



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

July 10, 2015

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

AGENDA

8:30 AM

1. Introductions of Board and Staff
2. Public Hearing on Proposed Rule Amendments to Chapters 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**
 1. Shorten the time period a person must wait before re-taking an exam they have failed to align with other 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.
- **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.

Additional details of the proposed amendments were described in the public hearing notice published in major newspapers and on the Secretary of State website on June 17, 2015. Copies of

the notice and the proposed rule amendments are available upon request, and may be viewed at the Board's website, <http://www.maine.gov/dacf/php/pesticides/rulemaking.html>

Written comments may be e-mailed to henry.jennings@maine.gov, or mailed to the Board's address above, until 5:00 PM on July 24, 2015.

3. Minutes of the June 5, 2015, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

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: Lebelles Hicks
Staff Toxicologist

Action Needed: Provide input to staff

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

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

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

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

9. Other Old or New Business

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

10. Schedule of Future Meetings

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 Motor Inn?
 - Make sure to sign up for sandwiches and drinks before leaving today.
- b. Adjustments and/or Additional Dates?

11. 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.
- 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. 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

June 5, 2015

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

MINUTES

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

1. Introductions of Board and Staff

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

2. Minutes of the April 24, 2015 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

April 24, 2015, Minutes:

- **Jemison/Flewelling: Moved and seconded to adopt minutes**
- **In Favor: Unanimous**

3. Review of Draft “Guidance for the Application of Pesticides In Forest Settings In Order to Minimize the Risk of Discharges to Surface Waters”

On June 27, 2012, the Board approved *Interim Guidelines for Forest Pesticide Applications* which were intended to assist foresters in minimizing the risk of discharges to surface waters. In April, 2015, the Maine Department of Environmental Protection finalized a general permit for aerial application of pesticides to forestry sites and referenced BPC Best Management Practices. Additionally, at the Joint Standing Committee on Agriculture, Conservation and Forestry work session for LD 817, An Act Regarding Aerial Pesticide Spray Projects, there was discussion about adding references to technological advances for aerial spraying. The Board reviewed the interim guidelines at the April 24, 2015 meeting and provided some input which the staff has attempted to capture in a new draft.

Presentation By: Mary Tomlinson
Pesticides Registrar and Water Quality Specialist

Action Needed: Provide Guidance to the Staff

- Jennings said that the guidance document does not describe any recommendations as BMPs. Operators need the ability to choose which practices to implement because all of the practices will not be feasible in all circumstances. These are not requirements.
- Tomlinson sent the draft document to foresters and a few other people, seeking feedback, and heard nothing back.
- Jennings wanted to make sure no one can construe these as legal parameters. There was concern about this from the Board.
- Eckert asked what the difference between neutral and stable atmospheric conditions is. Jennings replied that stable atmosphere occurs first thing in the morning if you have clear sky when there is very little air movement. Under neutral conditions there is some horizontal movement but the vertical movement caused by thermals has not begun yet. Under unstable conditions, the thermals have formed and there is both horizontal and vertical air movement. Applicators do not want to apply small droplets in stable air because high target residues can result.
- Bohlen asked who the target audience is for this, applicators only or a broader audience? Jennings replied that it will most likely be someone well versed on the subject. Bohlen responded there was terminology used that was very technical. Jennings suggested the staff go back and look at places where terminology could use further explanation. When Tomlinson drew those up and sent them out she used multiple forestry manuals and input from foresters.
- Morrill questioned item 4 on page 20. The document mentions buffer areas in several spots and then provides an actual footage buffer in that location. Jennings stated this came from foresters. Since they are required to buffer surface waters with their harvesting practices, they use this as a way to buffer streams by both vegetation and distance. Morrill suggested taking the whole bullet out because buffers are explained under item 16, etc. Jennings agreed to delete item 20.
- Bullet point 34 is missing closing parentheses. Tomlinson stated that this has been fixed.
 - **Morrill/Jemison: Moved and seconded to accept the draft as amended**
 - **In Favor: Unanimous**

4. Interpretation of CMRCMR 01-026, Chapter 10, Section 2(P)(2), Definition of Property Open to Use by the Public as Regards Outdoor Applications

At the December 5, 2014, meeting the Board had a discussion about the definition of “property open to use by the public,” which state statutes defines as commercial applications requiring a licensed applicator. 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.” During that discussion it was noted that this exemption has been used most commonly by land trusts to treat for invasive plants where they post and indicate the area (but not the entire “property”) is temporarily closed to the public. The Board discussed this topic at the March 13 and April 24, 2015 meetings, but tabled the matter pending further input from Maine land trusts. The Board will review those findings and provide guidance on whether this is the appropriate interpretation of the rule.

Presentation By: Henry Jennings
Director

Action Needed: Provide Guidance on Interpretation of the Chapter 10 Definition

- Jennings stated there was interest in reaching out to land trusts to see what sort of impact it might have if the seven day exemption applied to the entire property. The land trust network sent out an online survey. Attachment 9G summarizes this survey.

- The survey provides information on how many land trusts are doing their own invasive species control and which are hiring commercial applicators. Many are doing invasive plant control, but few are hiring commercial applicators.
- Bohlen stated the tenor of the responses revolves around two ideas: pesticide application safety and entirely blocking land trusts from doing invasive plant control.
- Bohlen stated the take home message was that many of the land trusts have extremely limited capacity to do any of this. There are only a few, two or three, that have licensed their own master applicators. For many of the land trusts this is not a top priority and if we make it a \$500 fee, they just will not do invasive plant control. Invasive plant control is a low priority activity anyway. Bohlen felt the overall feeling from the land trusts was that changing the current interpretation of exemption was a bad thing. He is leaning towards not making it apply to the entire property and going with option two.
- Of the land trusts that responded to survey 47% said they sprayed and 53% did not.
- Eckert asked of the people not using the licensed applicators, what are they doing and how are they doing it? Is it staff, someone fairly knowledgeable, or volunteers? Bohlen said his feeling was the ones not using licensed applicators are using off the shelf products. Many land trusts do hand removal of invasive plants as well.
- Jennings stated most of the off the shelf herbicides are typically not restricted. Stevenson stated that internet purchases could be a concern.
- Granger asked if we are only talking about herbicides, or all pesticides. Morrill stated he believes they are talking about all pesticides, but the Board is mainly concerned about the spraying of trails.
- Granger suggested a third option, areas on property open to the public which are treated with pesticides must be closed to the public for a period of seven days after treatment. Granger stated this keeps people off the area that has been sprayed, but doesn't close down the entire property. Jennings stated the third paragraph is similar to Granger's option. What Granger is suggesting sounds a lot like what the interpretation is now.
- The real question is what is the definition of "property"? Randlett suggests replacing the word "property" with "treated area".
- The other question is, to keep it open are you required to use a commercial applicator?
- Recreational areas, trails, and parks are the areas affected by this rule.
- Flewelling suggested the Board go with option two and then revise it as necessary.
- Bohlen suggested thinking about this not in terms of a public health risk, but of overuse of material, excessive runoff, and not paying attention to buffers.
- Jennings stated educating the land trusts on proper pesticide use is an alternative to changing the interpretation of the exemption.
- Ann Gibbs stated that Fish is providing this kind of training and the DACF has a new hire that is doing this.
- Stevenson did not think closing down 100 acres to apply to one acre makes much sense. He also stated they have not seen any problems/issues with how things are being done. Are we trying to solve a problem that is not there?
 - **Randlett suggested that the staff come back with a rewritten policy and the Board agreed.**

5. Board Discussion About How to Handle Situations in Which a Property Owner Removes Signs Prior to the Required 48 Hours

In April of 2015, the Board's office received an inquiry about whether it was lawful for a property owner to remove signs posted pursuant to Chapter 28, Section 3, prior to the expiration of the 48 hour posting period. One homeowner allegedly removes the signs as soon as the lawn care company leaves

the property. Chapter 28 states that signs “shall remain in place at least two days following the completion of the application.” The staff is seeking Board input on the interpretation of that standard and whether the staff should enforce the standard with homeowners.

Presentation By: Henry Jennings
Director

Action Needed: Provide Guidance to the Staff

- How should staff respond when homeowners are pulling up pesticide application signs as soon as the applicator leaves?
- Jennings stated he had reservations about aggressively enforcing the posting standards with homeowners for a variety of reasons.
- Morrill stated if an application is done by a commercial applicator, it needs to be posted, however a homeowner can buy the same products and apply them and would not need to post signs.
- Randlett stated he was not interested in enforcement against homeowners, but if it is a landlord-tenant situation or the public is invited onto the property, then the signs take on more public significance. When this is at a rental property and the landlord pulls up signs, tenants may have no idea that an application was made.
- Jemison suggested that one solution could be the lawn care companies put in their contract that it is the homeowner’s obligation to keep the sign up for two days. Morrill said that the necessary information is on the sign. Stevenson remarked that space is a premium on the homeowner agreement forms. Jemison noted that the signs say should, but not must. Bohlen felt uncomfortable with the idea of specifying what a business needs to put in a contract. Jemison said he was seeing this as a way to protect the businesses. Morrill stated that there is already a lot of information in the contracts.
- Connors agreed with Randlett that it is not so much about enforcement, but clarifying who is responsible for making sure the sign is up for two days. Connors suggested having the sign state, “Homeowner Do Not Remove”. In this particular case, it was about the abutter. Another issue is the public walking by a property and going off a sidewalk and unknowingly onto a location that has recently been sprayed with pesticides. Connors also noted that homeowners may not own all the way to the sidewalk.
- Flewelling asked if this was a single incident. Connors replied that there have been multiple incidents of a similar nature, but this is one is at the forefront.
- Bohlen said he is trying to envision how this is going to be enforced. He asked Connors if the Board would even hear about these signs being removed.
- Eckert remarked that after the sign has been posted, the responsibility shifts to the homeowner; the company did its job by posting the sign.
- Connors said that in other New England states the commercial applicators inform the homeowner not to remove the sign for a specified amount of time and in some instances that is in writing.
- Morrill said the Board cannot currently pursue any action on this. Randlett stated in a certain circumstance this could come into play and the Board should be careful about making a pronouncement that they do not want to pursue any action against a property owner. Bohlen provided an example of a circumstance in which the commercial property owner might have an incentive to remove the sign prematurely: a bed & breakfast may want to pull signs early because it would detract from what they are trying to promote.
- Connors suggested that in order to determine when enforcement is appropriate you first need to determine applicability. Granger suggested the sign be put up and removed by the applicator. Connors said that in his view the placing of the sign is specific to the applicator and the responsibility of removing of the sign is implied to be the responsibility of the property owner.

Connors asked what is the Board's position? The real question is whose duty is it to remove the sign?

- Jennings offered that the Assistant Attorney General has provided an interpretation. He believed the important question is the level of priority enforcement of this standard deserves.
- Bohlen said the level of priority for him has to do with the level of the risk to the public.
- Eckert remarked that she sees a difference in priority between a situation involving homeowner and abutter versus a business and a larger public group.
- Connors said that it is still unclear who the sign language applies to. It is natural for the homeowner or tenant to remove the sign. Jennings responded that it applies to anybody who removes the sign.
- Bohlen stated that the test for this should be asking what is the risk to others, not what is the risk to property owners.

6. Board Discussion About Commercial Certification and Licensing Periods

The Board's staff has been working with the State Office of Information Technology and Pegasystems to develop a new technology solution to manage the Board's licensing system and other process oriented activities. That effort includes an analysis of the Board's processes and discussion about whether any of those processes can be streamlined or simplified. The commercial applicator licensing requirement is one that adds complexity, but not necessarily benefit—licenses last for two years and the certification period lasts for six years—which makes that process more difficult to automate. Private licenses have the same three-year license and certification period. Because the staff is in the midst of analyzing its business processes, it seemed appropriate to bring process questions to the Board for review and discussion.

Presentation By: Henry Jennings
Director

Action Needed: Provide Guidance to the Staff

- Jennings explained that the staff is in the midst of a fairly large scale “business process management” technology solution development project. This is a good opportunity to go through each requirement and ask ourselves why we came up with each specific rule and does it still make sense.
- For example, there is a fair amount of confusion on the part of commercial applicators about the six-year certification period and the two-year license period. Jennings asked the Board about exploring simplifying specific license processes.
- Morrill remarked that it was easier to track credits over a three-year period.
- Stevenson suggested five years and five years.
- Morrill said that if the Board can make it easier for the applicators and the staff they should do it. He suggested three years and three years. Jennings said that from a management standpoint it is easier to track credits for a three-year period rather than a five- or six-year period. There is added cost with a longer licensing period. What if the licensing period is five years and a person quits prior to working five years?
- Morrill stated that is easier to keep track of credits over a three-year period.
- Bohlen suggested all licenses should be on the same period and they can have different credits; that is fine, but all license periods should be the same.
- Eckert asked why it was set up like it is to begin with? Jennings responded that it used to be a one year license period and a five year certification period.
- Morrill said this is the time to simplify this.

- Jennings noted that this would require rulemaking, but not major-substantive if the fee is not changed. The staff will initiate rulemaking on this.
- Jennings discussed the merits of the requirement for passing a core and category exam within a one-year period.
- Eckert suggested staggering the licenses so that staff does not have to review all licenses in one year.
- Jennings stated if anyone else has ideas on processes that seem unnecessarily complex, now is the time to bring them up.
- Jemison suggested changing the license and certification periods for all licenses to three years.
- Bohlen agreed the licensing process looks absurdly complicated.

7. Board Discussion About Enforcement of the Ag Basic License Requirement

On April 1, 2015, the new Maine statute requiring licensing of “private applicators of general use pesticides for food production” (the so-called Ag Basic license) went into effect. The compliance staff has raised the question about how the Board recommends enforcing this new standard. Historically, the Board has endorsed a phased approach to enforcement of new standards. The staff is seeking guidance on the appropriate enforcement approach.

Presentation By: Raymond Connors
 Manager of Compliance

Action Needed: Provide Guidance to the Staff

- Connors asked for the Board’s view on how to approach enforcement of the new licensing requirement.
- Morrill stated there was already a three-year phase in on this.
- Eckert suggested giving them a warning on the first inspection and then enforcement action on the second inspection. Morrill and Flewelling worried this will put out the word that people do not need to worry about getting a license until they are inspected.
- Katie Green stated she felt MOFGA tried very hard to get the word out, but there are still many people who are not licensed. Tim Hobbes remarked that all the potato growers are licensed.
- Connors said that for an Ag Basic grower using pesticides, the criteria is \$1,000 of gross produce sales. The produce season is just beginning. When does the trigger start since the law went into effect April 1? How do you prove when \$1,000 of edible products have been sold?
- Dave Struble asked how many Ag Basic licenses have been issued? Connors replied that there are approximately 400 Ag Basic licenses currently, but Gary would be in a better position to answer the question. Dave Struble asked what percent of the population that 400 is?
- Jennings said that a large percentage of those licenses are from medical marijuana people, which was not anticipated. Some growers chose to get private licenses, rather than Ag Basic. Also, growers do not need a license if they are only using FIFRA Section 25b exempt products.
- Jemison remarked that the statute stating selling “\$1,000 annually” is bad wording.
- Stevenson asked how inspectors figure out how much growers sell?
- Ann Gibbs noted for nursery licenses they have a defined area that they require licenses for.
- Connors said that in the past, in the lawn care industry, the inspectors discussed the licensing requirements, left a brochure, and then the applicator signed off on that. He suggested using a similar process in this situation.
- Morrill said that continuing to provide educational support is the best approach.
- Some farms have three or four people with Ag Basic licenses

8. Consideration of a Consent Agreement with Tractor Supply Company of Brentwood, TN

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 a retailer that was selling pesticides positioned closer than ten feet from animal feed.

Presentation By: Raymond Connors
Manager of Compliance

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

- Tractor Supply sells pesticides that require a General Use Pesticide Distributors license. Connors said that some of the requirements of the pesticide self service area (such as signs, 10' rule, spill kit), were ignored in 14 of the Tractor Supply stores. Many of these stores were in violation more than one year.
- Connors sent the corporate office a warning letter.
- The stores have corporate planograms dictating which products go where, so store managers were reluctant to move products.
- In 2014, there were eight Tractor Supply Stores that were inspected and had violations.
- Connors sent them a Consent Agreement that they acknowledged and paid.
- Bohlen stated eight stores and \$1,000 does not seem like nearly a high enough fine for this large of a corporation.
- Morrill noted that there are six years of failed inspections. Why didn't we send a warning letter in 2008 and then a fine in 2009? Morrill asked why we waited so long to fine them?
- Randlett replied that he also questioned the fine amount because he thought it was low, but then understood it better after talking to Connors. Connors had been working with a new Tractor Supply Company employee who was working to bring the stores into compliance. Morrill stated he felt there was uneven treatment concerning farmers and this company. Connors stated there was a distinction with this situation where there were individual stores that had violations, but not in all the sequential years the consent agreement covered.
- Bohlen asked if the Tractor Supply stores are going to be inspected this year? The Board needs evidence they're making changes; if this does not work, then the fine needs to be ratcheted up.
- Eckert added that there needs to be equal treatment between farmers and large corporations.
 - **Flewelling/Eckert: Motion to approve consent agreement negotiated by staff**
 - **In Favor: Unanimous**

9. Other Old or New Business

- a. Variance Permit for Maine Department of Transportation, Bureau of Maintenance & Operations
 - Morrill asked what the first three variances were for. He would like that stated in the letter. Item 9.d. the variance permit for Dubois Contracting lists the purpose of the variance, items 9.a., 9.b., and 9.c. do not provide this level of detail.
- b. Variance Permit for RWC, Inc
- c. Variance Permit for Asplundh Tree Expert Co.—Railroad Division

- d. Variance Permit for Dubois Contracting
- e. EMERA Maine Letter
 - Letter to inform BPC that they plan to hydraulically spray 53 substations in SOR and 43 in NOR
- f. Nancy Oden Letter and Article
 - EPA proposing temporary pesticide-free zones for honeybees.
- g. Land Trusts Memo and Survey
 - 51 of 80 land trusts responded to survey
- h. Other?
 - The staff hasn't secured a room to meet in yet at University of Machias for next Board meeting. There are some places that can be rented, but they are expensive and/or inconvenient.

10. Schedule of Future Meetings

July 10 and August 28, 2015 are the next tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Tentative plan for field trip/Board meeting August 27-28 (Thanks to Nancy McBrady for her hard work on this)
 - Leave Augusta Thursday morning, August 27, arrive in Jonesboro around noon. Have lunch and tour the Blueberry Hill Farm Experimental Station.
 - Proceed to Wyman's of Maine, Deblois for a tour of the processing facility and fields.
 - Proceed to Machias for dinner/overnight. Listening session in the evening?
 - Board Meeting Friday, August 28 at University of Maine Machias. Listening session before meeting?
 - Eat lunch.
 - Return to Augusta.
- Adjustments and/or Additional Dates? - Those who want to ride in the van, meet at the Deering Building at 8am on August 27th
- Board will plan to hold October meeting on the 9th at the Deering Building
- Board will plan to hold November meeting on the 13th
- Board will plan to hold December meeting on the 18th

11. Adjourn

- **Eckert/Flewelling: Moved and seconded to adjourn at 10:20am**
- **In Favor: Unanimous**

Notice of Agency Rule-making Proposal

AGENCY: Agriculture, Conservation and Forestry, Board of Pesticides Control

CHAPTER NUMBER AND TITLE: Board of Pesticides Control Rules:
Amendments to Chapter 31—Certification and Licensing Provisions/Commercial Applicators
Amendments to Chapter 34—Certification and Licensing Provisions/Pesticide Dealers
Amendments to Chapter 35—Certification and Licensing Provisions/Spray Contracting Firms

PROPOSED RULE NUMBER (*leave blank; assigned by Secretary of State*):

CONTACT PERSON FOR THIS FILING: Henry Jennings, 207-287-7543, henry.jennings@maine.gov

CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different):

PUBLIC HEARING: Friday, July 10, 2015, 8:30 am, Room 319, Deering Building, 90 Blossom Lane, Augusta

COMMENT DEADLINE: 5:00 pm, Friday, July 24, 2015

BRIEF *SUMMARY:

Chapter 31—Four amendments are proposed:

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—Two amendments are proposed:

1. Shorten the time period a person must wait before re-taking an exam they have failed to align with other 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.

Chapter 35—Two amendments are proposed:

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

IMPACT ON MUNICIPALITIES OR COUNTIES (if any)

STATUTORY AUTHORITY FOR THIS RULE:

Chapter 31—22 MRSA §§ 1471-D

Chapter 34—22 MRSA §§ 1471-D

Chapter 35—22 MRSA §§ 1471-D

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different):

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: Mari.Wells@maine.gov

* Check one of the following two boxes.

The above summary is for use in both the newspaper and website notices.

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT Henry Jennings DATE: June 9, 2015
(authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
014	01A	4003	01			

Rule-Making Fact Sheet
(5 MRSA §8057-A)

AGENCY: Agriculture, Conservation and Forestry, Board of Pesticides Control

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Henry Jennings, 28 SHS Augusta, ME 04333, 207-287-7543, henry.jennings@maine.gov

CHAPTER NUMBER AND RULE TITLE:

Board of Pesticides Control Rules:

Amendments to Chapter 31—Certification and Licensing Provisions/Commercial Applicators

Amendments to Chapter 34—Certification and Licensing Provisions/Pesticide Dealers

Amendments to Chapter 35—Certification and Licensing Provisions/Spray Contracting Firms

STATUTORY AUTHORITY:

Chapter 31—22 MRSA §§ 1471-D

Chapter 34—22 MRSA §§ 1471-D

Chapter 35—22 MRSA §§ 1471-D

DATE AND PLACE OF PUBLIC HEARING:

Friday, July 10, 2015, 8:30 am, Room 319, Deering Building, 90 Blossom Lane, Augusta

COMMENT DEADLINE: 5:00 pm, Friday, July 24, 2015

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

All of the proposed amendments are intended to simplify and standardize licensing and certification periods and/or to clarify ambiguous rule language.

Chapter 31—Four amendments are proposed:

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—Two amendments are proposed:

1. Shorten the time period a person must wait before re-taking an exam they have failed to align with other 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.

Chapter 35—Two amendments are proposed:

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

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

Aligning the licensing and certification periods will reduce the administrative burden on applicators/businesses; extending the licensing period will reduce costs associated with paperwork and writing checks. Changing the requirement for passing both core and category exams within one year of each other will potentially reduce the number of applicators re-taking exams they've already passed, but the number affected will be small. The other amendments will clarify the rules, fostering common understanding among the regulated community.

FISCAL IMPACT OF THE RULE: The amendments should reduce the administrative burden on businesses.

FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE:

Note: If necessary, additional pages may be used.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

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

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 within ~~12 months~~ a 5 year period 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 31st of the ~~sixth~~ third year after the date of successful completion of ~~the~~ required exams and on December 31st 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.

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 34: CERTIFICATION AND LICENSING PROVISIONS/PESTICIDE DEALERS

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 35: CERTIFICATION AND LICENSING PROVISIONS/SPRAY CONTRACTING FIRMS

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

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.

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

FROM THE DESK OF JUSTIN NICHOLS
313 Hodsdon Road, Pownal, Maine 04069

June 1, 2015

Eugene Meserve
Maine Board of Pesticides Control
28 State House Station
Augusta Maine
04333

Dear Mr. Meserve:

Thank you very much for your rapid response to our inquiries last Tuesday, May 26th. Thank you also to Ray Connors and LeBelle Hicks for their timely efforts to track down information and make contact with True Green. I began this letter at your request as an explanation of the facts of the incident of last week, and then added some suggestions that I hope the Board will take into consideration. A quick background on me: I am a professional gardener and have applied both traditional and organically certified pesticides for 25 years in this capacity. I have no political party affiliation, but rather approach things on an issue by issue basis. I am opposed to burdensome or reactive regulation, but in the case of pesticides, I believe that the public's right-to-know, and health, as well as overall environmental effects are cause for a more stringent monitoring.

At your request I have summarized the events of yesterday, May 26th, 2015. Gail Jones of Durham, Maine and I began work on the Evans property on Whipple Farm Lane in Falmouth Maine at approximately 8:55 AM. We began edging beds and tree rings and applying bark mulch to the the areas edged. The grass was very wet with what we thought was dew, as the humidity was above 90%. The homeowner drove out and greeted us at around 9:15 and discussed the work we were doing. He made no mention of any application of pesticide or fertilizer, though it had occurred shortly before. *(I am unsure of the communication True Green had with Mr Evans at the time of the application, though Mr. Evans has since emailed us that he has information from True Green that a urea was applied, which he viewed as fairly benign. In my opinion, it is the job of True Green to educate the customer as to the hazards of the product and any reentry intervals or drying requirements of the products they apply. I do not know what if any conversation took place between Mr. Evans and True Green.)* We continued working and by 9:30 Gail mentioned that she was getting a sinus headache. I felt nauseas and my face was red where I had been touching it with my bare wet hands. We were working on an area of about 200 feet of lawn that abuts a sidewalk with no barrier between. A few minutes later, Gail saw the True Green pesticide application sign at the driveway far end of the property. It indicated that there had been an application at 8:18 that morning. There was only that one sign.

We looked around and saw no other signs. We went to the rear of the home to wash off with a hose and saw no signs. We are both quite certain that there was only one sign on the property. It is possible someone removed additional signs between 8:18 and 8:55, but seems unlikely as it is a over-55 community and I can think of no motivation for someone to do such a thing.

After going to the home of a neighbor who let us use her facilities to continue cleaning ourselves and our equipment, I called the number on the True Green sign to find out what we had been exposed to. Between 9:38 and 10:13 I called True Green four times at three numbers 1-888-463-9128, 1-800-464-0171, and 1-800-878-4733. I was transferred multiple times, but given no help whatsoever. I explained that we had been covered in chemical and needed HELP. I stressed our exposure and concern and the unacceptability of True Green offering no help. I said we were probably going to head to the emergency room and that we needed to know what we had been exposed to as we had been on our hands and knees and soaking wet in chemical. Each True Green representative passed me along and said they could do nothing for me. One said they were an answering service. Once I was transferred to a phone system that never picked up. One said they were only customer service and I needed to speak with The Corporate Office. One said they were in a corporate office, but that they were a satellite office. The corporate office told me they couldn't provide me with a local contact and that they were experiencing high call volume in our area and referred me back to the number on the sign—all of this despite my virtual pleas for information, and clear expression that we needed help and to know immediately what had been sprayed on the property. It was a fairly nightmarish experience and worthy of a good comedy send up, and fortunately, Gail and I had not been exposed to anything to which we reacted allergically or was of acute toxicity to humans. The combination of three herbicides, one insecticide and a fertilizer application and possibly other adjuvants or materials clearly affected both of us. Still, the failure and/or incapability of True Green to provide a local contact, name, or number is quite astounding.

There was one small sign on the far end of property at the driveway. Hundreds of elderly walk through there each day with pets, grandchildren, etc. It is the height of irresponsibility to apply pesticides without adequate signage, especially adjacent to two hundred feet of highly travelled sidewalk. And why didn't the homeowner know? And why did I never receive any help from True Green. Not one person took my name or number. None of the many people I spoke with at True Green displayed knowledge of policy or procedure for addressing a pesticide exposure. Based on this experience, I believe that this True Green should be required to improve their practices. However I think this incident is likely indicative of broader systemic issues, and, rather than having this be a call for a punitive step against True Green, I think a more productive approach is to consider ways in which

we can improve the situation around commercial pesticide application in Maine. After reflecting on this experience, I recommend the following practical steps to the Board of Pesticides Control, with the aim of educating the public, protecting the public, and building the public trust.

1: Pesticide warning signs must provide a local number which anyone in need can call for rapid information regarding the application.

This could save lives. This cannot but help medical staff, parents of exposed children, other citizens who have been exposed to pesticides, pet owners, bee keepers, concerned neighbors, etc.

2: Pesticide application signs must list the name of the Products applied and the EPA registration number.

I can't think of any reason not to do this. It helps the applicator double check their work. It helps the homeowner to be sure the correct application has occurred. It helps anyone who may have been exposed to the product to protect their health.

3. Pesticide application yard signs must be increased in size, both to carry adequate information, and so that they can be seen and read by those without 20/20 eyesight. Perhaps we increase the size to 8 by 10 with fonts commensurate with the new sign size.

Why not? What are we trying to hide with tiny signs that are unreadable to many, certainly to most of the members of the retirement community and many Americans with disabilities.

4. Develop a specific formula for the placement of yard signs.

Sign frequency should be based on a specific formula, such as footage of frontage on public ways or nearby occupied dwellings, rather than the current loose standard. This could be fine-tuned to apply primarily to residential or heavily-foot- trafficked areas. For example, one sign every 50 feet of frontage on a public way in a residential area might be a reasonable standard.

5. Require pesticide application signs based on proximity of the application to abutters, and public ways, in addition to the current policy in which the category(e.g Turf) triggers the posting requirement.

One benefit of this is that it may obviate the need to demarcate the specific area treated, which while helpful, could be burdensome to the applicator. See 6 below.

6. Require demarcation of any area treated within 50 feet of public way.

Demarcation might take the form of biodegradable landscape paint, flags, small signs, flagging tape.

7. Increase the requirement from 2 to 7 years for the keeping of records of or pertaining to the application of pesticides.

Two years of record keeping for business or commercial application of pesticides seems grossly inadequate when one considers that a misapplication of pesticides could cause a water supply or other public or private resource long-term contamination. It hardly seems an undue burden on business in the digital age to keep records as long as one would for tax purposes.

Sincerely,

Justin Nichols

Pownal, Maine

Proposed Administrative Consent Agreement Background Summary

Subject: Town of Hartland
PO Box 280
Hartland, Maine 04943

Date of Incident(s): Approximately July 9th and July 16th of 2014

Background Narrative: A caller reported to the Board that he thought Hartland town employees were spraying Roundup or a similar type product to sidewalks and walkways around town. Through a follow-up inspection, it was determined that a town employee did apply a 40% concentrate sodium bisulfite solution to about one mile of sidewalk as a crack and crevice treatment targeting growing grass and broadleaf weeds. Neither the town employee nor any other town employee was licensed as a commercial applicator at the time of the applications.

Summary of Violation(s): 22 M.R.S. § 1471-D(1)(A). Commercial pesticide applications may only be conducted by certified commercial applicators.

Rationale for Settlement: The town manager and town employees were cooperative with the inspection. Town personnel were not aware of the commercial licensing requirement.

Attachments: Proposed Consent Agreement

JUN 04 2015

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL

Chris Littlefield)
Town of Hartland)
PO Box 280)
Hartland, Maine 04943)

ADMINISTRATIVE CONSENT AGREEMENT
AND
FINDINGS OF FACT

amount: \$250.00
date: 6/2/15
check#: 2181

This Agreement by and between the Town of Hartland (hereinafter called the "Town") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That on July 29, 2014, the Board received a call that Hartland town employees were spraying Roundup or a similar type product to sidewalks and walkways around town and near a bridge and lake. The caller appeared familiar with a license being required for this type of work.
2. That on July 30, 2014, a Board inspector conducted a follow up inspection starting with Chris Littlefield, the town manager. Littlefield stated that two town employees had made a crack and crevice herbicide application to sidewalks around town at his request because a selectman wanted weeds controlled. Littlefield did not know the date of the application or the product used, but was cooperative in arranging a meeting with the employees who made the application.
3. That on August 6, 2014, the Board inspector met with Littlefield, Russel Dickey and Brad Russel. Dickey made the application to the sidewalks over the course of two days, which he thought were on July 9 and July 16. Brad Russel, who works primarily at the water treatment plant, supplied the two-gallon hand can sprayer and the 40% sodium bisulfite solution used to make the applications. The sodium bisulfite was from fifty-five gallon containers of this product stored at the water treatment plant and used to treat effluent.
4. That during the inspection described in paragraph three, Dickey said he applied the 40% concentrate sodium bisulfite solution undiluted. He applied approximately twenty-five gallons to about one mile of sidewalk as a crack and crevice treatment targeting growing grass and broadleaf weeds.
5. That CMR 01-026 Chapter 10, Section 2 (MM), defines a pesticide in part as "any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest".
6. That applying the sodium bisulfite solution as described in paragraphs three and four, constitutes application of sodium bisulfite solution as a pesticide.
7. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S.A. § 1471-C(5-A), must be a certified commercial applicator in accordance with 22 M.R.S.A. § 1471-D(1)(A).
8. That "commercial applicator" also includes individuals who apply pesticides in connection with their duties as employees of local governments, according to 22 M.R.S.A. § 1471-C(5).
9. That a custom application is defined in 22 M.R.S.A. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public.
10. That the application described in paragraphs two, three, and four constitutes a custom application as defined in 22 M.R.S.A. § 1471-C(5-A).

11. That no one from the Town had a commercial pesticide applicator's license at the time of the custom application described in paragraphs two, three, and four.
12. That the circumstances described in paragraphs one through eleven constitute a violation of 22 M.R.S.A. § 1471-D(1)(A).
13. That the Board has regulatory authority over the activities described herein.
14. That the Town expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
15. That this Agreement shall not become effective unless and until the Board accepts it.
16. That, in consideration for the release by the Board of the causes of action which the Board has against the Town resulting from the violation referred to in paragraph twelve, the Town agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine.)

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

TOWN OF HARTLAND

By: Christopher Littlefield Date: 6/2/15

Type or Print Name: Christopher Littlefield

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

By: _____ Date: _____
Mark Randlett, Assistant Attorney General



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

MAINE BOARD OF PESTICIDES CONTROL

**POLICY CONCERNING DENYING ACCESS TO THE PUBLIC
FOR SEVEN DAYS TO AREAS "OPEN TO USE BY THE PUBLIC"**

DRAFT July 10, 2015

Background

At the December, 2014, and the April and June, 2015 meetings, the Board had discussions regarding pesticide applications to private lands which are held open for public use. State statutes define pesticide applications made to property open to use by the public as "custom applications" which may only be conducted by a licensed commercial applicator.

Section 2 (P) (2) of Chapter 10 defines "property open to use by the public." Property is deemed to be open to use by the public where its owner, lessee or other lawful occupant operates, maintains or holds the property open or allows access for routine use by members of the public. The rule also defines when those areas are NOT considered open to the public.

One of those exemptions includes areas, "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 Board discussed what the term "property" means in the context of this exemption and whether or not to interpret it in a way that allows land trusts and other land owners to control invasive plants or other vegetation and then close off only the area that was treated instead of the entire property.

Board Policy

The Board determined that because pesticide applications to recreational areas, trails and parks pose minimal risks, the exemption from consideration as a "property open to use by the public" is appropriate when the public is excluded from treated areas for seven days. Therefore pesticide applications under those circumstances will not require supervision by a licensed commercial applicator.

Maine Department of Agriculture,
Conservation and Forestry

POLLINATOR PROTECTION PLAN
2015

Walter E. Whitcomb, Commissioner
Ellis Additon, Director, Bureau of Agriculture,
Food, and Rural Resources

Introduction

Pollinators are vitally important to fruit and vegetable production both in Maine and across the country. In recent years, national concern over the health of managed and wild pollinators has increased. Beekeepers have suffered significant colony losses dating back to 2006, and a syndrome described as Colony Collapse Disorder (CCD) has garnered considerable attention in the popular press. These trends have raised questions about the sustainability of managed colonies and whether pollinator decline will adversely affect agricultural production.

Overall, Maine's pollinators appear to be in better health than those in many other states. Department of Agriculture, Conservation and Forestry (DACF) experts have not yet observed any evidence of CCD in the state. Even with a generally healthy prognosis, Maine honey bee health is clearly being impacted by parasites, diseases, management practices, and, in some cases, the presence of chemicals.

Maine has an effective apiary program with a long history of being proactive and engaged in pollinator health issues. The State Apiarist is well known and respected throughout the country and serves on national Pollinator Protection Workgroup, a subcommittee of the Pesticide Program Dialog Committee. DACF's apiary program has been effective in maintaining positive relationships with both hobbyist and contract beekeepers. Out-of-state pollinator service contractors working in Maine must pre-file permit applications which allow DACF to inspect hives and track their movements. In-state beekeepers pay a nominal fee to register their hives which also allows the State Apiarist to keep ahead of disease and pest issues.

The DACF is also known for having a progressive and active pesticide program. The Maine Board of Pesticides Control (BPC) is extremely active in the area of pesticide education, featuring timely topics presented by well-renowned experts. The BPC prides itself on responding to complaints quickly with thorough and objective investigations, which could include investigations about impacted pollinators.

DACF staff has invested considerable resources in researching pollinator health issues in recent years. Scientific literature is tracked, scrutinized and evaluated for information and recommendations that can be applied in Maine for the benefit of pollinators. Pollinator plans from other states have also be reviewed and analyzed. The collective expertise, research and insight of the DACF staff form the basis for this plan.

Maine's Pollinator Protection Plan

The DACF sees great value in taking a proactive, coordinated approach to protecting pollinators in Maine. Consequently, the DACF elected to craft a plan that documents the Department's commitment to pollinator health as well as DACF activities that support that goal. The plan also contains a compilation and synthesis of existing recommendations—in the form of Best Management Practices—intended to protect pollinator health.

This plan is modelled after the North Dakota Department of Agriculture plan. It is also based—in part—on input received at the November 20, 2014 Pollinator Health and Safety Conference co-sponsored by the DACF and the University of Maine Cooperative Extension. Cooperating sponsors included the Maine Beekeepers Association, the Maine Farm Bureau and the Maine Organic Farmers and Gardeners Association. This conference focused on pollinator issues and provided an opportunity for landowners, beekeepers, pesticide users, government officials, and other stakeholders to discuss pollinator health issues. It was also an opportunity for these stakeholders to offer input on reasonable practices that beekeepers, landowners, and pesticide applicators could incorporate to protect pollinators and minimize impacts to crop production.

This plan is designed to reduce risks to pollinators in the state, focusing mainly on managed hives. Education, improved communication, and the promotion of pollinator health Best Management Practices (BMPs) form the cornerstones of this plan. The intent is to continuously incorporate the latest scientific consensus covering pollinator issues, and to serve both as an informational document and an action plan for all interested parties.

Challenges Faced by Beekeepers

Beekeepers face a challenging task of keeping colonies alive with the threat of CCD, varroa mites, tracheal mites, small hive beetles, bacterial, fungal and viral diseases, declining quality forage, and pesticide exposure. Nationally, year-to-year colony survival is variable but elevated since CCD was first identified in 2006.

Growers and other pesticide users cannot help beekeepers manage threats from mites, beetles, and the microbes that weaken their hives. They can, however, help with reducing their exposure to pesticides and improving the quality of forage available. Even though varroa mites are considered the greatest threat to honey bee colonies, a strong colony can handle the pressures of this tiny creature better than one weakened by other stressors.

Honey bees feed on pollen for their protein source, and utilize nectar for carbohydrates. They must obtain these nutrients from a variety of plants in order to obtain all the essential amino acids and nutrients required to build and maintain a strong hive. Bees can become easy targets for pests, predators and pathogens when they do not obtain the proper balance of nutrients. Bees provided with high quality forage are better able to handle stressors from all directions.

Honey bees may be exposed to pesticides applied directly to hives to rid them of pests such as the varroa mite or applied to plants on which they forage.

Challenges Faced by Growers and Pesticide Users

Growers face many challenges in attempting to obtain acceptable yields. Growers contend with insect pests, diseases, weeds, drought, overland flooding, and other factors that impact crop production and quality. They often need to eliminate pests and competing plants without impacting yields. They also must consider the timing of pesticide applications with respect to harvest and rotational intervals. Even with Integrated Pest Management (IPM) systems, pests often are able to adapt quickly to different methods, rotations, pesticides, or reproduce so quickly that their populations rise exponentially in a short time. Because of the nature of such pests, making timely chemical applications as part of an IPM plan is essential to manage pests effectively.

There are over 10,000 registered pesticides in Maine that are used to manage agricultural and non-agricultural pests. In many cases, pesticide applicators have a limited time window to make an application. Factors such as pest infestation levels, temperature, precipitation, wind speed, water levels, use buffers, and presence of pollinators all affect pesticide choices and decisions on when, where, and how to apply pesticides. Applicators also must pay attention to the location of sensitive sites adjacent to treatment sites, such as surface water, endangered species, organic fields, and beehives. The ideal time to apply many of these chemicals is likely to coincide with when the pollinators are most active, putting pesticide applicators in a difficult position of balancing pest management needs and protecting pollinators.

Homeowners also need to take special precaution when applying pesticides. The pesticide user BMPs apply to anyone using pesticides. The pesticide label is the law and it contains instructions intended to minimize risks to human health, pollinators, and every other component of our environment.

DACF Activities Committed to Pollinator Health

The DACF devotes resources to the following activities in support of pollinators:

- All Maine licensed pesticide applicators must pass the core exam which covers the basics of legal and appropriate pesticide application. The study manual provided for this exam contains information on the importance and protection of pollinators.
- The Board of Pesticides Control (BPC) participates annually in numerous pesticide applicator recertification training courses. Appropriate use of pesticides and pollinator protection are emphasized in these trainings.
- The State Apiarist speaks to a wide variety of audiences about pollinator health and safety.
- New pesticide applicators can, prior to testing for the core exam, attend an optional core exam training at which appropriate use of pesticides and pollinator protection are emphasized. The DACF offers this training many times annually.
- The BPC website contains extension information and numerous pertinent links about pollinator protection and appropriate use of pesticides. The Board supported website *GotPests?* provides IPM information to homeowners.
- The BPC, in cooperation with the state apiarist, investigates all pesticide complaints regarding pollinators and, in the event of a bee kill, references the EPA's bee kill protocol for these complaints.
- The DACF will work with Maine fruit commodity groups using contracted pollinator services to improve communication and coordination, and to investigate tactics that reduce risks to pollinators.
- Hive registration and inspection conducted by the state apiarist is important to managing pollinator health and is another opportunity for outreach and stakeholder feedback.
- The DACF will continue working with University System to develop guidance on product choices to reduce risk to bees.

Best Management Practices

These voluntary BMPs for pesticide users, landowners/growers, and beekeepers are shared with the intent of:

- Encouraging positive relationships and co-existence among beekeepers, landowners, and pesticide applicators;
- Reducing pesticide exposure and subsequent risk of pesticides to pollinators;
- Supporting both a robust apiary industry and agricultural economy; and

- Continued compliance with state pesticide and apiary requirements.

Beekeeper Best Management Practices

- **Work with landowners to choose hive locations.** Ideal hive locations will have minimal impact on agricultural activities but will still have adequate access to forage and water. Avoid placing hives in low spots to minimize impacts from drift or temperature inversions on hives. Give consideration to timing after rain events when determining which roads to travel. Discuss with landowners preferred roads/trails to use. Beekeepers should also request contact information for applicators, renters, and neighbors (if applicable).
- **Be cognizant of neighboring landowners when placing and moving hives.** Neighboring landowners often use the same roads, trails, and section lines. Do not block these right-of-ways or place hives so close they may cause problems for other land-users. Take appropriate steps to ensure that bees do not negatively affect operations of neighboring landowners, such as considering the proximity of hives to neighboring yards, bins, equipment, or storage sites.
- **Work constructively with applicators when notified of upcoming pesticide applications.** When informed of a planned application, beekeepers should block, move, or net hives, or find other strategies to allow pesticide applicators to manage pests while minimizing pesticide exposure by bees.
- **Notify landowners and applicators when arriving and when moving hives.** If possible, notify nearby pesticide applicators and landowners when you place or move beehives. This will ensure they are aware of current hive locations and can notify you before making pesticide applications. Contact information for nearby pesticide applicators can usually be obtained from landowners.
- **Obtain landowner permission for hive placement every year and maintain positive contact.** As landowner information changes, it is important to ensure everybody is updated and bees are not placed without permission. This step is imperative to ensure hives do not become a nuisance.
- **Immediately report all suspected pesticide-related bee kills to the DACF pesticide program.** Inspect bee behavior regularly. The DACF is the lead pesticide regulatory agency in the state. The DACF will respond to complaints and may collect and analyze samples from the location for pesticide residues. Some pesticides degrade rapidly and timely reporting will aid the pesticide investigation. Beekeepers can report suspected pesticide incidents by calling 207-287-2731 and speaking to a representative from the BPC.
- **Use registered pesticides according to the label.** When pesticide use is necessary to manage pests within hives, use registered pesticides and comply with all restrictions, precautions and directions found on the pesticide label. Failure to comply with label directions may decrease the effectiveness of pesticides, increase the risk of adverse effects to bees, cause unsafe pesticide residues in honey and other products, and potentially lead to pesticide resistance. Contact the DACF pesticide program with any questions on pesticide labeling or to determine whether a pesticide is registered in the state.
- **Comply with all requirements of the Maine beekeeping law.**
 - For all beekeepers:

- i. Maintain hives free of diseases and parasites
 - ii. Provide the ACF Commissioner with all apiary (hive) locations
 - iii. Report the total number of colonies to the ACF Commissioner
- In state only :
 - a. Pay Beekeeper's Licensing fee each year
- If importing honeybees to Maine:
 - a. Pay Beekeeper's Registration fee each year
 - b. Obtain an import permit
 - c. Provide certificate of hive inspection prior to importing honeybees or used equipment
 - d. Continue to provide up to date hive locations throughout the season. This ensures that all locations are accurate when applicators attempt to locate them.
- **Ensure hives are easily visible to applicators.** Hives must be visible so applicators can locate them before spraying.

Landowner/Grower/Agency Best Management Practices

- **Work with beekeepers to choose hive locations.** Ideal locations for hives will have minimal impact on farming/ranching operations, but will still allow bees to access forage and water. Communicate with beekeepers about which roads/trails can be problematic when wet and any preferred traffic routes. Landowners may also want to provide contact information for applicators, renters, and neighbors.
- **Communicate with renters about bee issues.** Renting land for agricultural production is a common practice. Landowners and renters should discuss bee issues, such as who has authority to allow bees, how long they will be allowed and hive placement. These issues should be addressed and included when rental agreements are negotiated.
- **Communicate with pesticide applicators about who has the responsibility to look for hives, notify neighbors, etc.** When contracting with commercial pesticide applicators, make sure that there is a clear understanding of who has the responsibility to identify hive locations and communicate with beekeepers. Applicators may do this as part of their standard procedures, but some landowners may prefer to make beekeeper contacts themselves.
- **Agronomists should consider pollinator impacts when making pesticide recommendations.** Ensure that agronomists and crop consultants consider pollinator issues when making pesticide recommendations, including product choices and pesticide timing decisions.
- **Plant bee forage.** Plant flowering plants, trees and shrubs to improve bee forage, especially in non-farmable or non-crop areas. Doing so provides forage and it may also concentrate bees away from fields to be treated with pesticides, thereby minimizing impacts to pollinators. State agencies, such as the Maine Department of Transportation (MDOT), are encouraged to incorporate development/expansion of pollinator forage into their strategic plans. MDOT is already evaluating plantings and mowing practices that are more beneficial to pollinators.

- Many pesticide labels require untreated **vegetative buffer strips** around sensitive sites. Plant flowering plants in those buffer strips to provide additional bee forage.
- If planting **cover crops**, add flowering plants into the mix. Even a small percentage of flowering plants can provide a considerable amount of forage for pollinators.

Pesticide User Best Management Practices

- **Use Integrated Pest Management.** Utilize economic thresholds and IPM to determine if insecticides are required to manage pests.
- **Choose pesticides carefully.**
 - When insecticides are required, try to choose insecticides with low toxicity to bees, lower residual toxicity or repellent properties towards bees; pay particular attention to pollinator toxicity and product persistence.
 - Choose formulations that present a lower risk to bees.
 - Avoid dusts and wettable powder insecticide formulations; these can leave a powdery residue which sticks to hairs on bees. Bees then bring the pesticide back to the hive and potentially expose the entire hive to the pesticide for an unknown amount of time.
 - Granular and liquid formulations are safer for pollinators since granules are not typically picked up by bees and liquids dry onto plant surfaces.
 - Ultra low volume formulations are usually more hazardous than other liquid formulations.
 - Microencapsulated formulations are highly toxic to pollinators.
 - Avoid tank mixing of insecticides and fungicides as specific mixtures may cause synergistic toxic effects on bees and most combinations have not been researched.
- **Use caution around flowering plants.** Pesticide applicators should pay special attention when making applications on or near plants that are or will soon flower.
 - Many pesticides, especially insecticides, have use restrictions prohibiting applications when bees are foraging in the treatment area. Some labels prohibit applications when crops are blooming and require that the applicator notify beekeepers in the area prior to application. Check with the University of Maine Cooperative Extension at least annually for up-to-date product recommendations.
 - Do not apply any pesticides, including fungicides, during bloom.
 - Identify weeds which are attractive to bees; note when they bloom.
 - Check fields for bee activity prior to making applications.
 - Mow flowering weeds prior to application so that bees will not be foraging on them.
- **Use registered pesticides according to the label.** Pesticide label language is developed to ensure that pesticides will not pose a risk of unreasonable adverse effects to human health or the environment. Failure to comply with the label not only puts humans and the environment at risk,

it is also illegal. Applicators are bound by all directions, precautions and restrictions on pesticide labeling, even when following other BMPs. Contact the DACF with any questions on pesticide label language.

- **When possible, apply pesticides early morning or in the evening.** Pollinators are most active during daylight hours and when the temperature is over 55 degrees Fahrenheit. Apply pesticides early in the morning or preferably in the evening when bees are less active to reduce the chances that bees will be foraging in or near the treatment site.
 - Be cognizant of temperature restrictions on pesticides. The efficacy of some pesticides is reduced at certain temperatures.
 - Be aware of temperature inversions when choosing the best time for applications.
 - Applying pesticides in the early evening allows them to decompose during the night. Unusually low temperatures can increase the time that toxic residue remains on the crop.
- **Avoid drift.** Pesticide drift is the off-site movement of pesticides through the air from the treatment site to adjacent areas, either in the form of mist, particles or vapor. Drift reduces the effectiveness of the chemical applied since only part of the applied amount reaches the target. Drifting chemicals also pose a risk to non-target organisms that come in contact with the off-target residues. These insecticides can negatively affect bees and other beneficial insects by direct contact or by contaminating their forage and habitat. Drifting herbicides have the potential to further reduce quality forage available to pollinators. Contact University of Maine Cooperative Extension for more information on how to reduce pesticide drift.
- **Incorporate pollinator considerations in planning wide-area spray programs.** Currently, there are no wide-area spray programs routinely occurring in Maine. However, populations of the spruce budworm are on the upswing and there is a rising threat of mosquito-borne diseases. Land managers and project coordinators should plan to incorporate strategies, such as careful selection of products or spraying at dusk, in order to minimize any potential risks to pollinators.
- **Communicate with your neighbors about pesticide applications and hive locations.** Bees will fly several miles to find quality forage. The BPC has rules that allow nearby landowners to request advance notification. Apiarists are encouraged to communicate with their neighbors about pesticide use.

Supporting Pollinator Forage and Habitat

- **Bee Forage.** Everyone can plant forage for bees. Plants that support pollinators are also beneficial for other wildlife, are often visually attractive and can help improve soil health. Flowers often come to mind when thinking about bees, but bees also utilize trees, shrubs and other less-noticeable plants for pollen and nectar sources. It is important to consider diversity when choosing plants to ensure adequate forage for the entire growing season. Diversity will also ensure pollinators have access to all of the nutrients they require to be healthy. Easy, efficient ways to improve pollinator forage include:
 - Plant trees, shrubs and flowers that provide good forage for all types of pollinators. Diversity is important. The pollen and nectar of each species carries a different nutrient load for the pollinators. Diversity can be worked into existing plantings. Every time a plant is added and/or replaced, choose a variety that will contribute to pollinator forage. Foraging honey bees are typically not aggressive.

- Create bee forage along secondary roads. Ditches along secondary roads often contain several species of plants that provide forage for pollinators. It is a common practice to mow ditches for the safety of motorists and to prevent drifting snow. Consider spot spraying noxious weeds and mowing ditches later in the year to ensure that bee forage is available. Incorporate short forbs into secondary road ditches to minimize attracting large wildlife.
- Put out flower pots, create flowerbeds, plant trees or shrubs, or establish gardens to provide forage. Create **habitat for beneficial, wild pollinators**. Roughly 70 percent of native bees nest in the ground. They burrow into areas of well-drained, bare or partially vegetated soil. Other bees nest in abandoned beetle houses in snags or in soft centered, hollow twigs and plant stems. Bees will also utilize dead trees and branches. Habitats can be created by leaving deadfalls and brush piles as nesting habitat. Consider the type of habitat you wish to create and pollinators you want to attract. Be cognizant that certain structures might attract other animals such as fox, coyote, skunks, and porcupines.
- **Increase public land access for managed hives.** Public land typically does not incorporate crop production and large scale insecticide use. There are some agencies that allow beekeepers to place honey bees on state and federal lands. Contact DACF for more information. Permission must be obtained and hives placed on state or federal lands must also be registered with the DACF.