



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

Emergency Meeting

**August 17, 2020
7:45 AM**

Video conference hosted in Microsoft Teams, to join the meeting:

Web link for the Microsoft Teams meeting:

[Join Microsoft Teams Meeting](#)

Dial in phone number: 1 (207) 209-4724

Conference ID: 119 200 904#

AGENDA

1. Introductions of Board and Staff
2. Proposed Limited Duration Exemption from Commercial Certification/Licensure Requirements for School Custodial Staff Applying General Use Antimicrobials with Powered Application Equipment for the Purposes of Routine Cleaning in Schools

Board staff have received numerous inquiries from concerned school custodial staff regarding the use of powered application equipment for the application of disinfectants in schools. Under current rule, these applications require a commercial applicator license. On August 6, Facilities and Transportation Directors of over forty schools convened a meeting to discuss the issue and subsequently submitted a letter to the Board requesting an exemption from the certification and licensing requirements. Due to the timing of this request, should the Board support this request, there are limited options by which exemptions could be provided. The Board will now discuss those options, possible approaches to an exemption and next steps.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and determination on how the Board wishes to proceed with the requested exemption

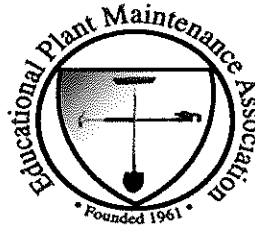
3. Adjourn

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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AUG 12 2020



Andrew R. Madura
President

Mark Hager
Vice President

Shelley Phillips
Treasurer

To Whom It May Concern:

Over forty Facilities and Transportation Directors from schools all around the state met virtually via Zoom on Thursday August 6 to discuss the use of electromagnetic sprayers to apply disinfectants in our schools and on our bus fleets in an effort to respond to enhanced cleaning and disinfecting in the wake of the COVID-19 pandemic. We have been told that, due to a Maine law stating that the use of battery powered spraying devices is only allowed if one holds a pesticide applicators license, unlicensed school employees cannot use these devices. Given the timing of learning this information, there is not enough reasonable time for us or enough of our staff members to become licensed before the start of school.

While we appreciate and understand that laws are put in place for a reason, most of us, as IPM coordinators for our school departments, also know that the increased demand for disinfection of surfaces, and no additional personnel to help with this increased workload, forces the need for us to utilize machines like these electromagnetic sprayers. The devices do several things to assist us in making our schools, buses and school facilities safe:

1.) Because the particles are charged electronically, the particles seek to adhere immediately to surfaces. Compared to hand pump sprayers and spray bottles, the risk is LOWER, for airborne contamination and contaminated air quality. John Pietroski from the Maine Board of Pesticide Control could not answer the question as to the logic of how these devices work differently than the already approved hand pump sprayers and stated he did not have experience using an electrostatic sprayer for disinfectant use, he added that he had heard positive feedback from a few applicators. Mr. Pietroski however did point out that all disinfectants have potential to be harmful to the applicators and the public. The applicator needs to follow the disinfectant label and the equipment instructions.

2.) They reduce the amount of disinfectant needed to cover a surface, as the particles are smaller and adhere immediately. This reduces the overuse of chemicals that pump sprayers and bottles cause, thereby helping keep our budgets for disinfectants under control and treated areas safer by not overapplying disinfectants.

3.) They allow more area to be covered more quickly and evenly by the same or fewer staff with less chemical. ALL of us as school facilities leaders are understaffed during this global pandemic, as we are being asked to perform more cleaning and disinfecting in the same amount of time.

The COVID-19 pandemic is an unprecedented situation that none of us has ever seen or experienced before. We hope to never have to deal with it again during our lifetimes. Our goals in fighting this pandemic are the same: ***Keep our students and staff safe.*** In no way do any of us want to flout the law or have an unreasonable exception made to randomly spray harmful chemicals. Our staff members have been and will continue to be trained in safety matters including the appropriate, safe and responsible ways to apply disinfectants to keep our schools and all of our facilities safe for all.

Please allow for an exemption or waiver to be made to this law, even if it is temporary, so that we can continue to do our jobs in the best and safest way we know how and combat the spread of COVID-19 virus.

Sincerely, Yours

A handwritten signature in black ink, appearing to read 'Andrew R. Madura', with a long, sweeping horizontal line extending to the right.

Andrew R Madura
President
Maine Educational Plant Maintenance Association

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Memorandum

To: Board of Pesticides Control
From: Megan Patterson
Subject: Proposed Limited Duration Exemption from Commercial Certification/Licensure Requirements for School Custodial Staff Applying General Use Antimicrobials with Powered Application Equipment for the Purposes of Routine Cleaning in Schools

August 15, 2020

Under Title 1471 C(5); Title 1471 D(1) and 01-026 CMR Chapter 10 Section 2(I) certification and licensure by the board is required for application of antimicrobial pesticides in the course of routine cleaning using powered application equipment. Board staff have received indication that some school districts want to use powered application equipment to make applications of antimicrobial pesticides for the purpose of managing COVID-19. Some schools have already reopened and others will soon reopen. Given the immediate need for schools currently or soon implementing reopening to be able to make antimicrobial pesticide applications to protect public health, certification and licensure cannot be accomplished in a timely manner.

Should the Board choose to support the provision of a temporary exemption from certification and licensure requirements it is proposed that the following limitations and requirements be considered:

1. Exempt only custodial staff employed by the school. Chapter 10.02(YY) defines "school" as any public or private elementary or secondary school, kindergarten or nursery school that is part of an elementary or secondary school or a tribally funded school.
2. Limit the exemption to the use of powered application equipment used for the application of general use antimicrobial pesticides in the course of routine cleaning related to the management of COVID-19.
3. Limit the exemption to pesticides currently registered by the Maine Board of Pesticides Control.

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4. Limit the exemption to pesticides with EPA approved labeling for use with label specified powered application equipment.
5. Limit the exemption to a specified duration.
6. Require all exempted custodial staff to complete Board of Pesticides Control approved and verified training pertaining to the use of powered application equipment and antimicrobial pesticides.

Additionally, staff have identified that powered applications of general use antimicrobial pesticides require compliance with 01-026 Chapter 27 Sections 4 and 5. Under these sections of rule schools using powered application equipment to apply antimicrobial pesticides must:

1. Provide notification to staff, parents or guardians of students at least 5 days prior to the planned application.
2. Post signs (as required in rule) 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
3. Comply with Integrated Pest Management techniques detailed in Chapter 27.05, specifically the completion and documentation of monitoring for the pest, identification of the pest, determination of treatment threshold exceedance, and utilized non-pesticide control measures.

It is suggested that the Board consider an exemption from some or all of these requirements or modification of the requirements.

There are limited ways by which the Board may enact an exemption from rule with the expedience necessary to immediately address the current situation. Approaches may include:

- emergency rulemaking, which has a limited duration of 90 days; or
- proposing a Governor's executive order

Should the Board choose to proceed with proposing an exemption, it is suggested that an Executive Order could contain some or all of the following language:

Pursuant to 37-B M.R.S. Ch. 13, including but not limited to 37-B M.R.S. §742(l)(C)(l), (12), (13)(a) and §834, order as follows:

- A. Commercial certification and licensing requirements for the application of general use antimicrobial pesticides with powered application equipment by custodial staff in schools, as defined in 01-026 Chapter 10 Section 2 (YY), to control Covid-19, is suspended until (DATE); provided the pesticides used are Maine registered, EPA approved for use with label specified powered equipment, and each exempted custodial staff member completes Board required training.

- B. The requirement in Department Rule Chapter 27.04(B)(1) that the application by school custodial staff of general use antimicrobial pesticides with powered equipment in schools to control Covid-19 be preceded by advanced notification at least five days in advance of the application is suspended until (DATE).

- C. The requirement in Department Rule Chapter 27.04(B)(2) that notice of the application by school custodial staff of general use antimicrobial pesticides with powered equipment in schools to control Covid-19 be posted 48 hours prior to and following the application is suspended until (DATE).

- D. The requirement in Department Rule chapter 27.05(C) that school custodial staff applying general use antimicrobial pesticides with powered equipment to control Covid-19 in schools complete and document monitoring for the pest, identification of the pest, determination of treatment threshold exceedance, and utilized non-pesticide control measures is suspended until (DATE).

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

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

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

Section 1. Definitions

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

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

Section 2. Requirements for All Schools

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

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

Section 3. Exemptions

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

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

Section 4. Notification

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

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

Section 5. Integrated Pest Management Techniques

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

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

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

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

EFFECTIVE DATE:

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

AMENDED:

July 5, 2005 – filing 2005-266

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

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

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds

