



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**August 8, 2014**

**AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine**

**AGENDA**

**8:30 AM**

1. Introductions of Board and Staff
2. Public Hearing on Proposed Rule Amendments to Chapters 20, 22, 28, 31, 32, 33, and 41

The Board will hear testimony on the proposed amendments to the following seven rules:

- **Chapter 20 Special Provisions**—Add a requirement for applicators making outdoor treatments to residential properties to implement a system to positively identify application sites in a manner approved by the Board. This requirement is currently in policy.
- **Chapter 22 Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition**—Improve the effectiveness of the rule by eliminating the requirement of identifying sensitive areas for commercial applications conducted under categories 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management) and 7E (biting fly & other arthropod vectors [ticks]). Applications conducted under category 6A and to sidewalks and trails under category 6B will require the applicator to implement a drift management plan.
- **Chapter 28 Notification Provisions for Outdoor Pesticide Applications**—Add to the list of categories that require posting: 6B (industrial/commercial/municipal vegetation management) except when making applications to sidewalks and trails, and 7E (biting fly & other arthropod vectors [ticks]). Require advance notice be published in a newspaper for applications conducted under 6A (rights-of-way vegetation management), and to sidewalks and trails under 6B (industrial/commercial/municipal vegetation management). This aligns with the proposed amendments to Chapter 22, eliminating the requirement for mapping sensitive areas, in lieu of posting or public notice.
- **Chapter 31 Certification and Licensing Provisions/Commercial Applicators**—Three amendments are proposed:
  1. Clarify that certain applications are exempt from commercial licensing requirements. These are currently in policy:
    - Adults applying repellents to children with the written consent of parents/guardians;
    - Persons installing antimicrobial metal hardware.

2. Exempt aerial applicators certified in other states from passing a written regulation exam and allow for issuance of reciprocal licensing when the staff determines that an urgent pest issue exists and when staff verbally reviews pertinent Maine laws with the applicator.
3. Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.

- **Chapter 32 Certification and Licensing Provisions/Private Applicator**—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.
- **Chapter 33 Certification & Licensing Provisions/Private Applicators of General Use Pesticides (Agricultural Basic License)**—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.
- **Chapter 41 Special Restrictions on Pesticide Use**—Amend Section 3 to eliminate the restrictions on hexazinone relative to pesticide distributors and air-assisted application equipment.

3. Minutes of the June 27, 2014, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

4. Final Adoption of Amendments to Chapters 20, 22, and 51

The Board held a public hearing on proposed amendments to Chapters 20, 22, and 51 on March 1, 2013. The proposed amendments were intended to allow governmental entities to conduct public-health-related, mosquito-control programs in the event of an elevated mosquito-borne disease threat. The Board reviewed the comments on April 12, 2013, and provisionally adopted revised proposals on May 24, 2013. The Joint Standing Committee on Agriculture, Conservation and Forestry held public hearings and work sessions on the provisionally adopted rules on June 26, 2013 and January 14, 2014 and a work session on January 23, 2014. The Committee voted to recommend authorizing final adoption in a divided report on January 28, 2014, and three resolves became law on February 26, 2014. Since the resolves were not passed as emergency legislation, they did not become effective until August 1, 2014. The Board has 60 days from the effective dates of the resolves to finally adopt the rules.

Presentation By: Henry Jennings  
Director

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapters 20, 22, and 51

5. Consideration of a Board Policy Interpreting “Food Production” for the Purposes of Determining Applicability of Public Law 2011, Chapter 169

Public Law 2011, Chapter 169, “An Act To Require Certification of Private Applicators of General Use Pesticides,” requires anyone who grows and sells more than \$1,000 worth of edible plants annually to become certified if they use general-use pesticides in “food production.” A number of questions have arisen about what constitutes “food production” for the purposes of the

licensing requirement. At the June 27, 2014, meeting, the Board reviewed questions and discussed what it thought the legislative intent was. After reaching consensus, the Board directed the staff to draft an interim enforcement policy for review at a future meeting. The staff has prepared a draft policy for the Board's consideration.

Presentation By: Henry Jennings  
Director

Action Needed: Approve/Revise Draft Policy

6. Interpretation of CMR 01-01A, Chapter 24, Section 7(D)

Chapter 24, Section 7(D) requires that, "Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements." When the original rule was adopted, the Board wanted to make sure that pesticides stored at distributors were protected from vandalism and the weather. Some questions have arisen about how this requirement should be applied in certain circumstances.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Provide Guidance to the Compliance Staff

7. Interpretation of CMR 01-026, Chapter 31, Section 1(E)(IV)

Section 1(E) of Chapter 31 currently lists four "exemptions," presumably to the requirements for a commercial applicator's license. The fourth exemption reads, "Certified or licensed Wastewater or Drinking Water Operators." A question has arisen about the intended scope of this exemption.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff

8. Other Old or New Business

- a. ERAC sampling update—Mary Tomlinson
- b. Variance permit to Urban Tree Service for control of poison ivy in York, Maine—H. Jennings
- c. Variance permit to The Lawn Dawg for control of invasive plants in South Portland, Maine—H. Jennings

9. Schedule of Future Meetings

September 12, October 24, and December 5, 2014, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

10. Adjourn

## NOTES

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

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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**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.

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**Section 1. Registered Pesticides**

- A. 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).
- B. 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.
- C. 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.
- D. 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.

**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.

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**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.

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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

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

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

CORRECTIONS:

February, 2014 – agency names, formatting

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 22: STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION**

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**SUMMARY:** These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

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### **SECTION 1. EXEMPTIONS**

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

### **SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS**

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. **Equipment**
  - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
  - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.

- III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

**B. Weather Conditions**

- I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.
- II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.
- III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

**C. Identifying and Recording Sensitive Areas**

- I. Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- II. This requirement shall not apply to commercial applications conducted under categories 3A (outdoor ornamental tree and plant), 3B (turf), 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management), or 7E (biting fly & other arthropod vectors [ticks]).
- III. Applications conducted under category 6A (rights-of-way vegetation management) and to sidewalks and trails under category 6B (industrial/commercial/municipal vegetation management) require the applicator to implement a drift management plan.

**D. Presence of Humans, Animals**

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

**E. Other Requirements**

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in order to avoid adverse impacts on off-target areas and to protect public health and the environment.

**SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES**

**A. Positive Identification of the Target Site**

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including;

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

**B. Site Plans Required**

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
  - (i) delineates the boundaries of the target area and the property lines;
  - (ii) depicts significant landmarks and flight hazards;
  - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
  - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

**C. Site-Specific Application Checklist**

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;
- II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
- III. Confirmation that the target site has been positively identified;
- IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
- V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
- VI. Wind speed and direction;
- VII. The measures used to protect all Sensitive Areas;
- VIII. Confirmation that there are no humans visible in or near the target area.

**D. Buffer Zones for any Sensitive Area Likely to Be Occupied**

Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.

**E. Wind Speeds for Aerial Applications**

Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

**SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE****A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides**

Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.

**B. Standards for Unconsented, Off-Target Drift of Pesticides**

- I. **General Standard.** Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.
- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
  - (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
  - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
  - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
  - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
  - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:

- (i) The standard of care exercised by the applicator;
- (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;
- (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

### C. **Consent**

- I. **Consent, How Given.** Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

## SECTION 5. **VARIANCES FROM STANDARDS**

### A. **Variance Permit Application**

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address, and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;

- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;
- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;
- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.

**B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff**

- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 MRSA §1471-T, "Exemptions."

**SECTION 6. EMERGENCIES**

- A. In the event that severe pest or weather conditions threaten to cause a significant natural resource and/or economic loss, as determined by the Commissioner of the Maine Department of Agriculture, Conservation and Forestry, the requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:
  - I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.

- II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
  - III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aerial application in the affected regions and the approximate dates that the emergency may continue.
  - IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
  - V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.
- B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010

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STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):  
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:  
January 1, 1988

AMENDED:  
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

AMENDED:  
September 22, 1998 - also converted to MS Word  
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)  
January 1, 2010 by request of agency in filing 2009-252  
June 12, 2013 – filing 2013-135 (Emergency major substantive)

CORRECTIONS:  
February, 2014 - formatting

**SUMMARY:** These regulations establish procedures and standards for informing interested members of the public about outdoor pesticide applications in their vicinity. This chapter sets forth the requirements for requesting notification about pesticide applications, for posting property on which certain commercial pesticide applications have occurred and also establishes the *Maine Pesticide Notification Registry* structure and fees.

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**Section 1. Requesting Notification About Outdoor Pesticide Applications**

The purpose of the following notification requirement is to enable individuals an opportunity to obtain information regarding outdoor pesticide application activities in their vicinity.

**A. Requests for Notification; How Made**

The owner, lessee or other legal occupant of a sensitive area may make a request to be notified about any outdoor pesticide application(s) which may occur within 500 feet of that sensitive area and any aerial application(s) which may occur within 1,000 feet of the sensitive area.

1. The request may be made in any fashion, so long as it is effective in informing the person receiving the request of the name, address, telephone number, and interest in receiving notification of the person making the request.
2. The request for notification should be made to the person responsible for management of the land on which the pesticide application will take place. If the person making the request for notification is uncertain as to the identity of the person to whom the request should be made, he/she may make the request for notification to the person who owns the land involved, as such ownership is ascertainable from the tax records of the municipality. That landowner shall then be responsible for assuring compliance with provisions of this section.

**B. Procedure of Notification**

Once a request for notification has been made as provided in Section 1(A), the person receiving the request shall cause notification to be given as follows:

1. General notification of intent to apply pesticides out-of-doors shall be given to the person making the request for notification. Such general notification may be given in any fashion, provided that it is effective in informing the person receiving the notice of the following:

- a. the approximate date(s) when pesticide(s) may be applied;
- b. the pesticide(s) which may be applied;
- c. in general terms, the manner of application; and
- d. the name, address and telephone number of a person responsible for the pesticide application from whom additional information may be obtained.
- e. If requested, the person responsible for managing the land shall make reasonable efforts to supply a copy of the MSDS(s) and/or the pesticide label(s). However such requests for additional information will not delay nor prohibit the intended pesticide application.

Where feasible, such general notification shall be given within one week after the request for notification is received and at least one day before any pesticide application is to occur. Such notification may cover outdoor pesticide applications which are planned over a period of up to one growing season.

2. If, following receipt of the general notification as provided by Section 1(B)(1) above, the person seeking notification believes there is a need for additional or updated information regarding impending pesticide application activities, he/she may make a further request for additional information from the person identified in the general notification. This request for additional information must specify the type of information needed, including, for example, more specific information regarding the date or dates on which pesticides will be applied when known. The person responsible for the notification shall make reasonable efforts to comply with such request for additional information.
3. If any person is dissatisfied with the efforts made by any other person at complying with these notification provisions, a complaint may be filed with the Board. The Board shall then make efforts to attempt to reach a reasonable and fair resolution between the parties.

## **Section 2. *Maine Pesticide Notification Registry for Non-Agricultural Pesticide Applications***

The Board shall maintain a list of individuals who must be notified of outdoor, non-agricultural pesticide applications in their vicinity. This list shall be referred to as the *Maine Pesticide Notification Registry*.

### **A. *Individuals to be Included on the Registry***

1. Individuals requesting to be listed on the *Maine Pesticide Notification Registry* shall pay all appropriate fees and provide the following information on forms supplied by the Board:
  - a. Name;

- b. Mailing address;
  - c. Listed registry residence, including street or road address and city;
  - d. Daytime and evening telephone number(s), one of which is designated as the primary contact number; and
  - e. The names and addresses of all landowners or lessees within 250 feet of the boundary of the listed registry residence.
2. Individuals may register more than one residence by completing additional forms and paying all appropriate fees.
  3. The effective period of the registry will be from March 1 to February 28 of the following year. Individuals must submit their request for inclusion on the next effective registry by December 31. All submissions received after that date will be included on the following registry. Individuals may notify the Board at any time of changes in their listed registry residence, however, changes will not take effect until the following registry. An individual will not be considered officially included on the *Maine Pesticide Notification Registry* unless their name appears on the current effective registry.
  4. The Board shall mail renewal notices to individuals listed on the *Maine Pesticide Notification Registry* on or before November 1 of each year. An individual must re-apply and pay all appropriate fees annually to remain on the registry for the next twelve month period.

**B. Alerting Neighbors to the Presence of an Individual on the Registry**

1. All individuals on the *Maine Pesticide Notification Registry* shall annually provide a letter to all landowners and lessees within 250 feet of their property boundary from whom they want to receive notification.
2. This letter, approved and supplied by the Board, must inform neighbors of the existence of the *Maine Pesticide Notification Registry*, the individual's request to be notified in the event of an outdoor pesticide application, the distance from the property boundary which shall cause notification to be given for non-agricultural pesticide applications, and the notification requirements of this chapter.
3. The individual on the registry requesting notification bears the burden of proof for demonstrating that this provision has been met.
4. Failure to distribute the letter will not prohibit an individual from being added to or remaining on the registry.

**C. Registry Provided to Commercial Applicators**

The *Maine Pesticide Notification Registry* shall be printed and distributed annually to affected licensed Commercial Master Applicators on or before its effective date of March 1. Newly licensed Commercial Master Applicators will be provided a copy of the current effective registry upon licensing.

**D. Notification to Individuals on the *Maine Pesticide Notification Registry***

1. Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet of the property boundary of the listed registry residence.
2. A person who receives a letter in accordance with Section 2(B) and who performs any outdoor, non-agricultural pesticide application within 250 feet to the property boundary of the listed registry residence shall notify the individual from whom the letter was given or sent.
3. Notification must consist of providing the following information to the individual on the registry:
  - a. The location of the outdoor pesticide application;
  - b. The date and approximate start time of the pesticide application (within a 24 hour time period) and, in the event of inclement weather, an alternative date or dates on which the application may occur;
  - c. The brand name and EPA registration number of the pesticide product(s) which will be used; and
  - d. The name and telephone number of the person or company making the pesticide application.
4. An individual on the registry who receives notification may request a copy of the pesticide product label or Material Safety Data Sheet. The person or company performing the pesticide application shall make reasonable efforts to comply with such request for additional information. However, such requests for additional information will not delay nor prohibit the person or company from performing the pesticide application as scheduled.
5. Notification must be received between 6 hours and 14 days prior to the pesticide application.
6. Notification must be made by telephone, personal contact or mail.
  - a. In cases where personal contact with the individual listed on the registry is not achieved, notification requirements are met via telephone if:

- i. the information is placed on a telephone answering device activated by calling the individual's primary contact telephone number; or
    - ii. the information is given to a member of the household or workplace contacted by dialing the primary contact telephone number.
  - b. If notification cannot be made after at least two telephone contact attempts and personal contact is not feasible, notification may be made by securely affixing the notification information in written form on the principal entry of the listed registry location.
7. The person or company performing the pesticide application bears the burden of proof for demonstrating that they have complied with this section.

#### E. Exceptions

1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
2. The following types of pesticide applications do not require notification under this section:
  - a. The application of pesticides indoors;
  - b. Agricultural pesticide applications;
  - c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing categories ~~VI(A)~~ 6A (utility rights-of-way), ~~VI(B)~~ and 6B (roadside vegetation management), and ~~VI(C)~~ 6C (railroad vegetation management);
  - d. The outdoor commercial application of pesticides in certification and licensing category ~~VH(a)~~ 7A (structural general pest control) within five (5) feet of a human dwelling, office building, institution such as a school or hospital, store, restaurant or other occupied industrial, commercial or residential structure which is the intended target site;
  - e. The application of general use pesticides by hand or with non-powered equipment to control stinging insects;
  - f. The placement of pesticidal baits;
  - g. The injection of pesticides into trees or utility poles;
  - h. The placement of pesticide-impregnated devices on animals, such as ear tags and flea collars;

- i. The application of pesticidal pet supplies, such as shampoos and dusts;
- j. The application of disinfectants, germicides, bactericides and virucides, such as bleach. The use of disinfectants in the pressure-washing of the exterior of buildings is not exempt under this section;
- k. The application of insect repellents to the human body;
- l. The application of swimming pool products;
- m. The application of general use paints, stains, and wood preservatives and sealants applied with non-powered equipment or by hand or within an enclosure which effectively prevents the escape of spray droplets of the product being applied; and
- n. The injection of pesticides into wall voids.

**F. Exemption from this section**

If an individual on the current effective registry and a person or company performing pesticide applications subject to this rule can reach an agreement on notification provisions acceptable to both parties other than those described herein, then the requirements as described in this section may be waived. For such an exemption to be in effect, the details of the notification agreement must be placed in writing and signed by both parties. Either party may terminate the notification agreement with a 14-day, written notice.

**G. Fee**

The annual application fee for an individual requesting to be on the registry will be \$20.00. The Board may waive the fee for individuals who demonstrate an inability to pay, or where other extenuating circumstances exist which justify granting a waiver. Evidence of an individual's inability to pay shall include, but not be limited to, the individual's participation in any of the following programs:

1. Food Stamps
2. Temporary Assistance for Needy Families (TANF)
3. Supplemental Security Income (SSI)
4. Social Security Disability (SSD)
5. Maine Care (Medicaid)

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

### Section 3. Posting and Public Notice Requirements for Pesticide Applications in Certain Commercial Licensing Categories

#### A. Signs

##### 1. Categories Requiring Posting

- a. 3A (outdoor ornamentals),
- b. ~~III(b)~~ 3B (turf), and ~~VII(a)~~
- c. 6B (industrial/commercial/municipal vegetation management), except applications to sidewalks and trails
- d. 7A (structural general pest control)
- e. 7E (biting fly & other arthropod vectors [ticks])

##### 2. Posting Requirements

~~Where outdoor commercial pesticide applications in certification and licensing categories III(a) Outdoor Ornamentals, III(b) Turf, and VII(a) Structural General will take place, the area~~ Areas treated under the categories listed in Section 3A(1) shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted before application activities commence and shall remain in place at least two days following the completion of the application. The sign shall be sufficient if it meets the following minimum specifications:

- ~~A.~~a. The sign must be at least five (5) inches wide and four (4) inches high;
- ~~B.~~b. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- ~~C.~~c. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- ~~D.~~d. The sign must bear:
  - ~~1.~~i. the word CAUTION in 72 point type;
  - ~~2.~~ii. the words PESTICIDE APPLICATION in 30 point type or larger;
  - ~~3.~~iii. the Board designated symbol;
  - ~~4.~~iv. any reentry precautions from the pesticide labeling;
  - ~~5.~~v. the name of the company making the pesticide application and its telephone number;

~~6~~.vi. the date and time of the application; and

7.vii. a date and/or time to remove the sign.

**B. Public Notice**

Advance notice must be published in a newspaper of general circulation in the affected area at least three but no more than 30 days prior to applications conducted under category 6A (rights-of-way vegetation management) and to sidewalks and trails under category 6B (industrial/commercial/municipal vegetation management),

**E.C. Exemption from this section**

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
  2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS**

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**SUMMARY:** These regulations describe the requirements for certification and licensing of commercial applicators.

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**1. Individual Certification and Company/Agency Licensing Requirements**

- A. Any commercial applicator must be either:
  - I. licensed as a commercial applicator/master; or
  - II. licensed as a commercial applicator/operator; or
  - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
- B. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- C. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
- D. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability

to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

#### E. Exemptions

- I. Employing entities only performing post harvest treatments to agricultural commodities are exempt from master licensing requirements.
- II. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- III. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – Rules Relating to Public Swimming Pools and Spas Administered by the Maine Bureau of Health.
- IV. Certified or licensed Wastewater or Drinking Water Operators
- V. Adults applying repellents to children with the written consent of parents/guardians.
- VI. Persons installing antimicrobial metal hardware.

## 2. Categories of Commercial Applicators

- A. All commercial applicators shall be categorized according to the type of work performed as outlined below:

### I. Agricultural Animal and Plant Pest Control

- a. **Agricultural Animal** - This subcategory includes commercial applicators using or supervising the use of pesticides on animals and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire as pesticide applicators are included in this subcategory; however, those persons applying pesticides as drugs or medication during the course of their normal practice are not included.
- b. **Agricultural Plant** - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of crops including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.

**Option I - Limited Commercial Blueberry** - This option includes commercial applicators using or supervising the use of pesticides in the production of blueberries only.

**Option II - Chemigation** - This option includes commercial applicators using or supervising the use of pesticides applied through irrigation equipment in the production of crops.

**Option III - Agricultural Fumigation** - This option includes commercial applicators using or supervising the use of fumigant pesticides in the production of crops.

**Option IV - Post Harvest Treatment** - This option includes commercial applicators using or supervising the use of pesticides in the post harvest treatment of food crops.

## II. **Forest Pest Control**

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, Christmas trees, and forest seed producing areas.

## III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of outdoor ornamental trees, shrubs and flowers.
- b. **Turf** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of turf, such as at turf farms, golf courses, parks, cemeteries, athletic fields and lawns.
- c. **Indoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of live plants in shopping malls, businesses, residences and institutions.

## IV. **Seed Treatment**

This category includes commercial applicators using or supervising the use of pesticides on seeds.

## V. **Aquatic Pest Control**

- a. **General Aquatic** - This subcategory includes commercial applicators using or supervising the use of pesticides applied directly to surface water, including but not limited to outdoor application to public drinking water supplies, golf course ponds, rivers, streams and wetlands. Excluding applicators engaged in public health related activities included in categories VII(e) and VIII below.

- b. **Sewer Root Control** - This subcategory includes commercial applicators using or supervising the use of pesticides applied to sewers to control root growth in sewer pipes.

#### VI. **Right-Of-Way Vegetation Management**

- a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside and railroad rights-of-way.
- b. **Industrial/Commercial/Municipal Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on industrial, commercial, municipal or publicly owned areas including, but not limited to, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots and sidewalks.

#### VII. **Industrial, Institutional, Structural and Health Related Pest Control**

- a. **General** - This subcategory includes commercial applicators using or supervising the use of pesticides in, on or around human dwellings, office buildings, institutions such as schools and hospitals, stores, restaurants, industrial establishments (other than in Category 6) including factories, warehouses, food processing plants, food or feed transportation facilities and other structures, vehicles, railroad cars, ships, aircraft and adjacent areas; and for the protection of stored, processed or manufactured products. This subcategory also includes commercial applicators using or supervising the use of pesticides to control rodents on refuse areas and to control other pests, including but not limited to birds and mammals.
- b. **Fumigation** - This subcategory includes commercial applicators using or supervising the use of fumigants or fumigation techniques in any type of structure or transportation device.
- c. **Disinfectant and Biocide Treatments** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in manufacturing, swimming pools, spas, industrial cooling towers, public drinking water treatment plants, sewers and air conditioning systems.
- d. **Wood Preserving** - This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to treat lumber, poles, railroad ties and other types of wooden structures including bridges, shops and homes. It also includes commercial applicators applying general use pesticides for remedial treatment to utility poles.

- e. **Biting Fly & other Arthropod Vectors** - This subcategory includes commercial applicators and non-public health governmental officials using or supervising the use of pesticides in management and control of biting flies & other arthropod vectors of public health and public nuisance importance including, but not limited to, ticks, mosquitoes, black flies, midges, and members of the horsefly family.
- f. **Termite Pests** - This subcategory includes commercial applicators using or supervising the use of pesticides to control termites.

#### VIII. **Public Health Pest Control**

- a. **Biting Fly Pests** - This subcategory includes governmental officials using pesticides in management and control of potential disease vectors or other pests having medical and public health importance including, but not limited to, mosquitoes, black flies, midges, and members of the horsefly family.
- b. **Other Pests** - This subcategory includes governmental officials using pesticides in programs for controlling other pests of concern to public health including, but not limited to, ticks and birds and mammal vectors of human disease.

#### IX. **Regulatory Pest Control**

This category includes governmental employees using pesticides in the control of pests regulated by the U.S. Animal and Plant Health Inspection Service or some other governmental agency.

#### X. **Demonstration and Research Pest Control**

This category includes all individuals who (1) demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration, (2) conduct field research with pesticides, and in doing so, use or supervise the use of pesticides. Individuals who conduct only laboratory-type research are not included. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

#### XI. **Aerial Pest Control**

This category includes commercial applicators, including pilots and co-pilots, applying or supervising the application of pesticides by means of any aircraft. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

### 3. **Competency Standards for Certification of Commercial Applicators**

- A. Applicants seeking commercial certification must establish competency in the general principles of safe pest control by demonstrating knowledge of basic subjects including, but not limited to, pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques and applicable laws and regulations. (Core Exam).
- B. Applicants seeking commercial certification must demonstrate competency in each applicable category or subcategory. (Category Exam). Competency in the applicable category or subcategory shall be established as follows:

**I. Agricultural Animal and Plant Pest Control**

- a. **Agricultural Animals.** Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.
- b. **Agricultural Plant.** Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I - IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

**II. Forest Pest Control**

Applicants seeking certification in the category of Forest Pest control as described in Section 2(A)(II) must demonstrate practical knowledge of forest vegetation management, forest tree biology and associated pests. Such required knowledge shall include population dynamics of pest species, pesticide-organism interactions, integration of pesticide use with other pest control methods, environmental contamination, pesticide effects on non-target organisms, and use of specialized equipment. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

**III. Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals.** Applicants seeking certification in the Outdoor Ornamental subcategory as defined in Section 2(A)(III)(a) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of trees, shrubs and floral plantings. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Turf.** Applicants seeking certification in the Turf subcategory as described in Section 2(A)(III)(b) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of turf. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- c. **Indoor Ornamentals.** Applicants seeking certification in the Indoor Ornamental subcategory described in Section 2(A)(III)(c) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of indoor ornamental plantings. Such knowledge shall include pest recognition, proper pesticide selection, undue pesticide persistence, and application methods with particular reference to techniques used in proximity to human presence.

#### IV. **Seed Treatment**

Applicants seeking certification in the category of Seed Treatment as described in Section 2(A)(IV) must demonstrate practical knowledge of seed types and problems requiring chemical treatment. Such knowledge shall include seed coloring agents, carriers and binders which may affect germination, hazards associated with handling, sorting, and mixing in the treatment process, hazards of introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

#### V. **Aquatic Pest Control**

- a. **General Aquatic -** Applicants seeking certification in the subcategory of General Aquatic as described in Section 2(A)(V)(a) must demonstrate practical knowledge of proper methods of aquatic pesticide application, application to limited area, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include basic factors contributing to

the development of nuisance aquatic plant growth such as algal blooms, understanding of various water use situations and potential downstream effects from pesticide use, and potential effects of various aquatic pesticides on plants, fish, birds, insects and other organisms associated with the aquatic environment. Also required shall be an understanding of the Department of Environmental Protection laws and regulations pertaining to aquatic discharges and aquatic weed control and a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

- b. **Sewer Root Control** - Applicants seeking certification in the subcategory of Sewer Root Control as described in Section 2(A)(V)(b) must demonstrate practical knowledge of proper methods of sewer root control pesticide application, application to pipes, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include potential effects on water treatment plants, movement of pesticides into off target pipes or buildings and the hazards of sewer gases.

#### VI. **Right-of-Way Vegetation Management**

Applicants seeking certification in the subcategories under Right-of-Way Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of right-of-way pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of right-of-way herbicides, and reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of right-of-way spraying on adjacent public and private properties and activities, and effects of right-of-way spraying on fish and wildlife species and their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

#### VII. **Industrial, Institutional, Structural and Health Related Pest**

- a. **General.** Applicants seeking certification in the subcategory of General Pest Control as described in Section 2(A)(VII)(a) must demonstrate a practical knowledge of a wide variety of pests and methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans,

domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

- b. **Fumigation.** Applicants seeking certification in the subcategory Fumigation as described in Section 2(A)(VII)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees and customers.
- c. **Disinfectant and Biocide Treatments.** Applicants seeking certification in the Disinfectant and Biocide Treatments subcategory described in Section 2(A)(VII)(c) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant, cooling water and pool or spa system designs, labels and hazards of disinfectants and biocides and proper application techniques to assure adequate control while minimizing exposure to humans and the environment.
- d. **Wood Preserving.** Applicants seeking certification in the Wood Preserving Subcategory described in Section 2(A)(VII)(d) must demonstrate practical knowledge in wood destroying organisms and their life cycles, nonchemical control methods, pesticides appropriate for wood preservation, hazards associated with their use, proper handling of the finished product, proper disposal of waste preservatives, and proper application techniques to assure adequate control while minimizing exposure to humans, livestock and the environment.
- e. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest control as described in Section 2(A)(VII)(e) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- f. **Termite Pests.** Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans,

domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

#### VIII. **Public Health Pest Control**

- a. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest Control as described in Section 2(A)(VIII)(a) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Other Pests.** Applicants seeking certification in the subcategory of Other Pest Control as described in Section 2(A)(VIII)(b) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

#### IX. **Regulatory Pest Control**

Applicants seeking certification in the category of Regulatory Pest Control as described in Section 2(A)(IX) must demonstrate practical knowledge of regulated pests and applicable laws relating to quarantine and other regulations of pests. Such knowledge shall also include environmental impact of pesticide use in eradication and suppression programs, and factors influencing introduction, spread, and population dynamics of relevant pests. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

#### X. **Demonstration and Research Pest Control**

Applicants seeking certification in the category of Demonstration and Research Pest Control as described in Section 2(A)(X) must demonstrate practical

knowledge in the broad spectrum of activities involved in advising other applicators and the public as to the safe and effective use of pesticides. Persons involved specifically in demonstration activities will be required to demonstrate knowledge of pesticide-organism interactions, the importance of integrating chemical and non-chemical control methods, and a grasp of the pests, life cycles and problems appropriate to the particular demonstration situation. Field researchers will be required to demonstrate general knowledge of pesticides and pesticide safety, as well as a familiarity with the specific standards of this Section which apply to their particular areas of experimentation. All individuals certified in this category must also be certified in one or more of the previous categories or subcategories which represent at least 80% of their practice. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

#### XI. **Aerial Pest Control**

Applicants seeking certification in the category of Aerial Pest Control as described in Section 2(A)(XI) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Applicants must also demonstrate competency in the specific category or subcategory in which applications will be made, as described in paragraphs I, II, VI and VIII herein. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

#### 4. **Competency Standards for Certification of Commercial Applicator/Master**

- A. **Regulations Exam.** An applicant seeking certification as a commercial applicator/master must successfully complete a closed book exam on the appropriate chapters of the Board's regulations. The passing grade shall be 80%. An applicant must successfully complete the regulations exam before being allowed to proceed to the master exam. The staff may waive the requirements for the closed book regulation exam if it determines that a pest management emergency exists necessitating the issuance of a nonresident license pursuant to Section 6 B. of this chapter, provided that the staff verbally reviews the pertinent regulations with the applicant prior to issuing a nonresident license.
- B. **Master Exam.** An applicant seeking certification as a commercial applicator/master must also demonstrate practical knowledge in ecological and environmental concerns, pesticide container and rinsate disposal, spill and accident mitigation, pesticide storage and on site security, employee safety and training, potential chronic effects of exposure to pesticides, pesticide registration and special review, the potential for groundwater contamination, principles of pesticide drift and measures to reduce drift, protection of

public health, minimizing public exposure and use of non pesticide control methods. In addition, applicant must demonstrate the ability to interact with a concerned public.

## 5. Certification Procedures for Commercial Applicators

### A. Initial Certification

I. **Application for Exams.** All persons desiring to take exams must request an application from the Board's office and submit all required information and fees. All fees are waived for governmental employees.

- a. Information shall include name, Social security number, home address, company address, name and telephone number of supervisor and categories for which certification is desired.
- b. A non-refundable fee of \$10.00 for each core, category or subcategory exam shall accompany the application.
- c. Study materials for other than the regulations exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
- d. A non-refundable fee of \$50.00 for the regulations and master exams shall accompany the application for Master exams. Study material for the regulations exam will be sent to the applicant upon receipt of their application and the required fees.

### II. Appointment for Exams

- a. Upon receipt of an application the staff shall schedule an exam date and notify the applicant. If the scheduled date is not convenient for the applicant, it shall be the responsibility of the applicant to contact the Board's office to arrange a more convenient time to take the exams.
- b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exams on the scheduled date at least 24 hours in advance of the scheduled exam. Applicants who cancel their exam appointment two times in a row shall also forfeit their exam fees. Re-application shall require an additional \$15.00 fee.
- c. Exams will be available year-round on an appointment basis at the Board's office in Augusta.
- d. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.

**III. Exams**

- a. Applicants in all areas except category I(b)IV, Post Harvest Treatment shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.
- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification in all areas except category I(b)IV, Post Harvest Treatment must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.
- c. Applicants in subcategory I(b)IV Post Harvest Treatment shall take one closed book exam which combines the core exam and the category exam.

**IV. Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.

- a. Applicants should be present and ready to take the exams at the appointed time.
- b. Applicants shall not talk during the examination period.
- c. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

**V. Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait ~~30~~ 6 more days before retaking again.
- b. An applicant who fails a category exam must re-apply and pay all required fees and may not retake that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait ~~30~~ 6 more days before retaking again.

- c. An applicant who passes the core and one category exam shall be considered eligible for operator level licensing in that particular category so long as that person will be working under the supervision of a Master applicator. If at a later date the applicant wishes to add another category, only the appropriate category exam shall be required.
- d. An applicant who fails a master exam must re-apply and pay all required fees and may not retake the examination prior to ~~14~~ 6 days after the date of such failed examination.
- e. Any applicant must pass both the core and at least one category exam within 12 months before qualifying for certification.
- f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.

VI. **Expiration.** Certification under this Section will expire on December 31<sup>st</sup> of the sixth year after the date of successful completion of the exams and on December 31<sup>st</sup> of every sixth year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

VII. An applicant's original certification period shall not be extended due to the applicant qualifying for another category or upgrading to the master level.

#### B. **Recertification of Applicators**

I. Persons with current valid certification may renew that certification by either providing documentation from a substantially equivalent professional certification program approved by the board or by accumulating recertification credits during the certification period described in Section 5(A)VI according to the following schedule:

- a. **Master level** - 18 credit hours, including at least 3 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.
- b. **Operator level** - 12 credit hours, including at least 3 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.

II. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.

- a. Board staff will review program agendas and monitor programs as time permits.

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- III. Credit will be allowed for topics including, but not limited to:
- a. Applicable laws and regulations.
  - b. Environmental hazards.
  - c. Calibration and new application techniques.
  - d. Label review.
  - e. Applicator safety.
  - f. Storage and disposal.
  - g. Pest identification and control.
  - h. Integrated pest management.
- IV. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting with details of the agenda. Board staff will review program agendas and assign credit values.
- a. One credit will be assigned for each 1 hour of presentation on appropriate topics.
  - b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
  - c. An individual who organizes a meeting shall be required to maintain a sign up sheet and supervise the signing of the sheet by all applicators attending the program. That individual shall submit the signup sheet to the Board at the same time the verification attendance forms are collected and submitted to the Board.
- V. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
- VI. A person who fails to accumulate the necessary credits during their first six year certification period will have to retake and pass all exam(s) required for initial certification. If a person fails to accumulate the necessary credits again that person must retake and pass all exam(s) required for initial certification and within one year thereafter, obtain the balance of the recertification credits which that person failed to accumulate during the previous certification period. If that person does not obtain the balance of credits needed, the Board will not renew their license until the make- up credits are accrued.

- VII. Attendance verification forms must verify attendance by the applicator of the entire approved program(s) for which recertification credit is sought, and must be completed, signed and submitted to the program organizer or Board representative by the applicator seeking recertification credit(s). No other person may complete or sign the form on the applicator's behalf. Any form that is completed or signed by a person other than the applicator will be deemed a fraudulent report and will not be approved by the Board for recertification credit(s). Any credit(s) approved by the Board pursuant to an attendance verification form which is subsequently determined by the Board to have been completed or signed by a person other than the applicator shall be void and may not be counted towards the applicator's recertification requirements; and any recertification issued on the basis of such credits shall be void.

## 6. Licensing

- A. All Commercial Applicators required to be certified under this chapter and state pesticide law shall be licensed before using or supervising the use of pesticides as described in Section 1(A).
- B. Nonresident licenses. When the staff determines that a pest management emergency exists which necessitates the use of aerial application and for which there are not sufficient qualified Maine licensees, it may issue a license without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Nonresident licenses issued pursuant to this section are effective until December 31 of the year in which they are issued.
- ~~B.C.~~ **Application.** Application for a commercial applicator license shall be on forms provided by the Board.
- I. The completed application must include the name of the company or agency employing the applicant.
- II. Unless the applicant is the owner of a company, the completed application must be signed by both the applicant and that person's supervisor to verify the applicant is an employee of the company/agency.
- ~~C.D.~~ **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - \$70.00 per person.
- II. For replacement, upgrade to master or to add categories \$5.00.
- ~~D.E.~~ Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, Certification & Licensing Provisions/Spray Contracting Firms which requires an additional Spray Contracting Firm License.

~~E.F.~~ **Insurance.** Commercial applicators who spray for hire (custom applicators) shall be required to have liability insurance in force at any time they make a pesticide application.

I. Applicators shall submit a completed and signed form provided by the Board at the time they apply for their license which attests that they will have the required amounts of insurance coverage in effect when they make pesticide treatments. The information submitted on the form must be true and correct.

II. Insurance coverage must meet or exceed the following minimum levels of liability:

a. Ground applicators:

Public liability	\$100,000 each person \$300,000 each occurrence
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Property damage	\$100,000 each occurrence
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b. Aircraft applicators:

Public liability	\$100,000 each person \$300,000 each occurrence
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Property damage	\$100,000 each occurrence
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~~E.G.~~ **Reports.** Annual Summary Reports described in Chapter 50, Section 2(A) must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license is temporarily suspended until the proper report is received or until a decision is rendered at a formal hearing as described in 22 MRSA §1471-D (7).

~~G.H.~~ **Expiration**

I. All licenses will expire at the end of the second calendar year after issuance or when an individual licensee terminates employment with the company/agency with which the individual's license is affiliated.

II. The licensee or a company/agency representative shall notify the Board in writing within 10 days after a licensee is terminated from employment.

III. Also, all licenses within a company/agency are suspended if the licensed Master is terminated from employment or dies.

~~H.I.~~ **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

## 7. ~~Grandfathering and Transitions~~

- ~~A. The amendments to Section 1 shall not affect the licensing status of municipal applicators or residential lawn herbicide applicators. Those licensees with restricted operator licenses shall be allowed to operate without a master level license until January 1, 1997. At that time they must successfully complete the master regulation and oral exams and upgrade to the master level to be eligible for license renewal.~~
- ~~B. Applicators licensed prior to January 1, 1996 in category VII(a), General Pest Control shall be automatically licensed in category VII (g) Termite Pest control.~~
- ~~C. The three category or subcategory specific recertification credits and one credit in environmental science, ecology or toxicology required by Section 5(B)(I)(a) and (b) must be accumulated by any applicator recertifying after December 31, 1998.~~
- ~~D. The 1999 amendments to this chapter which extend license and certification periods shall be phased in over two years. Phase one shall include licensees renewing licenses after December 31, 2000 whose last name begins with the letters A through J. Phase two shall include licensees renewing licenses after December 31, 2001 whose last name begins with the letters K through Z. All new licenses issued after December 31, 2000 shall be issued according to these amendments.~~

STATUTORY AUTHORITY: 22 M.R.S.A., Section 1471-D

EFFECTIVE DATE:

January 1, 1983 (filed with Secretary of State August 13, 1982)

AMENDED:

December 29, 1982  
 January 1, 1984  
 January 1, 1984 - Section 7  
 May 20, 1984 - Section 6  
 May 13, 1985 - Section 5  
 Emergency amendment effective April 18, 1986 - Section 6  
 August 3, 1986 - Section 6  
 November 30, 1986 - Section 3  
 May 23, 1987 - Section 1  
 April 27, 1988  
 April 29, 1990  
 January 1, 1996 (adopted by Board October 7, 1994 - see Section 8 for transition dates)  
 October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

March 4, 2007 – filing 2007-69

July 2, 2009 – filing 2009-318 (EMERGENCY, later reverted to pre-emergency status)

**CORRECTIONS:**

February, 2014 – agency names, formatting

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 32: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS**

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**SUMMARY:** These regulations describe the requirements for certification and licensing of private applicators.

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**1. Competency Standards for Certification - Private Applicator**

- A. No person shall be certified as a private applicator unless he has fulfilled requirements demonstrating his knowledge of basic subjects including pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques, and applicable laws and regulations. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans (core exam).
- B. No person shall be certified as a private applicator unless he has demonstrated knowledge of the general principles of pest control for his major commodity, including specific pests of the crop, their life cycle, and proper timing of control measures to be efficacious (Commodity Exam).

**2. Certification Procedures for Private Applicators**

**A. Initial Certification**

- 1. Any person seeking to be certified as a private applicator must pass a written core exam and a written exam in the area of his primary commodity. Both exams shall be closed book.
- 2. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board,
- 3. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
  - a. Applicants should be present and ready to take the exams at the appointed time.
  - b. Applicants shall not talk during the examination period.
  - c. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work

sheets will be provided and all papers shall be collected at the end of the period.

- d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

4. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam may not retake that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must wait ~~30~~ 6 more days before retaking the exam again.
- b. An applicant who fails the exam in the area of his primary commodity may not retake the that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must wait ~~30~~ 6 more days before retaking the exam again.
- c. Any applicant must pass both the core and at least one commodity exam within 12 months before qualifying for certification.
- d. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.

5. At its discretion, the Board may, in special circumstances, offer the option of an oral core and commodity exam to a person with recognized difficulty in reading.

- a. The person requesting this option must identify another qualified individual from whom he can seek advice and guidance necessary for the safe and proper use of pesticides related to his certification.
- b. The person identified as reader and advisor to applicant must be present at time of oral exam and acknowledge his willingness to assist the private applicator.

6. Certification under this section will expire on October 31st of the third year after the date of successful completion of the exams and on October 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

**B. Recertification**

- 1. Any person with current valid certification may renew that certification by accumulating 6 recertification credits during the certification period described in Section 2(A)6.

2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
3. Credit will be allowed for topics including, but not limited to:
  - a. Applicable laws and regulations.
  - b. Environmental hazards.
  - c. Calibration and new application techniques.
  - d. Label review.
  - e. Applicator safety.
  - f. Storage and disposal.
  - g. Pest identification and control.
  - h. Integrated pest management.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
  - a. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
  - b. An individual conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
5. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
6. A person who fails to accumulate the necessary credits will have to re-apply to take the exams required for initial certification.

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### 3. Licensing

- A. **Application.** Application for a private applicator license, shall be on forms provided by the Board. Information shall include name; Social Security number; mailing address; farm name, location and telephone number; and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
1. For a private applicator license - \$15.00 per person.
  2. For replacement or alteration - \$5.00.
- C. **Expiration.** Private applicator licenses are issued on a three-year period and will expire on October 31st of the third year. Any person who has accumulated the required number of recertification credits must apply for license renewal within one year of the expiration date of the license or the recertification credits are forfeited and that person must retake and pass both the core and commodity exams to again be eligible for licensing.
- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*
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STATUTORY AUTHORITY: 22 M.R.S.A. § 1471-D

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

December 6, 1987

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

August 25, 1997 – fees

January 4, 2005 – filing 2004-605, Section 3.C.

CORRECTIONS:

February, 2014 – agency names, formatting

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 33: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS OF GENERAL USE PESTICIDES**

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**SUMMARY:** These regulations describe the requirements for certification and licensing of private applicators using general-use pesticides to produce plants or plant products intended for human consumption as food, where the person applying the pesticides or the employer of the person applying the pesticides derives \$1,000 or more in annual gross income from the sale of those commodities.

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**SECTION 1. Competency Standards for Certification—Private Applicator of General Use Pesticides (Core exam)**

- A. No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.
- B. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides and the potential adverse effect of pesticides on plants, animals or humans.

**SECTION 2. Certification Procedures for Private Applicators**

**A. Initial Certification**

- 1. Any person seeking to be certified as a private applicator of general-use pesticides must pass a written core exam. The exam shall be closed book.
- 2. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board.
- 3. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
  - a. Applicants should be present and ready to take the exams at the appointed time.
  - b. Applicants shall not talk during the examination period.

- c. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
  - d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
4. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on the core exam.
- a. An applicant who fails the core exam may not retake that examination prior to ~~14~~ 6 days after the date of such failed examination. If an applicant fails again the applicant must wait ~~30~~ 6 more days before retaking the exam again.
  - b. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
5. Certification under this section will expire on October 31 of the third year after the date of successful completion of the exams and on October 31 of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

**B. Recertification**

1. Any person with a current valid certification may renew that certification by accumulating three recertification credits during the certification period described in Section 2(A)(5).
2. Recertification credits will be available through Board-approved meetings including, but not limited to, University or industry and trade organization seminars or workshops and approved home study courses where pest management topics are included.
3. Credit will be allowed for topics including, but not limited to:
  - a. Applicable laws and regulations;
  - b. Environmental hazards;
  - c. Calibration and new application techniques;
  - d. Label review;
  - e. Pesticide risk and applicator safety;
  - f. Pesticide storage and disposal;

- g. Pest identification, biology and management;
  - h. Integrated pest management;
  - i. Pesticide fate and drift management;
  - j. Risk communication; and
  - k. Public relations.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
    - a. A minimum of one credit shall be assigned for each one hour of presentation on appropriate topics.
    - b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each one hour of presentation on appropriate topics.
  5. For in-state programs, each participant will complete an on-site process to verify attendance at each program for which credit is allowed. For electronic, correspondence or out-of-state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of completion or attendance and a copy of the agenda or syllabus of the training provided. The agenda or syllabus must show the length of each presentation and describe what was covered.
  6. A person who fails to accumulate the necessary credits will have to take the most current exam required for initial certification.

### **SECTION 3. Licensing**

- A. **Application.** Application for a private applicator of general-use pesticides license shall be on forms provided by the Board. Information shall include name, Social Security number, mailing address, farm name, location, telephone number and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
  1. For a private applicator of general-use pesticides license—\$15.00 per person.
  2. For replacement or alteration—\$5.00.
- C. **Expiration.** Private applicator of general-use pesticides licenses are issued on a three-year basis and will expire on October 31 of the third year.

- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*
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STATUTORY AUTHORITY: 22 M.R.S. §1471-D(2-D), 22 M.R.S. §1471-M(1)(C-1)

EFFECTIVE DATE:

December 26, 2011 – filing 2011-474

CORRECTIONS:

February, 2014 – agency names, formatting

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE**

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**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.

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**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. ~~Prohibition of Certain Air-Carrier Application Equipment~~

~~It shall be unlawful to apply any liquid pesticide mixture containing the active ingredient hexazinone with any application equipment that utilizes a mechanically generated airstream to propel the spray droplets unless the airstream is directed downward.~~

#### B. **Licenses Required**

I. No person shall purchase, use or supervise the use of any pesticide containing the active ingredient hexazinone unless they have obtained a private or commercial pesticide applicator's license from the Board in accordance with 22 M.R.S. 1471-D.

II. ~~No person shall:~~

~~a. Distribute any pesticide containing the active ingredient hexazinone without a restricted use pesticide dealer's license from the Board; or~~

~~b. Distribute any pesticide containing the active ingredient hexazinone to any person who is not licensed as a private or commercial pesticide applicator by the Board.~~

#### C. ~~Records and Reporting~~

~~Dealers distributing pesticides containing the active ingredient hexazinone shall keep records of such sales and provide reports to the Board as described in Chapter 50, "Record Keeping and Reporting Requirements."~~

### 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.

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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):  
March 1, 1997

AMENDED:  
May 7, 1997 - Section 3(B)(II)

CONVERTED TO MS WORD:  
March 11, 2003

AMENDED:  
May 12, 2003 - Section 4 added

NON-SUBSTANTIVE CORRECTIONS:  
June 24, 2003 - summary only

AMENDED:  
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



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**June 27, 2014**

**Cafeteria, Madison Area Memorial High School, 486 Main Street, Madison, Maine**

**MINUTES**

**10:00 AM**

Present: Bohlen, Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Randlett, introduced themselves
- Staff Present: Bills, Connors, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the March 28 and May 16, 2014, Board Meetings

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

- **Flewelling/Granger: Moved and seconded to approve the March minutes**
- **In favor: Unanimous**
- In the May minutes, Jemison noted that on page 8, agenda item 9, first bullet, “bill” was misspelled, “absence” was misspelled and there was an extra period in front of the word “Lakes”.
  - **Eckert/Granger: Moved and seconded to approve the May minutes as amended**
  - **In favor: Unanimous**

3. Public Forum (limited to one hour)

At this time, the Board invites anyone interested to address its members with questions or concerns about any pesticide-related issues.

Presentation By: Henry Jennings  
Director

Action Needed: None required

- Dave Colson, Maine Organic Farmers and Gardeners Association (MOFGA), said that the requirement for the Ag Basic license is not well known and that there are several groups across the

state willing to assist. A discussion ensued about how to make people aware of the new license requirement.

4. Interpretation of the Term “food production” in the Context of the Agricultural Basic Pesticide Applicator License

Questions have arisen about the term “food production” in the statute that requires certification for a “private applicator of general use pesticides for food production” (Title 22, Sec. 1471-D [2-D]). The staff is asking the Board to interpret the meaning of the term in this context.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide guidance to the staff on how to interpret the statute

- Jennings explained that there have been several questions from growers on whether they need a license. He referred to Fish’s memo. Examples include a greenhouse grower who disinfects pots prior to planting; a greenhouse grower using disinfectants on capillary mats and benches when no plants are present; various post-harvest treatments; and disinfecting of bins, storage areas, etc. The Board needs to be true to the language of the statute, while interpreting what it thinks the intent was. Applying common sense and practicality would be helpful to the staff. There are food safety and environmental concerns, and food safety was probably foremost in the legislator’s minds.
- Granger said that it started as a concern that folks are putting pesticides on food that don’t have any training. If people are going to be eating food that has been treated, the growers ought to know what they’re doing. It should apply to any core practice that is apt to leave a residue on the food. It ought to be related to making sure that people using pesticides on food know the rules about pesticides. If sanitizing equipment presents no likelihood of getting residues on food, then it should not be included; post-harvest treatments go directly on food, they should be included. Look at in terms of residues on food. Stevenson agreed.
- Hicks noted that sanitizing equipment is crucial to control bacteria, etc., so from a food safety issue it is important. Bohlen argued that the risk caused by poorly done sanitation is a food issue, not a pesticide issue; the Board’s authority relates to pesticide use, not food-borne pathogens.
- Eckert suggested including anything from planting the seed or whatever, to the post-harvest treatment, when product is sold or transferred.
- Jemison suggested that any product that has an EPA number should be included; it’s easier to define. Bleach has an EPA number; it is the start of the process.
- Flewelling noted that people doing sanitation must have a license of some kind.
- Jennings stated that there are people in food production using products without an EPA number.
- Bohlen said that EPA number is one trigger, but the Board needs to put boundaries around what constitutes food production. Post-harvest treatment is straight-forward, others are trickier. What about producing seeds for home gardens? This is not the sale of a food product, but is there a risk in that person not having training?
- Granger mentioned neonicotinoids.
- Morrill said that should be included because the end goal is for the plant to be eaten.
- Hicks suggested borrowing a standard from MOFGA: growers can use a registered disinfectant or sanitizer in production as long as it doesn’t come in contact with food.
- Bohlen asked about soil; sanitation early on, soil pathway.
- Morrill said it should start with soil. Flewelling agreed, saying it shouldn’t start with the container. Morrill suggested using “growing medium” instead of “soil.”
- Granger expressed concern that this would not be a clean definition and asked whether it could be based on products having an “agricultural” label. Hicks noted that if a label has Worker Protection

Standard information on it, it could be considered agricultural. Morrill said that you could have identical products without that information.

- **Consensus was reached for staff to draft a policy where food production is defined as beginning with soil treatments and ending with the transfer of the food product.**

## 5. Overview of Board of Pesticides Control Posting/Notification Requirements

At the March 28, 2014, meeting, the subject of Board of Pesticides Control sign requirements came up as the Board reviewed a complaint filed by Donna Herczeg. There was Board sentiment to review the BPC sign requirements at a future meeting and determine whether they are serving the intended purpose. The staff has summarized those requirements and will share the results with the Board.

Presentation By: Henry Jennings  
Director

Action Needed: Determine whether the signs are serving the intended purpose

- Jennings explained that this item came from the March meeting, when Donna Herczeg spoke. One of her concerns was about signs used in lawn care. Some Board members expressed an interest in having a fuller understanding of all sign requirements. The staff attempted to summarize them in the memo. At one time there was an attempt to consolidate all notification requirements in Chapter 28, where the self-initiated request, non-agricultural registry, and residential sign requirements are contained. However, new rules for schools and indoor applications contain separate notification requirements. At the last meeting there was a discussion about adding biting fly (7E) and general vegetation management (6B) if done in a fashion that isn't related to a ROW. Chapter 51 is the oldest chapter with notification requirements; those were around budworm spraying which goes back to 1983. The Legislature made a finding that one way to reduce conflict and concern was to increase communication, so it required public notice for forest insect applications. A couple of concerns that were voiced about residential signs are that the signs have become so busy it is difficult to find pesticide information on them. When Chapter 28 was enacted, the Board wasn't opposed to advertising, but maybe the advertising piece has gone beyond what was anticipated. The question the Board asked in March was: Are the regulations serving the original purpose?
- Eckert noted that, at the time, they wanted companies to think that signage could be a good thing; this company is doing a good thing, being a good public citizen by letting people know; trying to put a little sweetener on it. She is always amazed at how small the sign is allowed to be. If you see something like this on a lawn, you don't see the sign, you notice the holder. You know they sprayed, but don't know what. Are the signs doing what we want them to do? Should they be bigger? The simpler they are, the better, so people can easily identify their purpose.
- Jemison said that he remembers the rules as having a "Board-approved" symbol and minimum information. The Board could keep it simple, such as company name and phone number. The most important thing is that people can see the "Caution, pesticide application" component. That was the purpose. Some of the pictures of signs that Donna Herzog brought were difficult to recognize as an application sign.
- Morrill noted that there were two issues with those signs: (1) One of them was facing the wrong way, and (2) what can be on the sign? It seems like all the required information was there. Maybe there should be a defined border around the required information. Every company uses a different size sign; they should be able to use whatever they want. He prefers not to want to regulate what additional information can be on the sign. Add a border that defines required information and the sign should to point toward ingress.
- Hicks pointed out that the staff gets a lot of calls from the public from these signs; the logo does more to identify a company than a phone number. It's advertising, but it's also useful.

- Jennings said that it does tell you who the company is, but does it tell you that an application was done? One of the requirements is that signs be light-colored with dark, bold lettering. One sign that Donna Herczeg brought in was bright colors. This kind of color scheme can really draw attention to bright colors and detract from the pesticide information in black-and-white text.
- Stevenson suggested that the staff go to the particular companies and tell them they are not following the rule. He agreed that there should be borders around the required information; if they put extra stuff around that, it's fine. There is a perception out there that the original intent was a strategy to frighten people away from making applications. It's a source of pollution, although good for marketing. When you see them on the pallets, you realize how many are put out there.
- Tim Hobbs noted that, if you look back at the minutes, Herczeg's issue was companies using the signs for marketing. If someone is concerned about pesticides, they will know that's what it means. Make sure there's a balance; one person complaining about marketing needs to be kept in perspective. If the rule about contrasting colors is followed, the signs do work.
- Eckert asked whether the Board should be more open to different signage or posting that accomplishes the same purpose.
- Flewelling said he is happy with how the rule is currently written. He is okay with advertising on it and doesn't like to tell people how to do business.
- Jemison suggested making the required information on white, with black letters, with a black border around it, 4x5 inches. Outside of that, they can do anything they want.
- Morrill said the way the rule is written is fine. It gives the option of using multiple-color signs; some companies use different colors for different types of applications.
- Jemison said that if there are too many colors the information is lost in the busy-ness. He is okay with colors as described in rule, but make sure that area (with the required information) is clearly visible.
- Morrill agreed that signs should follow the current rule. Signs called into question probably did not. This fact should be pointed out to the companies.
- Jennings noted that the way it's written now, the information could be spread all over the sign; Jemison advocated that it should be all together in a boxed area.
  - **Consensus was reached that the rule should be left as is and enforced as currently written.**

## 6. Mosquito-Borne Disease Update

During 2012 and 2013, the Board completed two sets of rulemaking in order to allow governmental entities in Maine to conduct adult mosquito-control programs to prevent mosquito-borne diseases. In addition, there have been two bills in the Maine Legislature affecting public-health-related mosquito control. The Maine Department of Agriculture, Conservation and Forestry also submitted a plan to the Legislature for preventing mosquito-borne diseases. Finally, the Maine Department of Environmental Protection is finalizing a Pesticide General Permit that would allow for wide-area, aerial-spray programs for control of forest and public health pests, and is working with BPC staff on amending the permit for the use of Bt as a larvicide for mosquito control. The staff will update the Board on the status of these activities and mosquito-borne disease trends.

Presentation By: Henry Jennings  
Director

Action Needed: None—informational only

- Jennings noted that the only document included in the Board packet was the bill enacted by the Legislature. The Department of Agriculture, Conservation and Forestry (DACF) put in a bill in the first session and it was met with concern in the agricultural community and groups concerned about

pesticide use. A lot of people are opposed to the use of pesticides until something is frightening enough. The bill basically says that we're really scared of pesticides and we're really scared of mosquito-borne diseases, so only use pesticides if we really have to. The Department of Health and Human Services makes the determination of when the critical phase is met. DACF has responsibility for mosquito-control programs, but this responsibility is dependent on funds. The rulemaking that the Board did was around whether landowner consent should be required for public-health mosquito control. The Legislature did approve the amendments, so the Board will need to do a final adoption at the August meeting. Massachusetts makes it very clear that once a public health emergency is declared, landowner prerogative is out the window. The Board did put in rule that government agencies will attempt to exclude four areas: certain agricultural land, public water supplies, aquaculture and fish hatcheries, and endangered species.

- In order for government entities to exclude agricultural areas, the DACF must receive a digital map. Last year, Katy Green from MOFGA provided maps of MOFGA farms in York and Cumberland counties. They are looking for easier ways for this to be accomplished.
- Testing of mosquitoes begins July 1. The Maine Vector-borne Disease Working Group, through the Maine CDC has been producing an Arboviral Plan for about 10 years. It's good on monitoring and communication, but weak on response. There is a group now, with people from CDC and DACF and others, working on how the response plan would work. 2012 was a big year across the country and Maine for West Nile Virus (WNV), and Maine had its first confirmed case of WNV in a Gorham resident. There is some evidence that hot dry years are WNV years. Last year the concern was EEE; there were 26 positive pools for EEE, both the highest number of positive pools and the earliest ever detections. Maine has tested horses, emus, pheasants; moose and deer blood tested positive for EEE. It's been found in all 16 counties. This year they are testing human blood.
- One important factor is how long is mosquito season? The viruses cycle between mosquitoes and birds; when virus levels reach a certain level, humans are then at risk. This seems to occur in mid-August to September when virus levels get high enough. Most years Maine won't need to do any spraying because by the time virus levels get high enough, it is too cold to spray in the evening which is the preferred timing for efficacy purposes. The Maine CDC communicates with towns, encourages them to move times of outdoor activities so they're not playing outside at dusk.
- Dr. Sears left CDC.

## 7. Other Old or New Business

- a. Letter from Emera Maine about substation spraying
  - b. Variance Permit for Dubois Contracting
  - c. Variance Permit for the Maine Department of Transportation
  - d. Variance Permit for Bartlett Tree Company
  - e. Variance Permit for RCL Services
  - f. Ogunquit Ordinance
  - g. Other
- Jennings noted that the variance permits were just "fyi." The staff issued them because they are repeats or they fall under a policy allowing the staff to issue them. Flewelling asked if any railroads are really close to water. Jennings replied that in some places they're basically going through the lake; some places the railroad track is the lake frontage. He noted that the Board had agreed to look into this issue during the coming winter.
  - The Ogunquit ordinance was "void and of no effect" because the town did not notify the Board. They forgot a lot of exemptions, such as paints and stains. Flewelling asked if it was enforceable as

written. Jennings replied that back in the 1980s the Maine law court made a determination that towns have the right to be more restrictive than the state in terms of pesticide use. That is why the Legislature put in statute that the Board should be notified, and the Board maintains a centralized listing. They notify us in advance in case there is a conflict that we could make them aware of, but we have no right to stop them.

- Randlett noted that ordinances can be more restrictive, but there are two statutes that apply. The one requiring notification to the Board, and an agriculture statute which prohibits municipalities from making ordinances that prohibit the use of BMPs for agriculture.

8. Schedule of Future Meetings

August 8 (public hearing for rulemaking), September 12, October 24 and December 5, 2014 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

- **No adjustments made nor additional dates added**

9. Adjourn

- **Eckert/Stevenson: Moved and seconded to adjourn at 11:56 AM**
- **In favor: Unanimous**

## **BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 20—SPECIAL PROVISIONS**

### **Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 20 requires authorization from each individual property owner which would be impractical for wide-area programs conducted in residential areas. The proposed amendment to Chapter 20 relaxes the need for individual property owner authorization when the Maine CDC recommends spraying due to vector-borne disease threats.

No changes were made to the amendments based on comments received.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

### **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.

### **Provisional Adoption**

At its May 24, 2013 meeting, the Board provisionally adopted the major substantive amendments to Chapter 20.

### **Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1568, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 87).

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026 CHAPTER 22—STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES  
BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION**

**Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 22 imposes operational standards that would be impractical for wide-area programs conducted in residential areas.

The amendments to Chapter 22 originally exempted wide-area vector control programs from the entire chapter. Some comments received during the comment period suggested that certain portions of Chapter 22 were appropriate and feasible for public health related mosquito control programs. The Board agreed that there was some value to retaining some of the requirements in Chapter 22 and revised the proposed amendments consistent with the comments. Notably the Equipment standards, Weather Condition standards, and Positive Identification of Target Site were retained. The sections to be exempted include Identifying and Recording Sensitive Areas, Presence of Humans and Animals, and certain specifics of Site Plans, which would not be practical in an emergency situation.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

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**Provisional Adoption**

At its May 24, 2013 meeting, the Board provisionally adopted the major substantive amendments to Chapter 22.

**Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1567, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 88).

## **BASIS STATEMENT FOR ADOPTION OF CMR 026-01, CHAPTER 51—NOTICE OF AERIAL PESTICIDE APPLICATIONS**

### **Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law.

Chapter 51 details requirements for notice of aerial applications. Originally, the intent of the Board was to exempt government-sponsored, wide-area vector control programs from the entire chapter because notice requirements are included in Chapter 20 in lieu of individual notification. Comments received during comment period suggested that certain elements of Chapter 51 were still feasible. The Board agreed with those comments and revised its proposed amendments consistent with the comments. Notably, the Board decided there was value in retaining the requirement for notice to the Board and Maine Poison Control Center as described in the chapter.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

### **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.

### **Provisional Adoption**

At its May 24, 2014 meeting, the Board provisionally adopted the major substantive amendments to Chapter 51.

### **Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1569, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 86).

**01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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**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.

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**Section 1. Registered Pesticides**

- A. 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).
- B. 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.
- C. 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.
- D. 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.

**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. Prohibition of Unauthorized Application of Pesticides~~**

- ~~A. Except as provided by Chapter 20.6(D) and 6(E) below, 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 consent 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.

- ~~B. Except as provided by Chapter 20.6(D) and 6(E) below, no person may apply a pesticide to a property of another unless prior consent 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.~~
- ~~C. Except as provided by Chapter 20.6(D) and 6(E) below, no commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 
  - ~~1. 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~~
  - ~~2. 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.~~~~
- ~~D. The requirements of Chapter 20.6(A), (B) or (C) shall not apply when the pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of maintaining such easement or right of way.~~
- ~~E. When the Maine Center for Disease Control (CDC) recommends mosquito control for arboviral diseases, the requirements of Chapter 20.6(A), (B) or (C) shall not apply to government sponsored mosquito control programs, provided that the government entity:
 
  - ~~1. makes a reasonable effort to provide advance notice to residents about mosquito 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 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, makes efforts to avoid applications to certified organic crops and livestock.~~~~

## **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. ~~Transition~~**

~~This regulation will become effective on January 1, 2008.~~

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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

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 22: STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION**

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**SUMMARY:** These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

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### **SECTION 1. EXEMPTIONS**

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

### **SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS**

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. Equipment
  - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
  - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.

III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

B. Weather Conditions

I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.

II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.

III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

C. Identifying and Recording Sensitive Areas

Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request. This requirement shall not apply to commercial application categories 3B (turf), 3A (ornamental tree and plant) or 7A (structural general pest control applications).

D. Presence of Humans, Animals

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in order to avoid adverse impacts on off-target areas and to protect public health and the environment.

**SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES****A. Positive Identification of the Target Site**

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including:

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

**B. Site Plans Required**

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
  - (i) delineates the boundaries of the target area and the property lines;
  - (ii) depicts significant landmarks and flight hazards;
  - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
  - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

**C. Site-Specific Application Checklist**

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;
  - II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
  - III. Confirmation that the target site has been positively identified;
  - IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
  - V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
  - VI. Wind speed and direction;
  - VII. The measures used to protect all Sensitive Areas;
  - VIII. Confirmation that there are no humans visible in or near the target area.
- D. Buffer Zones for any Sensitive Area Likely to Be Occupied
- Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.
- E. Wind Speeds for Aerial Applications
- Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

#### **SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE**

- A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides.
- Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.
- B. Standards for Unconsented, Off-Target Drift of Pesticides
- I. General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the

pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
  - (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
  - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
  - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
  - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
  - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:
  - (i) The standard of care exercised by the applicator;
  - (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;
  - (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. Consent

- I. Consent, How Given. Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

**SECTION 5. VARIANCES FROM STANDARDS**

A. Variance Permit Application

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address, and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;
- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;

- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.
- B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff
- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 MRSA §1471-T, “Exemptions.”

## SECTION 6. EMERGENCIES

- A. In the event that severe pest or weather conditions threaten to cause a ~~public health emergency as determined by the Commissioner of the Maine Department of Health and Human Services, or a threat of significant natural resource and/or economic loss, as determined by either the Commissioner of the Maine Department of Agriculture, Conservation and Forestry or the Commissioner of the Maine Department of Agriculture, Food and Rural Resources, the specified requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:~~
- I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.
- II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
- III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aerial application in the affected regions and the approximate dates that the emergency may continue.

- IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
- V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.

B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010

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STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):  
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:  
January 1, 1988

AMENDED:  
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

AMENDED:  
September 22, 1998 - also converted to MS Word  
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)  
January 1, 2010 by request of agency in filing 2009-252

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS**

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**SUMMARY:** These regulations describe the notification requirements for persons contracting aerial pesticide applications to control forest, ornamental plant, right-of-way, biting fly and public health pests.

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**Section I. Content of All Newspaper Articles/Advertisements, Written Notices to Property Owners and Posters**

- A. All newspaper articles/advertisements and written notices to property owners required by this chapter shall contain the following:
1. Description of the target area sufficient to inform people who may be in the vicinity.
  2. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
  3. Intended purpose of the pesticide application.
  4. Pesticide(s) to be used.
  5. Date or reasonable range of dates on which application(s) are proposed to take place.
  6. Telephone number of the Maine Board of Pesticides Control.
  7. Telephone number of the Maine Poison Control Center.
  8. Public precautions which appear on the pesticide label.
- B. All newspaper articles/advertisements must be printed in a minimum of 10 point types and at least 2 inches wide.
- C. All posters required by this chapter shall contain the following:
1. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
  2. Intended purpose of the pesticide application.
  3. Pesticide(s) to be used.

4. Telephone number of the Maine Board of Pesticides Control
5. Telephone number of the Maine Poison Control Center.
6. Public precautions which appear on the pesticide label.

## **Section II. Forest Insect Applications**

### **A. Responsible Parties**

1. In the event of a forest insect spray program administered pursuant to Title 12, Chapter 801, the Maine Department of Conservation, Bureau of Forestry, is responsible for notices.
2. In the case of any other forest insect aerial spray activity, responsibility for notices lies with the landowner, her/his representative or the lessee if the land is leased.

### **B. Newspaper Articles/Advertisements and Written Notices to Property Owners**

1. An article about/advertisement of a major forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 14 days but not more than 30 days prior to commencement of planned spray activity.
2. An article about/advertisement of a minor forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 4 days but not more than 10 days prior to commencement of planned spray activity.
3. An addition of spray areas not specified in the original newspaper article/advertisement and any change from the insecticides specified in the original article/advertisement shall be published in the same newspaper at least 24 hours before the change is effected.
4. A written notice of all forest insect aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. **Posting of Areas Subject to Major and Minor Forest Insect Aerial Spray Applications**

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads; known boat launching sites on rivers leading through spray areas and within the boundaries of the land owned by the person authorizing the spray activity; and marked points of access to foot trails known to be used by the public.
2. Posters shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. They shall contain the information required in Section I(C). The information shall be printed in both English and French.

D. **Written Notice to the Board and the Maine Poison Control Center**

1. A written notice shall be given to the Board and to the Maine Poison Control Center according to the following schedule:
  - a. Written notice of major forest insect aerial spray applications shall be given to the Board and the Maine Poison Control Center at least 15 days but not more than 30 days prior to the commencement of planned spray activity.
  - b. Written notice of minor forest insect spray application shall be given to the Board and the Maine Poison Control Center at least 5 days prior to the commencement of planned spray activity.
  - c. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's office.
2. **Notice to the Board.** These notices shall be prepared on forms provided by the Board and shall consist of:
  - a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
  - b. The date or dates on which spraying is proposed to take place.

- c. The name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
  - d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
  - e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice and the poster to be used.
  - f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.
3. **Notice to the Maine Poison Control Center.** These notices shall be prepared on forms provided by the Board and shall consist of:
- a. A description of the general area the proposed application activity will take place.
  - b. The date or dates on which spraying is proposed to take place.
  - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
  - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.

### **Section III. Ornamental Plant Applications**

#### **A. Responsible Parties**

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section III(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

#### **B. Newspaper Articles/Advertisements and Written Notices to Property Owners**

1. An article about/advertisement of ornamental plant aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray

activity. The article/ advertisement shall contain the information required in section I(A) and (B) and shall not be limited to a legal notice.

2. A written notice of ornamental plant aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

**C. Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

**Section IV. Rights-Of-Way, Forest Vegetation Management and Other Forest Pest Applications**

**A. Responsible Parties**

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section IV(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

**B. Newspaper Articles/Advertisements or Written Notices to Property Owners**

1. An article about/advertisement of rights-of-way, forest vegetation management or other forest pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice or;
2. In areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

**C. Posting Requirements for Rights-of-Way, Forest Vegetation Management and Other Forest Pest Aerial Applications**

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. The poster shall contain the information required in Section I(C). Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads and any place a maintained public trail enters the application site.
2. Poster shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. The information shall be printed in both English and French.

**D. Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

**Section V. Biting Fly and Public Health Pest Applications**

**A. Responsible Parties**

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section V(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

**B. Newspaper Articles/Advertisements and Written Notice to Property Owners**

1. An article about/advertisement of biting fly and public health pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice.
2. A written notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are

difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

**C. Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

**Section VI. Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications**

A. A written notice shall be given to the Board and the Maine Poison Control Center at least 7 days but not more than 30 days prior to the commencement of planned spray activity.

B. These notices shall be prepared on forms provided by the Board and shall consist of:

**1. Written notice to the Board**

- a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
- b. The date or dates on which spraying is proposed to take place.
- c. A description of the delivery mechanism which shall include the name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
- d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
- e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice or the notice given to person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site.
- f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.

**2. Written notice to the Maine Poison Control Center**

- a. A description of the general area the proposed application activity will take place.

- b. The date or dates on which spraying is proposed to take place.
  - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
  - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.
- C. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's staff.

## Section VII. ~~Variances From Notice Requirements~~ Emergencies

### A. ~~*[Repealed by sunset provision, April 19, 1996.]*~~ Disease Vectors

When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from this chapter provided that the responsible governmental entity submits the written notice to Board and the written notice to the Maine Poison Control Center as described in this chapter.

### B. Other Emergencies

The Board's staff may grant an emergency variance from the notice requirements set forth in Sections III, IV, V and VI of this chapter if the notice requirements prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists.

- 1. An emergency situation:
  - a. Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or
  - b. Will present significant risks to human health; or
  - c. Will present significant risks to threatened or endangered species, beneficial organisms, unique ecosystems or the environment; or
  - d. Will cause significant economic loss due to:
    - i. an outbreak or an expected outbreak of a pest; or

- ii. a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).
  2. Any emergency variance granted by the staff under this section shall include provisions demonstrating the applicant will furnish substantially equivalent notification as provided by this chapter and shall include:
    - a. Documented notification of person(s) owning property or using commercial or institutional buildings within 500 feet of the intended target site prior to the pesticide application and where appropriate;
    - b. Radio or television announcements or,
    - c. Prominently positioned poster.
  3. No variance may be granted if the emergency situation is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
  4. 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".
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-G, M, R and T

EFFECTIVE DATE:

August 12, 1985

AMENDED:

May 19, 1991

April 8, 1992

April 19, 1994

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998 - inserted "residential rental," in II(B)(4), III(B)(2), IV(B)(2), V(B)(2), VI(B)(1)(e); conversion to MS Word 2.0.

March 5, 2003 - VI(A), filing 2003-62

July 11, 2012 - spelling correction in Section 2(B)(3)

## **BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 20—SPECIAL PROVISIONS**

### **Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 20 requires authorization from each individual property owner which would be impractical for wide-area programs conducted in residential areas. The proposed amendment to Chapter 20 relaxes the need for individual property owner authorization when the Maine CDC recommends spraying due to vector-borne disease threats.

No changes were made to the amendments based on comments received.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

### **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.

### **Provisional Adoption**

At its May 24, 2013 meeting, the Board provisionally adopted the major substantive amendments to Chapter 20.

### **Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1568, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 87).

# **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 Provision

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

Small business that contract for mosquito control work may benefit from the proposed rule amendments. There may be as many as 200 such businesses.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burdens for small businesses.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

**01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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**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.

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**Section 1. Registered Pesticides**

- A. 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).
- B. 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.
- C. 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.
- D. 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.

**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. Prohibition of Unauthorized Application of Pesticides~~**

- ~~A. Except as provided by Chapter 20.6(D) and 6(E) below, 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 consent 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.

- ~~B. Except as provided by Chapter 20.6(D) and 6(E) below, no person may apply a pesticide to a property of another unless prior consent 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.~~
- ~~C. Except as provided by Chapter 20.6(D) and 6(E) below, no commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 
  - ~~1. 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~~
  - ~~2. 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.~~~~
- ~~D. The requirements of Chapter 20.6(A), (B) or (C) shall not apply when the pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of maintaining such easement or right of way.~~
- ~~E. When the Maine Center for Disease Control (CDC) recommends mosquito control for arboviral diseases, the requirements of Chapter 20.6(A), (B) or (C) shall not apply to government sponsored mosquito control programs, provided that the government entity:
 
  - ~~1. makes a reasonable effort to provide advance notice to residents about mosquito 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 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, makes efforts to avoid applications to certified organic crops and livestock.~~~~

## **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. ~~Transition~~**

~~This regulation will become effective on January 1, 2008.~~

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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

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026 CHAPTER 22—STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES  
BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION**

**Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 22 imposes operational standards that would be impractical for wide-area programs conducted in residential areas.

The amendments to Chapter 22 originally exempted wide-area vector control programs from the entire chapter. Some comments received during the comment period suggested that certain portions of Chapter 22 were appropriate and feasible for public health related mosquito control programs. The Board agreed that there was some value to retaining some of the requirements in Chapter 22 and revised the proposed amendments consistent with the comments. Notably the Equipment standards, Weather Condition standards, and Positive Identification of Target Site were retained. The sections to be exempted include Identifying and Recording Sensitive Areas, Presence of Humans and Animals, and certain specifics of Site Plans, which would not be practical in an emergency situation.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

**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.

**Provisional Adoption**

At its May 24, 2013 meeting, the Board provisionally adopted the major substantive amendments to Chapter 22.

**Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1567, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 88).

# **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 22—Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

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

Small businesses that contract for mosquito control work may benefit from the proposed amendments. There may be as many as 200 such businesses.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burden on small businesses.

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

Since there are no anticipated impacts on small businesses, there are no less intrusive or less costly alternatives.

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 22: STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION**

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**SUMMARY:** These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

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### **SECTION 1. EXEMPTIONS**

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

### **SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS**

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. Equipment
  - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
  - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.

III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

B. Weather Conditions

I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.

II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.

III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

C. Identifying and Recording Sensitive Areas

Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request. This requirement shall not apply to commercial application categories 3B (turf), 3A (ornamental tree and plant) or 7A (structural general pest control applications).

D. Presence of Humans, Animals

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in order to avoid adverse impacts on off-target areas and to protect public health and the environment.

**SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES****A. Positive Identification of the Target Site**

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including:

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

**B. Site Plans Required**

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
  - (i) delineates the boundaries of the target area and the property lines;
  - (ii) depicts significant landmarks and flight hazards;
  - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
  - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

**C. Site-Specific Application Checklist**

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;
  - II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
  - III. Confirmation that the target site has been positively identified;
  - IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
  - V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
  - VI. Wind speed and direction;
  - VII. The measures used to protect all Sensitive Areas;
  - VIII. Confirmation that there are no humans visible in or near the target area.
- D. Buffer Zones for any Sensitive Area Likely to Be Occupied
- Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.
- E. Wind Speeds for Aerial Applications
- Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

#### **SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE**

- A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides.
- Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.
- B. Standards for Unconsented, Off-Target Drift of Pesticides
- I. General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the

pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
  - (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
  - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
  - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
  - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
  - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:
  - (i) The standard of care exercised by the applicator;
  - (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;
  - (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. Consent

- I. Consent, How Given. Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

**SECTION 5. VARIANCES FROM STANDARDS**

A. Variance Permit Application

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address, and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;
- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;

- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.
- B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff
- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 MRSA §1471-T, "Exemptions."

## SECTION 6. EMERGENCIES

- A. In the event that severe pest or weather conditions threaten to cause a ~~public health emergency as determined by the Commissioner of the Maine Department of Health and Human Services, or a threat of significant natural resource and/or economic loss, as determined by either the Commissioner of the Maine Department of Agriculture, Conservation and Forestry or the Commissioner of the Maine Department of Agriculture, Food and Rural Resources,~~ the ~~specified~~ requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:
- I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.
- II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
- III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aerial application in the affected regions and the approximate dates that the emergency may continue.

- IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
- V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.

B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010

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STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):  
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:  
January 1, 1988

AMENDED:  
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

AMENDED:  
September 22, 1998 - also converted to MS Word  
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)  
January 1, 2010 by request of agency in filing 2009-252

## **BASIS STATEMENT FOR ADOPTION OF CMR 026-01, CHAPTER 51—NOTICE OF AERIAL PESTICIDE APPLICATIONS**

### **Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law.

Chapter 51 details requirements for notice of aerial applications. Originally, the intent of the Board was to exempt government-sponsored, wide-area vector control programs from the entire chapter because notice requirements are included in Chapter 20 in lieu of individual notification. Comments received during comment period suggested that certain elements of Chapter 51 were still feasible. The Board agreed with those comments and revised its proposed amendments consistent with the comments. Notably, the Board decided there was value in retaining the requirement for notice to the Board and Maine Poison Control Center as described in the chapter.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

### **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.

### **Provisional Adoption**

At its May 24, 2014 meeting, the Board provisionally adopted the major substantive amendments to Chapter 51.

### **Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1569, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 86).

# **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 51—Notice of Aerial Pesticide Applications

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

There are currently two companies that contract to make aerial pesticide applications in Maine that might benefit from the proposed amendments.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burdens on small businesses.

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

Since there are no anticipated impacts on small businesses, there are no less intrusive or less costly alternatives.

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS**

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**SUMMARY:** These regulations describe the notification requirements for persons contracting aerial pesticide applications to control forest, ornamental plant, right-of-way, biting fly and public health pests.

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**Section I. Content of All Newspaper Articles/Advertisements, Written Notices to Property Owners and Posters**

- A. All newspaper articles/advertisements and written notices to property owners required by this chapter shall contain the following:
1. Description of the target area sufficient to inform people who may be in the vicinity.
  2. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
  3. Intended purpose of the pesticide application.
  4. Pesticide(s) to be used.
  5. Date or reasonable range of dates on which application(s) are proposed to take place.
  6. Telephone number of the Maine Board of Pesticides Control.
  7. Telephone number of the Maine Poison Control Center.
  8. Public precautions which appear on the pesticide label.
- B. All newspaper articles/advertisements must be printed in a minimum of 10 point types and at least 2 inches wide.
- C. All posters required by this chapter shall contain the following:
1. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
  2. Intended purpose of the pesticide application.
  3. Pesticide(s) to be used.

4. Telephone number of the Maine Board of Pesticides Control
5. Telephone number of the Maine Poison Control Center.
6. Public precautions which appear on the pesticide label.

## **Section II. Forest Insect Applications**

### **A. Responsible Parties**

1. In the event of a forest insect spray program administered pursuant to Title 12, Chapter 801, the Maine Department of Conservation, Bureau of Forestry, is responsible for notices.
2. In the case of any other forest insect aerial spray activity, responsibility for notices lies with the landowner, her/his representative or the lessee if the land is leased.

### **B. Newspaper Articles/Advertisements and Written Notices to Property Owners**

1. An article about/advertisement of a major forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 14 days but not more than 30 days prior to commencement of planned spray activity.
2. An article about/advertisement of a minor forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 4 days but not more than 10 days prior to commencement of planned spray activity.
3. An addition of spray areas not specified in the original newspaper article/advertisement and any change from the insecticides specified in the original article/advertisement shall be published in the same newspaper at least 24 hours before the change is effected.
4. A written notice of all forest insect aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. **Posting of Areas Subject to Major and Minor Forest Insect Aerial Spray Applications**

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads; known boat launching sites on rivers leading through spray areas and within the boundaries of the land owned by the person authorizing the spray activity; and marked points of access to foot trails known to be used by the public.
2. Posters shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. They shall contain the information required in Section I(C). The information shall be printed in both English and French.

D. **Written Notice to the Board and the Maine Poison Control Center**

1. A written notice shall be given to the Board and to the Maine Poison Control Center according to the following schedule:
  - a. Written notice of major forest insect aerial spray applications shall be given to the Board and the Maine Poison Control Center at least 15 days but not more than 30 days prior to the commencement of planned spray activity.
  - b. Written notice of minor forest insect spray application shall be given to the Board and the Maine Poison Control Center at least 5 days prior to the commencement of planned spray activity.
  - c. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's office.
2. **Notice to the Board.** These notices shall be prepared on forms provided by the Board and shall consist of:
  - a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
  - b. The date or dates on which spraying is proposed to take place.

- c. The name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
  - d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
  - e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice and the poster to be used.
  - f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.
3. **Notice to the Maine Poison Control Center.** These notices shall be prepared on forms provided by the Board and shall consist of:
- a. A description of the general area the proposed application activity will take place.
  - b. The date or dates on which spraying is proposed to take place.
  - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
  - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.

### **Section III. Ornamental Plant Applications**

#### **A. Responsible Parties**

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section III(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

#### **B. Newspaper Articles/Advertisements and Written Notices to Property Owners**

1. An article about/advertisement of ornamental plant aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray

activity. The article/ advertisement shall contain the information required in section I(A) and (B) and shall not be limited to a legal notice.

2. A written notice of ornamental plant aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

**C. Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

**Section IV. Rights-Of-Way, Forest Vegetation Management and Other Forest Pest Applications**

**A. Responsible Parties**

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section IV(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

**B. Newspaper Articles/Advertisements or Written Notices to Property Owners**

1. An article about/advertisement of rights-of-way, forest vegetation management or other forest pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice or;
2. In areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

**C. Posting Requirements for Rights-of-Way, Forest Vegetation Management and Other Forest Pest Aerial Applications**

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. The poster shall contain the information required in Section I(C). Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads and any place a maintained public trail enters the application site.
2. Poster shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. The information shall be printed in both English and French.

**D. Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

**Section V. Biting Fly and Public Health Pest Applications**

**A. Responsible Parties**

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section V(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

**B. Newspaper Articles/Advertisements and Written Notice to Property Owners**

1. An article about/advertisement of biting fly and public health pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice.
2. A written notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are

difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

**C. Written Notice to the Board and the Maine Poison Control Center**

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

**Section VI. Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications**

A. A written notice shall be given to the Board and the Maine Poison Control Center at least 7 days but not more than 30 days prior to the commencement of planned spray activity.

B. These notices shall be prepared on forms provided by the Board and shall consist of:

**1. Written notice to the Board**

- a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
- b. The date or dates on which spraying is proposed to take place.
- c. A description of the delivery mechanism which shall include the name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
- d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
- e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice or the notice given to person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site.
- f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.

**2. Written notice to the Maine Poison Control Center**

- a. A description of the general area the proposed application activity will take place.

- b. The date or dates on which spraying is proposed to take place.
  - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
  - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.
- C. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's staff.

## Section VII. ~~Variances From Notice Requirements~~ Emergencies

### A. ~~*[Repealed by sunset provision, April 19, 1996.]*~~ Disease Vectors

When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from this chapter provided that the responsible governmental entity submits the written notice to Board and the written notice to the Maine Poison Control Center as described in this chapter.

### B. Other Emergencies

The Board's staff may grant an emergency variance from the notice requirements set forth in Sections III, IV, V and VI of this chapter if the notice requirements prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists.

- 1. An emergency situation:
  - a. Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or
  - b. Will present significant risks to human health; or
  - c. Will present significant risks to threatened or endangered species, beneficial organisms, unique ecosystems or the environment; or
  - d. Will cause significant economic loss due to:
    - i. an outbreak or an expected outbreak of a pest; or

- ii. a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).
  2. Any emergency variance granted by the staff under this section shall include provisions demonstrating the applicant will furnish substantially equivalent notification as provided by this chapter and shall include:
    - a. Documented notification of person(s) owning property or using commercial or institutional buildings within 500 feet of the intended target site prior to the pesticide application and where appropriate;
    - b. Radio or television announcements or,
    - c. Prominently positioned poster.
  3. No variance may be granted if the emergency situation is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
  4. 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".
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-G, M, R and T

EFFECTIVE DATE:

August 12, 1985

AMENDED:

May 19, 1991

April 8, 1992

April 19, 1994

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998 - inserted "residential rental," in II(B)(4), III(B)(2), IV(B)(2), V(B)(2), VI(B)(1)(e); conversion to MS Word 2.0.

March 5, 2003 - VI(A), filing 2003-62

July 11, 2012 - spelling correction in Section 2(B)(3)

# **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 Provision

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

Small business that contract for mosquito control work may benefit from the proposed rule amendments. There may be as many as 200 such businesses.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burdens for small businesses.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

# **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 22—Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

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

Small businesses that contract for mosquito control work may benefit from the proposed amendments. There may be as many as 200 such businesses.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burden on small businesses.

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

Since there are no anticipated impacts on small businesses, there are no less intrusive or less costly alternatives.

# **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 51—Notice of Aerial Pesticide Applications

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

There are currently two companies that contract to make aerial pesticide applications in Maine that might benefit from the proposed amendments.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burdens on small businesses.

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

Since there are no anticipated impacts on small businesses, there are no less intrusive or less costly alternatives.

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 1 - TESTIMONY GIVEN AT MARCH 1, 2013 PUBLIC HEARING**

Person/Affiliation	Summary of Testimony	Board Response
<p>Katy Green (MOFGA) (also submitted written testimony)</p>	<p>Questions the efficacy of spraying mosquitoes to prevent disease.</p> <p>Would like the Board to do more outreach on how people can protect themselves.</p> <p>Any person should be able to opt out for any reason.</p> <p>Government-sponsored spray programs should not be exempted from entire chapter e.g., in Chapter 22: monitoring of wind speeds, positive identification of sites.</p> <p>Hope protection of organic farms will be included in rule; prefer anyone be able to opt out, but if not, then at least organic farms.</p> <p>MOFGA has been working on mapping organic farms; it's unclear how the mapping will be managed and who will maintain the maps .</p> <p>Would like Board policy to be available for review and comment soon.</p> <p>Concerned that Maine does not have enough data about mosquitoes and virus presence and we are putting the spraying ahead of monitoring.</p>	<p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.</p> <p>The Board continues to support education to help people protect themselves from mosquitoes and supports the use of an IPM approach to managing mosquitoes and protecting public health.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>The Board reviewed Chapters 22 and 51 and agreed that parts of them should not be exempted. It adjusted the proposed amendments accordingly.</p> <p>The Board will work with MOFGA and other groups to develop plans for mapping exclusion zones.</p> <p>The Board agrees that mosquito surveillance is critical to making informed decisions and is working with the Maine CDC to expand mosquito surveillance.</p>
<p>Jody Spear (also submitted written testimony)</p>	<p>Spray programs are ineffective .</p> <p>Pesticides are dangerous for the environment, especially for pollinators.</p> <p>Organic farmers should be able to opt out of aerial spraying.</p> <p>Maine should not “come into line” with other states, but should lead the way by having a policy that is less damaging</p>	<p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.</p> <p>Data from Massachusetts suggest that bees are not harmed by carefully conducted public health mosquito-control pesticide applications because of product choice</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 1 - TESTIMONY GIVEN AT MARCH 1, 2013 PUBLIC HEARING**

Person/Affiliation	Summary of Testimony	Board Response
	<p>to the environment.</p> <p>Granger asked if there is any way to conduct a spray program and protect the pollinators and Spear replied that there is not.</p>	<p>application rates and application timing.</p> <p>The Board supports exclusion zones for organic farms but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>The Board supports the use of an IPM approach to managing mosquitoes and protecting public health.</p>
<p>Dave Bell (Maine Wild Blueberry Commission) (also submitted written testimony)</p>	<p>Concerned about potential residue on fruit, making it unacceptable to overseas customers.</p> <p>Would like organic farms to be named as sensitive sites to be avoided.</p> <p>Looked at cranberry study done in Massachusetts, but because the samples were taken 3–5 days after spraying, can't be sure there would be no detect the day after spraying. Would like research on the materials most likely to be used.</p> <p>Concerned that the way the rule is currently written it would require only a “reasonable effort” for ground-based spraying. Needs a stronger requirement to avoid application to commercial fruits, especially near suburban interfaces.</p> <p>For aerial spraying the “extent feasible” is not adequate to provide protection. Section should be strengthened.</p> <p>Wild blueberries are only sensitive near harvest. Would like to see research on the timing. If the materials biodegrade in 24 hours then they could postpone harvest for one or two days, but if it takes longer, couldn't postpone for five days, would lose harvest.</p> <p>Shouldn't be exempt from standards in Chapter 22: equipment, weather, identification and recording of sensitive sites; some sections would have to be modified, but most</p>	<p>There are U.S. tolerances for residues of the active ingredients which could be used in a public health mosquito application. Mosquito public health adulticide applications are at much lower rates of active ingredient per acre than are residential or agricultural uses.</p> <p>Blueberry farms are large enough to be easily excluded; and would not generally be part of the target areas for mosquito control which are centered around the interface of vector habitat and population areas.</p> <p>Data from Massachusetts on cranberries suggests that within a few days there will be no residues from the insecticides most likely to be used in a public health mosquito control program.</p> <p>The Board supports the idea of additional research to address crop residue concerns. The BPC toxicologist indicated that some research has already been done on residues and she will study the data and report back.</p> <p>The Board agrees that agricultural sites need not be sprayed and supports mapping those sites as exclusion zones. It also recognizes that very small sites may not be feasible to exclude from an aerial spray program.</p> <p>The Board is sensitive to concerns about the standard</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 1 - TESTIMONY GIVEN AT MARCH 1, 2013 PUBLIC HEARING**

Person/Affiliation	Summary of Testimony	Board Response
	<p>should not be exempted.</p>	<p>of care required of the government entity, but could not identify alternative language that would not create an unreasonable impediment to public health control programs.</p> <p>The Board agrees that parts of Chapter 22 should not be exempt and has revised the amendments to address this concern.</p>
<p>May Linda Rapelye (also submitted written testimony)</p>	<p>Would like organic to be able to opt out.</p> <p>Wonders what happens to the pesticide when it kills mosquitoes in the air; do the mosquitoes, along with the pesticide, drop into the water?</p> <p>Thinks treating larvae with Bti is more effective and would like to see it made possible.</p>	<p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.</p> <p>EPA has approved labels for the products with wide-area public health programs for mosquito control. This means they have been through the environmental risk assessment process and EPA has determined that - at labeled rates - the products pose an acceptable risk to aquatic life.</p> <p>The Board supports the use of an IPM approach to managing mosquitoes and protecting public health which would include the use of <i>Bti</i> and other methods. The staff has engaged in a dialog with the Maine DEP about revising the General Permit for Larval Mosquito Control to make larval control more practical.</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

<b>Person/Affiliation</b>	<b>Summary of Comments</b>	<b>Board Response</b>
<p>Bell, David – Executive Director, Maine Blueberry Commission</p>	<p>Concerned about pesticide residues on blueberries that may not be acceptable to international customers or above international tolerance levels.</p> <p>Concerned about organic growers losing the opportunity to sell their crop as certified organic if a prohibited substance is applied above a field.</p> <p>Wants a stronger opt-out option for ground-based applications in section 6.C.2.of Chapter 20.</p> <p>Wants to make sure that blueberry fields with maturing fruit are considered a sensitive site under section 6.C.3., and to strengthen the language, “takes affirmative steps” to ensure sensitive sites will be protected from residues.</p> <p>Suggests field trials to ensure that control materials used will result in minimal product quality risk.</p> <p>Suggests only exempting public health applications from specific requirements in Chapter 22 and to do a review to see if there may be a need for additional standards for this type of application project.</p> <p>Suggested specific changes to Chapter 22, Section 2.C &amp; D.; Section 3.B,C,D&amp;E and Section 4.B.</p>	<p>There are U.S. tolerances for residues of the active ingredients which could be used in a public health mosquito application. Mosquito public health adulticide applications are at much lower rates of active ingredient per acre than are residential or agricultural uses.</p> <p>Blueberry farms are large enough to be easily excluded; and would not generally be part of the target areas for mosquito control which are centered around the interface of vector habitat and population areas.</p> <p>Data from Massachusetts on cranberries suggests that within a few days there will be no residues from the insecticides most likely to be used in a public health mosquito control program..</p> <p>The Board agrees that agricultural sites need not be sprayed and supports mapping those sites as exclusion zones. It also recognizes that very small sites may not be feasible to exclude from an aerial spray program.</p> <p>The Board is sensitive to concerns about the standard of care required of the government entity, but could not identify alternative language that would not create an unreasonable impediment to public health control programs.</p> <p>The Board supports the idea of additional research to address crop residue concerns. The BPC toxicologist indicated that some research has already been done on residues and she will study the data and report back</p> <p>The Board agrees that parts of Chapter 22 should not be exempt and has revised the amendments to address this concern.</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

<b>Person/Affiliation</b>	<b>Summary of Comments</b>	<b>Board Response</b>
<p>Simone, Michael, Owner, Mosquito Terminators</p>	<p>Believes the exceptions from Chapters 20, 22 and 51 should be extended to any legitimate licensed mosquito control company operating in areas that have been identified by the Maine CDC.</p>	<p>The Board determined that the scope of the current rulemaking effort is public health mosquito control programs undertaken by governmental entities. Governmental entities will likely contract with commercial pesticide applicators for this type of control work, and therefore these amendments will apply to commercial applicators as well.</p>
<p>McCarron, Patricia, Director, Maine Lobstermen’s Association</p>	<p>Strongly opposed to the amendments to all chapters. Concerned that insecticides sprayed for mosquitoes will harm lobster since both are arthropods and that they will have lethal and sub-lethal effects.</p> <p>Questions the efficacy of mosquito adulticiding and encourage public educational programs to emphasize elimination of breeding sites and resting habitat, encouraging natural predators and personal protection from bites.</p> <p>If education fails, suggest larvicide programs using <i>Bacillus thuringiensis israelensis</i></p> <p>Opposes elimination of a property owner’s right to be excluded from aerial spray programs.</p>	<p>EPA has approved labels for the products with wide-area public health programs for mosquito control. This means they have been through the environmental risk assessment process and EPA has determined that - at labeled rates – the products pose an acceptable risk to aquatic life. There are U.S. tolerances for residues of the active ingredients which could be used in a public health mosquito application. Mosquito public health adulticide applications are at much lower rates of active ingredient per acre than are residential or agricultural uses.</p> <p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it’s in the best interest of the state.</p> <p>The Board continues to support education to help people protect themselves from mosquitoes and supports the use of an IPM approach to managing mosquitoes and protecting public health.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

<b>Person/Affiliation</b>	<b>Summary of Comments</b>	<b>Board Response</b>
<p>Spear, Jody, Harborside, Maine</p>	<p>Requests that the opt-out choice be retained in Chapter 20 and does not think the words “reasonable effort” in Section C.2 and “to the extent feasible” in Section C.3 are appropriate.</p> <p>Concerned that the “sensitive sites” referred to in Chapter 20 Section C.3 will go unprotected if Chapter 22 is amended as proposed.</p> <p>Would like more specifics in Chapter 20 B.1 and C.1 including a similar (3 day) advance notice for ground spraying.</p> <p>Doesn’t think Chapter 20 properly replaces the 500 foot notification requirements in Chapter 51.</p> <p>Doesn’t think the words “reasonable effort” in Chapter 22 Section 6.B are appropriate.</p>	<p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>Sensitive sites referred to in Chapter 20 will be excluded from the target area and buffer zones will be implemented.</p> <p>The Board agrees that notifying the public is of paramount importance. It also recognizes an outbreak of EEE may require a very rapid response. Historically, the media has found wide-area spray programs to be extremely newsworthy. Additionally, government entities understand the value of keeping the public informed.</p> <p>The Board is sensitive to concerns about the standard of care required of the government entity, but could not identify alternative language that would not create an unreasonable impediment to public health control programs.</p>
<p>McCammon, Laurie, Scarborough, Maine</p>	<p>Strongly opposed to aerial spraying. Wants to make sure all have the ability to opt out of spraying. Has child with multiple life-threatening allergies.</p>	<p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p>
<p>Green, Katy, Organic Transitions Coordinator, Maine Organic Farmers and Gardeners Association</p>	<p>Prefers that the Board educate the public about personal protection from arboviral disease instead of changing the rules to allow for spraying.</p> <p>Would like the rule to allow any citizen, for any reason, to have their property included in the exclusion zones that would be defined in either Board rule or policy for both aerial and ground applications.</p>	<p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it’s in the best interest of the state.</p> <p>The Board continues to support education to help people protect themselves from mosquitoes and supports the use</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

<b>Person/Affiliation</b>	<b>Summary of Comments</b>	<b>Board Response</b>
	<p>Sees no reason to exempt government sponsored spray programs from Chapter 22 or Section VI of Chapter 51.</p> <p>Wants to make sure the Board provides resources to ensure that no organic farm mapped by MOFGA is accidentally treated. Would like the Board to draft a policy regarding the system that will be used to identify exclusion zones and the process to be followed to make sure applicators get the maps that identify those exclusion zones.</p> <p>The Board should also direct resources to mosquito surveillance so that any spray program will be based on robust data.</p>	<p>of an IPM approach to managing mosquitoes and protecting public health.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>The Board reviewed Chapters 22 and 51 and agreed that parts of them should not be exempted. It adjusted the proposed amendments accordingly.</p> <p>The Board will work with MOFGA and other groups to develop plans for mapping exclusion zones.</p> <p>The Board agrees that mosquito surveillance is critical to making informed decisions and is working with the Maine CDC to expand mosquito surveillance.</p>

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

Person/Affiliation	Summary of Comments	Board Response
<b>Beekeepers</b>		
Thurlow-Kimball, Karen, Browns Bee Farm	Identified themselves as Beekeepers	<p>Data from Massachusetts suggest that bees are not harmed by carefully conducted public health mosquito-control pesticide applications because of product choice application rates and application timing.</p> <p>The proposed amendments do not eliminate advance notification, they only modify the requirements for property owner authorization in the event of mosquito-borne disease public health threat.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p>
Gideon, Victor, Raymond, Maine	Opposed to the changes in all three rules and concerned about off-target deposition and effects on their hives.	
Weymouth, Jason, Brunswick, Maine	Believe everyone has the right to know about applications.	
Geer, Ron, Essential Valuation LLC	Believe everyone should have the right to opt-out of applications. Some call for at least a 5 miles no-spray radius around hives.	
Poppema, Louise, Cumberland, Maine		
Crowell, Sandra, Raymond, Maine		
Sullivan, Louise, Cape Elizabeth, Maine		
McCloskey, Susan		
Leavitt, Pete, Beekeeper		
Gilbert, William, Eliot, Maine		
Burks, Bernadette, Kennebunk, Maine		
Allen, Tracey, Scarborough, Maine		
Shoe, Randy, Berwick, Maine		

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

Person/Affiliation	Summary of Comments	Board Response
Riney, Monika, Wildermirth Farm, Winthrop, Maine		
Peiffer, Lawrence, MSBA Vice President, Master Beekeeper		
<b>Organic Farmers</b>		
Bouchard, Jennifer	Identified themselves as organic farmers.  Oppose the changes in Chapter 20 that allow application without landowner/occupant consent. All should be able to opt out of spray programs.	Requiring individual property owner authorization is not feasible and would prevent most wide-area public-health spray programs.  The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.
Wotton, Angela, Hammond, Maine		
Berry, Eli		
Faull, Sara, Mandala Farm, Gouldsboro, Maine		
Theriacult, Sonya, Summit Springs Farm, Poland, Maine		
Forsythe, Alexander, Richmond, Maine		
Marquis, Wayne, Van Buren, Maine		
Pike, Jordan, Two Toad Farm, Lebanon, Maine		
Bolduc, Karen, South Auburn Organic Farm, Auburn, Maine		

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

Person/Affiliation	Summary of Comments	Board Response
Lassen, Hugh, Intervale Blueberry Farm, Cherryfield, Maine		
Oliver, Sarah, Even Keel Farm, Pemaquid, Maine		
<b>Unspecified</b>		
Scully, David, President, Prouts Neck Audubon Society	Requests no-spray zone over Stratton and Bluff Islands because 32 priority bird species use the area during migration and more than 240 species including endangered Roseate Terns use the island.	Endangered and threatened species habitat are commonly excluded from public health related mosquito control programs.
Kress, Stephen, Director, Seabird Restoration Program, National Audubon Society		
Eddy, Terry, Scarborough, Maine	Against the changes in Chapter 20 that allow application without landowner/occupant consent. All should be able to opt out of spray programs.	Requiring individual property owner authorization is not feasible and would prevent most wide-area public-health spray programs.  The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.
Pepin, Kimberly		
Wilder, Sara, Norridgewock, Maine	Oppose the changes to the rules.  Against mosquito spraying.  Prefer public education about personal protection.  Efficacy of aerial applications negligible.  Do not take away the requirement for consent before spraying.	The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.  The Board continues to support education to help people protect themselves from mosquitoes and supports the use of an IPM approach to managing mosquitoes and
Tomash, Adam, West Gardiner, Maine		
Maier, James, M.D., Scarborough, Maine		
MacMahon, James, M.D., Scarborough, Maine		

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

Person/Affiliation	Summary of Comments	Board Response
Foley-Ferguson, Suzanne, Scarborough, Maine		protecting public health.  Requiring individual property owner authorization is not feasible and would prevent most wide-area public-health spray programs.
Davis, Derek, Scarborough, Maine		
Bottesch, Marla, Norridgewock, Maine		
Balgooyen, Helen, Norridgewock, Maine		
Zando, Marla, Scarborough, Maine		
Woodin, Eddie, S. Portland, Maine		
Tanner, Nanette, Scarborough, Maine		
Sweet-Demetriou, Marcella, Winham, Maine		
Sweet, Arlene		
Sweet, William		
Robbins, Sandy		
Nomani, Louise, Norridgewock, Maine		
Michka, Kay, Lexington, Maine		
D'Andrea, Karen, Scarborough, Maine		

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

Person/Affiliation	Summary of Comments	Board Response
Cutter, Jane, Scarborough, Maine		
Malis, Suzanne		
Stoesser, Cora, Bowdoin, Maine		
scooterweeks@yahoo.com		
Lamb, Scott, Appleton, Maine		
Hathaway, Nancy, Blue Hill, Maine and Surry Conservation Commission		
Christie, Jeanne		
Bedard, Deb		
Avila, Lelania, NE Harbor, Maine		
Ward, Dayle, Appleton, Maine		
McBride, Chris, Stephanie and Cooper		
Ludders, Jessica, Charleston, Maine		
Gleeson, Karen, Northport, Maine		
Christen, Renata, Waldo County		

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

<b>Person/Affiliation</b>	<b>Summary of Comments</b>	<b>Board Response</b>
Bailey, Roberta, Fedco Seeds, Vassalboro, Maine		
Twidwell, Karen, Greene, Maine		
Rapelye, Mary Linda, Lyric Meadow Farm, Boothbay, Maine		
Elliott, Alice, Richmond, Maine		
Domenichelli, Angela, Belfast, Maine		
Burke, Amy, York, Maine		
Ciarrocca, Joe		
Pierce, Julia and Benjamin, Vassalboro, Maine		
Patrick, Eileen		
Brown, Deborah, Jefferson, Maine		
Comstock, Lauren		
Lodata, Bob, Charleston, Maine		
Livingston, Laura		
Drake, Cynthia, Dover-Foxcroft, Maine		
Moger, Bonnie, Westbrook, Maine		

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

<b>Person/Affiliation</b>	<b>Summary of Comments</b>	<b>Board Response</b>
Higgins, Lois, Kittery, Maine		
Thompson, Laurie, Dayton, Maine		



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

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**MAINE BOARD OF PESTICIDES CONTROL POLICY RELATING TO THE INTERPRETATION  
OF “FOOD PRODUCTION” AS IT RELATES TO THE AGRICULTURAL BASIC PESTICIDE  
LICENSE**

**DRAFT**

**BACKGROUND**

The term “food production” is an important term used in the statute (*excerpt below*) that requires a “private applicator of general use pesticides” to obtain a license (referred to as an “Agricultural Basic” pesticide applicator license) 22 MRS § 1471-D (2-D):

*2-D. (TEXT EFFECTIVE 4/1/15) Certification required; private applicator of general use pesticides for food production. A private applicator of general use pesticides may not use or supervise the use of general use pesticides for food production without prior certification from the board, except that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. Additional certification under this section is not required for a person certified as a commercial applicator or a private applicator under subsection 1 or 2, respectively.*

Some growers have asked for clarification as to whether certain practices constitute “food production” in this context, including:

- growing vegetable seedlings for sale to home gardeners
- sanitizing containers, benches or other surfaces to prepare for growing the crop
- post-harvest treatments applied directly to the food or applied to food boxes, containers or storage bins

The staff asked the Board to provide a clear interpretation of the meaning of “food production” in order to be able to consistently inform growers about which practices require an Agricultural Basic license. The Board had a lengthy discussion at its June 27, 2014, meeting and agreed on the policy below.

**POLICY**

For the purpose of determining the requirement for a private applicator of general use pesticide license (Agricultural Basic) per 22 MRS 1471-D (2-D), “food production” will include treatments beginning with the growing media and ending when the plant or plant product is transferred out of the grower’s control.

This includes, but is not limited to:

- soil or other growing medium applications
- seed treatments
- foliar or root treatments
- soil, root or stem injections
- smoke, mist, fumigant or total release fogger applications to greenhouses or hoop houses, when food plants are present
- post-harvest treatments, such as dips, fumigation, produce rinsing with a disinfectant, etc.

Applications done in a manner that do not present a significant risk of resulting in pesticide residues on food do not require a license.



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

To: Board Members  
From: Raymond Connors, Manager of Compliance  
Subject: Interpretation of Chapter 24, Section 7(D)  
Date: August 8, 2014

The compliance staff occasionally encounters pesticides stored outdoors in self-service areas at retail establishments where pesticides are sold that may not fit the letter of the law with respect to CMR 012-026, Chapter 24, Pesticide Storage Facility Standards/Pesticide Distributors, Section 7(D) (*see excerpt below*). The staff is seeking guidance on how certain circumstances should be addressed. Some storage conditions include:

1. Pesticides stored on “farmers’ porches” at farm and garden supply retailers
2. Partial fences with a gate surrounding certain retail establishments that store pesticides outdoors
3. Entry to facility that is gated, but where there is no fence

Excerpt from CMR 012-026, Chapter 24, Section 7(D)

**Section 7. Special Requirements for Pesticide Distributor Self-Service Sales Areas**

- A. All pesticides, unless they are exempted products under 22 M.R.S.A. §1471-W(5), shall be displayed in a separate area that is identified by a Board approved sign informing the public where to obtain additional information. The signs must be positioned between four and seven feet above the floor and prominently posted in all areas where non-exempt pesticides are displayed.
- B. All pesticide containers in the self-service sales area shall be in good condition and have full labeling intact. It is prohibited to have torn, punctured, rusted or leaking pesticide containers in the self-service sales area.
- C. All pesticide products not exempted under 22 M.R.S.A. §1471-W(5) shall not be displayed within 10 feet of food or animal feed products unless they are stored in adjoining aisles separated by a solid barrier. Pesticides shall not be on display above food or animal feed products.
- D. Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements.
- E. Each retail or wholesale establishment must be equipped with spill cleanup materials sufficient to absorb 2 times the volume of the largest container stored. These cleanup materials must be readily available and easily accessible.



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AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

To: Board Members  
From: Gary Fish, Manager of Pesticide Programs  
Subject: Interpretation of Chapter 31, Section 1(E)(IV)  
Date: August 8, 2014

Recently, Mary Tomlinson attended a meeting with other governmental officials and York Water District (YWD) personnel contemplating a possible aquatic application of copper sulfate to control algae on Chase's Pond, which is the York water supply. A question arose about whether the licensing exemption contained in Chapter 31, Section 1(E)(IV) (see *excerpt below*) would allow the YWD employees, who are certified as drinking water operators, to apply copper sulfate to Chase's Pond. In addition, the exemption language could be interpreted to imply that certified drinking water operators could make any type of pesticide application without a Board license. The staff is seeking Board guidance on this question.

Excerpt from CMR 01-026, Chapter 31, Section 1(E)

**1. Individual Certification and Company/Agency Licensing Requirements**

**E. Exemptions**

- I. Employing entities only performing post harvest treatments to agricultural commodities are exempt from master licensing requirements.
- II. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- III. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – Rules Relating to Public Swimming Pools and Spas Administered by the Maine Bureau of Health.
- IV. Certified or licensed Wastewater or Drinking Water Operators



STATE OF MAINE  
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BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY JENNINGS  
DIRECTOR

July 1, 2014

Andy Knight  
Urban Tree Service  
PO Box 1631  
Rochester, NH 03866-1631

**RE: Variance Permit for CMR 01-026, Chapter 29**

Dear Mr. Knight

On November 18, 2011, the Board authorized the staff to issue permits for broadcast pesticide applications within 25 feet of water for control of plants that pose a dermal toxicity hazard provided the applicator agrees to use low-pressure equipment and direct the spray away from the water.

By way of this letter, your request for a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 is hereby granted for the treatment of a poison ivy at 150 US Route 1, York, Maine for 2014. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your variance application.

We will alert the Board at its August 8, 2014 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings  
Director  
Maine Board of Pesticides Control



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
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WALTER E. WHITCOMB  
COMMISSIONER  
HENRY JENNINGS  
DIRECTOR

July 1, 2014

Patrick Devou  
The Lawn Dawg, Inc.  
163 Washington Avenue  
Portland, ME 04101

**RE: Variance Permit for CMR 01-026, Chapter 29**

Dear Mr. Devou:

On December 13, 2013, the Board authorized the staff to issue multi-year permits for broadcast pesticide applications within 25 feet of water for control of invasive plants provided the applicator has demonstrated knowledge of best management practices for control of the plant, has a multi-year plan for controlling the invasive plants, and has a re-vegetation plan for the site.

By way of this letter, your request for a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 is hereby granted for the treatment of various invasive plants at 1 C Street in South Portland. This variance is valid until December 31, 2016. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your variance application; also, the Board does require that you notify them if there is a change in products to be used.

We will alert the Board at its August 8, 2014 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings  
Director  
Maine Board of Pesticides Control