



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 28, 2015**

**Science Building, Room 102, University of Maine at Machias, Machias, Maine**

**AGENDA**

**9:00 AM**

1. Introductions of Board and Staff
2. Minutes of the July 10, 2015, Board Meeting  
Presentation By: Henry Jennings  
Director  
Action Needed: Amend and/or Approve
3. Review of the Hearing Record and Potential Adoption of Amendments to Chapters 31, 34, and 35

*(Note: No additional public comments may be accepted at this time.)*

On June 17, 2015, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 31, 32, and 35. A public hearing was held on July 10, 2015, at the Deering Building. Three comments were received regarding the amendments. The Board will now review the comments and the responses drafted by the staff; the changes to the proposed amendments; the basis statements; and the statements of impact on small businesses; and determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation by: Henry Jennings  
Director

Action Needed: Review the hearing record and provide direction to the staff on further refinements or adopt the amendments

4. Letter from the Legislative Committee on Agriculture, Conservation and Forestry

On July 16, 2015, the Joint Standing Committee on Agriculture, Conservation and Forestry of the 127<sup>th</sup> Legislature sent a letter to the Board requesting a review of its rules "in order to determine whether the standards for pesticide application and public notification for public parks and playgrounds should be consistent with the standards that have been established for pesticide

application and public notification in school buildings and on school grounds under CMR 01-026, Chapter 27.” The Board will now consider that request and identify an appropriate response.

Presentation By: Henry Jennings  
Director

Action Needed: Review the request from the Joint Standing Committee on Agriculture, Conservation and Forestry and provide guidance to the staff

5. Other Old or New Business

- a. Variance Permit for control of phragmites on Chebeague Island
- b. Variance Permit for control of poison ivy in Windham
- c. Variance Permit for control of phragmites in roadside ditches along forest roads
- d. Variance Permit for control of phragmites in York
- e. Other

6. Schedule of Future Meetings

October 9, November 13, and December 18, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

7. Adjourn

## NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at [www.thinkfirstspraylast.org](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.



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## BOARD OF PESTICIDES CONTROL

July 10, 2015

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

### MINUTES

Present: Eckert, Granger, Jemison, Morrill & Stevenson

1. Introductions of Board and Staff

- The Board, Staff and Assistant Attorney General introduced themselves.
- Staff Present: Connors, Fish, Hicks & Jennings

2. Public Hearing on Proposed Rule Amendments to Chapters 31, 34 and 35

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

▪ **Chapter 31 Certification and Licensing Provisions/Commercial Applicators**

1. Change the license period from two years to three; change the certification period from six years to three and align the licensing and certification periods.
2. Amend the description of Category 6B to clarify what types of applications are included.
3. Change the requirement for passing both the core and category exams within one year of each other to within five years.
4. Clarify that certified or licensed wastewater or drinking water operators are exempt from licensing only while applying pesticides to the wastewater or drinking water and not while performing other duties such as weed management.

▪ **Chapter 34 Certification and Licensing Provisions/Dealers**

- a. Shorten the time period a person must wait before re-taking an exam they have failed to align with other licensing rules.
- b. Change the license period from one year to three; change the certification period from five years to three and align the licensing and certification periods.

▪ **Chapter 35 Certification and Licensing Provisions/Spray Contracting Firms**

1. Remove the requirements for spotters and monitors for forest insect aerial spray programs.
2. Change the license period from two years to three.

- The public hearing opened at 8:33 AM

- Morrill summarized the proposed changes and Jennings mentioned that written comments were due by July 24<sup>th</sup>
- No comments were received

3. June 5, 2015, Minutes:

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

- Jemison requested the following changes
  - Page 2, fourth bullet, last line should be “high “off” target residues...” and,
  - Page 3, 8<sup>th</sup> bullet, should start with, “Granger suggested a third option:...”
    - **Stevenson/Jemison: Moved and seconded to adopt as amended**
    - **In Favor: Unanimous**

4. Board Discussion About Herbicide Label Plant-Back Restrictions as They Apply to Cover Crops

At the April 24, 2015 meeting, John Jemison requested that the Board review the herbicide plant-back label restrictions and how they currently prevent farmers from planting cover crops that are being recommended by the United States Department of Agriculture. The staff has been researching the question and will update the Board on the current status.

Presentation By: Lebelle Hicks  
Staff Toxicologist

Action Needed: Provide input to staff

- Hicks introduced the issue and explained that there are many cover crops that may be recommended in Maine cropping systems, each with different susceptibilities to the herbicides commonly used on forage and vegetable crops. She also mentioned there are over 500 herbicide products which could potentially be applied to forage and vegetable crops, which is too many to review individually.
- Hicks looked at various cover crops like those that might follow corn or barley and compared those cover crops to the labels on both broadleaf and grass herbicides. Some of the herbicides would cause stunting on the cover crops but most would not affect grain development. Residues from some of the broad spectrum herbicides might affect most of the cover crops.
- Some of the herbicides are PrePlant or PreEmergence and they only have tolerances for the primary crop (as opposed to a cover crop). The herbicide needs a tolerance for the cover crop too if it will be used for food or feed. Green manure is not defined as a non-food use so that complicates things. Ideally there should be no need for a tolerance for a green manure.
- USDA recommends plant mixes as cover crops with 2 – 4 different plants in them which makes the analysis even more difficult. Some are not recognized as human food, but they are forages for animals. Some also provide feed for wildlife.
- Hicks described the table she has been working on. Thirty-two labels were reviewed. She only looked at commodities grown in Maine and only captured information for the Northeast region or Maine. Twelve out of thirty-two labels had specific language regarding cover crops: the others did not. Some had directions on doing bioassays before planting the cover crop to see if the plant grows well or not. A few examples of specific label language include:

- Shaper herbicide - don't count frozen ground time as part of the rotation restriction,
  - Sandea – 3 year restriction on planting cover crops
  - Rimsulfuron – very confusing label. Rotation intervals had guidelines and restrictions which depended on rain, irrigation etc. to determine when you could plant a new crop
- Eckert asked the staff to define “plant-back restriction.” Planting back the same crop?
  - Hicks explained that it was label restriction relating to planting of crops on a specific site after treating that site with an herbicide.
  - Jemison noted that USDA is encouraging multispecies cover crop mixes and some growers qualify for cost share money. He is concerned that the government may be paying for a grower to do something that is not completely legal. Because there are many benefits and the cover crop will not be used as food or feed, Pennsylvania has a huge program to promote the use of cover crops. Other states allow it for just soil cover. Jemison's objective is to make sure Maine allows soil management practices that are the most sustainable without the potential of getting farmers in trouble. He asked what can we do as a Board to affect this end? Rational public policy would allow Maine growers to use recommended cover crops even if they don't get a full stand. Otherwise they will just use glyphosate and that will result in glyphosate resistant weeds.
  - Lauchlin Titus was asked to speak. He said he was sorry that he started this and he is passionate about cover crops. He sought recertification credit for the last cover crop presentation he developed. He looked at labels on-line. Has done this for a long time and thought nothing of it.
  - In preparing for the Board Meeting, Titus did research and found a reference from the University of Nebraska Lincoln which states: “cover crops can be planted after any herbicide application if not used for food or feed.” If it will be used for food or feed it is breaking the law.
  - A statement from Penn State indicates, “cover crops not harvested can be planted after any herbicide application.” Cary Giguere, from the Vermont Agency of Agriculture, said growers can plant cover crops if they will accept a reduced stand and the crop will not be fed to animals. In those circumstances, it is considered green manure.
  - Jennings explained that all the statements Titus read are not from EPA. There are two important questions around cover crops: is it legal and is it beneficial. Cary Giguere gave a practical answer to a legal question. It is unfortunate that herbicide labels appear to prohibit most recommended cover crops. It's a shame to not allow this because it has environmental and agronomic benefits, but the Board is stuck because it was asked a legal question, which was then sent to EPA to interpret. We cannot give a practical answer to a legal question. We can't say a cover crop is not a crop. We need EPA and USDA to work together to figure this out. We need to ask the registrants to move this forward.
  - Tim Hobbs asked, what are the implications for potato growers? Titus replied that if a grower uses Sencor or Matrix they could have problems if they plant a mixed stand cover crop following potatoes.
  - Stevenson asked whether EPA has addressed this at all. Hicks replied that they have not and that she is trying to get the State FIFRA Issues Research and Evaluation Group's (SFIREG) Pesticides Operations and Management (POM) subcommittee to do an issue paper to send to EPA to address this problem and hopefully get USDA there as well. Stakeholders need to figure out what are the liability issues, what happens if an off label recommendation kills a cover crop? Can the grower sue the manufacturer? There have been problems in the past like this. Twelve of the thirty-two products have specific crop restrictions.

- Morrill asked whether this could be done with a 24C label? Hicks said not if it is a tolerance issue. Morrill asked, is it a tolerance issue? Hicks explained that if it is food or feed then it is a tolerance issue.
- Hobbs asked, what is the intended use? Morrill replied, I think you go with the intent of the use. Hicks said since the Starlink corn issue EPA probably won't allow the intent to be enough.
- Jennings explained that if you explicitly do a 24C where the cover crop is limited to green manure it might work but the company may not support the 24C label. He noted that there might be too many products to do this for. Jemison disagreed and asked whether the Board could adopt a policy that would allow for this use? Jemison distributed a draft policy.
- Randlett stated that adopting this policy would encourage growers to violate federal and state law. Stevenson said that isn't good. Morrill said the label is the law.
- Jennings suggested that maybe the Department could issue a policy? Randlett said he would not want that to happen either.
- Stevenson asked, how long has this been an issue? Hicks mentioned that in 1991 we had a similar plant-back issue.
- Morrill asked whether Hicks go to the SFIREG POM with this issue. Eckert asked, is the SFIREG POM the official committee? Hicks replied that it is.
- Stevenson mentioned the 24C registration idea again. Hicks said it is not a local need and that it is a national need.
- Morrill suggested the manufacturers should tackle this. Jemison said they will not because the companies are afraid of lawsuits for injured crops.
- Hicks offered another way to deal with it: have USDA come up with cover crops that are herbicide specific.
- Eckert asked is there a way to meet the letter of the law, or is that too difficult? Or is it impossible?
- Jemison said it would be a lot of work to offer specific cover crops. They might be able to do the research and develop an App for a smart phone. Growers will resort to the simplest solution. Growers do not have the time to figure it all out.
- Hicks said the Stinger label allows any grain but no legumes. So you could do a good mix following a Stinger application.
- Titus explained that tank mixes make this a lot more complex. The combination of herbicide products, as many as nine different active ingredients, makes it very complex to figure out what cover crops are allowed. Manufacturers are trying to get good residual control. They can't have that and then allow grass or brassica cover crops because those plants are the same families as the weeds they are trying to control. Farmers accept many risks and will plant a five species mix and realize some species are not going to do well.
- Katy Green said prescribed mixes just would not work for their growers, they need legumes, etc.
- Jennings asked how many herbicides are actually involved. Hicks said Titus and Jemison picked the thirty-two. Titus said forage growers use about fifteen and vegetable growers use a lot more.
- Eckert asked, don't potato growers sell some of their cover crops for feed? Hobbs replied that some are used for feed and he asked whether this could be a low priority enforcement wise. Can we work and educate the growers on this? Jemison agreed with that in theory. He said it would be hard for Cooperative Extension to make recommendations. If we could adopt the policy it would make it easier for him to educate the grower about this issue. They are still trying to get growers to do cover crops.
- Hobbs said Cooperative Extension just hired an agronomist to help promote rotational crops for potatoes.

- Jemison realized that Randlett was not going to approve of the policy statement.
  - Eckert wanted to add language to make this a low priority and use enforcement discretion.
  - Hicks mentioned again that she would bring the issue to the EPA -SFIREG POM committee. Morrill supported that.
  - Jennings asked if the Board still wants the staff to send a letter to EPA on this topic. Morrill replied that, if a letter will help, we should do that. Morrill suggested a letter to EPA and Congress, Marge Kilkelly that works for Angus King and Representative Pingree's office. Jennings said the staff will draft the letter but does not like being in this situation.
  - Morrill asked the staff to make it a low priority for enforcement. Jennings stated that the enforcement staff must weigh the public consequence when determining an appropriate enforcement response. In this circumstance, there's actually a public benefit associated with this violation. That fact should give regulators cause to reconsider.
  - Stevenson asked, is the USDA ignoring this issue? Hicks said they are taking about it.
  - Morrill said we should not hold companies liable.
  - Jemison said we won't have a policy.
  - Jennings suggested the Board had reached a consensus on enforcement discretion.
  - Hobbs said the letter should not go to USDA because it might put the cost share money in jeopardy. He wanted the Board to let EPA inform USDA. Morrill suggested we only send the letter to the EPA.
  - Jennings wondered if working with SFIREG POM was good enough.
  - Hobbs said a letter to EPA from the Board and to the congressional delegation will be enough. Send no letter to USDA.
- **Consensus reached to have Hicks work with SFIREG-POM and to have Jennings draft a letter for Board Chair signature to EPA and the Congressional delegations.**

5. Board Discussion About Further Streamlining of the Agency Licensing and Other Processes

The staff has been working to develop a new, comprehensive technology solution to better manage the licensing processes and provide a self-service internet portal for licensees. Because programming/automating complex business rules is both difficult and expensive, one aspect of the development involves a methodical analysis of the current processes with a view toward identifying opportunities to simplify and/or improve those processes. The staff will provide a brief overview of the current progress and invite input on other potential areas to improve the agency processes.

Presentation By: Gary Fish  
 Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff

- Fish said we are working hard to develop a new licensing, compliance and enforcement portal. We need to find ways to simplify some processes to make the application coding less complicated and costly.
- Jennings said we have seen many situations that need to be changed. One example is the insurance affidavit. We are asking for applicator and public input to help us recognize where we can streamline our application, inquiry/complaint and product registration processes. Now is a good time for people to chime in.

- Eckert noted that our rules are very complicated. Jennings said some are hard to figure out. Like company affiliated licenses. It drives business rules that make the database application very complicated. We are trying to sidestep processes where we can but have to pay attention to the rules and statutes. Soon applicators will be able to pay for a license on-line, but it has to be checked to make sure all the requirements are satisfied. The Board doesn't have enough money to fully automate most processes. In the future we hope we can simplify so it can be fully automated.

- **Information only. Board was supportive of potential rule changes.**

6. Review of Letter to from Justin Nichols Recommending Changes to the Board's Posting Requirements

Justin Nichols and Gail Jones, landscapers, were working at a client's property in Falmouth for about 35 minutes when both of them started feeling ill. Shortly thereafter they discovered a sign indicating the lawn had been sprayed just prior to their arrival. Nichols called the telephone number listed on the sign but was unable to get any timely information about what had been applied at the site. Nichols subsequently wrote to the Board inspector with the goal of providing input and recommendations for the Board to consider.

Presentation By: Henry Jennings  
Director

Action Needed: Determine the appropriate response

- Jennings said we need to separate the question of compliance issues from the suggestions for changes to the rules. Nichols met with Inspector, Eugene Meserve. When Nichols began explaining his suggested procedural changes, Meserve suggested that Nichols convey those ideas to the Board. We usually put the letters on the agenda. We just did rulemaking on the posting issue. Nichols has a series of recommendations. Chapter 28 says you just have to list a phone number but it doesn't assign any duties beyond that. Is that an issue? Is there liability for the lawn care company?
- Eckert asked if he found someone to answer his toxicity questions. Hicks and Jennings said that he did. Connors also helped him find out what products were involved. However, when Meserve did the use inspection the products used were different from the list given on the phone.
- Eckert said they should be able to go to Poison Control. It's unacceptable that they could not get the info on what was used quickly.
- Granger asked, was the sign posted at the end of the driveway (street end)? Don't we have a requirement that it show out to the road? Randlett explained that the rule is very subjective. Connors said the sign was not at the sidewalk end of the driveway. It was not directly facing the street, but you could see it from the road.
- Granger asked whether the landscaper could see it as they came into the property. Connors said the landscapers came in from the road not by the driveway. So they missed the sign until they worked their way to the driveway.
- Granger asked whether the rule requires information on the product used to be included on the sign. Connors said, no, just "Caution Pesticide Application".
- Granger suggested that since it was hard to get the active ingredient information, should we require the EPA number on the sign? Connors said that would be more consistent with the other parts of Chapter 28.

- Morrill expressed concern that all companies are different. The number of applications that require posting is really high for some companies. The real problem was the phone number not being answered. The customer had the information.
- Granger said the information did not get to the person that needed it. How hard is it to just write the EPA numbers on the sign? Is that unreasonable to require? There is no fail-safe backup. EPA numbers are necessary if it is not unreasonable.
- Eckert said Nichols and his partner (landscapers with a pesticide license) had knowledge others would not have.
- Hicks said EPA numbers get you into all the databases. Morrill replied some EPA numbers are a lot of numbers, there will be high potential for a mistake. The common name will be better. Granger said the common name can be even longer. Hicks added the common name will not give you the solvent in the mix.
- Stevenson said sharpies are hard to read. Do lawn care companies mix products? Hicks replied three or more products are mixed sometimes.
- Stevenson stated recording products on the signs presents challenges. The big problem was no one answered the phone. Do we make a rule for one company that did not follow the rules?
- Eckert asked is it logical to require a local phone number? 800 numbers go to nowhere.
- Stevenson added could it be the Master Applicator number? Local numbers may go outside Maine too?
- Jennings said phone answering is sometimes contracted out. Many go to a call center instead.
- Stevenson noted that the posting rules have been in place for a long time. Jennings inquired whether this rises to the level of making rule changes?
- Jemison added we could do a spot check to see if you can reach someone in 5 minutes each time. He is worried that it probably would not be good. This brings home why we need to improve the signs. He sees problems with using EPA numbers, as a dyslexic.
- Morrill said the sign has to be rigid and waxed and a sharpie is necessary to write on it. The big issue is to make sure someone answers the phone and can respond to information requests.
- Jemison added that we need to make sure the signs are posted properly. Do we need to have more signs?
- Hicks said we may need to do an educational program on how the number should mean something. Morrill suggested the staff send an advisory out to companies about making sure the phone number is answered.
- Jennings wondered if the Board needs to set clearer expectations around the posting locations? We can encourage companies to make sure the phone is answered.
- Morrill said it is not in the spirit of the rule. We need to address the phone number issue. It is time to do a better job communicating issues.
- Hicks asked can they use stickers with EPA numbers. Stevenson replied that there are-already too many stickers.
- Jemison offered could we ask the 5 inspectors to spot check 4 or 5 signs and call the number and see if they get anyone as a survey and see how widespread the problem is? Can you get the information needed?
- Jennings replied the field staff could do this, but a question arises about who is entitled to pesticide application information? What if a pesticide opposition group started calling those numbers? Stevenson said those within 500 feet have the right to know.
- Connors asked whether it is worth documenting the posting practices at each site as well? Bring that in as part of the discussion.
- Jennings asked whether it is the Board's intent to require posting to alert people entering a treated site from the sidewalk or is it just where people normally enter the property?
- Morrill indicated there are instances where more signs are needed.

- Stevenson said the real issue is making sure the phone is answered. Shouldn't the landscaper have been more diligent in checking the surroundings before working on the property? Seems like the existing rule is adequate as long as the phone number is answered and the questions are answered.
- Connors added that the landscaper did talk to the homeowner. Stevenson asked whether the landscaper ask the property owner what was applied. Katy Green, MOFGA, said yes and the homeowner gave incorrect information.
- Stevenson replied the invoice should have been there. Jemison asked, doesn't the invoice go on the door?
- Jennings asked if they had consensus on the need to provide a phone number that works. Should we do a survey? What is the Board's expectation on the signs?
- Morrill said yes on sending a communication about the phone number.
- Eckert also said she likes the survey idea.
- Morrill was worried about the time it will take to get the information about what was applied. Eckert said it seems like it would not be that hard.
- Stevenson added that this is a posting for information. It is not an emergency number. Companies should be able to provide the information in a reasonable amount of time, but not for emergencies.
- Jennings indicated the staff would benefit from further guidance on what the Board wants for an interpretation of the rule where it is vague and performance based. We have one point of consensus so far.
- Eckert said we just surveyed land trusts why not survey on this? Morrill said he would support a survey if it is mailed out. The survey could ask, what number, where does it go, who answers the number? Connors felt it would be self-graded and it would not work that well.
- Granger asked whether the Board would be content if someone on the urban registry could not get the label and SDS? These options do not allow for providing the information that someone needs if they may have been exposed. Hicks said having the label or SDS also helps to rule out the pesticide if they have a copy of either one or both.
- Eckert added that workplaces have SDSs and employees can get that information quickly. The landscaper should have the right-to-know too.
- Stevenson said the homeowner has all the information on the invoice. Signs must be bigger to incorporate this information. How many people are being poisoned?
- Hicks asked how often people would work on a lawn and not know what was applied, get a reaction and never report it to us?
- Morrill observed the discussion could go on indefinitely. We agree to write a letter. Jennings said should the letter go out to everyone that has to post? Morrill and Stevenson said yes to all that have to post.
  - **Granger/Eckert Moved and seconded to require all applicators that need to post get a letter.**
  - **In Favor: Eckert, Morrill, and Stevenson**
  - **Against: Jemison and Granger**

7. Consideration of a Consent Agreement with the Town of Hartland

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves two unlicensed

municipal employees who applied sodium bisulfite to control weeds on municipal sidewalks and walkways.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors summarized the issue. It involved an application of sodium bisulfate with a hand can to weeds on sidewalks.
- Hicks asked whether the product is registered. Connors indicated it was not. Jennings said it constitutes use of an unregistered product. Connors said it still is a pesticide because of their intent.
- Morrill asked how toxic is it? Hicks replied corrosive.
- Morrill inquired if it is also used in wine. Hicks replied it is used at a very low concentration as a food preservative. Here it was much more concentrated. The SDS says it could cause blindness, corneal damage, and digestive tract injury.

- **Jemison/Eckert: Moved and seconded to accept the agreement as presented**
- **In Favor: Unanimous.**

8. Draft Policy Regarding Interpretation of CMR 01-026, Chapter 10, Section 2 (P) (2), Definition of Property Open to Use by the Public as Regards Outdoor Applications

At the December, 2014 and the April and June, 2015 meetings the Board had discussions about the definition of “property open to use by the public,” as it applies to treating small areas within a large land holding. Section 2 (P) (2) of Chapter 10 provides the exemption, “where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application.” The discussion included information from a survey made of land trusts which use this exemption to apply pesticides to control invasive vegetation. The staff has drafted a policy based on that discussion.

Presentation By: Henry Jennings  
Director

Action Needed: Approve/Disapprove the Policy

- Jennings said the staff submitted a cleaner document as requested by Randlett. The staff re-wrote the policy consistent with the last meeting discussion.
- Granger asked, will this conflict with the rules at all? Fish replied it would not.

- **Stevenson/Eckert: Moved and seconded to approve as presented.**
- **In Favor: Unanimous.**

9. Other Old or New Business

a. Department of Agriculture, Conservation and Forestry Pollinator Protection Plan

- Jennings said the Department plan is in Board packet. The public may submit comments to Ellis Additon, Bureau Director.
- Hobbs commented that he was surprised there was no public process and asked whether there needs to be.

- Eckert asked what happens with it now. Will it just be filed, will it be shared? Jennings said it is posted on web, it was distributed to AGCOM and it will be revised over time.
- Eckert mentioned that an editorial in the KJ commented that a local town was spraying a park and it was not good for bee protection. She concluded that the Board must not have gotten a complaint. Should this message be sent out to municipalities? She thought it might have been Gardiner.
- Stevenson asked a question about CCD: what qualifies as CCD? Jennings said it must meet certain standards. Could be varroa mites, winter die-off, etc.

b. Other - None

10. Schedule of Future Meetings

a. August 27-28, October 9, November 13, and December 18, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

a. August meeting:

- Who is planning to travel in the state van from Augusta?
- Who will be staying at the Machias River Inn?
- Make sure to sign up for sandwiches and drinks before leaving today.

b. Adjustments and/or Additional Dates?

11. Adjourn

- **Jemison/Granger: Moved and Seconded that the meeting adjourn at 11:01 AM**
- **In Favor: Unanimous**

SUMMARY OF COMMENTS—CHAPTERS 31, 34, 35—AUGUST 2015

PUBLIC HEARING, JULY 10, 2015

END OF COMMENT PERIOD, JULY 24, 2015

<b>TESTIMONY AND WRITTEN COMMENTS RECEIVED</b>			
<b>Person/Affiliation</b>	<b>Summary of Testimony</b>	<b>Type of Comment</b>	<b>Board Response</b>
Erik Grove	“Less is always more. You have my support.”	Written	Board agrees that simplification and consistency is preferable.
Robert P. Gagnon, MSAD#1	It is difficult to get credits within the six-year window; three years will be more difficult. (for commercial applicators, Chapter 31)	Written	The number of credits will also be reduced, so the number of credits per year stays the same. The Board reasoned the benefits of a standard license and certification period outweigh other considerations.
Gary Fish, BPC	The proposed change of the requirement for passing both the core and category exams from within one year to within five years should be amended to within three years to coincide with the new licensing period. (for commercial applicators, Chapter 31)	Written	The Board agreed that aligning the time frame for becoming certified with the standard certification period was logical. Consequently, the Board determined it was appropriate to adopt the change to the proposed amendments.



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

**Basis Statement**

Four amendments to Chapter 31 were proposed by the Board:

1. Change the license period from two years to three; change the certification period from six years to three and align the licensing and certification periods.
2. Amend the description of Category 6B to clarify what types of applications are included.
3. Change the requirement for passing both the core and at least one category exam within one year of each other to within five years.
4. Clarify that certified or licensed wastewater or drinking water operators are exempt from licensing only while applying pesticides to the wastewater or drinking water and not while performing other duties such as weed management.

Three comments were received. One person was in favor of the changes. One person suggested that getting recertification credits in three years instead of six would be a challenge. The Board reasoned that since the number of credits per year did not change it should not cause a hardship. Furthermore, the Board contended that the shorter certification period aligned with the license period is less confusing, discourages procrastination and promotes participation in seminars where current issues are reviewed.

The third comment was from the Board staff suggesting that the time period requirement for passing both the core and at least one category exam be changed to three years to align with the licensing and certification period. The Board agreed that made sense because it simplifies record management for the staff and consistency with the certification is logical.

**Impact on Small Business**

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

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

## **Agency**

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

## **Chapter Number and Title of Rule**

CMR 01-026, Chapter 31—Certification and Licensing Provisions/Commercial Applicators

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

Currently there are about 1,800 licensed commercial pesticide applicators in Maine. They will all be affected by this amendment:

1. recertification credits will now have to be accrued during a three-year period rather than a six-year period, however the actual number of credits per year remains the same, so there is no added cost; and
2. license periods will change from two to three years, reducing the paperwork. The cost per year remains the same.

## **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**

None

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

The amendments will result in a slight decrease in paperwork.

## **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, 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 only 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 applying registered disinfectants to waste or drinking water as part of their employment.
- V. Adults applying repellents to children with the 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**~~ **General Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation (including invasive plants) on sites not included in category VI a ~~industrial, commercial, municipal or publicly owned areas~~ including, but not limited to, municipal and other publicly owned properties, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots, ~~and sidewalks, and trails.~~

## 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.~~ Individuals applying to take exams must submit a completed application and associated 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. Exams will be scheduled by Board staff. It is the responsibility of the applicant to reschedule if necessary.~~

- 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 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 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 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 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 6 days after the date of such failed examination.
- e. Any applicant must pass both the core and at least one category exam by December 31 of the third year from the date on which the first exam was passed ~~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~~ third year after the date of successful completion of ~~the~~ required exams and on December 31<sup>st</sup> of every ~~sixth~~ third 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~~ 9 credit hours, including at least ~~3~~ 2 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.
- b. **Operator level** - ~~12~~ 6 credit hours, including at least ~~3~~ 2 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.

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 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.
- 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 sign-up 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~~ applicants must submit verification of attendance at approved programs to the Board. 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.~~ submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
- VI. A person who fails to accumulate the necessary credits during their first ~~six~~ three 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).~~ Applicants must attend the entire approved program(s) for which recertification credit is sought. No other person may complete or sign ~~the~~ a verification form on the another 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.

- 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.
- D. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - ~~\$70.00~~ \$105.00 per person.
  - II. For replacement, upgrade to master or to add categories \$5.00.
- 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.
- 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
Property damage	\$100,000 each occurrence
    - b. **Aircraft applicators**

Public liability	\$100,000 each person \$300,000 each occurrence
Property damage	\$100,000 each occurrence

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).

H. **Expiration**

I. All licenses will expire at the end of the ~~second calendar year after issuance~~ certification period as determined in Section 5(A)VI 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.

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. **Transition**

For the purposes of converting from two year licenses and six year certification periods to three year licenses with concurrent three year certification periods, and to ensure that license expirations are evenly distributed across any three year period. During the transition period, the Board may initially issue one, two, or three year licenses with corresponding certification periods. Licensees must obtain a proportional number of recertification credits per year during the transition period. License fees will also be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when a license is renewed, based on applicant's last name.

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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

AMENDED:

December 9, 2014 – filing 2014-280



**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 34—CERTIFICATION AND LICENSING  
PROVISIONS/PESTICIDE DEALERS**

**Basis Statement**

Two amendments to Chapter 34 were proposed by the Board:

1. Shorten the time period a person must wait before re-taking an exam they have failed. This change would align Chapter 34 with other Board licensing rules.
2. Change the license period from one year to three; change the certification period from five years to three and align the licensing and certification periods to be consistent with other Board licenses.

One comment was received that was not specific to any particular chapter but was supportive of the proposed amendments. Consequently, the Board concluded that the proposed amendments better serve the public interest and determined it was appropriate to adopt the amendment as proposed.

**Impact on Small Business**

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

# **Rulemaking Statement of Impact on Small Business**

## **5 MRSA §8052, sub-§5-A**

### **Agency**

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

### **Chapter Number and Title of Rule**

Chapter 34—Certification and Licensing Provisions/Pesticide Dealers

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

Currently there are about sixty licensed Restricted Use Pesticide Dealers in Maine. They will all be affected in that the license period will increase from one year to three, and the time frame in which they need to receive recertification credits decreases from five years to three years. The cost per year remains the same.

### **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**

None

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

The amendments will result in a slight decrease in paperwork.

### **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, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 34: CERTIFICATION AND LICENSING PROVISIONS/PESTICIDE DEALERS**

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**SUMMARY:** These regulations describe the requirements for certification and licensing of pesticide dealers.

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### **Section 1. Competency Standards for Certification**

No person shall be certified as a pesticide dealer unless that person has demonstrated knowledge of pesticide classifications, formulations, labeling, safety, storage 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.

### **Section 2. Certification Procedures for Pesticide Dealers**

#### **A. Initial Certification**

1. **Application for Exam.** All persons desiring to take the exam must request an application from the Board's office and submit all required information and fees.
  - a. Information shall include name, home address, Social Security number, name and telephone number of company and company address.
  - b. A fee of \$10.00 for the exam shall accompany the application.
2. **Appointment for Exam**
  - 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. Exams will be scheduled by Board staff. It is the responsibility of the applicant to reschedule if necessary.~~
  - b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exam on the scheduled date at least 24 hours in advance of the scheduled exam. 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.
3. Study materials for the dealer exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
  4. **Examinations.** All applicants shall complete the closed book dealer exam covering subjects specified in Section 1.
  5. **Examination Procedure.** All applicants shall comply with these rules or forfeit their opportunity to complete the exam at a specified appointment.
    - a. Applicants should be present and ready to take the exam at the appointed time.
    - b. Applicants shall not talk during the examination period.
    - c. Applicants shall not be allowed to bring any books or papers 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 exam and shall not leave the table during an exam unless authorized by the staff.
  6. **Qualification.** An applicant desiring to qualify for dealer certification must achieve a passing score of 80 percent.
    - a. An applicant who fails the exam may not re-apply to take the examination prior to ~~14~~ 6 days after the date of such examination. If an applicant fails again the applicant must wait ~~30~~ 6 days before retesting.
    - b. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
  7. **Expiration.** Certification under this section will expire on December 31st of the ~~fifth~~ third year after the date of successful completion of the exam and on December 31st of every ~~fifth~~ 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 ~~15~~ 9 recertification credits during the certification period described in Section 2(A)7.

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. Label review,
  - c. Pesticide formulations,
  - d. Applicator safety,
  - e. Storage and disposal,
  - f. Pest identification control,
  - g. 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.
5. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
6. 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.
7. For in state programs, ~~each participant will complete a form to verify attendance at each program for which credit is allowed at the site. applicants must submit verification of attendance at approved programs to the Board.~~ For out of state programs, applicants must notify the Board about attendance and send a registration receipt or other proof of attendance 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. submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
8. A person who fails to accumulate the necessary credits will have to re-apply to ~~take~~ re-take and pass the exam required for initial certification.

#### **Section 4.     Licensing**

- A. **Application.** Application for a pesticide dealer license shall be on forms provided by the Board.
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
  - 1. For a pesticide dealer license - ~~\$20.00~~ \$60.00 per person.
  - 2. For replacement or alteration - \$5.00.
- C. **Reports.** All required reports described in Chapter 50 must have been submitted in proper form before a license will be processed.
- D. **Expiration.** All licenses will expire at the end of the certification period as determined in Section 2 A 7. ~~at the end of each calendar year.~~

### **Section 5. Special Dealer Requirements**

- A. Each dealer shall be responsible for the acts of those people in his/her employ and the dealer's license shall be subject to denial, suspension or revocation for any violation of the statute or regulations, whether committed by the dealer, his/her office, agent, employee, or other person acting in concert or participation with him/her.
- B. A licensed dealer must be present in the outlet at the time of sale of a restricted use pesticide so that she/he may supervise the transaction.
- C. Restricted-use and limited-use pesticides shall be stored separately in an area not accessible for self service.
- D. No dealer shall sell any restricted-use pesticides to any person who does not have in his/her possession a valid license.
- E. No dealer shall sell any limited-use pesticides to any person who does not have in his/her possession a valid license and limited-use permit.
- F. Dealers shall either maintain a record of restricted sales pursuant to Chapter 50, "Record Keeping and Reporting Requirements".

### **Section 6. Transition**

For the purposes of converting from one year licenses and five year certification periods to three year licenses with concurrent three year certification periods, and to ensure that license expirations are evenly distributed across any three year period, the Board may initially issue one, two, or three year licenses with corresponding certification periods. Licensees must obtain a proportional number of recertification credits per year during the transition period. License fees will also be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when an existing license is renewed, based on the applicant's last name.

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

EFFECTIVE DATE:

January 1, 1983.

AMENDMENT EFFECTIVE:

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

MINOR CORRECTION:

April 25, 2013 – grammar in first paragraph

February, 2014 – agency names, formatting



**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 35— CERTIFICATION AND LICENSING  
PROVISIONS/SPRAY CONTRACTING FIRMS**

**Basis Statement**

Two amendments to Chapter 35 were proposed by the Board:

1. Remove the requirements for spotters and monitors for forest insect aerial spray programs.
2. Change the license period from two years to three.

One comment was received that was not specific to any particular chapter but was supportive of the proposed amendments. Consequently, the Board concluded that the proposed amendments better serve the public interest and determined it was appropriate to adopt the amendment as proposed.

**Impact on Small Business**

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

# **Rulemaking Statement of Impact on Small Business**

## **5 MRSA §8052, sub-§5-A**

### **Agency**

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

### **Chapter Number and Title of Rule**

Chapter 35—Certification and Licensing Provisions/Spray Contracting Firms

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

Currently there are 253 licensed spray contracting firms in Maine. They will all be affected in that the license period will increase from two years to three; the cost per year remains the same.

Businesses doing aerial spraying for forest insect projects will not be required to hire specific monitors and spotters. This amendment is required by a change in statute.

### **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**

None

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

The amendments will result in a slight decrease in paperwork.

Costs will be lower for major forest insect aerial spray projects.

### **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, CONSERVATION AND FORESTRY**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 35: CERTIFICATION AND LICENSING PROVISIONS/SPRAY CONTRACTING FIRMS**

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**SUMMARY:** These regulations describe the requirements for certification and licensing of spray contracting firms.

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### **1. Competency Standards for Certification**

No person shall be certified as a spray contracting firm unless it demonstrates that the firm will have in its employment a sufficient number of licensed Master and Operator applicators to actively supervise and conduct the program in accordance with all applicable laws and regulations, and that such firm will otherwise be competent to responsibly make a pesticide application. ~~Where a major forest insect aerial spray program is undertaken, the firm must also demonstrate that there will be an adequate number of licensed spotters to accompany each spray team.~~ A responsible official of the contracting firm will sign a statement attesting that he/she is familiar with and that the contracting firm will comply with all statutes, rules, and guidelines of the Board.

### **2. Certification Procedures**

All applicants must complete and submit an application provided by the Board which details the organizational structure of the spray contracting firm.

- A. Information shall include the firm name, chief officer, telephone number and location of the company headquarters, and business mailing address.
- B. Information shall also include a listing of all Master applicators who shall have responsibility for spray programs conducted in Maine along with their business locations and telephone numbers.
- C. Information shall also be included, as required on the application form, which demonstrates whether the firm has the necessary competence to responsibly apply pesticides in Maine.

### **3. Licensing**

- A. **Application.** Application for a spray contracting firm license shall be on the same form provided by the Board for certification information.
- B. **Fee.** At the time of application, the applicant must submit a fee of ~~\$200.00~~ \$300.00.
  - 1. For replacement or alteration - \$5.00.

- C. **Insurance.** An applicant must submit a completed and signed form, provided by the Board, which attests that the spray contracting firm will have the required amounts of insurance specified in Chapter 31 in effect when any employee or agent makes a pesticide application.
- D. **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).
- E. **Decision.** Within 15 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.*
- F. **Refusal to Renew.** The Board may refuse to renew a license if it is not in accordance with any of the requirements hereof or if the Board makes, as to the licensee, any of the findings set forth in 22 M.R.S.A. §1471-D (8), which describe the bases for a decision by the Administrative Court to suspend or revoke a license. If the Board determines that there is evidence sufficient to refuse to renew a license, it shall give notice and an opportunity for a hearing before the Board prior to making that determination final.
- G. **Expiration.** All spray contracting firm licenses will expire at the end of the ~~second~~ third calendar year after issuance.

#### 4. **Special Spray Contracting Firm Requirements**

- A. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the Board.
- B. Each spray contracting firm shall be responsible for the acts of those people in its employ and its license shall be subject to denial, refusal to renew, suspension, or revocation, and such firm shall otherwise be punishable under the law, for any violation of the statutes or regulations, whether committed by the owner, chief officer, agent, employee or other person acting in concert or participation with it.
- C. No spray contracting firm shall make a forest insect aerial spray application until it ascertains that legally required notification has been given to the public and the Board, and there has been compliance with all other requirements for such an application, including any required licensing of its employees, agents and independent contractors and their employees.
- D. ~~No spray contracting firm shall make a major forest insect aerial spray application unless licensed applicators, spotters and monitors are in place to direct or monitor each spray aircraft or each team of spray aircraft during actual applications.~~

~~E.D.~~ A spray contracting firm shall cause its ~~licensed spotters and other~~ employees and agents to prepare reports pursuant to Chapter 50, "Record Keeping and Reporting".

## **5. Grandfathering and Transitions**

~~The 1999 amendments to this chapter which extend the license period shall affect licenses renewed after December 31, 2000.~~

For the purposes of converting from two year licenses to three year licenses to ensure that license expirations are evenly distributed across any three year period, the Board may initially issue one, two, or three year licenses. License fees will be prorated in accordance with the length of the license term. The length of the initial license terms will be assigned by the Board when an existing license is renewed, based on company name.

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

EFFECTIVE DATE:

February 6, 1985

AMENDED:

January 12, 1986

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999; also converted to MS Word

CORRECTIONS:

February, 2014 – agency names, formatting

SENATE

PETER E. EDGECOMB, DISTRICT 1, CHAIR  
THOMAS B. SAVIELLO, DISTRICT 17  
JAMES F. DILL, DISTRICT 5

MICHAEL O'BRIEN, LEGISLATIVE ANALYST  
CASSIE NIXON, COMMITTEE CLERK



HOUSE

CRAIG V. HICKMAN, WINTHROP, CHAIR  
WILLIAM F. NOON, SANFORD  
ROBERT J. SAUCIER, PRESQUE ISLE  
RALPH CHAPMAN, BROOKSVILLE  
MICHELLE ANN DUNPHY, OLD TOWN  
RUSSELL J. BLACK, WILTON  
DONALD G. MAREAN, HOLLIS  
CAROL A. MCELWEE, CARIBOU  
ANTHONY J. EDGECOMB, FORT FAIRFIELD  
MARYANNE KINNEY, KNOX

STATE OF MAINE  
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE  
COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY

July 16, 2015

Department of Agriculture, Conservation and Forestry  
Maine Board of Pesticides Control  
c/o Henry Jennings, Director  
28 State House Station  
Augusta, ME 04333

Re: Pesticide use in public parks and playground facilities

Dear Mr. Jennings:

During the First Regular Session of the 127<sup>th</sup> Maine Legislature, the Joint Standing Committee on Agriculture, Conservation and Forestry conducted a public hearing and work session on LD 1098, An Act To Protect Children from Exposure to Pesticides.

Although we unanimously voted Ought Not to Pass on this piece of legislation, we request that the Maine Board of Pesticides Control review its rules in order to determine whether the standards for pesticide application and public notification for public parks and playgrounds should be consistent with the standards that have been established for pesticide application and public notification in school buildings and on school grounds under CMR 01-026, Chapter 27.

We would appreciate a response to this inquiry by February 1, 2016. Please let us know if you have any questions about our request.

Sincerely,

Handwritten signature of Peter E. Edgecomb.

Sen. Peter E. Edgecomb  
Senate Chair

Handwritten signature of Craig V. Hickman.

Rep. Craig V. Hickman  
House Chair

cc: Commissioner Whitcomb, Department of Agriculture, Conservation and Forestry  
Members, Joint Standing Committee on Agriculture, Conservation and Forestry  
Rep. Benjamin M. Chipman of Portland

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

**026 BOARD OF PESTICIDES CONTROL**

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

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

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**Section 1. Definitions**

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

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

## Section 2. Requirements for All Schools

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

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

### **Section 3. Exemptions**

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

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

#### **Section 4. Notification**

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

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

## **Section 5. Integrated Pest Management Techniques**

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

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

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

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

**EFFECTIVE DATE:**

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

**AMENDED:**

July 5, 2005 – filing 2005-266

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

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

**Appendix A**

**Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds**





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

August 5, 2015

Lynn Mills  
53 Jenks Road  
Chebeague Island, Maine 04017

**RE: Variance Permit for CMR 01-026, Chapters 29 for Phragmites Control on Chebeague Island**

Dear Ms. Mills:

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

The Board also emphasized the fact that there is a native species of phragmites (*Phragmites americanus*) and care should be taken to ensure proper identification.

This letter will serve as your Chapter 29 variance permit until December 31, 2017 for the treatment of phragmites (*Phragmites australis* subsp. *australis*) on the site on Chebeague Island. We understand that you have been working with the Department of Environmental Protection on a plan to control the phragmites *within* the wetland; this permit covers only the area *adjacent* to the wetland.

Please bear in mind that your permit is based upon adherence to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

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

cc: Bryan Emerson  
Stantec  
30 Park Drive  
Topsham, Maine 04086



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY JENNINGS  
DIRECTOR

July 17, 2015

June Barden  
5 Varney Mill Rd  
Windham, ME 04062

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

Dear Ms Barden,

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 5 Varney Mill Road, Windham, Maine for 2015. 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 28, 2015 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

Copy:  
Top Leaf Tree LLC  
147 Valley Road, Raymond, ME 04071



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

August 18, 2015

David Adams  
Dasco Inc  
1455 Central Dr.  
Presque Isle, Maine 04769

**RE: Variance Permit for CMR 01-026, Chapters 29 for Phragmites Control in Roadside Ditches**

Dear Mr. Adams:

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

The Board also emphasized the fact that there is a native species of phragmites (*Phragmites americanus*) and care should be taken to ensure proper identification.

This letter will serve as your Chapter 29 variance permit until December 31, 2017 for the treatment of phragmites (*Phragmites australis* subsp. *australis*) on forest roads in T7R19WELS, T8R19WELS, T11R16, T9R17, T8R7, and T8R16 to comply with requirements of SFI and FSC certification.

Please bear in mind that your permit is based upon adherence to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

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



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

August 5, 2015

Joseph Anderson  
High Pine Environmental, LLC  
105 Front Street  
Portland, Maine 04103

**RE: Variance Permit for CMR 01-026, Chapters 29 for Phragmites Control in York, Maine**

Dear Mr. Anderson:

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

The Board also emphasized the fact that there is a native species of phragmites (*Phragmites americanus*) and care should be taken to ensure proper identification.

This letter will serve as your Chapter 29 variance permit until December 31, 2017 for the treatment of phragmites (*Phragmites australis* subsp. *australis*) on the site on Barrells Millpond in York, Maine. This variance permit is only for the area within 25 feet upland of the high water mark, not to the wetland itself. I checked with the Department of Environmental Protection (DEP) to see if this application would be a concern. DEP's response was that applications may be made without a DEP Waste Discharge License provided that those applications are made in accordance with the guidelines in the attached fact sheet "Use of Herbicides in Wetlands in Maine".

Please bear in mind that your permit is based upon adherence to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

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