

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

SUMMARY: These provisions regulate the use, storage and disposal of pesticides with specific emphasis on registered pesticides, right of way and aquatic applications and employer/employee requirements.

Section 1. Registered Pesticides

A. Definitions

“Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS” means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

- AB.** The use of any pesticide not registered by the Maine Board of Pesticides Control in accordance with Title 7 M.R.S.A. §601 is prohibited except as otherwise provided in this chapter or by FIFRA, Section 2(ee).
- BC.** The use of registered pesticides for other than registered uses, or at greater than registered dosages, or at more frequent than registered intervals is prohibited, provided that application or use of unregistered pesticides and unregistered applications or uses of registered pesticides may be made for experimental purposes if in accordance with requirements of the Maine Board of Pesticides Control, and the U.S. Environmental Protection Agency.
- CD.** Retailers and end users of pesticides no longer registered in Maine may continue to sell and use those items provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other Federal law.
- DE.** In conducting review of registration or re-registration pursuant to 7 M.R.S.A. §607-A, the Board may consider the potential for environmental damage by the pesticide through direct application on or off-target or by reason of drift. If the Board finds that the use of the pesticide is anticipated to result in significant adverse impacts on the environment, whether on or off-target, which cannot be avoided or adequately mitigated, registration or re-registration will not be granted unless the Board finds that anticipated benefits of registration clearly outweigh the risks. In any case where the Board may request data in connection with registration or re-registration of any pesticide, such data may include that concerning pesticide residues, propensity for drift and testing therefor. Such data, if requested, shall provide information regarding residues and residue effects on plant tissues, soil and water and other potential deposition sites, and shall take into consideration differences in plants, soils, climatic conditions at the time of application and application techniques.

F. In conducting review of registration or reregistration pursuant to 7 M.R.S.A §607-A, the Board shall require submission of the confidential statement of formula as defined in 7 M.R.S.A. §607 (5-A) and the following affidavits:

1. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide has or has never been stored, distributed, or packaged in a fluorinated container; and
2. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide formulation does or does not contain perfluoroalkyl or polyfluoroalkyl substances as defined by the Board for this purpose of this section.

Section 2. Right-of-Way

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

Section 3. Pesticide Storage and Disposal

- A. Unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
- B. Obsolete, expired, illegal, physically or chemically altered or unusable pesticides, except household pesticide products, shall be either:
 1. stored in a secure, safe place under conditions that will prevent deterioration of containers or any contamination of the environment or risk to public health, or
 2. returned to the manufacturer or formulator for recycling, destruction, or disposal as appropriate, or
 3. disposed of in a licensed hazardous waste facility or other approved disposal site that meets or exceeds all current requirements of the Maine Department of Environmental Protection and the U.S. Environmental Protection Agency for facilities receiving such waste.

Section 4. Aquatic Applications

No person, firm, corporation or other legal entity shall, for the purpose of controlling aquatic pests, apply any pesticide to or in any waters of the state as defined in 38 M.R.S.A. §361-A(7) without approval of the Maine Department of Environmental Protection.

Section 5. Employer/Employee Requirements

- A. Any person applying pesticide shall instruct their employees and those working under their direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and shall instruct such persons as to the proper steps to be taken to avoid such hazards.
- B. Any person applying pesticides shall provide and maintain, for the protection of their employees and persons working under their direction, the necessary safety equipment as set forth on the label of the pesticide to be used.

Section 6. Authorization for Pesticide Applications

- A. Authorization to apply pesticides to private property is not required when a pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of establishing or maintaining such easement or right of way.
- B. When the Maine Center for Disease Control and Prevention (CDC) has identified that an organism is a vector of human disease and the vector and disease are present in an area, a government entity shall obtain authorization for ground-based applications by:
 - 1. Sending a written notice to the person(s) owning property or using residential rental, commercial or institutional buildings within the intended target site at least three days but not more than 60 days before the commencement of the intended spray applications. For absentee property owners who are difficult to locate, mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice; and
 - 2. Implementing an “opt out” option whereby residents and property owners may request that their property be excluded from the application by submitting written notice to the government entity at least 24 hours before spraying is scheduled to commence. Authorization is considered given for any property for which written notice was submitted and no “opt out” request was received by the sponsoring government entity.
- C. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government entities are not required to receive prior authorization to apply pesticides to private property, provided that the government entity sponsoring the vector control program:
 - 1. Provides advance notice to residents about vector control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and
 - 2. Implements an “opt out” option whereby residents and property owners may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and
 - 3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.

D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:

1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
2. No person may apply 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.
3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
 - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

Section 7. Positive Identification of Proper Treatment Site

- A. Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

STATUTORY AUTHORITY: Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

July 6, 1979

AMENDMENT EFFECTIVE:

April 1, 1985

January 1, 1988

May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65

September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

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December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

June 12, 2013 – Emergency major substantive filing 2013-134

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

September 11, 2014 – filing 2014-163 (Final adoption, major substantive)

December 9, 2014 – Section 7 added, filing 2014-279

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 31—CERTIFICATION AND LICENSING
PROVISIONS/COMMERCIAL APPLICATORS**

Basis Statement

Three amendments to Chapter 20 were proposed by the Board:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

The amendments to the proposed rule are in response to Public Law Chapter 83 and recent legislation from the 130th Maine Legislature LD 264: Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State. This law directs the Board of Pesticides Control to amend rules to require affidavits that disclose if Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are present in pesticide product formulations or containers at the time of product registration with the State of Maine. Many of these substances (PFAS) have been identified as substances that many break down very slowly and can build up in people, animals, and the environment over time. Amending these rules would allow the Board to identify these substances in pesticide products at the time of registration from the company.

Thirteen comments were received. Several people agreed with the Board’s definition of PFAS. Other comments included: making affidavits publicly available, including contaminant reporting with the confidential statement of formula, and inquired about expanding the container requirements to all fluorinated containers. The Board responded that affidavits will be publicly available, contamination of pesticides is handled at the federal level, and some members indicated that all fluorinated containers should be considered. Additionally, the Board also had comments about clarifying that affidavits were public and including all fluorinated containers in the rule.

Impact on Small Business

In accordance with 5 MRSA §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A

Agency

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

Chapter Number and Title of Rule

CMR 01-026, Chapter 20—Special Provisions

Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule

Currently there are 2,809 pesticide registrants that register their products in Maine. They will all be affected by this amendment:

1. Registrants will be required to complete additional reporting requirements by answering several affidavits regarding fluorination in their products; and
2. Additional recordkeeping will also be required as registrants will now be required to submit the confidential statement of formula (CSF) in addition to answering affidavit questions.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

No additional skills will be necessary for the reporting and recordkeeping required by this new rule, these will be additional steps added to the current pesticide product registration flow.

Required reporting includes:

1. Answering if products have ever been stored, distributed, or packaged in a fluorinated container;
2. Answering if products contain perfluoroalkyl or polyfluoroalkyl substances in the formulation; and
3. Providing the confidential statement of formula (CSF).

Brief Statement of the Probable Impact on Affected Small Businesses

The amendments will result in a slight increase in product registration information submitted and would require registrants to check yes or no to affidavit questions.

Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule

If registrants do not submit these materials electronically as a part of the current registration flow, they will need to provide these materials in paper formats which could be more burdensome. Electronic submission is likely the least intrusive and least costly means of accomplishing this requirement.

Summary of Comments Received Regarding 130th Legislature, LD 264, Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

Board of Pesticides Control CMR26-01 Chapter 20

| # | Name | Summary of Comments | Response |
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| 1 | <p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association; Patricia Rubert-Nason – Maine Sierra Club; Sarah Woodbury – Director of Advocacy for Defend Our Health; Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p> | <ul style="list-style-type: none"> All work done for Ch. 20 is appreciated. Agrees with the Board definition of PFAS, provides consistency with other state agencies. | <ul style="list-style-type: none"> The Board of Pesticides Control (BPC) appreciates the support. BPC plans to keep the current definition to remain consistent with other state agencies. |
| 2 | <p>Patricia Rubert-Nason – Maine Sierra Club; Sarah Woodbury – Director of Advocacy for Defend Our Health; Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p> | <ul style="list-style-type: none"> Required affidavits submitted by registrants should be publicly available. | <ul style="list-style-type: none"> All reports and affidavits produced by the BPC are already public documents. |
| 3 | <p>Patricia Rubert-Nason – Maine Sierra Club; Sarah Woodbury – Director of Advocacy for Defend Our Health; Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic 4Farmers and Gardiners Association</p> | <ul style="list-style-type: none"> Concerned about and would like clarification regarding the Confidential Statement of Formula (CSF) and the need to include all inert ingredients, active ingredients, and contaminants in addition to the CSF. | <ul style="list-style-type: none"> Confidential Statement of Formula (CSF) includes the active and inert ingredients and are protected by federal law FIFRA §10(a) as confidential business information (CBI). Any material not identified as a part of the CSF is considered to be a contaminant. The CSF would not be included in any public documents due to their confidentiality. The Environmental Protection Agency (EPA) considers Perfluoroalkyl and Polyfluoroalkyl Substances |

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| | | | <p>(PFAS) to be potentially toxicologically significant contaminants and may trigger 159.179(b) in the Code of Federal Regulations (CFR). Under FIFRA Section 6(a)(2), pesticide registrants should report to EPA additional factual information on unreasonable adverse effects, including metabolites, degradates, and impurities (such as PFAS). EPA has identified a master list PFAS that is available on their website. BPC staff have an inquiry into EPA and AAPCO (Association of American Pesticide Control Officials) regarding the process of requiring 6(a)(2) reporting.</p> |
| <p>4</p> | <p>Sarah Woodbury – Director of Advocacy for Defend Our Health; Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p> | <ul style="list-style-type: none"> Recognized that the resolution specifically responded to HDPE containers, but to expand the scope of containers from just HDPE containers to any fluorinated plastic containers. | <ul style="list-style-type: none"> BPC recognizes that many plastics – not just HDPE containers – are fluorinated. Identifying additional container types to be included in affidavits is beyond the scope of the current ask from LD 264. EPA has noted that there is no evidence that PFAS occur from containers other than HDPE. Additionally, LD 1503 will ultimately prohibit any intentionally fluorinated |

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| | | | products in the State of Maine by 2030. |
| 5 | Patricia Rubert-Nason – Maine Sierra Club; Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association | <ul style="list-style-type: none"> • More should be done to eliminate PFAS in pesticides | <ul style="list-style-type: none"> • BPC agrees that long-chain PFAS resulting from the fluorination of pesticide product containers should not be allowed to continue to occur. BPC is working toward a greater understanding of the scope of PFAS in pesticides as more information becomes available in this rapidly evolving issue. BPC also acknowledges that any product that contains intentionally added PFAS will be prohibited under LD 1503 by the year 2030. |
| 6 | Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy | <ul style="list-style-type: none"> • Full extent of legal authority that the Board has should be used against PFAS. • The full panel of PFAS chemicals should be excluded from pesticides. • Affidavits should not be withheld from the public, as the committee that led the implementation of LD 1503 voted to not keep documents and affidavits confidential. • Disclosure of CSF should include contamination. • Clarify that affidavits are public records, under Maine’s Freedom | <ul style="list-style-type: none"> • The BPC has reviewed its authority and has outlined it in their full report regarding LD 264 to the Maine Legislature. • The current definition proposed by BPC includes all PFAS chemicals identified by the EPA and is consistent with other state agencies. • The BPC recognizes that during the implementation of LD 1503 affidavits were not withheld and intends to make affidavits public records. • Contaminants in pesticides are required to be reported upon |

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| | | <p>of Access Act (preferably on the website, not as a document that must be accessed through a formal freedom of access request).</p> <ul style="list-style-type: none"> • It is not necessary to wait for further legislative direction or authority to include adjuvants as a part of the manufacturers' affidavit as to the presence or absence of PFAS. The Board has extensive authority to require information about the formulation and to require other information for registration of a product and should make clear that adjuvants are covered with other inert ingredients. • Board should make a point to prohibit registration of PFAS | <p>federal registration with FIFRA §6(a)(2) incident reporting and would be available as a part of products' federal registration process. BPC has inquiries into EPA and AAPCO regarding additional requirements for 6(a)(2) reporting.</p> <ul style="list-style-type: none"> • Affidavits will be public records. • If adjuvants are contained within a pesticide formulation, the CSF would disclose that information. Adjuvants that are added to pesticides separately are not considered to be pesticide products and the Board has included the avenues that need to be taken in order to regulate adjuvants or fluorinated adjuvants in the future in their full report regarding LD 264 to the legislature. Since this proposed action would require amendments to state statute, the BPC will wait for further legislative direction to address this issue. • The proposed resolve does not currently prohibit PFAS from pesticide products but does require BPC to identify if PFAS are in registered products. BPC |
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| | | | acknowledges this concern and would like to note that all products that contain intentionally added PFAS will be prohibited by 2030 as outlined in LD 1503. |
| 7 | Karen Reardon – Vice President of Public Affairs for Responsible Industry for a Sound Environment | <ul style="list-style-type: none"> • Definitions of PFAS should take data assessments into account. • The Board should consider reviewing the container leeching study that will be coming from US EPA in the first quarter of 2022. • The Board should not rush to complete rulemaking before they have a full finding of what is happening with HDPE containers. | <ul style="list-style-type: none"> • Initially, BPC was interested in referring to policy for a group of PFAS considered to be the “most concerning” by the EPA but ultimately decided to remain consistent with other state agencies in their definition. BPC will continue to review new data assessments as they are published. • The BPC will consider reviewing the container leeching study during its development of rulemaking regarding containers. • BPC staff have already entered into rulemaking guidelines, following A.P.A. procedures, and must meet deadlines for amendments, approval from Board members, and public comment. This process is not typically quickly implemented but must continue to comply with LD 264. |
| 8 | Sarah Woodbury – Director of Advocacy for Defend Our Health | <ul style="list-style-type: none"> • Chapter 20, Section 1 affidavit requirements requires clarification; should require | <ul style="list-style-type: none"> • Complete formulations from the CSF are protected under federal law FIFRA §6(a)(2) and |

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| | | <p>complete formulation including active, inert, and contaminants.</p> <ul style="list-style-type: none"> • There is no reasonable claim for the need to prohibit disclosure of the affidavits to protect confidential business information since no one could derive a formula simply based on the presence or absence of thousands of potential ingredients. • Maine should have a single definition of PFAS, and that definition should be the same one already in use in statute, which is now the one proposed in the draft rule as well. • Noted that contaminants should be added to the rule because Maine already has PFAS contamination and the cleanup will cost millions. • The rule should unequivocally state the affidavits are public and accessible records. While this may be the intent of the proposed language, ambiguity should be eliminated by separately listing the three required items or adding a sentence explicitly clarifying the public nature of the affidavits. • Stated that the Board should make a recommendation to the | <p>cannot be included with affidavits as public records – however the affidavits will describe if a pesticide product contains PFAS.</p> <ul style="list-style-type: none"> • Information in the CSF itself is confidential business information (CBI) under federal law FIFRA §10(a). Affidavits themselves will be public documents and will describe whether a PFAS known to the manufacturer is in the product or if it is stored in an HDPE container. • BPC recognizes the statements made and has incorporated a definition of PFAS that has been used across multiple state agencies. • Contaminants are addressed during federal registration FIFRA §6(a)(2). BPC currently has an inquiry in at EPA and AAPCO regarding 6(a)(2) reporting at the state level. BPC acknowledges that millions will be spent on remedial PFAS activities. • BPC acknowledges the concern regarding transparency of the affidavits. BPC will consider |
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| | | <p>legislature that the Board supports no use of pesticides containing PFAS or of pesticides stored in HDPE containers.</p> | <p>changing the rule to incorporate this sentiment.</p> <ul style="list-style-type: none"> The BPC is working toward understanding the full scope of PFAS in pesticides and is implementing measures to better understand if PFAS are in pesticides registered in Maine through its registration process. The full scope of PFAS in pesticides, the Maine registration process, and all legal authorities that the BPC has to regulate these classes of chemicals is outlined in the full report to the Maine legislature regarding LD 246. |
| 9 | <p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association</p> | <ul style="list-style-type: none"> Stated that new rules will help minimize reliance on pesticides. The original legislation was to stop PFAS contamination from aerial spraying and morphed into LD 264. Described the PFAS problem was being exacerbated by pesticides that contain PFAS and farmers were losing businesses, land, and health. Hoped this rule would help Maine turn off one of the PFAS taps by discovering the extent of PFAS in pesticides. CSF is confidential but affidavits can be made public. | <ul style="list-style-type: none"> It is the BPC’s policy title 22 M.R.S §1471-X to minimize reliance on pesticides and promote integrated pest management. BPC appreciates the sentiments made to reduce PFAS contamination in Maine’s environment. To BPC’s current understanding, most PFAS contamination in the environment in Maine is attributed to sludge and sludge-derived compost in agriculture rather than pesticides. BPC agrees that the CSF is confidential and that the |

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| | | <ul style="list-style-type: none"> The Board should exercise the broad authority it has to gather formula data in consideration of granting product registration. We hope that the system established for compiling the information would be streamlined so that it would not create an undue burden on the BPC staff. Manufacturers know whether PFAS is in their products and they must be responsible for reporting that in an online database that would minimize additional work for the staff. | <p>affidavits will be public documents.</p> <ul style="list-style-type: none"> BPC has researched and started the implementation of adding affidavits to its existing registration software, Maine Pesticide Registration and Licensing Software (MEPRLS). This would allow registrants to state whether or not they have PFAS in their product as they are conducting the registration process, reducing staff time and burden. |
| 10 | Patricia Rubert-Nason – Maine Sierra Club | <ul style="list-style-type: none"> Would like to thank the Board of Pesticides for their work on implementing LD 264. Urges the Board to ensure that all ingredients and known contaminants are included in the affidavits and that those affidavits are shared with the public. | <ul style="list-style-type: none"> The BPC appreciates the support and plans to use CSF to determine if PFAS are in pesticide formulations, which include active and inert ingredients. Containments known to manufacturers are required to be addressed during federal registration FIFRA §6(a)(2). However, BPC has inquired about 6(a)(2) forms to both EPA and AAPCO. |
| 11 | Mariana Tupper – Yarmouth, ME | <ul style="list-style-type: none"> Particularly concerned about the use of PFAs. As both our Environmental Protection Agency and the Food & Drug Administration say, such substances are dangerous for | <ul style="list-style-type: none"> BPC appreciates the support and will continue to work on this issue as it relates to pesticides. |

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| | | <p>human beings and other species on which we depend. Please help the State of Maine stay a strong leader in sensible, smart, and safe agriculture. Progress made in 2021 should be underscored, embellished, and celebrated.</p> | |
| 12 | <p>Lelania Avila – Northeast Harbor, ME; Penelope Andrews – Hermon, ME, Member of Sierra Club of Maine and Natural Resources Council of Maine; John Olsen – Jefferson, Maine</p> | <ul style="list-style-type: none"> • Urges Maine's Board of Pesticides Control to implement the pesticide laws passed in the last session of the Legislature. The laws will restrict and assess and address the problem of PFAS in pesticides. • Please ensure that any PFAS chemical added to the product as an "inert" ingredient will be included in the reporting. The same goes for PFAS contaminants known to the manufacturer. | <ul style="list-style-type: none"> • BPC will implement rules regarding PFAS from the Maine legislature. • Active and inert ingredients are included in the required affidavits and CSF. Contaminants that are known to the manufacturer are reported under FIFRA §6(a)(2) reporting during the federal registration process. BPC is reviewing its ability to also require 6(a)(2) reporting. |

SUMMARY OF BOARD COMMENTS TO STAFF—CHAPTER 20

PUBLIC MEETING ON FEBRUARY 18, 2022

| Board Comments Received | Staff Answers |
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| Wondering if HDPE containers should be changed to all fluorinated containers | Provided 2 versions of the proposed rule; one with HDPE container information gathered and one with all fluorinated container information gathered. |
| Wanting to clarify if affidavits are public documents and how staff would execute this | Staff clarified that these documents could be published on a regular basis on the Board website. |

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE

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

Section 1. ALDICARB (TEMIK®)

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

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

Section 2. TRICHLORFON (DYLOX, PROXOL)

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

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

Section 3. HEXAZINONE (VELPAR, PRONONE)

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

A. Licenses Required

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

Section 4. AQUATIC HERBICIDES

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

A. Board Publication of List

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

B. Licenses Required

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

C. Disclosure

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

D. Records and Reporting

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

E. Use of Best Management Practices

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

Section 5. PLANT-INCORPORATED PROTECTANTS

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

A. Definitions

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

B. License Required

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

C. Dealer Requirements

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

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

D. Grower Requirements

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

E. Product-Specific Requirements

- I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
 - a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for

its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.

- b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
- c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
 - i. the request must be made prior to planting of the Bt-corn crop;
 - ii. the request must identify the non-Bt-corn crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or
 - 2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.
- d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.

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

F. **Confidentiality**

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

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

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

A. **Definitions**

- I. “Invasive Invertebrate Pests” means any invertebrate species, including its eggs or other biological materials capable of propagating that species, that does or is likely to cause economic or environmental harm or harm to human health and meets one or more of the following criteria:
- a. federally or state regulated;
 - b. non native or not originating from this eco region;
 - c. native or non-native vectors of plant diseases;
 - d. native pests that have become highly destructive due to climate change or ecosystem factors

“Emerging Invasive Invertebrate Pests” means any invertebrate, including its eggs or other biological material capable of propagating that species that occurs outside of its eco-region and its introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health, to include:

- a. Species both known now and unknown now but showing up at a later date;
- b. Species that occur outside of their eco-region (level III) as defined by EPA; and
- c. Species on a Board approved list.

- II. “Ornamental Plants” means shrubs, trees and related vegetation excluding turf and lawn, in and around residences.

B. Board Publication of Product List

The Board of Pesticides Control will publish by July 1, 2022 within 30 days of adoption and by March 15th of each year thereafter a list of insecticide products containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam registered in Maine for which the manufacturer has verified that there is an outdoor ornamental plant or turf use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of outdoor ornamental plants or turf. Pesticides labeled solely for use in preserving wood, managing indoor pests, managing structural pests within five (5) feet of a human dwelling, and treating pets are specifically exempt from this list.

C. Licenses Required

- I. No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. Unless exempted under Chapter 41, Section 6 (C) (IV) no person shall purchase, use or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.

- III. No person shall distribute any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.
- IV. Registered pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use described in Chapter 41, Section 6 (C) (II) where ~~used for~~ management of an invasive invertebrate pest on ornamental plants by:
 - a. The applicator obtains an emergency permit from the Board; or
 - b. The use of these products is for management of emerging invasive invertebrate pests on ornamental plants in outdoor residential landscapes.
- V. No person shall use any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing for the purposes of managing turf and lawn in outdoor residential landscapes.

D. Records and Reporting

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

E. Emergencies

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

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

F. Emergency Use Permits

Emergency use permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate application date(s);
- VI. The type(s) of application equipment to be employed;
- VII. The approved pest species for which the application is being made as defined in policy or by the board; and
- VIII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

~~This section becomes effective January 1, 2023.~~

Section 7. CHLORPYRIFOS (DURSBAN, LORSBAN)

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

- A. No person shall use or supervise the use of any pesticide containing the active ingredient chlorpyrifos unless they have obtained a private or commercial applicator's license from the Board, possess the pesticide in the State before January 1, 2022, and obtain a temporary use authorization permit from the Board.
- B. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
 - I. The name, address and telephone number of the applicant;

- II. The brand name of the pesticides to be applied;
- III. The date on which the pesticides were purchased;
- IV. The approximate quantity of the pesticides possessed;
- V. The purpose for which the pesticide application(s) will be made; and
- VI. The duration for which the applications will take place or until the product is gone.

C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if:

- I. The permit application is received prior to December 31, 2022;
- II. The applicant possesses a valid pesticide applicator license issued by the State;
- III. The pesticides proposed for use were purchased prior to January 1, 2022;

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

STATUTORY AUTHORITY: 5 M.R.S.A. §§ 8051 *et seq.*
7 M.R.S.A. §§ 601-610
22 M.R.S.A. §§ 1471-A, 1471-B, 1471-C, 1471-D, 1471-M

EFFECTIVE DATE:
March 8, 1981 (Captan)

AMENDED:
May 7, 1981 (Trichlorfon)
January 2, 1984 (Aldicarb)
May 8, 1988 (Trichlorfon)
August 5, 1990 (Captan)
August 17, 1996 (Hexazinone)
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
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February 2, 2004 - Section 4, 1st paragraph and sub-section A, filing 2004-31
April 30, 2007 – filing 2007-154
February 3, 2008 – filing 2008-36
July 16, 2009 – filing 2009-253 (final adoption, major substantive)
May 3, 2012 – filing 2012-99 (final adoption, major substantive)

CORRECTIONS:
February, 2014 – agency names, formatting

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