees less than 50 feet from these corn kernels! I have never found a field that needed to be replanted as a result of bird pulling if Avipel was used on the seed. I would rate that at 100% effectiveness.

We have other crops that also receive significant damage from bird pulling of seed and it would certainly be helpful to have registration of the product for use on those crops as well. Specifically, pumpkins, squash and related cucurbit family crop are the ones that receive loss similar to what we see in corn. Acreage of these crops in Maine are much less than acreage of corn, but magnitude of injury is similar to untreated corn and the cost of seed and value per acre of the crop both significantly exceed those values for corn.

Lastly, I am also President of the Maine Vegetable and Small Fruit Growers Association and the Association supports continuing registration of Avipel and possible expansion of the label to other crops of concern.

Sincerely yours,



Lauchlin W. Titus



24 (c) Special Local Need Registration SLN ME-120002

(FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF MAINE)

This SLN expires and must not be used or distributed after June 30, 2017

Avipel[®] Hopper Box (Dry) Corn Seed Treatment

For Protection of Field and Sweet Corn Seed to discourage consumption by Grackles, Black Birds and Crows

ACTIVE INGREDIENT

9,10- Anthraquinone.....97.1%

OTHER INGREDIENTS.....2.9%

Total 100%

KEEP OUT OF REACH OF CHILDREN

CAUTION

NOT A PLANT FOOD INGREDIENT

Active Ingredient: 9, 10 Anthraquinone

REFER TO PACKAGE LABEL FOR DIRECTIONS FOR USE

FOR MEDICAL EMERGENCIES INVOLVING THIS PRODUCT, CALL TOLL FREE 1-800-535-5033. HAVE THE PRODUCT CONTAINER OR LABEL AVAILABLE WHEN SEEKING TREATMENT ADVICE.

MANUFACTURED BY: ARKION LIFE SCIENCES LLC - 551 Mews Drive, Suite J - New Castle, DE 19720 - 800-468-6324

EPA Establishment No. 84123-TN-001

NET CONTENTS: 12 - 16 Ounce Canisters

Date of Manufacture: 11-30-12

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CONDITIONS OF SALE AND WARRANTY

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ARKION® MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

Handling, storage and use of the product by Buyer or User are beyond the control of Arkion® and Seller. Risks such as ineffectiveness or other directions will be assumed by the Buyer or User.

IN NO CASE WILL ARKION® OR SELLER BE HELD LIABLE FOR CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES RESULTING FROM THE HANDLING, STORAGE OR USE OF THIS PRODUCT, NOR HELD RESPONSIBLE FOR INJURY OR LOSS AS A RESULT OF THE HANDLING OR USE OF THIS PRODUCT.

DIRECTIONS FOR USE

It is a violation of federal law to use this product in a manner inconsistent with its labeling.

I. GENERAL INFORMATION

When applied properly Avipel® forms a bird repellent coating on corn seeds. Birds may sample treated seeds but they will avoid additional consumption. **Thorough, uniform and consistent coverage** is essential for full protection from bird depredation. Use only at recommended labeled rate. Lower amounts may not give desired control.

DIRECTIONS FOR USE

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The State Department of Agriculture must be informed immediately of any adverse effects that may result from the use of this product.

RATE: Field corn and Sweet Corn Seed: Apply Avipel Hopper Box (dry) at a rate of one scoop, 2.0 ounces of product per 25 pounds of seed (1.94 ounces a.i. per 25 pounds of seed) as a dry mixture in the planter box as a seed treatment just prior to planting. **Do not make more than one (1) application per acre per season.**

MIXING INSTRUCTIONS: Always apply Avipel Hopper Box (dry) to the seed and mix thoroughly before additional dry products, i.e. talc or graphite is applied to the seed. For best results, pour 25 pounds of corn seed into the seed hopper and then add 2.0 ounces (one scoop) of Avipel Hopper Box (dry) and mix thoroughly with a paddle or other suitable tool dedicated to mixing this product only. For each additional 25 pounds of seed add 2.0 ounces (one scoop) of Avipel Hopper Box (dry) and mix again to ensure all seeds are covered. **DO NOT MIX WITH BARE HANDS.** Use only at the recommended rate. Lower amounts may not give desired control. Treated seed must be adequately dyed in accordance with 21 CFR 2.25 to prevent use as a food or feed item.

This label must be in the possession of the applicator during the application of this product.

User Safety Recommendations

Users should: Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet. Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing. Remove PPE immediately after handling product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

LOT NUMBER

24 (c) Special Local Need Registration SLN ME 120002

**PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS
CAUTION**

Harmful if swallowed. Harmful if absorbed through the skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling. Harmful if inhaled. Avoid breathing dust. Remove contaminated clothing and wash clothing before re-use. Causes moderate eye irritation. Avoid contact with eyes or clothing.

PERSONAL PROTECTIVE EQUIPMENT: When handling Avipel®, use long-sleeved shirt and long pants, socks, shoes, chemical resistant gloves and goggles. Use a dust/mist filtering respirator (MSHA/NIOSH approved number prefix TC-21C, or a NIOSH approved respirator with any N,R,P or HE filter.

ENVIRONMENTAL HAZARDS: Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA. Do not contaminate water by cleaning of equipment or disposal of waste. Apply this product only as specified on this label.

II. STORAGE AND DISPOSAL

Pesticide Storage: Store in a sheltered location away from food or feed.

Pesticide Disposal: Improper disposal of excess pesticide or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instruction, contact your State Pesticide or Environmental Control Agency or the Hazardous Waste representative at the nearest EPA Regional Office for guidance. Arkion® also can be contacted for guidance on the disposal of pesticide wastes.

Container and Measuring Scoop Disposal: Dispose of in a sanitary landfill or incinerator or, if allowed by state and local authorities, by burning. If burned, stay out of smoke.

Agricultural Use Restrictions

Use this product only in accordance with its labeling and Worker Protection Standard, 40 CFR part 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and green-houses, and handlers of agricultural pesticides. It contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 4 hours. "Exception: if the product is soil-injected or soil incorporated, the Worker Protection Standard, under certain circumstances, allows workers to enter the treated areas if there will be no contact with anything that has been treated." PPE required for early entry to treated areas that is permitted under the Worker Production Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is: coveralls, waterproof gloves, shoes plus socks, protective eye wear.

The use of Avipel® in agricultural applications is protected by US Patents 6,328,986; 5,885,604; 5,922,774

**Avipel® and Arkion® are registered trademarks of Arkion® Life Sciences LLC
551 Mews Drive, Suite J - New Castle, DE 19720 - 800-468-6324 www.Arkionls.com**

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ACTIVE INGREDIENT	KEEP OUT OF REACH OF CHILDREN
9,10- Anthraquinone.....97.1%	CAUTION
OTHER INGREDIENTS.....2.9%	NOT A PLANT FOOD INGREDIENT
Total 100%	Active Ingredient: 9,10- Anthraquinone

FIRST AID

If inhaled:	<ul style="list-style-type: none"> • Move person to fresh air. • If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. • Call a Poison Control Center or Doctor for further treatment advice.
If on skin or clothing:	<ul style="list-style-type: none"> • Take off contaminated clothing. • Rinse skin immediately with plenty of water for 15-20 minutes. • Call a Poison Control Center or Doctor for treatment advice.
If in eyes:	<ul style="list-style-type: none"> • Hold eye open and rinse slowly and gently with water for 15-20 minutes. • Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. • Call a Poison Control Center or Doctor for treatment advice.
If swallowed:	<ul style="list-style-type: none"> • Call poison Control Center or Doctor immediately for treatment advice. • Have person sip a glass of water if able to swallow. • Do not induce vomiting unless told to do so by the Poison Control Center or Doctor. • Do not give anything by mouth to an unconscious person.

FOR MEDICAL EMERGENCIES INVOLVING THIS PRODUCT, CALL TOLL FREE 1-800-535-5053. HAVE THE PRODUCT CONTAINER OR LABEL AVAILABLE WHEN SEEKING TREATMENT ADVISE.

SEE SIDE PANEL FOR ADDITIONAL PRECAUTIONARY STATEMENTS

MANUFACTURED BY:

ARKION LIFE SCIENCES, LLC - 551 MEWS DRIVE, SUITE J - NEW CASTLE, DE 19720

EPA Establishment No.: 84123-TN-001

Date of Manufacture: 11/30/12

Net Contents: 16.0 Ounces

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RATE: Field corn and Sweet Corn Seed: Apply Avipel Hopper Box (dry) at a rate of one scoop, 2.0 ounces of product per 25 pounds of seed (1.94 ounces a.i. per 25 pounds of seed) as a dry mixture in the planter box as a seed treatment just prior to planting. **Do not make more than one (1) application per acre per season.**

MIXING INSTRUCTIONS: Always apply Avipel Hopper Box (dry) to the seed and mix thoroughly before additional dry products, i.e. talc or graphite is applied to the seed. For best results, pour 25 pounds of corn seed into the seed hopper and then add 2.0 ounces (one scoop) of Avipel Hopper Box (dry) and mix thoroughly with a paddle or other suitable tool dedicated to mixing this product only. For each additional 25 pounds of seed add 2.0 ounces (one scoop) of Avipel Hopper Box (dry) and mix again to ensure all seeds are covered. **DO NOT MIX WITH BARE HANDS.** Use only at the recommended rate. Lower amounts may not give desired control. Treated seed must be adequately dyed in accordance with 21 CFR 2.25 to prevent use as a food or feed item.

This label must be in the possession of the applicator during the application of this product.

User Safety Recommendations

Users should: Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet. Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing. Remove PPE immediately after handling product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

LOT NUMBER

24 (c) Special Local Need Registration SLN ME 120002

**PRECAUTIONARY STATEMENTS
HAZARDS TO HUMANS AND DOMESTIC ANIMALS
CAUTION**

Harmful if swallowed. Harmful if absorbed through the skin. Avoid contact with skin, eyes or clothing. Wash thoroughly with soap and water after handling. Harmful if inhaled. Avoid breathing dust. Remove contaminated clothing and wash clothing before re-use. Causes moderate eye irritation. Avoid contact with eyes or clothing.

PERSONAL PROTECTIVE EQUIPMENT: When handling Avipel®, use long-sleeved shirt and long pants, socks, shoes, chemical resistant gloves and goggles. Use a dust/mist filtering respirator (MSHA/NIOSH approved number prefix TC-21C, or a NIOSH approved respirator with any N,R,P or HE filter.

ENVIRONMENTAL HAZARDS: Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans or other waters unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the sewage treatment plant authority. For guidance contact your State Water Board or Regional Office of the EPA. Do not contaminate water by cleaning of equipment or disposal of waste. Apply this product only as specified on this label.

II. STORAGE AND DISPOSAL

Pesticide Storage: Store in a sheltered location away from food or feed.

Pesticide Disposal: Improper disposal of excess pesticide or rinsate is a violation of Federal Law. If these wastes cannot be disposed of by use according to label instruction, contact your State Pesticide or Environmental Control Agency or the Hazardous Waste representative at the nearest EPA Regional Office for guidance. Arkion® also can be contacted for guidance on the disposal of pesticide wastes.

Container and Measuring Scoop Disposal: Dispose of in a sanitary landfill or incinerator or, if allowed by state and local authorities, by burning. If burned, stay out of smoke.

Agricultural Use Restrictions

Use this product only in accordance with its labeling and Worker Protection Standard, 40 CFR part 170. This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and green-houses, and handlers of agricultural pesticides. It contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard. Do not enter or allow worker entry into treated areas during the restricted entry interval (REI) of 4 hours. "Exception: if the product is soil-injected or soil incorporated, the Worker Protection Standard, under certain circumstances, allows workers to enter the treated areas if there will be no contact with anything that has been treated." PPE required for early entry to treated areas that is permitted under the Worker Production Standard and that involves contact with anything that has been treated, such as plants, soil, or water, is: coveralls, waterproof gloves, shoes plus socks, protective eye wear.

The use of Avipel® in agricultural applications is protected by US Patents 6,328,986; 5,885,604; 5,922,774

**Avipel® and Arkion® are registered trademarks of Arkion® Life Sciences LLC
551 Mews Drive, Suite J - New Castle, DE 19720 - 800-468-6324 www.Arkionls.com**

24 (c) Special Local Need Registration SLN ME 120002

(FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF MAINE)

This SLN expires and must not be used or distributed after June 30, 2017

Avipel® Hopper Box (Dry) Corn Seed Treatment

For Protection of Field and Sweet Corn Seed to discourage consumption by Grackles, Black Birds and Crows

ACTIVE INGREDIENT	KEEP OUT OF REACH OF CHILDREN
9,10- Anthraquinone.....97.1%	CAUTION
OTHER INGREDIENTS.....2.9%	NOT A PLANT FOOD INGREDIENT
Total 100%	Active Ingredient: 9,10- Anthraquinone

FIRST AID

If inhaled:	<ul style="list-style-type: none"> • Move person to fresh air. • If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. • Call a Poison Control Center or Doctor for further treatment advice.
If on skin or clothing:	<ul style="list-style-type: none"> • Take off contaminated clothing. • Rinse skin immediately with plenty of water for 15-20 minutes. • Call a Poison Control Center or Doctor for treatment advice.
If in eyes:	<ul style="list-style-type: none"> • Hold eye open and rinse slowly and gently with water for 15-20 minutes. • Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. • Call a Poison Control Center or Doctor for treatment advice.
If swallowed:	<ul style="list-style-type: none"> • Call poison Control Center or Doctor immediately for treatment advice. • Have person sip a glass of water if able to swallow. • Do not induce vomiting unless told to do so by the Poison Control Center or Doctor. • Do not give anything by mouth to an unconscious person.

FOR MEDICAL EMERGENCIES INVOLVING THIS PRODUCT, CALL TOLL FREE 1-800-535-5053. HAVE THE PRODUCT CONTAINER OR LABEL AVAILABLE WHEN SEEKING TREATMENT ADVISE.

SEE SIDE PANEL FOR ADDITIONAL PRECAUTIONARY STATEMENTS

MANUFACTURED BY:

ARKION LIFE SCIENCES, LLC - 551 MEWS DRIVE, SUITE J - NEW CASTLE, DE 19720

EPA Establishment No.: 84123-TN-001

Date of Manufacture: 11/30/12

Net Contents: 16.0 Ounces

SECTION 1: IDENTIFICATION

1.1. Product Identifier

Product Form: Mixture

Product Name: Avipel® Dry Hopper Box

Product Code: EPA Registration No: SLN 69969-X

1.2. Intended Use of the Product

Use of the substance/mixture: For the protection of Field and Sweet Corn Seed against consumption by various bird species, including Black Birds, Crows, Pheasants and Sand Hill Cranes.

1.3. Name, Address, and Telephone of the Responsible Party

Company

Arkion® Life Sciences LLC.

551 Mews Drive Suite J

New Castle, DE 19720

[302-504-7400](tel:302-504-7400); [800-468-6324](tel:800-468-6324)

1.4. Emergency Telephone Number

Emergency Number : 1-800-535-5053

INFOTRAC – TOLL FREE 24 HOUR EMERGENCY TELEPHONE NUMBER

SECTION 2: HAZARDS IDENTIFICATION

2.1. Classification of the Substance or Mixture

Classification (GHS-US)

Comb. Dust

Eye Irrit. 2B H320

Skin Sens. 1 H317

Carc. 2 H351

Full text of H-phrases: see section 16

2.2. Label Elements

GHS-US Labeling

Hazard Pictograms (GHS-US)



Signal Word (GHS-US)

: Warning

Hazard Statements (GHS-US)

: May form combustible dust concentrations in air.

H317 - May cause an allergic skin reaction.

H320 - Causes eye irritation.

H351 - Suspected of causing cancer.

Precautionary Statements (GHS-US)

: P201 - Obtain special instructions before use.

P202 - Do not handle until all safety precautions have been read and understood.

P261 - Avoid breathing dust, mist, vapors.

P264 - Wash hands, forearms, and other exposed areas thoroughly after handling.

P272 - Contaminated work clothing must not be allowed out of the workplace.

P280 - Wear eye protection, protective clothing, protective gloves.

P302+P352+P362+P364 - IF ON SKIN: Wash with plenty of water. Take off contaminated clothing and wash it before reuse.

P305+P351+P338 - IF IN EYES: Rinse cautiously with water for several minutes.

Remove contact lenses, if present and easy to do. Continue rinsing.

P308+P313 - If exposed or concerned: Get medical advice/attention.

P333+P313 - If skin irritation or rash occurs: Get medical advice/attention.

P337+P313 - If eye irritation persists: Get medical advice/attention.

P405 - Store locked up.

P501 - Dispose of contents/container in accordance with local, regional, national, and international regulations.

2.3. Other Hazards

Exposure may aggravate those with pre-existing eye, skin, or respiratory conditions. May form combustible dust concentrations in air.

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2.4. Unknown Acute Toxicity (GHS-US)

No data available

SECTION 3: COMPOSITION/INFORMATION ON INGREDIENTS

3.1. Substance

Not applicable

3.2. Mixture

Name	Product Identifier	%	Classification (GHS-US)
Anthraquinone	(CAS No) 84-65-1	98	Comb. Dust Skin Sens. 1A, H317 Carc. 2, H351
Water	(CAS No) 7732-18-5	< 2	Not classified

Full text of H-phrases: see section 16

SECTION 4: FIRST AID MEASURES

4.1. Description of First Aid Measures

First-aid Measures General: Never give anything by mouth to an unconscious person. If you feel unwell, seek medical advice (show the label if possible).

First-aid Measures After Inhalation: Remove to fresh air and keep at rest in a position comfortable for breathing. Obtain medical attention if breathing difficulty persists.

First-aid Measures After Skin Contact: Remove contaminated clothing. Drench affected area with water or soap and water for at least 15 minutes. Wash contaminated clothing before reuse. Obtain medical attention if irritation develops or persists.

First-aid Measures After Eye Contact: Rinse cautiously with water for at least 15 minutes. Remove contact lenses, if present and easy to do. Continue rinsing. Obtain medical attention.

First-aid Measures After Ingestion: Do NOT induce vomiting. Rinse mouth. Immediately call a POISON CENTER or doctor/physician.

4.2. Most important symptoms and effects, both acute and delayed

Symptoms/Injuries: May cause an allergic skin reaction. Suspected of causing cancer. Causes eye irritation.

Symptoms/Injuries After Inhalation: May cause respiratory irritation.

Symptoms/Injuries After Skin Contact: May cause an allergic skin reaction. Symptoms may include: Redness, pain, swelling, itching, burning, dryness, and dermatitis.

Symptoms/Injuries After Eye Contact: Causes eye irritation. Symptoms may include: Redness, pain, swelling, itching, burning, tearing, and blurred vision.

Symptoms/Injuries After Ingestion: Ingestion is likely to be harmful or have adverse effects.

Chronic Symptoms: Suspected of causing cancer.

4.3. Indication of Any Immediate Medical Attention and Special Treatment Needed

If you feel unwell, seek medical advice (show the label where possible).

SECTION 5: FIRE-FIGHTING MEASURES

5.1. Extinguishing Media

Suitable Extinguishing Media: Use extinguishing media appropriate for surrounding fire.

Unsuitable Extinguishing Media: Do not use a heavy water stream. Use of heavy stream of water may spread fire.

5.2. Special Hazards Arising From the Substance or Mixture

Fire Hazard: Combustible Dust. Dust explosion hazard in air. Supports combustion at high temperatures.

Explosion Hazard: Avoid dust clouds in combination with static electricity. Dust clouds can be explosive.

Reactivity: Hazardous reactions will not occur under normal conditions.

5.3. Advice for Firefighters

Precautionary Measures Fire: Exercise caution when fighting any chemical fire. Under fire conditions, hazardous fumes will be present.

Firefighting Instructions: Use water spray or fog for cooling exposed containers. In case of fire: Evacuate area. Fight fire remotely due to the risk of explosion. Do not allow run-off from firefighting to enter drains or water courses. Stop leak if safe to do so.

Protection During Firefighting: Do not enter fire area without proper protective equipment, including respiratory protection.

Other Information: Refer to Section 9 for flammability properties.

SECTION 6: ACCIDENTAL RELEASE MEASURES

6.1. Personal Precautions, Protective Equipment and Emergency Procedures

General Measures: Avoid all contact with skin, eyes, or clothing. Avoid breathing dust. Avoid generating dust. Keep away from open flames, hot surfaces and sources of ignition. Use special care to avoid static electric charges.

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6.1.1. For Non-emergency Personnel

Protective Equipment: Use appropriate personal protection equipment (PPE).

Emergency Procedures: Evacuate unnecessary personnel.

6.1.2. For Emergency Responders

Protective Equipment: Equip cleanup crew with proper protection.

Emergency Procedures: Upon arrival at the scene, a first responder is expected to recognize the presence of dangerous goods, protect oneself and the public, secure the area, and call for the assistance of trained personnel as soon as conditions permit.

6.2. Environmental Precautions

Prevent entry to sewers and public waters. Notify authorities if liquid enters sewers or public waters.

6.3. Methods and Material for Containment and Cleaning Up

For Containment: Avoid generation of dust during clean-up of spills. Contain and collect as any solid.

Methods for Cleaning Up: Clear up spills immediately and dispose of waste safely. Avoid actions that cause dust to become airborne during clean-up such as dry sweeping or using compressed air. Use HEPA vacuum or thoroughly wet with water to clean-up dust. Use PPE described in Section 8. Vacuum clean-up is preferred. If sweeping is required use a dust suppressant. Use only non-sparking tools. Contact competent authorities after a spill.

6.4. Reference to Other Sections

See Heading 8. Exposure controls and personal protection. For further information refer to section 13.

SECTION 7: HANDLING AND STORAGE

7.1. Precautions for Safe Handling

Precautions for Safe Handling: Obtain special instructions before use. Do not handle until all safety precautions have been read and understood. Avoid creating or spreading dust. Fine dust of the product is capable of dust explosion. Avoid all sources of ignition: heat, sparks, open flame. Take precautionary measures against static discharge.

Hygiene Measures: Handle in accordance with good industrial hygiene and safety procedures. Wash hands and other exposed areas with mild soap and water before eating, drinking or smoking and when leaving work. Wash contaminated clothing before reuse.

7.2. Conditions for Safe Storage, Including Any Incompatibilities

Technical Measures: Comply with applicable regulations.

Storage Conditions: Store in a dry, cool and well-ventilated place. Store locked up. Keep container closed when not in use.

Keep/Store away from direct sunlight, and extremely high or low temperatures. Store in a sheltered location away from food or feed.

Incompatible Products: None known.

Storage Temperature: < 50 °C (122 °F) and above freezing

7.3. Specific End Use(s)

For the protection of Field and Sweet Corn Seed against consumption by various bird species, including Black Birds, Crows, Pheasants and Sand Hill Cranes.

SECTION 8: EXPOSURE CONTROLS/PERSONAL PROTECTION

8.1. Control Parameters

For substances listed in section 3 that are not listed here, there are no established exposure limits from the manufacturer, supplier, importer, or the appropriate advisory agency including: ACGIH (TLV), NIOSH (REL), or OSHA (PEL).

8.2. Exposure Controls

Appropriate Engineering Controls

: Emergency eye wash fountains should be available in the immediate vicinity of any potential exposure. Provide adequate general and local exhaust ventilation. Power equipment should be equipped with proper dust collection devices. Ensure that all electrical components/systems are in compliance with the National Electrical Code. Proper grounding procedures to avoid static electricity should be followed. Use explosion-proof equipment. Ensure all national/local regulations are observed.

Personal Protective Equipment

: Protective goggles. Gloves. Protective clothing. Insufficient ventilation: wear respiratory protection.



Materials for Protective Clothing

: Chemically resistant materials and fabrics.

Hand Protection

: Wear chemically resistant protective gloves.

Eye Protection

: Chemical safety goggles.

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Skin and Body Protection	: Wear suitable protective clothing.
Respiratory Protection	: If exposure limits are exceeded or irritation is experienced, approved respiratory protection should be worn.
Environmental Exposure Controls	: Do not allow the product to be released into the environment.
Consumer Exposure Controls	: Do not eat, drink or smoke during use.

SECTION 9: PHYSICAL AND CHEMICAL PROPERTIES

9.1. Information on Basic Physical and Chemical Properties

Physical State	: Solid
Appearance	: Light Gray powder
Odor	: Weak aromatic
Odor Threshold	: No data available
pH	: 6.5 - 8.5
Evaporation Rate	: No data available
Melting Point	: 284.7 °C (544.46 °F)
Freezing Point	: No data available
Boiling Point	: No data available
Flash Point	: No data available
Auto-ignition Temperature	: No data available
Decomposition Temperature	: > 270 °C (> 518 °F)
Flammability (solid, gas)	: No data available
Vapor Pressure	: No data available
Relative Vapor Density at 20 °C	: No data available
Relative Density	: No data available
Solubility	: Not soluble in water
Partition Coefficient: N-Octanol/Water	: No data available
Viscosity	: No data available
Minimum Ignition Energy	: < 3 mJ
Minimum Ignition Temperature	: > 500 °C (> 932 °F)
Limiting Oxygen Concentration	: 9 - 10%

9.2. Other Information No additional information available

SECTION 10: STABILITY AND REACTIVITY

- 10.1. Reactivity:** Hazardous reactions will not occur under normal conditions.
- 10.2. Chemical Stability:** Stable under recommended handling and storage conditions (see section 7).
- 10.3. Possibility of Hazardous Reactions:** Hazardous polymerization will not occur.
- 10.4. Conditions to Avoid:** Direct sunlight, extremely high or low temperatures, open flames, and sources of ignition.
- 10.5. Incompatible Materials:** None known.
- 10.6. Hazardous Decomposition Products:** Under conditions of fire this material may produce: Carbon oxides (CO, CO₂).

SECTION 11: TOXICOLOGICAL INFORMATION

11.1. Information On Toxicological Effects

Acute Toxicity: Not classified

Avipel® Dry Hopper Box	
LD50 Oral Rat	> 5000 mg/kg
LD50 Dermal Rat	> 5000 mg/kg
LC50 Inhalation Rat	> 2.04 mg/l
Anthraquinone (84-65-1)	
LD50 Oral Rat	> 5000 mg/kg
LC50 Inhalation Rat	> 1300 mg/m ³ (Exposure time: 4 h)
Water (7732-18-5)	
LD50 Oral Rat	> 90000 mg/kg

Skin Corrosion/Irritation: Not classified (Slightly irritant but not relevant for classification)

pH: 6.5 - 8.5

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Serious Eye Damage/Irritation: Causes eye irritation

pH: 6.5 - 8.5

Respiratory or Skin Sensitization: May cause an allergic skin reaction.

Germ Cell Mutagenicity: Not classified (Based on available data, the classification criteria are not met)

Carcinogenicity: Suspected of causing cancer

Anthraquinone (84-65-1)	
IARC group	2B
National Toxicology Program (NTP) Status	Evidence of Carcinogenicity.

Reproductive Toxicity: Not classified

Specific Target Organ Toxicity (Single Exposure): Not classified

Specific Target Organ Toxicity (Repeated Exposure): Not classified

Aspiration Hazard: Not classified

Symptoms/Injuries After Inhalation: May cause respiratory irritation

Symptoms/Injuries After Skin Contact: May cause an allergic skin reaction. Symptoms may include: Redness, pain, swelling, itching, burning, dryness, and dermatitis

Symptoms/Injuries After Eye Contact: Causes eye irritation. Symptoms may include: Redness, pain, swelling, itching, burning, tearing, and blurred vision

Symptoms/Injuries After Ingestion: Ingestion is likely to be harmful or have adverse effects

Chronic Symptoms: Suspected of causing cancer

SECTION 12: ECOLOGICAL INFORMATION

12.1. Toxicity

Avipel® Dry Hopper Box	
LC50 Fish 1	> 190 µg/l
EC50 Daphnia 1	> 240 µg/l

Anthraquinone (84-65-1)	
LC50 Fish 1	2650 mg/l (Exposure time: 96 h - Species: Pimephales promelas)

12.2. Persistence and Degradability No additional information available

12.3. Bioaccumulative Potential

Anthraquinone (84-65-1)	
Log Pow	3.39

12.4. Mobility in Soil No additional information available

12.5. Other Adverse Effects

Other Information : Avoid release to the environment.

SECTION 13: DISPOSAL CONSIDERATIONS

13.1. Waste treatment methods

Sewage Disposal Recommendations: Do not dispose of waste into sewer.

Waste Disposal Recommendations: Dispose of waste material in accordance with all local, regional, national, and international regulations. If these wastes cannot be disposed of by use according to label instruction, contact your State Pesticide or Environmental Control Agency or the Hazardous Waste representative at the nearest EPA Regional Office for guidance. Arkion® also can be contacted for guidance on the disposal of pesticide wastes.

SECTION 14: TRANSPORT INFORMATION

14.1. In Accordance with DOT Not regulated for transport

14.2. In Accordance with IMDG Not regulated for transport

14.3. In Accordance with IATA Not regulated for transport

SECTION 15: REGULATORY INFORMATION

15.1 US Federal Regulations

Avipel® Dry Hopper Box	
SARA Section 311/312 Hazard Classes	Immediate (acute) health hazard Delayed (chronic) health hazard
EPA FIFRA Pesticide Product Notice	This chemical is a pesticide product registered by the United States Environmental Protection Agency and is subject to certain labeling requirements under federal pesticide law. These requirements differ from the classification criteria and hazard information required for

Avipel® Dry Hopper Box

Safety Data Sheet

According to Federal Register / Vol. 77, No. 58 / Monday, March 26, 2012 / Rules and Regulations

	safety data sheets (SDS), and for workplace labels of non-pesticide chemicals. The hazard information required on the pesticide label is reproduced below. The pesticide label also includes other important information, including directions for use.
EPA FIFRA Signal Word	Caution
EPA FIFRA Hazard Statements	Harmful if swallowed. HARMFUL IF ABSORBED THROUGH SKIN. Harmful if inhaled. Moderate eye irritant.
EPA FIFRA Precautionary Statements	HAZARDOUS TO HUMANS AND DOMESTIC ANIMALS. NOT A PLANT FOOD INGREDIENT. Keep out of the reach of children. Avoid contact with eyes, skin and clothing. Wash thoroughly after handling. Avoid breathing dust. Remove contaminated clothing and wash clothing before re-use.

Anthraquinone (84-65-1)

Listed on the United States TSCA (Toxic Substances Control Act) inventory

EPA TSCA Regulatory Flag

T - T - indicates a substance that is the subject of a Section 4 test rule under TSCA.

Water (7732-18-5)

Listed on the United States TSCA (Toxic Substances Control Act) inventory

15.2 US State Regulations

Anthraquinone (84-65-1)

U.S. - California - Proposition 65 - Carcinogens List

WARNING: This product contains chemicals known to the State of California to cause cancer.

Anthraquinone (84-65-1)

U.S. - New Jersey - Right to Know Hazardous Substance List

SECTION 16: OTHER INFORMATION, INCLUDING DATE OF PREPARATION OR LAST REVISION

Revision Date	: 04/01/2015
Other Information	: This document has been prepared in accordance with the SDS requirements of the OSHA Hazard Communication Standard 29 CFR 1910.1200.

GHS Full Text Phrases:

Carc. 2	Carcinogenicity Category 2
Comb. Dust	Combustible Dust
Eye Irrit. 2B	Serious eye damage/eye irritation Category 2B
Skin Sens. 1	Skin sensitization Category 1
Skin Sens. 1A	Skin sensitization Category 1A
	May form combustible dust concentrations in air
H317	May cause an allergic skin reaction
H320	Causes eye irritation
H351	Suspected of causing cancer

This information is based on our current knowledge and is intended to describe the product for the purposes of health, safety and environmental requirements only. It should not therefore be construed as guaranteeing any specific property of the product.

SDS US (GHS HazCom)

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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

To: Board Members
From: Staff
Re: Rulemaking
Date: May 12, 2017

Based on the Board discussion at the March 31, 2017 meeting, the list of potential rulemaking activities has been reduced to the chapters listed below. See the attached documents for more details.

If the Board wants amendments to Chapter 29 regarding browntail moth to be in effect for next spring, the Chapter needs to be submitted to the Legislature at the beginning of January, 2018. A public hearing should be scheduled for the September board meeting.

Chapter		
27 Section 2(B)(4)ii	Change wording “a list of pesticide applications conducted on school grounds” to clarify that all pesticide applications must be included in log	housekeeping
27 Section 2(B)(5)	Change wording from “made in school buildings and on school grounds” to clarify that it includes the exterior of buildings	housekeeping
27 Section 3(A)	Add insect repellents to the list of exemptions	housekeeping
27 Section 3(C)	Change wording “When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt...” to clarify that all applications are exempt not just mosquito control applications.	housekeeping
29 Section 5	Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters	Requires discussion

HENRY JENNINGS, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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

29 Section 6	Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Plants that Pose a Dermal Toxicity Hazard	Incorporate policy
29 Section 6	<p>Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Invasive Plants</p> <p>Note: Currently the Board requires quite a bit of information for a variance (see policy). Removing the requirement for a variance means the Board would not receive this information, unless some requirements were added to the rule itself.</p>	Incorporate policy Requires discussion
36	<p>Certification and Licensing Provisions/Monitors and Spotters for Forest Insect Aerial Spray Program. Requirements were repealed in statute.</p> <p>Repeal entire chapter</p>	housekeeping

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

Section 2. Requirements for All Schools

- B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:
- (4) maintain and make available to parents, guardians and staff upon request:
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.

Discussion

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

Chapter 27 Section 2(B)(5)

Section 2. Requirements for All Schools

- B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:
- 5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and

Discussion

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

Chapter 27 Section 3(A)

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:
- (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,

- (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
- (3) application of paints, stains or wood preservatives that are classified as general use pesticides.

Section 4. Notification

Section 5. Integrated Pest Management Techniques

Discussion

Should insect repellents be added to the list of exemptions?

Chapter 27 Section 3(C)

Section 3. Exemptions

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).

Section 4. Notification

- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
 - (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.

Section 5. Integrated Pest Management Techniques

- C. Prior to any pesticide application the following steps must be taken and recorded:
 - (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.

Discussion

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

Chapter 29 Section 5

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

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

A. Exemptions

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

B. Prohibitions and Restrictions

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

Discussion

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

Chapter 29 Section 6

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:

- I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15 minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
- I. The name, address and telephone number of the applicant;
 - II. The area(s) where pesticides will be applied;
 - III. The type(s) of pesticides to be applied;
 - IV. The purpose for which the pesticide application(s) will be made;
 - V. The approximate application date(s);
 - VI. The type(s) of application equipment to be employed; and
 - VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:
- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
 - II. Demonstrate an appropriate balance of risk and benefit; and
 - III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

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

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

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

Policy 2

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

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

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

Discussion

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

Chapter 36

Suggested Change

Repeal Chapter

Discussion

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

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

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

Section 1. Definitions

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

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

Section 2. Requirements for All Schools

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

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

Section 3. Exemptions

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

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

Section 4. Notification

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

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

Section 5. Integrated Pest Management Techniques

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

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

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

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

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

EFFECTIVE DATE:

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

AMENDED:

July 5, 2005 – filing 2005-266

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

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

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 29: STANDARDS FOR WATER QUALITY PROTECTION

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

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

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

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

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

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

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

Section 4. Exemptions

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

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

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

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

A. Exemptions

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

B. Prohibitions and Restrictions

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

Section 6. Buffer Requirement

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

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

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

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

EFFECTIVE DATE:

April 14, 1999

AMENDED:

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

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

CORRECTIONS:

February, 2014 – agency names, formatting



PAUL R LEPAGE
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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WALTER E WHITCOMB
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**MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY TO
DELEGATE AUTHORITY TO THE STAFF TO APPROVE REQUESTS FOR
VARIANCE FROM CMR 01-026 CHAPTER 29 FOR CONTROL OF PLANTS
THAT POSE A DERMAL TOXICITY HAZARD**

Adopted November 18, 2011

BACKGROUND

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

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

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

The staff recommends the following interim policy:

POLICY

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

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

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



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

Adopted December 13, 2013

BACKGROUND

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

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

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

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

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

POLICY

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

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



TIMBERLAND DIVISION

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Maine Board of Pesticides Control
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Dear Board Chair,

As a commercial applicator in both aerial forestry and invasive plant management in the State of Maine, I am asking the Board for clarification on the definition of “**Emerged Wetland Plants**” as specified in Chapter 29, Section 6.A.V.c. If emerged wetland species are present, the site is defined as a “Wetland” and any broadcast application requires a 25-foot buffer. In both forestry and invasive plant management, the labelled products we use, allow for treatment to seasonably dry wetlands, sites having temporary surface waters, equipment ruts, and other depressions caused by management activities (See enclosed labels for Oust XP, EPA reg. No. 432-1552, page 4 and Arsenal Applicator’s Concentrate, EPA Reg. No. 214-299, page 4). Often these sites may contain “emerged wetland species” such as, cattails, purple loosestrife, phragmites, sedges, etc. These species often continue to grow when surface waters are no longer present, and can exist on seasonably dry wetland sites, dry road ditches, and skidder ruts.

There is a current movement in Maine’s aerial softwood release and site preparation programs to flag and mark these areas defined above since the State of Maine’s regulations are stricter than those found on the label. This is leading to an extremely expensive endeavor to mark and flag all skidder ruts, and seasonable dry wetland on a forestry site prior to any aerial operation is undertaken. The understanding is that these areas listed above as permissible on the labels are classified as wetlands in Maine’s Chapter 29 regulations.

Our hope as both forest landowners and applicators is to be able to follow the label specifications and not the stricter implications as specified in Chapter 29. Significant wetlands and sensitive areas are appropriately buffered and mapped as specified in the MBPC suggested BMP’s for aerial application (enclosed).

I have also enclosed a few pictures of the types of areas we are worrying about during our annual aerial herbicide release and site preparation programs in Maine. I look forward to discussing this issue with you further at the Maine Board of Pesticides Control May meeting. Thank you for your time and consideration.

Sincerely,

Ronald C. Lemin, Jr.

Enclosures (3)



Cattails growing in seasonably dry wet area. This would be defined as a Wetland by Chapter 29. Applicator would need to buffer 25 feet for broadcast application.



Example of a depression created from a harvesting or logging operation. Notice beginning of cattail growth. This would also need to be buffered by 25 feet as a wetland defined by Chapter 29.

- b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
- c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
- d. Applications may not be made when the wind is blowing toward marine waters.
- e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

CHAPTER 29

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:
 - I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:

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OUST XP LABEL

any requirements specific to your State or Tribe, consult the agency in your State responsible for pesticide regulation.

PRODUCT INFORMATION

Oust® XP Herbicide is a dispersible granule that is mixed in water and applied as a spray or impregnated on dry, bulk fertilizer. Oust® XP Herbicide controls many annual and perennial grasses and broadleaf weeds in forestry and non-crop sites.

Oust® XP Herbicide may be used for general weed control on terrestrial noncrop sites and for selective weed control in certain types of unimproved turf grasses on these same sites. Oust® XP Herbicide may also be used for selective weed control in forest site preparation and in the release of certain conifers and hardwoods. Oust® XP Herbicide can be tank mixed with other herbicides registered for use in forestry and noncrop sites; when tank mixing, use the most restrictive limitations from the labeling of both products.

When applied as spray, Oust® XP Herbicide controls weeds by both preemergence and postemergence activity. When applied on dry fertilizer, Oust® XP Herbicide controls weeds by preemergence activity. When applied as a spray, the best results are obtained when the application is made before the early stages of weed growth before weeds develop an established root system. When applied on dry fertilizer, the best results are obtained when the application is made before weed emergence. The best results are obtained when the application is made before or during the early stages of weed growth before weeds develop an established root system. Moisture is required to move Oust® XP Herbicide into the root zone of weeds for preemergence control.

This product may be applied on forestry and non-agricultural sites that contain areas of temporary surface water caused by collection of water between planting beds, in equipment ruts, or in other depressions created by management activities. It is permissible to treat intermittently flooded low lying sites, seasonal dry flood plains and transitional areas between upland and lowland sites when no water is present. It is also permissible to treat marshes, swamps and bogs after water has receded, as well as seasonally dry flood deltas. DO NOT make applications to natural or man-made bodies of water such as lakes, reservoirs, ponds, streams and canals.

A drift control agent may be used at the manufacturer's listed rate in the application of Oust® XP Herbicide.

Oust® XP Herbicide is noncorrosive, nonflammable, non-volatile and does not freeze.

For best postemergence results, apply Oust® XP Herbicide to young, actively growing weeds. The use rate depends upon the weed species, weed size at application, and soil texture. The degree and duration of control may depend on the following:

- weed spectrum and infestation intensity
- weed size at application
- environmental conditions at and following treatment
- soil pH, soil moisture, and soil organic matter

STORAGE AND DISPOSAL (continued)

Container Handling (continued)

Triple rinse as follows: To clean the container before final disposal, empty the remaining contents from this container into application equipment or mix tank. Fill the container about 10% full with water. Agitate vigorously or recirculate water with the pump for 2 minutes. Pour or pump rinsate into application equipment or rinsate collection system. Repeat this rinsing procedure two more times.

When this container is empty, replace the cap and seal all openings that have been opened during use; return the container to the point of purchase or to a designated location. This container must only be refilled with a pesticide product. Prior to refilling, inspect carefully for damage such as cracks, punctures, abrasions, worn-out threads and closure devices. Check for leaks after refilling and before transport. **DO NOT** transport if this container is damaged or leaking. If the container is damaged, or leaking, or obsolete and not returned to the point of purchase or to a designated location, triple rinse emptied container and offer for recycling, if available, or dispose of container in compliance with state and local regulations.

IMPORTANT

DO NOT use on food or feed crops. **DO NOT** use on Christmas trees. **DO NOT** treat irrigation ditches, or water used for crop irrigation or for domestic uses. Keep from contact with fertilizers, insecticides, fungicides, and seeds to prevent unintentional exposure of desirable vegetation to **Arsenal® herbicide Applicators Concentrate**. **DO NOT** apply or drain or flush equipment on or near sensitive desirable plants, or on areas where their roots may extend, or in locations where the chemical may be washed or moved into contact with their roots. **DO NOT** side trim desirable vegetation with this product. Prevent drift of spray to desirable plants.

Clean application equipment after using this product by thoroughly flushing with water.

GENERAL INFORMATION

Arsenal herbicide Applicators Concentrate is a surfactant-free aqueous solution to be mixed in water and generally applied as a postemergence spray for control of most annual and perennial grasses, broadleaf weeds, vines and brambles, and hardwood brush and trees for forestry site preparation and release of conifers from woody and herbaceous competition.

Arsenal herbicide Applicators Concentrate may be used for selective woody and herbaceous weed control in natural regeneration of certain conifers (see **CONIFER RELEASE TREATMENTS**). **Arsenal herbicide Applicators Concentrate** may also be mixed in water and used for stump and cut-stem treatment for control of unwanted woody vegetation. **Arsenal herbicide Applicators Concentrate** may be applied to control undesirable woody vegetation along forest roads that are contiguous with the treated forestry area.

Arsenal herbicide Applicators Concentrate is also recommended for the control of undesirable vegetation along nonirrigation ditchbanks and for the establishment and maintenance of wildlife openings, except in the state of California. See use directions for **STUMP AND CUT-STEM TREATMENTS, HERBACEOUS WEED CONTROL, and USE OF ARSENAL HERBICIDE APPLICATORS CONCENTRATE FOR SPOT TREATMENT OF UNDESIRABLE HARDWOOD VEGETATION.**

Arsenal herbicide Applicators Concentrate may be applied on forestry sites that contain areas of temporary surface water caused by the collection of water between planting beds, in equipment ruts, or in other depressions created by forest management activities, except in the states of California and New York. It is permissible to treat drainage ditches, intermittent drainage, intermittently flooded low-lying sites, seasonally dry flood plains, and transitional areas between upland and lowland sites when no water is present, except in the states of California and New York. Only the edge of drainage ditches can be treated for drainage ditches that contain water. It is also permissible to treat marshes, swamps, and bogs after water has receded, as well as seasonally dry flood deltas, except in the states of California and New York. **DO NOT** make applications to natural or man-made bodies of water such as lakes, reservoirs, ponds, streams, rivers and canals.

SYMPTOMOLOGY

Arsenal herbicide Applicators Concentrate is readily absorbed through foliage and roots and is translocated rapidly throughout the plant, with accumulation in the meristematic regions. Treated plants stop growing soon after spray application. Chlorosis first appears in the youngest leaf tissue. In perennials, the herbicide is translocated into the roots, thus preventing most resprouting. Chlorosis and tissue necrosis may not be apparent in some plant species for several weeks after application. Woody plants, brush, and trees normally **DO NOT** display the full extent of herbicide control until several months following application.

MIXING AND APPLICATION INSTRUCTIONS

MANAGING OFF-TARGET MOVEMENT

The following information is provided as general guidance for managing off-target movement. Specific use recommendations for **Arsenal herbicide Applicators Concentrate** may differ depending on the application technique used and the vegetation management objective. **Spray Drift:** Avoiding spray drift at the application site is the responsibility of the applicator. The interaction of many equipment-related and weather-related factors determines the potential for spray drift. The applicator and the grower are responsible for considering all these factors when making decisions.

Spray drift from applying this product may result in damage to sensitive plants adjacent to the treatment area. Only apply this product when the potential for drift to these and other adjacent sensitive areas (e.g. residential areas,