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

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

June 4, 2021

9:00 AM Board Meeting

Video conference hosted in MS Teams, to join the meeting:
Web link for the Microsoft Teams meeting:
Join on your computer or mobile app
Click here to join the meeting
Or call in (audio only)
+1 207-209-4724
Phone Conference ID: 998 223 734#

AGENDA

1. Introductions of Board and Staff

2. Minutes of the April 16, 2021 Board Meeting

   Presentation By: Megan Patterson, Director

   Action Needed: Amend and/or approve

3. Continuation of the BPC Budget Review with a Focus on the Cost of MePERLS Support, Maintenance, Hosting, and Licensing

   At the January 20, 2021 meeting, the Board was provided information about the projected cost of MePERLS. This information was presented by State of Maine Office of Information Technology at the request of the Board. The State of Maine Office of Information Technology serves an essential role in negotiating contracts with both PegaSystems and Stratosphere and can provide a comprehensive overview of the technology and the relative costs. The Board indicated that would like to continue the discussion about the ongoing costs of MePERLS and the feasibility of supporting these costs within the existing budget.

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING

PHONE: (207) 287-2731
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Presentation By: Aimee Carlton,

Action Needed: Determine next steps

5. Other Old and New Business

a. Email from Asher Putterman

b. Letter from Conservation Law Foundation and Public Employees for Environmental Responsibility

c. Letter from Versant Power

d. LD 125—An Act to Prohibit the Aerial Spraying of Glyphosate and Other Synthetic Herbicides for the Purpose of Silviculture

e. LD 155—Resolve, Directing the Board of Pesticides Control to Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use

f. LD 264—An Act to Prohibit Aerial Application of Perfluoroalkyl and Polyfluoroalkyl Substances

g. LD 316—An Act to Prohibit the Use of Chlorpyrifos

h. LD 519—An Act to Protect Children from Exposure to Toxic Chemicals

i. LD 524—An Act to Require Schools to Submit Pest Management Activity Logs to the Board of Pesticides Control and the Posting of Inspection Results for the Purpose of Providing Information to the Public

j. LD 808—An Act to Clarify the Funding for the University of Maine Cooperative Extension Diagnostic and Research Laboratory

k. LD 1158—An Act Regarding the Application of Certain Pesticides for Nonagricultural Use

l. LD 1159—An Act to Amend the Membership Requirements of the Board of Pesticides Control

m. LD 1599—An Act to Provide Maine People with Access to Information Regarding the Use of Pesticides in Maine

n. Variance Permit for CMR 01-026 Chapter 29, Maine Department of Transportation, Bureau of Maintenance & Operations

o. Variance Permit for CMR 01-026 Chapter 29, RWC, Inc.

p. Variance Permit for CMR 01-026 Chapter 29, Asplundh Tree Expert Co.- Railroad Division

q. Variance permit for CMR 01-026 Chapter 29, Acadia National Park

6. Schedule of Future Meetings

   July 16, August 27, and October 8, 2021 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

   Adjustments and/or Additional Dates?

7. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
  - *For regular, non-rulemaking business,* the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the Board's office or pesticides@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.

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AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

April 16, 2021

9:00 AM Board Meeting

Video conference hosted in MS Teams

MINUTES

Present: Adams, Bohlen, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

   - The Board, Assistant Attorney General Randlett, and Staff introduced themselves
   - Staff: Brown, Bryer, Connors, Couture, Nelson, Patterson, Peacock, Pietroski, Saucier, Tomlinson

2. Minutes of the March 5, 2021 Board Meeting

   Presentation By: Megan Patterson, Director

   Action Needed: Amend and/or approve

   - **Jemison/Granger: Moved and seconded to accept meeting minutes**
   - **In Favor: Unanimous**

3. Report on Annual Funding to Maine CDC for Mosquito Monitoring

   The Maine Center for Disease Control and Prevention (Maine CDC) coordinates state activities around preventing vector-borne diseases. As part of its responsibilities, the CDC coordinates mosquito and disease monitoring in Maine. The presence of mosquito-borne diseases and the species of vector mosquitoes present in Maine have been on the rise in recent years. Maine CDC and BPC entered into a Memorandum of Understanding in 2013 to establish cooperation to conduct surveillance for mosquito-borne diseases to protect public health. At the July 24, 2020 meeting Sara Robinson of the Maine CDC provided an overview of the trends and the state's monitoring program. At the July 24, 2020 meeting, the Board

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voted to approve funding in the amount of $50,000 for Maine CDC's mosquito monitoring efforts. The Board will now review a report on work accomplished in the previous year and work projected for the current year.

Presentation By: Sara Robinson, Infectious Disease Epidemiology Program Director

Action Needed: Review work accomplished and determine if the Board wishes to fund this request

- Sara Robinson updated the Board on mosquito monitoring conducted last year and plans for the upcoming year. She explained that the BPC was the only reason they were able to monitor last year because their federal funding was cut by $200,000. Robinson stated that Maine CDC collected and tested 527 pools, and all were negative. She added that the lab had to decrease to biweekly testing due to lab constraints during the pandemic but hoped to return to pre-pandemic testing this year.

- Morrill commented that last year the Board increased funding because they knew federal funding was unsteady and he was glad it helped keep the program going. Morrill asked Robinson what amount of funding they were looking for this year.

- Robinson responded that they were hoping for similar funding as last year but would happily accept whatever the Board could offer.

- There was discussion about whether funds were available this year to grant the same amount as last year. Patterson replied that there were sufficient funds.

    - **Adams/Jemison: Moved and seconded to fund request at $50,000**
    - **In Favor: Unanimous**

4. <u>Updated Reporting on Pesticide Poisonings in Maine</u>

Staff have compiled data on the patterns of pesticide poisonings in Maine. Call data were collected from both the Northern New England Poison Control (NNEPC) and the National Pesticide Information (NPIC). NNEPC and NPIC submitted two years' worth of data from Maine callers with pesticide. Staff will now discuss summaries of those data.

Presentation By: Pam Bryer, Toxicologist

Action Needed: Information only

- Bryer reviewed the summary document of pesticide poisonings she collected for the Board.

- Bryer stated that call volumes peaked in the height of summer and mostly involved children under five and took place at peoples' homes. Insecticides were the primary class of pesticides that caused calls. There were no pesticide deaths in the two years of call data, however two people were classified as having a major effect, meaning it was a life-threatening exposure. Bryer noted that intentional misuses and suicide attempts fell to 14 in 2020 from 20 in 2019. Bryer told the Board that as expected 2020 had an increase in the spring in disinfectant calls and the largest burdens of those exposures were in

children. She added that overall insecticides, repellants, and disinfectants were the classes of most concern. Bryer stated that the National Pesticide Information Center's list of questions asked was a good snapshot of questions commonly asked by homeowners.

- Bohlen commented that it was worth remembering that most exposures were from over the counter products and that he really appreciated seeing this information in a way they had not before.
- Morrill stated that this was the most informative data they had seen regarding exposures and gave the Board a glimpse into how to make a real impact with the information the BPC provides to the public.
- Bryer stated that the next step would be to reach out to the Maine Department of Labor to get worker's compensation classifications to try and get some useful information on exposures in the workplace.

5. Discussion of Pesticide Applications to Saturated Soils

Staff have recently received inquiries from the public concerning lawn care applications made to saturated soils and in close proximity to standing water. This is a continuation of a discussion staff began in 2005 regarding soggy lawns. At that time a committee was formed to address the issue and guidance document was developed on best management practices for pesticide applications on turf. Staff will now discuss their proposed plan of action.

Presentation By: Megan Patterson, Director

Action Needed: Determine next steps

- Patterson discussed the reasoning for the formation of the Soggy Lawns Committee in 2005 and the turf best management practices document developed with the input from multiple entities. She added that staff were still experiencing the same issues with early applications. Patterson stated that staff had received calls from the public and other applicators concerned about seeing applications being made in early March to wet lawns and frozen soils. One staff member saw where spreader tires had run very close to standing water. She asked the Board if they would like Staff to proceed with additional efforts to look into this issue.
- Jemison stated he thought they developed a very good product in 2005 and they could reformat it, change its appearance, and then send out to people. He added that it would only take a couple meetings with the same group of people to get suggestions on changes, repackaging and reformatting and then next spring or winter conduct outreach again. Jemison said he did not think they could get it together soon enough to make a difference this year because it was already mid-April and applications were being made.
- Bohlen suggested moving what he thought of as bottom-line recommendations on the back page in small print to the front page. He also suggested thinking about the kinds of treatments that were happening now that were not occurring in 2005, like tick and mosquito treatments.

- Morrill suggested changing it from a pamphlet to a more digital media friendly format. He stated that he remembered when this document was created, and staff went through and audited records and issued some enforcement actions.
- Patterson responded that that was certainly something staff could do if it was of interest to the Board.
- Morrill stated he thought the Board would certainly approve of that and added that perhaps Board staff could work to reformat the pamphlet and put it into new digital format and then bring it back to the Board and reconvene a group of stakeholders. He suggested bringing in someone who could create a message which resonated a little better.

6. Review of Board Member Terms and Appointments

At the March 5, 2021 meeting of the Board, members elected officers. Board member term limits and reappointments were discussed. The Board requested a review of term limits and plans for reappointment and new appointment at the next meeting.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson stated that terms for Granger and Flewelling expired in 2019 and they had been serving at will since that time. Terms for Bohlen and Morrill expired in 2020 and 2021 is when the term for Adams will end. Jemison and Waterman's terms will expire in 2022. She added that all those who had expired had not been reconfirmed. Patterson said if any expired members would like to continue serving on the Board she encouraged them to submit their application to the Governor's Office of Boards and Commissions. Necessary forms are available on the Office of Boards and Commissions webpage under confirmable boards and commissions. She added that the Governor needed to make all Board recommendations, the ACF committee approves those recommendations, and the full senate confirms the appointments.

7. Continuation of the BPC Budget Review with a Focus on the Cost of MePERLS Support, Maintenance, Hosting, and Licensing

At the January 20, 2021 meeting, the Board was provided information about the projected cost of MePERLS. This information was presented by State of Maine Office of Information Technology at the request of the Board. The State of Maine Office of Information Technology serves an essential role in negotiating contracts with both PegaSystems and Stratosphere and can provide a comprehensive overview of the technology and the relative costs. The Board indicated that would like to continue the discussion about the ongoing costs of MePERLS.

Presentation By: Megan Patterson, Director

Action Needed: Determine next steps

- Patterson stated the Board currently has a significant cash balance and the additional cost for MePERLS would begin in October 2022. She asked the Board if it would be helpful for the Department's Business Operations Manager to attend the next Board meeting to provide information about the software hosting, licensing, support, and maintenance fees in the context of the budget.
- Morrill asked if this level of spending would be sustainable once the state stopped supplementing some of this cost.
- Patterson replied that Carlton could speak to that and that Carlton had been thoughtful about program software solutions with high ongoing costs. She added that Carlton was outside the program and could provide the Board with information from a different perspective.

8. Other Old and New Business

a. LD 125—An Act to Prohibit the Aerial Spraying of Glyphosate and Other Synthetic Herbicides for the Purpose of Silviculture—possible work session week of April 26, 2021

b. LD 155—Resolve, Directing the Board of Pesticides Control to Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use—divided report March 9, 2021

c. LD 264—An Act to Prohibit Aerial Application of Perfluoroalkyl and Polyfluoroalkyl Substances—work session not scheduled

d. LD 316—An Act to Prohibit the Use of Chlorpyrifos—work session April 20, 2021

- Patterson stated that the public hearing was scheduled for next Tuesday and asked the Board what a timeline would look like for prohibiting use that people could comply with without ending up with waste product and issues regarding alternative solutions. She summarized phase out timelines and banned uses from a few other states. Patterson noted that in New York the regulators indicated that the short timeline of one year following implementation of prohibition had been difficult to comply with because growers did not feel like they had received timely information and found themselves scrambling to find solutions.

- Granger stated that chlorpyrifos was used by Christmas tree and apple growers. He said it was a broad-spectrum pesticide that took care of many pests, usually only needing one application on Christmas trees around bud break and there was enough residual effect that an additional spray was not required. He added that imidacloprid would work on a lot of the same pests as chlorpyrifos, but it would be applied at a time that would be more likely to affect pollinators. Granger noted that chlorpyrifos was one of the few products that would control balsam wooly adelgid, which had become well established. He stated that he did not see it listed on the poison control center calls reported for the last two years and that it was a very useful product. Granger stated that many of its uses had been

terminated and it was not used much anymore, but it would be a shame if growers did not have time to use what they have in stock.

- Waterman commented on cited medical issues related to chlorpyrifos regarding lower IQs, hormone issues and its effect on the development of fetal brains and normal genital development. He added that a couple of years ago the Academy of Pediatrics suggested that this product should be completely banned. Waterman stated that it had been banned in Europe since 2008, and there was a long and interesting discussion about why it had not yet been banned in the United States. He concluded that he would suggest a shorter phase-out time rather than a longer one.

- Granger commented that balsam wooly adelgid was definitely on the rise and there were likely relatively few people using the product but those who did really found it valuable. He added that some cranberry and blueberry growers likely used it as well.

- Patterson stated the proposed bill stipulated a one-year phaseout with the requirement that product to be used in 2022 must be purchased by January 31, 2022 and used, only with a variance, by December 31, 2022.

- Bohlen commented that people may have already purchased product for this year but was concerned there would be leftover product if it was phased out that quickly. He added that he completely agreed it needed to be banned.

- Jemison inquired about the container size and formulation the product was commonly sold in. He agreed that the product needed to be phased out.

- Granger responded that it was a liquid generally purchased in two and a half gallon jugs. He added that it was used at about one quart per acre and the product lasted a long time, so growers tended to stock up on it. Granger concluded that growers would likely have several years' worth in storage.

- Morrill stated that he agreed with Granger that a one-year phase out may not be enough time and it would force applications on farmers that they would not have made, or it would be disposed of elsewhere.

- Jemison offered to follow up with colleagues about who was using it, what the current usage rates were, and how many acres would be affected.

- Patterson stated that that information would be useful because staff will need to reach out to folks who need alternatives.

e. LD 519—An Act to Protect Children from Exposure to Toxic Chemicals—voted out of committee April 8, 2021—divided report

- Patterson stated the committee majority report included a Medical Advisory Committee (MAC) so it may be relevant to Waterman. She said that the MAC had a standing membership.

- Waterman stated that the Board established the MAC in 2008, and that it had been dormant recently. The purpose of the MAC was to provide medical and toxicology

information and review the science for specific questions pertaining to pesticides. The standing members were supposed to be Waterman as Chair, and the Director of the Northern New England Poison Control Center, Dr. Mark Nevin from Portland who are both happy to assume their role in the MAC. The third member was supposed to be the State Toxicologist, Andrew Smith. Smith responded that he and his staff cannot currently commit to service on the MAC due to demands of COVID-19 and PFAS issues. Waterman stated that Dr. Smith mentioned a couple names of people that are physicians in the toxicology field who may be able to serve on the MAC in his place. He added that he had not contacted them yet.

- Morrill thanked Waterman and said we have not had a MAC for some time, and he was very glad to have Waterman as a Board member and spearheading this process.

f. LD 524—An Act to Require Schools to Submit Pest Management Activity Logs to the Board of Pesticides Control and the Posting of Inspection Results for the Purpose of Providing Information to the Public—tabled April 8, 2021 to be scheduled with the hearing for LR 1896—An Act To Provide Maine People with Access to Information Regarding the Use of Pesticides in Maine

g. LD 808—An Act To Clarify the Funding for the University of Maine Cooperative Extension Diagnostic and Research Laboratory—hearing not scheduled

h. LD 1158—An Act Regarding the Application of Certain Pesticides for Nonagricultural Use—hearing scheduled April 13, 2021

i. LD 1159—An Act To Amend the Membership Requirements of the Board of Pesticides Control—hearing scheduled April 13, 2021

j. Spruce budworm in Maine

k. Policy Regarding Interpretation of CMR 01-01A, Chapter 26, Section 3(B) Notification and Posting in the Context of Powered Application of General Use Antimicrobial Pesticides for Routine Cleaning

l. Update on EPA investigation of container fluorination, pesticides, and PFAS

- Patterson told the Board that EPA clarified their initial comment that there were no PFAS in pesticides. They stated that they were referring to long chain PFAS. Patterson said EPA stated they were now looking at the full range of PFAS to determine which ones were of toxicological concern.

- Granger asked if there were any products with PFAS in them or was it all from containers.

- Patterson stated the EPA was working through lists of active and inert ingredients and some have been identified as PFAS, but it is unclear if they are currently in use in pesticides. She told the Board that there were a diversity of opinion on what PFAS were of toxicological significance and staff could provide some literature on this.

- Bryer stated that the scope of this issue is likely far broader than just pesticides.

- Bohlen commented that PFAS were turning up in huge quantities in wastewater flows and were finding their ways into marine environments very quickly. He added he thought this was an example of a much larger issue.

m. Proposed municipal ordinance—Westmanland

n. Seresto collars

- Bryer stated this was added as informational after an investigative report on about 1,700 pet deaths caused by Seresto collars and that EPA had not issued a warning. She got information from what is called the 6(a)(2) report, which is a permanent record for each registration added to every time someone calls the 800 number on a label. Bryer added that EPA pesticide registration review occurred every 15 years and they go through these calls, categorize them, and decide whether there was a correlation between the product and the complaint. Bryer noted that EPA did have the ability to issue reviews at any time. She stated that from the 6(a)(2) reports it is clear that pet products will cause adverse reactions in pets, not just Seresto, ranging from redness and irritation to seizures and death. Bryer told the Board that there was no information on any adverse reactions occurring in Maine.

o. EPA proposed cancellation of pentachlorophenol

- Patterson told the Board this product was used primarily to treat telephone poles and discussion of cancellations had been going on for years. She added that there were alternatives that could be used but was unsure about the relative efficacy of the alternatives.

9. Schedule of Future Meetings

July 16, August 27, and October 8, 2021 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

10. Adjourn

- **Waterman/Jemison: Moved and seconded to adjourn at 11:02 AM**
- **In Favor: Unanimous**

5a

From: Fish, Gary
To: asher p
Cc: Yurlina, Mary; Patterson, Megan L; Tomlinson, Mary E
Subject: RE: zoom meeting this week?
Date: Tuesday, May 04, 2021 7:35:17 AM

Hi Asher,

I suggest you work with Megan Patterson the BPC director and Mary Tomlinson, the Pesticide Registrar. I have cc'd both of them on this reply.

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Gary Fish
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http://www.maine.gov/dacf/php/index.shtml
www.yardscaping.org
www.gotpests.org

From: asher p <asherputterman@googlemail.com>
Sent: Monday, May 03, 2021 6:01 PM
To: Fish, Gary <Gary.Fish@maine.gov>
Cc: Yurlina, Mary <Mary.Yurlina@maine.gov>
Subject: Re: zoom meeting this week?

Hi Gary,
I apologise, I may have been unclear in my email, this is in regard to the MMP program, although it seems there should be some unity with hemp too. My understanding was that there were some sort of lists within the hemp and adult use programs for allowable pesticides.
I knew you were with the board of pesticide control and now your cannabis experience, made me think of you. Is there someone youd recommend speaking to at the pesticide board? We'd definitely like professional input and recommendations. We are including folks from Mofga as the adult use standards seem to be pulling from there and wed love to steer this towards organics.
Mostly just looking for some direction in pulling together facts from professionals in these fields. Just trying to push people towards some safe standard practices. Thank you for your time.
Asher

On Mon, May 3, 2021, 12:12 PM Fish, Gary <Gary.Fish@maine.gov> wrote:

> Hi Asher,

On Tuesday the ACF Committee is holding a work session on LD 33. I will not be available that day because there is no way of knowing when they will take it up. We are very interested in helping growers make sound IPM decisions. Seems like you should also include someone from the Board of Pesticides Control. Unfortunately there will be no easy answers to this dilemma for some time. Until the research can be done, pesticides will not be labeled for use on hemp. Since hemp is not a major crop the pesticide manufacturers will not pursue the research needed to provide EPA with the registration data. They will rely on the IR-4 Program at our Universities to do the research.

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From: asher p <asherputterman@googlemail.com>
Sent: Sunday, May 02, 2021 9:48 PM
To: Fish, Gary <Gary.Fish@maine.gov>
Subject: zoom meeting this week?

Hi Gary,

My name is Asher Putterman, I'm a farmer in Warren. My wife and I have a cut flower farm, we also grow some Cannabis and were participants in the hemp program a couple years ago. I'm involved in helping develop cannabis policy at the state level and have been working with other caregivers and farmers in the state as well as several advocacy groups for several years. Currently we're trying to craft general ag practices, allowed pesticide lists, etc.. Your name came up the other day as we were discussing some options to get growers on a similar page of best practices. I personally appreciate all you did to advocate for hemp farmers in the early years of the hemp program. I was wondering if you could join myself, John Jemison, maybe Chris Grigsby and Arleigh Kraus on a quick zoom this week, maybe tues or thurs. to chat briefly about what directions we could go with some ideas we have. We would love to hear your thoughts and insights in the arena of developing an approved pesticides list as well as general ag practices.

We'd love to steer this emerging industry in the direction of adopting organic standards and were thinking of building our list from that side of regulation.

Sorry for the short notice, these issues have moved very quickly through the legislature. There's a work group on Monday and we hope to try to get some ideas clarified by the end of the week.

Thank you,
Asher Putterman
asherputterman@gmail.com

5b

May 17, 2021

By email

Commissioner Amanda Beal
Maine Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, ME 04333

Commissioner Melanie Loyzim
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333

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

Re: Agency action needed to address PFAS contamination in pesticides

Dear Commissioner Beal, Commissioner Loyzim, and Director Patterson,

We write to raise the urgent issue of pesticides contaminated with per- and polyfluoroalkyl substances ("PFAS"), toxic "forever chemicals." Recent tests conducted by the U.S. Environmental Protection Agency ("EPA") and Public Employees for Environmental Responsibility ("PEER") have shown alarmingly high concentrations of PFAS in pesticide products registered and used in Maine. This will only further complicate the issue of PFAS contamination of water supplies and soils that have already impacted communities and public health across the state, as you well know. We ask that your agencies take the following steps to protect Maine's residents and environment from exposure to PFAS in pesticides:

(1) Prohibit or suspend distribution and use of pesticides shown to contain PFAS;
(2) Develop and implement a plan to test all pesticide products registered in Maine for PFAS contamination, prioritizing the most commonly used pesticides in the state;
(3) Develop and implement a comprehensive environmental testing program to test for PFAS in areas where PFAS-contaminated pesticides have been applied, with a focus on

comparing PFAS levels in such areas with PFAS levels in areas where contaminated pesticides have not been applied;

(4) Coordinate with the Department of Health and Human Services and other state agencies to develop a comprehensive plan for investigating the issue of PFAS contamination in pesticides including identifying and addressing environmental contamination and potential health impacts; and

(5) Schedule a meeting with the undersigned staff from CLF and PEER to discuss the issue further.

Overview of PFAS & Health Effects

Per- and polyfluoroalkyl substances, known as PFAS, are human-made chemicals used in hundreds of products and industrial processes. PFAS are known as "forever chemicals" because they never fully break down in the environment. They are also highly mobile in water and bioaccumulative.

PFAS are toxic to humans in concentrations as small as parts per trillion ("ppt").[1] These chemicals are associated with cancer and have been linked to growth, learning, and behavioral problems in infants and children; fertility and pregnancy problems, including pre-eclampsia; interference with natural human hormones; increased cholesterol; immune system problems; and, interference with liver, thyroid, and pancreatic function.[2] PFAS have been linked to increases in testicular and kidney cancer in human adults.[3]

Alarmingly, PFAS toxicity targets the immune system. Epidemiological studies have found decreased antibody response to vaccines,[4] and associations between blood serum PFAS levels and both immune system hypersensitivity and autoimmune disorders like asthma and ulcerative colitis.[5] The negative immune system effects of PFAS are extremely concerning given the ongoing COVID-19 pandemic. Recently, the Centers for Disease Control and Prevention released a "Statement on Potential Intersection between PFAS Exposure and COVID-19," which recognized the "evidence from human and animal studies that PFAS exposure may reduce antibody responses to vaccines . . . and may reduce infectious disease resistance."[6]

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[1] U.S. Department of Health & Human Services, Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls* (June 2018), at 5–6, https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf.

[2] *Id*.

[3] *Id*. at 6; Vaughn Barry et al., *Perfluorooctanoic Acid (PFOA) Exposures and Incident Cancers among Adults Living Near a Chemical Plant*, 121 ENVIRONMENTAL HEALTH PERSPECTIVES 1313, 1313 (2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3855514/pdf/ehp.1306615.pdf.

[4] Elsie M. Sunderland et. al., *A Review of the Pathways of Human Exposure to Poly- and Perfluoroalkyl Substances (PFASs) and Present Understanding of Health Effects*, 29 JOURNAL OF EXPOSURE SCIENCE AND ENVIRONMENTAL EPIDEMIOLOGY, no. 2, (2018), https://pubmed.ncbi.nlm.nih.gov/30470793/.

[5] *See* U.S. Environmental Protection Agency, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, 39 (May 2016), https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_health_advisory_final_508.pdf.

[6] Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry, *Statement on Potential Intersection between PFAS Exposure and COVID-19*, https://www.atsdr.cdc.gov/pfas/health-effects/index.html (last visited Mar. 29, 2021).

PFAS Contamination in Pesticides

In fall 2020, Public Employees for Environmental Responsibility ("PEER") tested the insecticide Anvil 10 + 10 ("Anvil") and discovered that it contains PFAS. Specifically, PEER's tests found 250 ppt of perfluorooctanoic acid ("PFOA"), and 260 – 500 ppt of hexafluoropropylene oxide dimer acid ("HFPO-DA"), a "GenX" replacement for PFOA.[7] PFOA was phased out of production starting in 2006 because of serious concerns over its harmful effects on human health and the environment.[8] PEER notified the Massachusetts Department of Environmental Protection ("DEP") and the U.S. Environmental Protection Agency ("EPA"). In December 2020, the *Boston Globe* reported on PEER's findings, confirming that DEP had tested Anvil and found levels of multiple PFAS compounds that substantially exceed the state's new limits on PFAS in drinking water.[9]

Anvil, manufactured by Clarke, is used widely for mosquito control. At least twenty-six states – including Maine – have used or purchased Anvil for mosquito control in recent years.[10] Clarke stores and ships Anvil and some of its other pesticides in a type of plastic container called high density polyethylene ("HDPE"). Clarke's HDPE containers are fluorinated in order to make them less permeable and reactive.[11] EPA testing revealed that the fluorinated containers used to store Anvil contain eight different PFAS compounds – including one type of PFAS, PFOA, for which EPA has issued a health advisory[12] – at levels ranging from 20,000-50,000 parts per trillion.[13]

EPA's theory is that the PFAS are likely leaching from the fluorinated containers into the pesticide stored inside.[14] If the fluorinated containers are the source of the PFAS in Anvil, this problem likely extends well beyond pesticides produced by Clarke. This could be a problem for

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[7] Public Employees for Environmental Responsibility, *Press Release: Aerially Sprayed Pesticide Contains PFAS* (December 1, 2020), https://www.peer.org/aerially-sprayed-pesticide-contains-pfas/.

[8] *See* U.S. Environmental Protection Agency, *Assessing and Managing Chemicals under TSCA, Fact Sheet: 2010/2015 PFOA Stewardship Program*, https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program#what (last visited Mar. 29, 2021).

[9] David Abel, *Toxic "Forever Chemicals" Found in Pesticide Used on Millions of Mass. Acres When Spraying for Mosquitoes*, BOSTON GLOBE, December 1, 2020, https://www.bostonglobe.com/2020/12/01/metro/toxic-forever-chemicals-found-pesticide-used-millions-mass-acres-when-spraying-mosquitos/.

[10] *See* U.S. Environmental Protection Agency, *EPA Takes Action to Investigate PFAS Contamination* (January 14, 2021) https://www1.maine.gov/dacf//php/pesticides/documents2/bd_mtgs/mar21/6o-EPA-PFAS-files-combined.pdf (listing states, including Maine, that purchased Anvil from Clarke between 2018 and 2020).

[11] U.S. Environmental Protection Agency, *Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide Packaging*, https://www.epa.gov/pesticides/pfas-packaging (last visited Mar. 29, 2021).

[12] See U.S. Environmental Protection Agency, *Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide Packaging*, https://www.epa.gov/pesticides/pfas-packaging (last visited Mar. 29, 2021) (listing PFAS found in Anvil packaging); U.S. Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited May 4, 2021) (explaining lifetime health advisory for PFOA and PFOS at 70 ppt).

[13] U.S. Environmental Protection Agency, *Memorandum, EPA's Analytical Chemistry Branch PFAS Testing: Rinses from Selected Fluorinated and Non-Fluorinated HDPE Containers*, 3 (March 4, 2021), https://www.epa.gov/sites/production/files/2021-03/documents/results-of-rinsates-samples_03042021.pdf.

[14] U.S. Environmental Protection Agency, *News Release: EPA Takes Action to Investigate PFAS Contamination*, (January 14, 2021), https://www.epa.gov/newsreleases/epa-takes-action-investigate-pfas-contamination.

hundreds or even thousands of pesticide products, as fluorination is a common treatment for pesticide packaging.[15]

Additional testing conducted by PEER has revealed PFAS contamination in the mosquito and tick control pesticide Mavrik Perimeter ("Mavrik"), manufactured by Zoecon, and the mosquito control pesticide Permanone 30–30 ("Permanone"), manufactured by Bayer Environmental Science.[16] Both Mavrik and Permanone are registered for use in Maine. PEER's testing found PFAS present in Mavrik at a total concentration of 280 ppt.[17] In Permanone, PEER found 3,500 ppt of PFOA and 630 ppt of HFPO-DA.[18] For reference, EPA's health advisory level for PFOA is only 70 ppt.[19] EPA has not yet taken action on the discovery of PFAS in Mavrik, Permanone, and other pesticides. Clearly, these results strongly suggest that PFAS contamination of pesticides is a widespread issue, affecting an unknown number of pesticide products. In addition to Anvil, Mavrik, and Permanone, PEER has discovered PFAS contamination in at least three other pesticides, which PEER will identify once it has completed final tests to confirm the PFAS contamination levels in those pesticides.

PEER's recent findings also suggest that leaching from fluorinated containers is not the only source of PFAS contamination in pesticides. First, the Permanone PEER tested is sold in metal barrels, not the fluorinated HDPE barrels that Anvil is stored in.[20] Second, both the high levels of PFAS found in PEER's most recent tests and the fact that the tests found different PFAS in many of the pesticides suggest that there is at least one other source of contamination in addition to fluorination of pesticide packaging. Possible sources include PFAS applied to the equipment used to manufacture or package the pesticides or PFAS that are intentionally added as "inert" ingredients to the pesticide products.

PFAS may be added to pesticides as inert ingredients without the public's knowledge. Most pesticide manufacturers do not disclose the inert ingredients in their pesticide products. Inert

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[15] *See*, *e.g.*, Office of the Indiana State Chemist and Seed Commissioner, Press Release, January 20, 2021, https://www.oisc.purdue.edu/pesticide/pdf/pfas_in_pesticide_statement_012021.pdf ("According [to] the EPA, 'it is estimated that roughly 20-30% of all rigid agriculture chemical packaging in North America sold into the crop protection market are packaged in fluorinated HDPE containers.'"); Jeremy C. Fox, *EPA Finds Toxic Compounds in Mosquito Spray Used in Mass.; Maker Will Change Packaging*, BOSTON GLOBE, January 14, 2021, https://www.bostonglobe.com/2021/01/15/metro/epa-finds-toxic-compounds-mosquito-spray-used-mass-maker-will-change-packaging/ ("'Fluorinated packaging is widely used by the agricultural industry for finished goods, including pesticides,' [Clarke] said. 'The potential for PFAS chemistry from the fluorinated packaging to leach into finished goods was unknown to Clarke.'").

[16] E.A. Crunden and Ariel Wittenberg, *PFAS in Pesticides: "A Problem of Epic Proportions"*, E&E NEWS, March 5, 2021, https://www.eenews.net/stories/1063726787; E.A. Crunden and Ariel Wittenberg, *Common Mosquito Pesticide Packed with PFAS*, E&E NEWS, March 26, 2021, https://www.eenews.net/stories/1063728605.

[17] E.A. Crunden and Ariel Wittenberg, *PFAS in Pesticides: "A Problem of Epic Proportions"*, E&E NEWS, March 5, 2021, https://www.eenews.net/stories/1063726787.

[18] E.A. Crunden and Ariel Wittenberg, *Common Mosquito Pesticide Packed with PFAS*.

[19] U.S. Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited May 4, 2021).

[20] E.A. Crunden and Ariel Wittenberg, *Common Mosquito Pesticide Packed with PFAS*. It is possible that Permanone is stored in HDPE barrels at some point in the manufacturing or distribution process, but the fact that PFAS exists in the Permanone delivered in metal barrels raises doubts that leaching from HDPE barrels fully explains the PFAS contamination PEER discovered.

ingredients must be approved by EPA, but they are not publicly disclosed if manufacturers claim them as trade secrets under federal pesticide law.[21] EPA has approved a number of PFAS as permissible inert ingredients,[22] but generally only EPA and the manufacturers know which pesticides contain PFAS.

The Department of Environmental Protection's Authority to Regulate PFAS in the Environment

The Maine Department of Environmental Protection ("DEP") has legal authority to protect residents and the environment from PFAS-contaminated pesticides. DEP has the broad authority to "prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State."[23] DEP already tests for the presence of PFAS in certain public water systems; certain groundwater, surface water, and private water supplies; and fish tissue.[24] Testing for PFAS in areas where contaminated pesticides have been applied would be in line with DEP's ongoing investigations of PFAS contamination in Maine's environment.

Governor Mills has prioritized a "coordinated response" by state agencies, including DEP, to "study PFAS distribution, assess the potential environmental and health impacts of PFAS, and recommend effective strategies to reduce or eliminate . . . those impacts."[25] As part of that coordinated effort, DEP participated in the Maine PFAS Task Force. In its final report, the Task Force recommended "[i]dentifying and reducing uses of PFAS," "[i]dentifying and investigating PFAS contaminants in the environment," and "[p]roviding safe drinking water."[26] Specifically, the Task Force recommend accelerating "ongoing efforts to identify prioritized locations and to sample groundwater, surface water and soil for PFAS, analyze sampling results for patterns, and refine models of PFAS fate and transport."[27]

Consistent with those recommendations, state lawmakers have introduced three bills addressing PFAS contamination in the environment. LD 129, as amended, directs the Commissioner of Health and Human Services to adopt rules setting a maximum contaminant level of 20 parts per trillion for six types of PFAS in Maine's drinking water.[28] Recently, the Committee on Health and Human Services voted unanimously to advance LD 129 out of committee with amendments. A second bill, LD 1600 directs DEP to test certain areas of soil and groundwater for PFAS contamination.[29] And a third bill, LD 1503, would establish a comprehensive program

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[21] *See* 7. U.S.C. § 136h (permitting applicants for federal pesticide registration to declare certain information about the pesticide, including the identity of inert ingredients, as non-disclosable trade secrets).
[22] *See* Public Employees for Environmental Responsibility, *Press Release: Aerially Sprayed Pesticide Contains PFAS* (December 1, 2020), https://www.peer.org/aerially-sprayed-pesticide-contains-pfas/.
[23] Me. Rev. Stat. tit. 38, § 341-A; *see also* Exec. Order No. 5 FY 19/20 (March 6, 2019) (recognizing that Maine law charges state agencies, including DEP, with "protecting public health and the environment from the risks of human exposure to these substances").
[24] See Maine PFAS Task Force, *Managing PFAS in Maine* (January 2020), 7, https://www.maine.gov/pfastaskforce/materials/report/PFAS-Task-Force-Report-FINAL-Jan2020.pdf.
[25] Exec. Order No. 5 FY 19/20 (March 6, 2019).
[26] Maine PFAS Task Force, *supra* note 24 at 2.
[27] *Id.*, 22.
[28] LD 129, 130th Me. Leg., 1st Reg. Sess. (2021).
[29] LD 1600, 130th Me. Leg., 1st Spec. Sess. (2021).

administered by DEP for identifying and prohibiting the sale of most products, including pesticides, that contain intentionally added PFAS.[30] Given the legislature's concern over PFAS contamination in Maine's water, soil, and products, DEP should act now to investigate the extent to which PFAS-contaminated pesticides are exacerbating this issue of pressing public health concern.

The high levels of PFAS found in the pesticides sampled emphasize the need for immediate action. EPA has established a health advisory at 70 ppt for two PFAS: PFOA and PFOS.[31] PEER's tests of Anvil and Permanone discovered PFOA at concentrations of 250 and 3,500 ppt, respectively. These concentrations far exceed EPA's health advisory level and underline the need for action to protect Maine's waters and safeguard public health.

The Authority of the Board of Pesticides Control and the Department of Agriculture, Conservation and Forestry to Regulate PFAS in Pesticides

Maine law grants the Board of Pesticides Control ("the Board"), in cooperation with the Department of Agriculture, Conservation and Forestry ("DACF"), broad authority to regulate pesticide distribution, use, and application within the state.[32] Under that authority, there are a range of actions that the Board and DACF could take to protect the environment and residents from exposure to PFAS-contaminated pesticides. Most significantly, the Board has the authority to cancel or suspend the state registration for any pesticide that "might cause unreasonable adverse effects on the environment," or which poses "an imminent hazard."[33]

In addition, the Board has the authority to adopt rules "that it determines necessary to carry out the provisions of [the Maine Pesticide Control Act]," including "[p]roviding for the collection, examination and reporting of samples of pesticides or devices" and "[p]roviding for the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers."[34] The Board could exercise that authority to coordinate a program to test pesticides for PFAS contamination and to address the issue of PFAS leaching from fluorinated containers. The Board also has the authority to issue "stop sale, use or removal" orders to enforce Maine's pesticide laws and protect Maine's residents and environment.[35]

The Board and DACF would not be alone in exercising their authority over pesticides to protect people and the environment. For example, the New York Department of Environmental Conservation acted quickly after learning of the presence of PFAS in Anvil by "quarantine[ing]

[30] LD 1503, 130th Me. Leg., 1st Spec. Sess. (2021).
[31] U.S. Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos (last visited May 4, 2021).
[32] *See, e.g.*, Me. Rev. Stat. tit. 22, § 1471-O ("The powers established under the Maine Pesticide Control Act of 1975 . . . shall be exercised by the Board of Pesticides Control."); Me. Rev. Stat. tit. 22, § 1471-B ("The Commissioner of Agriculture, Conservation and Forestry shall provide the board with administrative services of the department, including assistance in the preparation of the board's budget.").
[33] Me. Rev. Stat. tit. 7, § 609.
[34] Me. Rev. Stat. tit. 7, § 610.
[35] Me. Rev. Stat. tit. 7, § 612.

Anvil 10 + 10 products statewide" and "launching a comprehensive investigation into the universe and use of products stored in [fluorinated HDPE] containers."[36]

It is critical that the Board and DACF act swiftly to protect residents and the environment. Waiting for EPA to address the issue puts residents and the environment at unnecessary risk. EPA has so far relied primarily on voluntary action by Clarke to recall Anvil shipped in fluorinated containers. According to EPA, Clarke has "voluntarily stopped shipment of any products in fluorinated HDPE containers and is conducting its own testing to confirm EPA results and product stability in un-fluorinated containers."[37] EPA has "asked states with existing stock of [Anvil] distributed in fluorinated HDPE containers to discontinue use and hold until its final disposition is determined."[38] EPA's requests for voluntary action are insufficient to address the serious dangers posed by PFAS-contaminated pesticides. EPA's actions do not apply to Mavrik, Permanone, or any other contaminated pesticide and do not apply to consumers, certified applicators, or others who may possess or apply PFAS-contaminated pesticides. The Board and DACF must act to protect residents and the environment.

CLF and PEER's Requests

Given the dangers PFAS pose to Maine's residents and environment and the growing evidence of widespread PFAS contamination in pesticides, CLF and PEER reiterate our request that your agencies take the following actions:

(1) Prohibit or suspend distribution and use of Anvil, Mavrik, Permanone, and any other pesticides shown to contain PFAS;
(2) Develop and implement a plan to test all pesticide products registered in Maine for PFAS contamination, prioritizing the most commonly used pesticides in the state;
(3) Develop and implement a comprehensive environmental testing program to test for PFAS in areas where PFAS-contaminated pesticides have been applied, with a focus on comparing PFAS levels in such areas with PFAS levels in areas where contaminated pesticides have not been applied;
(4) Coordinate with the Department of Health and Human Services and other state agencies to develop a comprehensive plan for investigating the issue of PFAS contamination in pesticides, including identifying and addressing environmental contamination and potential health impacts; and
(5) Schedule a meeting with the undersigned staff from CLF and PEER to discuss the issue further.

[36] New York Department of Environmental Conservation, *Statement from New York State Department of Environmental Conservation Commissioner Basil Seggos on New Investigation of Potential PFAS Contamination* (January 15, 2021), https://www.dec.ny.gov/press/122184.html.
[37] U.S. Environmental Protection Agency, *News Release: EPA Takes Action to Investigate PFAS Contamination* (January 14, 2021), https://www.epa.gov/newsreleases/epa-takes-action-investigate-pfas-contamination.
[38] *Id*.

We appreciate your prompt attention to this urgent issue of public and environmental health and await your response.

Sincerely,

Sean Mahoney
Conservation Law Foundation
Executive Vice President and Director,
CLF Maine
Tel: 207-228-2728
E-mail: smahoney@clf.org

Tim Whitehouse
Public Employees for Environmental
Responsibility
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Colin Antaya
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Legal Fellow
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VERSANT POWER

MAY 21 2021

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May 18, 2021

Mr. Cam Lay

Maine Department of Agriculture
Board of Pesticides Control
28 State House Station
Augusta, Me 04333-0028

Dear Mr. Lay:

The purpose of this letter is to inform the Board of Pesticides Control that Versant Power plans to hydraulically spray fifty-three (53) electric substations and switching stations located in our Southern Operation Region (SOR), formally known as, Bangor Hydro Electric Company and forty-three (43) electric substations and switching stations located in our Northern Operation Region (NOR), formally known as, Maine Public Service Company.

The motorized hydraulic spraying will be conducted under a drift management plan that will be on file in Versant Power's place of business. This plan and associated spray operation will work under stringent parameters to minimize the possibility of any off-sight pesticide drift. Our intent is to spray these ninety-six (96) sites hydraulically this year and all our other locations will be sprayed with non-motorized low volume backpack sprayers. New sites may be added next year for potential hydraulic spraying.

The board will be notified every year with a new count of sites that will be hydraulically sprayed. As always, Versant Power will treat its transmission right of way (ROW) corridors using non-motorized low volume backpack sprayers.

If you have any questions please feel free to contact me at (207) 973-2862 or at Jessica.Webb@VersantPower.com.

Thank you,

Jessica Taylor Webb
Supervisor, Vegetation Management

cc. Mark Chandler, Lucas Tree Ex. Co.
cc. Neil Lyons, Versant Power

L.D. 155

Date: (Filing No. H-)

AGRICULTURE, CONSERVATION AND FORESTRY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE

HOUSE OF REPRESENTATIVES

130TH LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT " " to H.P. 111, L.D. 155, "Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use"

Amend the resolve by striking out everything after the title and inserting the following:

'**Sec. 1. Prohibit the use of certain neonicotinoids for outdoor use. Resolved:** That, pursuant to the Maine Revised Statutes, Title 7, section 610, the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall prohibit the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam used for application in outdoor residential landscapes such as on lawn, turf or ornamental vegetation. Products used for preserving wood, controlling or treating indoor pests, controlling or treating insects outside around structural foundations and other parts of structures and treating pets, as defined under Title 7, section 712, subsection 16, are specifically exempt from the prohibition under this section. The board shall allow the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam by certified applicators as defined under Title 22, section 1471-C, subsection 4 on ornamental vegetation to manage emerging invasive insect pests, including but not limited to the Asian long-horned beetle, emerald ash borer and hemlock wooly adelgid in order to safeguard the public health, safety and welfare of the State and to protect the natural resources of the State. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

Amend the resolve by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

The bill directs the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control to prohibit the use of any product containing certain neonicotinoids used for application in outdoor residential landscapes such as on lawn, turf or ornamental vegetation. The amendment adds products used for controlling or treating insects outside around structural foundations and other parts of structures to the list of products specifically

exempt from the prohibition. The amendment also requires the board to allow the use of certain neonicotinoids by certified applicators on ornamental vegetation to manage emerging invasive insect pests, including but not limited to the Asian long-horned beetle, emerald ash borer and hemlock wooly adelgid in order to safeguard the public health, safety and welfare of the State and to protect the natural resources of the State.

FISCAL NOTE REQUIRED

(See attached)

Committee: Agriculture, Conservation and Forestry
LA: KSN
File Name: G:\COMMITTEES\ACF\Amendments\130th 1st\058302.docx
LR (item)#: 058302
New Title?: Y
Add Emergency?: N
Date: May 21, 2021

Majority Report
OTP-A
(Minority Report ONTP)

COMMITTEE AMENDMENT TO LD 264, AN ACT TO PROHIBIT AERIAL APPLICATION OF PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES

Amend the bill by striking the title and replacing with the following:

Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

Amend the bill by striking out everything after the title and inserting in its place the following:

Sec. 1. Board of Pesticides Control to gather information relating to perfluoroalkyl and polyfluoroalkyl substances. Resolved: That the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall amend rules governing the registration of pesticides in the state to require manufacturers and distributors to provide affidavits stating whether the registered pesticide has ever been stored, distributed or packaged in a fluorinated high-density polyethylene container and manufacturers to provide an affidavit stating whether a perfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide. The board shall conduct a study to determine if fluorinated adjuvants are being used or sold in the state. The board shall explore what is needed to regulate fluorinated adjuvants in the state and shall explore what is necessary to impose a prohibition on the distribution or application of pesticides or adjuvants containing perfluoroalkyl or polyfluoroalkyl substances in the state. The board shall develop a feasible definition of perfluoroalkyl or polyfluoroalkyl adulteration in a pesticide. The board shall submit a report with findings and recommendations to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2022. The joint standing committee may submit a bill to the 130th Legislature relating to the subject matter of the report.

SUMMARY

This amendment strikes and replaces the bill with a resolve. The amendment directs the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control to amend rules governing the registration of pesticides in the state to require manufacturers and distributors to provide affidavits stating whether the registered pesticide has ever been stored, distributed or packaged in a fluorinated high-density polyethylene container and manufacturers to provide an

affidavit stating whether a perfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide. The amendment also directs the board to conduct a study to determine if fluorinated adjuvants are being used or sold in the state. The amendment directs the board to explore what is needed to regulate fluorinated adjuvants in the state and to explore what is necessary to impose a prohibition on the distribution or application of pesticides or adjuvants containing perfluoroalkyl or polyfluoroalkyl substances in the state. The amendment also directs the board to develop a feasible definition of perfluoroalkyl or polyfluoroalkyl adulteration in a pesticide. The amendment directs the board to submit a report, with findings and recommendations, to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2022 and gives the joint standing committee authority to submit a bill to the 130th Legislature relating to the subject matter of the report.

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document **No. 316**

H.P. 220 House of Representatives, February 8, 2021

An Act To Prohibit the Use of Chlorpyrifos

Received by the Clerk of the House on February 4, 2021. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

ROBERT B. HUNT
Clerk

Presented by Representative DOUDERA of Camden.
Cosponsored by Senator MIRAMANT of Knox and
Representatives: GRAMLICH of Old Orchard Beach, GROHOSKI of Ellsworth, O'NEIL of Saco, OSHER of Orono, PEBWORTH of Blue Hill, Senator: MAXMIN of Lincoln.

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

Sec. 1. 7 MRSA §606, sub-§1, ¶E, as amended by PL 2005, c. 620, §5, is further amended to read:

E. A pesticide that is adulterated or misbranded or any device that is misbranded; ~~or~~

Sec. 2. 7 MRSA §606, sub-§1, ¶F, as amended by PL 2005, c. 620, §5, is further amended to read:

F. A pesticide in containers that are unsafe due to damage~~.~~; or

Sec. 3. 7 MRSA §606, sub-§1, ¶G is enacted to read:

G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient.

Sec. 4. Temporary permit for use of pesticide containing chlorpyrifos. Notwithstanding the Maine Revised Statutes, Title 7, section 606, subsection 1, paragraph G, from January 1, 2022 to December 31, 2022 the Board of Pesticides Control may grant a temporary permit authorizing a pesticides applicator licensed by the State to use or apply a pesticide containing chlorpyrifos as an active ingredient, as long as that licensed pesticides applicator possessed the pesticide in the State before January 1, 2022. The Board of Pesticides Control shall post on its publicly accessible website information on the temporary permits issued under this section.

SUMMARY

This bill prohibits the use of pesticides containing chlorpyrifos as an active ingredient beginning January 1, 2022. From January 1, 2022 to December 31, 2022 the Board of Pesticides Control may grant a temporary permit authorizing a pesticides applicator licensed by the State to use or apply a pesticide containing chlorpyrifos as an active ingredient, as long as that licensed pesticides applicator possessed the pesticide in the State before January 1, 2022. The board is required to post on its publicly accessible website information on the temporary permits issued.

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

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

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April 14, 2021

Gustave S. Nothstein
Maine Department of Transportation, Bureau of Maintenance & Operations
16 State House Station
Augusta, Maine 04333-0016

RE: Variance permit for CMR 01-026 Chapter 29, Maine Dept. of Transportation

Dear Mr. Nothstein,

The Board of Pesticides Control considered your application for variance from Chapter 29. The variance is approved, with the condition that Streamline (EPA Reg. No. 352-848) not be applied within 25 feet of water. While the Board recognizes the importance of keeping vegetation out of the right of way areas, they are concerned about this particular pesticide and its relative toxicity to aquatic organisms.

Further, please note that Escort (EPA Reg. No. 352-439) is not currently registered in Maine. However, Escort XP (EPA Reg. No. 432-1549) is registered in Maine.

The Board authorizes the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2022, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan L. Patterson

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING

DEPARTMENT OF Agriculture Conservation & Forestry

PHONE: (207) 287-2731
THINKFIRSTSPRAYLAST.ORG

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

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

5o

April 14, 2021

Brian Chateauvert
RWC, Inc
P.O. Box 876
248 Lockhouse Rd.
Westfield, MA 01086-0876

RE: Variance permit for CMR 01-026 Chapter 29, RWC, Inc

Dear Mr. Chateauvert,

The Board of Pesticides Control considered your application for variance from Chapter 29. The variance is approved, with the condition that Method 240SL (with active ingredient aminocyclopyrachlor) not be applied within 25 feet of water. While the Board recognizes the importance of keeping vegetation out of the right of way areas, they are concerned about this particular pesticide and its relative toxicity to aquatic organisms.

The Board authorizes the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2022, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan L. Patterson

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING

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BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

5p

April 30, 2021

Don Weimann
Asplundh Tree Expert Co.- Railroad Division
740 County Rd 400
Ironton, OH 45638

RE: Variance permit for CMR 01-026 Chapter 29

Dear Mr. Weimann:

This letter will serve as your variance permit for Section 6 of Chapter 29 for vegetation control along the St. Lawrence and Atlantic Railroad right of ways.

The Board has authorized the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2022, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of significant changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your agency employees and contractors adhering to the precautions listed in Section IX of your variance request.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan L. Patterson

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING

DEPARTMENT OF Agriculture Conservation & Forestry

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

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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5q

April 14, 2021

Jesse Wheeler
Acadia National Park
PO Box 177
Bar Harbor, Maine 04609

RE: Variance permit for CMR 01-026 Chapter 29, Acadia National Park

Dear Mr. Wheeler:

In 2013 the board adopted a policy allowing for the issuance of multi-year variances for the control of invasive species. In determining this policy, the Board emphasized the need for a long-term plan for re-vegetation of the site, and demonstration of knowledge of efficacy and appropriate practices—the goal being to ensure that the site is reverted to native species, and not made available for another invasive species.

This letter will serve as your Chapter 29 variance permit until December 31, 2023 for the treatment of invasive Japanese barberry, glossy buckthorn, bush honeysuckle, Asiatic bittersweet, and purple loosestrife at several locations within the boundary of Acadia National Park lands.

Please bear in mind that your permit is based upon adherence to the precautions listed in Section X of your variance application. Also, if it is determined that different products than those listed in Section V are needed, you must contact the Board first and get a new variance.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan L. Patterson

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