



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

JANET T. MILLS
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 COMMISSIONER

Memorandum

To: Board of Pesticides Control
 From: Alexander Peacock, Director
 Subject: Prohibited Acts Update

December 6, 2024

Background:

Upon the Board's acceptance of the Administrative Consent Agreement with Arthur and Amelia Bond in July of 2023, staff have often been asked what can be done to deter violations of unauthorized pesticide applications in the future. MRS Title 7 §606. Prohibited Acts, outlines criteria of pesticide use that are recognized as violations in statute. Staff has prepared sample language for MRS Title 7 §606: Prohibited Acts and MRS Title 22 §1471-D: Certification and Licenses that may enhance statutory provisions to create a greater deterrent for unauthorized applications of pesticides. This topic is brought to the board for input and discussion.

MRS Title 7 §606. Prohibited Acts (Current)

§606. Prohibited acts

- 1. Unlawful distribution.** A person may not distribute in the State any of the following:
 - A. A pesticide that has not been registered pursuant to the provisions of this subchapter; [PL 2005, c. 620, §5 (AMD).]
 - B. A pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect that change and if that change will not violate any provision of FIFRA or this subchapter; [PL 2005, c. 620, §5 (AMD).]
 - C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate

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container cannot be clearly read, a label bearing the information required in this subchapter and rules adopted under this subchapter; [PL 2005, c. 620, §5 (AMD).]

D. A pesticide that has not been colored or discolored pursuant to section 610, subsection 1, paragraph D; [PL 2005, c. 620, §5 (AMD).]

E. A pesticide that is adulterated or misbranded or any device that is misbranded; [PL 2021, c. 105, §1 (AMD).]

F. A pesticide in containers that are unsafe due to damage; [PL 2021, c. 673, §4 (AMD).]

G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient; [PL 2021, c. 673, §4 (AMD).]

H. A pesticide that has been contaminated by perfluoroalkyl and polyfluoroalkyl substances; or [PL 2021, c. 673, §4 (NEW).]

I. Beginning January 1, 2030, a pesticide that contains intentionally added PFAS that may not be sold or distributed pursuant to Title 38, section 1614, subsection 5, paragraph D. [PL 2021, c. 673, §4 (NEW).]

[PL 2021, c. 673, §4 (AMD).]

2. Unlawful alteration, misuse, divulging of formulas, transportation, disposal and noncompliance. A person may not:

A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or rules adopted under this subchapter; [PL 2005, c. 620, §5 (AMD).]

A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter; [PL 2005, c. 620, §5 (NEW).]

B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling; [PL 2005, c. 620, §5 (AMD).]

C. Use for that person's own advantage or reveal, other than to the board or proper officials or employees of the state or federal executive agencies, to the courts of this State or of the United States in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board to contain or relate to trade secrets or commercial or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant; [PL 2005, c. 620, §5 (AMD).]

D. Handle, transport, store, display or distribute pesticides in such a manner as to endanger human beings or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides; [PL 2005, c. 620, §5 (AMD).]

E. Dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any water supply or waterway; [PL 2005, c. 620, §5 (AMD).]

F. Refuse or otherwise fail to comply with the provisions of this subchapter, the rules adopted under this subchapter or any lawful order of the board; [PL 2021, c. 673, §5 (AMD).]

G. Apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board; or [PL 2021, c. 673, §5 (AMD).]

H. Use or cause to be used any pesticide container inconsistent with rules for pesticide containers adopted by the board. [PL 2021, c. 673, §5 (NEW).]

[PL 2021, c. 673, §5 (AMD).]

3. Unlawful use. A person may not apply glyphosate or dicamba within 75 feet of school grounds. This subsection does not apply to residential property or land used for commercial farming.

For purposes of this subsection, unless the context otherwise indicates, the following terms have the following meanings:

- A. "Commercial farming" has the same meaning as in section 52, subsection 3; [PL 2021, c. 197, §1 (NEW).]
- B. "Residential property" means real property located in this State that is used for residential dwelling purposes; [PL 2021, c. 197, §1 (NEW).]
- C. "School" means any public, private or tribally funded elementary school as defined in Title 20-A, section 1, subsection 10, secondary school as defined in Title 20-A, section 1, subsection 32 or a nursery school that is part of an elementary or secondary school; and [PL 2021, c. 197, §1 (NEW).]
- D. "School grounds" means:
 - (1) Land associated with a school building including playgrounds and athletic fields used by students or staff of a school. "School grounds" does not include land used for a school farm; and
 - (2) Any other outdoor area used by students or staff including property owned by a municipality or a private entity that is regularly used for school activities by students and staff but not including land used primarily for nonschool activities, such as golf courses, farms and museums. [PL 2021, c. 197, §1 (NEW).]

[PL 2021, c. 197, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 382, §3 (NEW). PL 1983, c. 558, §§1,2 (AMD). PL 1983, c. 761, §§1,2 (AMD). PL 1985, c. 506, §A6 (AMD). PL 1989, c. 878, §§E3,4 (AMD). PL 2005, c. 620, §5 (AMD). PL 2021, c. 105, §§1-3 (AMD). PL 2021, c. 197, §1 (AMD). PL 2021, c. 673, §§4, 5 (AMD).

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MRS Title 7 §606. Prohibited Acts (SAMPLE)

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B. A pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect that change and if that change will not violate any provision of FIFRA or this subchapter; [PL 2005, c. 620, §5 (AMD).]

C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and rules adopted under this subchapter; [PL 2005, c. 620, §5 (AMD).]

D. A pesticide that has not been colored or discolored pursuant to section 610, subsection 1, paragraph D; [PL 2005, c. 620, §5 (AMD).]

E. A pesticide that is adulterated or misbranded or any device that is misbranded; [PL 2021, c. 105, §1 (AMD).]

F. A pesticide in containers that are unsafe due to damage; [PL 2021, c. 673, §4 (AMD).]

G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient; [PL 2021, c. 673, §4 (AMD).]

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A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or rules adopted under this subchapter; [PL 2005, c. 620, §5 (AMD).]

A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter; [PL 2005, c. 620, §5 (NEW).]

B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling; [PL 2005, c. 620, §5 (AMD).]

C. Use for that person's own advantage or reveal, other than to the board or proper officials or employees of the state or federal executive agencies, to the courts of this State or of the United States in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board to contain or relate to trade secrets or commercial or financial information

obtained by authority of this subchapter and marked as privileged or confidential by the registrant; [PL 2005, c. 620, §5 (AMD).]

D. Handle, transport, store, display or distribute pesticides in such a manner as to endanger human beings or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides; [PL 2005, c. 620, §5 (AMD).]

E. Dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any water supply or waterway; [PL 2005, c. 620, §5 (AMD).]

F. Refuse or otherwise fail to comply with the provisions of this subchapter, the rules adopted under this subchapter or any lawful order of the board; [PL 2021, c. 673, §5 (AMD).]

G. Apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board; or [PL 2021, c. 673, §5 (AMD).]

H. Use or cause to be used any pesticide container inconsistent with rules for pesticide containers adopted by the board. [PL 2021, c. 673, §5 (NEW).]

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3. Unlawful use. A person may not apply glyphosate or dicamba within 75 feet of school grounds. This subsection does not apply to residential property or land used for commercial farming.

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A. "Commercial farming" has the same meaning as in section 52, subsection 3; [PL 2021, c. 197, §1 (NEW).]

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D. "School grounds" means:

(1) Land associated with a school building including playgrounds and athletic fields used by students or staff of a school. "School grounds" does not include land used for a school farm; and

(2) Any other outdoor area used by students or staff including property owned by a municipality or a private entity that is regularly used for school activities by students and staff but not including land used primarily for nonschool activities, such as golf courses, farms and museums.

4. Unauthorized Application of Pesticides. Except as provided pursuant to rules adopted under Section 610 and Title 22, Chapter 258-A, no person may apply, or cause to be applied, a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term "legal occupant" includes tenants of rented property. Any person applying, or causing a pesticide to be applied on the property of another, shall bear the burden of proof demonstrating that prior authorization has been properly obtained pursuant to this section.

(a) Prima Facie Evidence. Clear and compelling evidence that only one person will benefit substantially from an unauthorized application of pesticides constitutes prima facie evidence that the person is responsible for the unauthorized application.

[PL 2021, c. 197, §1 (NEW).]

[PL 2021, c. 197, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 382, §3 (NEW). PL 1983, c. 558, §§1,2 (AMD). PL 1983, c. 761, §§1,2 (AMD). PL 1985, c. 506, §A6 (AMD). PL 1989, c. 878, §§E3,4 (AMD). PL 2005, c. 620, §5 (AMD). PL 2021, c. 105, §§1-3 (AMD). PL 2021, c. 197, §1 (AMD). PL 2021, c. 673, §§4, 5 (AMD).

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MRS Title 22 §1471-D. Certification and licenses (Current)

7. Suspension.

A. If the board determines that there may be grounds for revocation of a license or certificate, it may temporarily suspend said license or certificate pending inquiry and opportunity for hearing, provided that such suspension shall not extend for a period longer than 45 days. [PL 1975, c. 397, §2 (NEW).]

B. The board shall notify the licensee or certificate holder of the temporary suspension, indicating the basis therefor and informing the licensee or certificate holder of the right to request a public hearing. [PL 1983, c. 819, Pt. A, §47 (AMD).]

C. If the licensee or certificate holder fails to request a hearing within 20 days of the date of suspension, such right shall be deemed waived. If the licensee or certificate holder requests such a hearing, notice shall be given at least 20 days prior to the hearing to the licensee or certificate holder and to appropriate federal and state agencies. In addition, public notice shall be given by publication in a newspaper of general circulation in the State and such other publications as the board deems appropriate. [PL 1983, c. 819, Pt. A, §48 (AMD).]

D. This subsection is not governed by the provisions of Title 4, chapter 5 or Title 5, chapter 375. [PL 1999, c. 547, Pt. B, §39 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

[PL 1999, c. 547, Pt. B, §39 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

8. Revocation. The District Court may suspend or revoke the certification or license of a licensee or certificate holder upon a finding that the applicant:

A. Is no longer qualified; [PL 1975, c. 397, §2 (NEW).]

B. Has engaged in fraudulent business practices in the application or distribution of pesticides; [PL 1975, c. 397, §2 (NEW).]

- C. Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment; [PL 1975, c. 397, §2 (NEW).]
- D. Has stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare; [PL 1975, c. 397, §2 (NEW).]
- E. Has violated the provisions of this chapter or the rules and regulations issued hereunder; [PL 1975, c. 397, §2 (NEW).]
- F. Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the board; [PL 1975, c. 397, §2 (NEW).]
- G. Has made false or fraudulent records or reports required by the board under this chapter or under regulations pursuant thereto; [PL 1981, c. 470, Pt. A, §67 (AMD).]
- H. Has been subject to a criminal conviction under section 14 (b) of the amended FIFRA or a final order imposing a civil penalty under section 14 (a) of the amended FIFRA; or [PL 1981, c. 470, Pt. A, §67 (AMD).]
- I. Has had the license or certificate, which supplied the basis for the Maine license or certification pursuant to subsection 10, revoked or suspended by the appropriate federal or other state government authority. [PL 1977, c. 694, §341 (NEW).]
[PL 1983, c. 819, Pt. A, §49 (AMD); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

MRS Title 22 §1471-D. Certification and licenses (SAMPLE)

Converting Grounds for Revocation in Title 22 to Prohibited Acts Making them Applicable to Unlicensed Applicators

7. Suspension.

- A. If the board determines that there may be grounds for revocation of a license or certificate arising from prohibited acts pursuant to subsection 8-B, or Title 7, Section 606, it may temporarily suspend said license or certificate pending inquiry and opportunity for hearing, provided that such suspension shall not extend for a period longer than 45 days. [PL 1975, c. 397, §2 (NEW).]
- B. The board shall notify the licensee or certificate holder of the temporary suspension, indicating the basis therefor and informing the licensee or certificate holder of the right to request a public hearing. [PL 1983, c. 819, Pt. A, §47 (AMD).]
- C. If the licensee or certificate holder fails to request a hearing within 20 days of the date of suspension, such right shall be deemed waived. If the licensee or certificate holder requests such a hearing, notice shall be given at least 20 days prior to the hearing to the licensee or certificate holder and to appropriate federal and state agencies. In addition, public notice shall be given by publication in a newspaper of general circulation in the State and such other publications as the board deems appropriate. [PL 1983, c. 819, Pt. A, §48 (AMD).]
- D. This subsection is not governed by the provisions of Title 4, chapter 5 or Title 5, chapter 375. [PL 1999, c. 547, Pt. B, §39 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]
[PL 1999, c. 547, Pt. B, §39 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

8. Revocation. The District Court may suspend or revoke the certification or license of a licensee or certificate holder upon a finding that the applicant has committed a prohibited act pursuant subsection 8-B; or Title 7 Section 606.

8-B. Prohibited Acts. A person may not:

- A. Hold a board license or certificate if the person is no longer qualified; [PL 1975, c. 397, §2 (NEW).]
- B. ~~Has engaged~~ Engage in fraudulent business practices in the application or distribution of pesticides; [PL 1975, c. 397, §2 (NEW).]
- C. ~~Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment;~~ [PL 1975, c. 397, §2 (NEW).]
- D. ~~Has s~~Stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare; [PL 1975, c. 397, §2 (NEW).]
- E. ~~Has v~~Violated the provisions of this chapter or the rules and regulations issued hereunder; [PL 1975, c. 397, §2 (NEW).]
- F. ~~Has made~~ Make a pesticide recommendation, use or application, or ~~has supervised~~ such use or application, inconsistent with the labelling or other restrictions imposed by the board; [PL 1975, c. 397, §2 (NEW).]
- G. ~~Has made~~ Make false or fraudulent records or reports required by the board under this chapter or under regulations pursuant thereto; [PL 1981, c. 470, Pt. A, §67 (AMD).]

Conclusion:

The addition of unauthorized application of pesticides to prohibited acts would allow for stricter enforceability both within and outside of the regulated community. These changes coupled with an enhanced penalty structure would provide a greater deterrent for a person to perform an unauthorized pesticide application.