



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

---

MEMORANDUM

Date: July 1, 2013  
To: Board  
From: Henry Jennings  
Subject: Policy on Exclusion Areas Relative to Chapter 20, Section 6 Rulemaking Amendments

---

**Background**

The Board recently completed provisional adoption of a series of rulemaking amendments covering public-health-related mosquito-control efforts that may be conducted by governmental agencies. During the course of that effort, the Board determined that it was preferable to identify “exclusion areas”—as they relate to potential aerial applications to control adult mosquitoes—via Board policy as opposed to codifying them in rule. Using a Board policy allows the Board more flexibility to adjust to concerns as they arise. Adjusting requirements in rule takes several months to accomplish and costs more than a thousand dollars (not including staff time).

The staff reviewed the 2012 emergency rule, Massachusetts’s policy on exclusion areas, and comments received during the rulemaking process as a basis for proposing a Board policy. During the 2012 emergency rulemaking effort for Chapter 20, the Board identified certified organic farms and livestock operations as areas which should be excluded from aerial pesticide applications conducted for public health purposes. The 2012 Operational Response Plan to Reduce the Risk of Mosquito-borne Disease in Massachusetts specifies four types of “no-spray zones”:

1. Certified organic farms
2. Priority habitats for spray sensitive state-listed rare species
3. Surface water supply resource areas
4. Commercial fish hatcheries/aquaculture

In Maine, we have also heard concerns voiced about conventional agriculture, bee hives and lobsters. In addition, direct and intentional applications over surface water are prohibited under state law and applications which may result in aquatic residues must be covered by a waste discharge license. Information from Massachusetts indicates that state-sponsored public-health-related mosquito control programs do not present significant threats to bee hives or agricultural sites. Moreover, since excluding even a point from an aerial spray project results in a minimum of a 23 acre exclusion (due to the commonly used 500 foot buffers), buffering bee hives would present practical challenges and result in a significant reduction in mosquito control efficacy. Marine waters would also be appropriately buffered. This factor combined with the extremely low application rates and short persistence of the products commonly used in state-sponsored programs suggests that any potential risks to lobsters would be extremely low.

### **Board Policy**

Based on the considerations described above, the Board adopts the following policy. Areas listed below should be intentionally excluded from the targeted area for government-sponsored, public-health-related mosquito-control programs:

1. Certified organic farms for which digital maps of the crop or livestock areas have been provided to the Department in advance and in a file type that is compatible with Department software.
2. Other farmland for which the farm operator determines that the potential for pesticide residues presents economic risks and for which digital maps have been provided to the Department in advance and in a file type that is compatible with Department software.
3. Great ponds, rivers, marine waters and public water supplies derived from surface waters.
4. Fish hatcheries and aquaculture sites.
5. Mapped endangered species habitat for which the proposed application presents significant threats.