



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

PAUL R. LEPAGE
 GOVERNOR

WALTER E. WHITCOMB
 COMMISSIONER

To: Board of Pesticides Control Members
 From: Megan Patterson, Manager of Pesticide Programs
 RE: Licensing and certification interpretation/policy for training of WPS workers/handlers by Agricultural Basic applicators
 Date: May 3, 2017

In 2015, EPA published significant revisions of the Worker Protection Standard (WPS) rules. These revisions restricted the qualification to serve as a trainer of WPS defined workers and handlers to certified applicators. EPA reserves the term “certified” for only those applicators qualified to purchase and apply restricted use pesticides. This reasoning would only allow Maine Private Applicators of Restricted Use Pesticides, Commercial Master Applicators and Commercial Master Operators to train WPS workers and handlers.

In Maine, Private Applicators of General Use Pesticides (agricultural basic applicators) are not allowed to purchase or apply restricted use pesticides. However, completion of the necessary licensing examination—the agricultural core—would, by federal standards, qualify agricultural basic applicators to be considered “certified” and thus able to purchase and apply restricted use pesticides.

In June 2016, Board staff submitted a WPS equivalency request to EPA Headquarters in an attempt to rectify this inadvertent penalty on agricultural basic applicators. The request assessed Maine’s exam content and examination procedure required for agricultural basic applicators and argued that given federal requirements for certification, Maine’s agricultural basic applicators should be considered certified and thus able to train WPS defined workers and handlers. After consideration of the equivalency request, EPA Headquarters communicated via EPA Region I that an equivalency was not necessary and Maine could determine how to proceed with allowing agricultural basic applicators to train WPS workers and handlers.

We request that the Board provide approval or disapproval of the staff proposal to consider Private Applicators of General Use Pesticides (agricultural basic applicators) as equivalent to Private Applicators of Restricted Use Pesticides for the purpose of training WPS defined workers and handlers.

CAM LAY, DIRECTOR
 32 BLOSSOM LANE, MARQUARDT BUILDING



PHONE: (207) 287-2731
 WWW.THINKFIRSTSPRAYLAST.ORG

Subject: State of Maine Worker Protection Standard Equivalency Request
40 Code of Federal Regulations Chapter I §170.609 *Equivalency requests.*

Dear Ms. Fitz, Messrs. Keaney and Pont:

The Maine Department of Agriculture, Conservation & Forestry, Board of Pesticides Control is the State Lead Agency that regulates pesticides and is responsible for implementation and enforcement of the Worker Protection Standard.

Maine requests an equivalency determination for authority to recognize the Maine Private Applicator of General Use Pesticides in lieu of the United States Environmental Protection Agency regulation 40 CFR 170.401(c)(4) and 40 CFR 170.501(c)(4).

Introduction

Maine has similar requirements for both Private Applicators of General Use Pesticides and Private Applicators of Restricted Use Pesticides. Maine Private Applicators of Restricted Use Pesticides are required to complete closed book core and commodity exams. Private Applicators of General Use Pesticides are required to complete the same closed book core exam, but no commodity exam. Even with this lesser requirement, the Maine Private Applicator of General Use Pesticides licensing and certification procedure exceeds the federal standards for certification of private applicators as detailed in 40 CFR 171.5(a). The ways in which Maine certification exceeds the requirements listed in 40 CFR 171.5(a) are outlined below and provided in detail in section (2) of this document:

- Core exam
 - Is closed book
 - Requires a minimum score of 80
 - Contains 100 questions which cover all of the competency categories listed in 40 CFR 171.5(a)
 - Contains 10 questions related to the restricted use pesticide label for Gramoxone Max, EPA Registration No. 100-1074.
 - Addresses the difference between Restricted Use Pesticides and General Use Pesticides
- Recertification credits
 - 3 credits must be obtained over the 3 year certification period

For these reasons, Maine is requesting an equivalency determination to recognize Maine Private Applicators of General Use Pesticides as equivalent to Private applicators of Restricted Use Pesticides (40 CFR 171.5(a)) in their qualification to provide Worker Protection Standard Training for Workers (§170.401(c)(4)) and Handlers (§170.501(c)(4)) without additional training as stipulated under (§170.401(c)(4)(ii)) and (§170.501(c)(4)(ii)) respectively.

A comparison table comparing the federal regulation with the state rule is included with this correspondence.

The following is a response to the specific items listed in §170.609 *Equivalency requests*:

(1) Identification of the provision(s) of this part for which the State or Tribe is requesting regulatory equivalency:

§170.401(c)(4) *Training Requirements for Workers*

§170.501(c)(4) *Training Requirements for Handlers*

(2) Appropriate documentation establishing that the pertinent State or Tribal worker protection provision(s) provides environmental and human health protection that meets or exceeds the protections provided by the identified provision(s) in this part.

The current Maine Department of Agriculture, Conservation and Forestry Board of Pesticides Control Certification and Licensing Provisions Private Applicators of General Use Pesticides meets 40 CFR Part 170.401(c)(4) and 40 CFR 171.5(a)

Detailed below, are the depth and breadth of Maine's exam procedure, the exam topics, and the associated recertification criteria.

Competency Standards for Certification—Private Applicator of General Use Pesticides

No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.

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, animal or humans.

Any person seeking to be certified as a private applicator of general-use pesticides must pass a written core exam. The exam shall be closed book. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the exam period.

An applicant must achieve a passing score of 80 percent on the core exam.

An applicant who fails the core exam may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.

Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.

Standards for Recertification—Private Applicator of General Use Pesticides

A valid certification may be recertified by accumulating recertification credits.

Any person with a current valid certification may renew that certification by accumulating three recertification credits during the 3 year certification period.

Recertification credits will be available through Board-approved meetings including, but not limited to, University or industry and trade organization seminars or workshops and approved home study courses where pest management topics are included.

Recertification topics include but are not limited to:

- Applicable laws and regulations;
- Environmental hazards;
- Calibration and new application techniques;
- Label review;
- Pesticide risk and applicator safety;
- Pesticide storage and disposal;
- Pest identification, biology and management;
- Integrated Pest Management;
- Pesticide fate and drift management;
- Risk communication; and
- Public relations.

One credit shall be assigned for each one hour of presentation on appropriate topics.

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.

For in-state programs, each participant will complete an on-site process to verify attendance at each program for which credit is allowed. For electronic, correspondence or out-of-state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of completion or attendance and a copy of the agenda or syllabus of the training provided. The agenda or syllabus must show the length of each presentation and describe what was covered.

A person who fails to accumulate the necessary credits will have to take the most current exam required for initial certification.

Maine Worker Protection Standard Equivalency Request

Attached, are the Maine regulations that apply to this request.

(3) Identification of any additional modifications to existing State or Tribal regulations that would be necessary in order to provide environmental and human health protection that meets or exceeds the similar provisions of this part, and an estimated timetable for the State or Tribe to effect these changes.

None

(4) The expected economic impact of requiring compliance with the requirement(s) of this part in comparison with compliance with the State or Tribal requirement(s), and an explanation of why it is important that employers subject to the State or Tribal authority comply with the State or Tribal requirement(s) in lieu of similar provision(s) in this part.

The State of Maine developed the “Ag Basic” license to provide increased awareness of pesticide safety. Chapter 33 of the Maine Board of Pesticides Control. Chapter 33 is summarized as:

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

The effective date was December 26, 2011. The Board developed a time table to ensure there was sufficient notice and time for those impacted to obtain the study materials and to take the closed book exam. To date 511 applicators have taken the exam and have obtained their license. The Maine Board of Pesticides Control has provided approximately 15 educational training sessions across the state.

The Ag Basic license was developed based on the profile of the Maine agricultural community.

Based on USDA NASS Maine data, the number of farms has increased, from 8,136 in 2007; to 8,173 in 2012; to 8,200 in 2015. USDA NASS data reports in 2012, some 5,214 farms used 1 or more pesticides to control: insects, weeds, nematodes, or diseases in addition to growth regulators, which is counted separately. The number of registered RUPs continues to decrease, however, the biopesticides in addition to conventional-- yet more selective-- chemicals are increasing.

In 2012, there were 457 USDA Certified Organic farms in Maine and 154 USDA Organic Certified Exempt. However, “organic” does not mean there are no pesticides used—and label directions do not apply. The State of Maine registers 25B products, so there is a need to ensure these products are used properly. The Ag Basic License has raised pesticide safety awareness for organic producers—who typically participate in zero to few sessions about pesticide application, pesticide safety, worker protection, use and care of PPE, etc.

At minimum, the 511 applicators licensed as Private Applicators of General Use Pesticides will need to attend two—one for 2017 and another for the 2018 changes—Worker Protection Standard Train-the-Trainer courses resulting in lost work time of at least 4088 hours. Based on Bureau of Labor Statics estimates of mean hourly wage for farming, fishing, and forestry occupations—this is a loss of more than \$51,000 in wages.

(5) The signature of the designated representative of the State or Tribal agency responsible for pesticide enforcement.

If you have questions in regard to this correspondence and attachments please do not hesitate to contact me at:

Megan L. Patterson

6/29/16

Megan Patterson
(207)287-8804
megan.l.patterson@maine.gov

You may also contact, Henry Jennings, the Director of this office, at:

(207)287-7543
henry.jennings@maine.gov

Table: Federal/State Regulation Comparison			
Topic	Federal Regulation	State Rule	Comment
Training	<p>§170.401(c)(4) <i>Training Programs Workers</i></p> <p><i>The person who conducts the training must meet one of the following criteria:</i></p> <ul style="list-style-type: none"> <i>(i) Be designated as a trainer of certified applicators, handlers or workers by EPA or the State or Tribal agency responsible for pesticide enforcement.</i> <i>(ii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.</i> <i>(iii) Be currently certified as an applicator of restricted use pesticides under part 171 of this chapter.</i> <p>§170.501(c)(4) <i>Training Programs Handlers</i></p> <p><i>The person who conducts the training must have one of the following qualifications:</i></p> <ul style="list-style-type: none"> <i>(i) Be designated as a trainer of certified applicators or pesticide handlers by EPA or the State or Tribal agency responsible for pesticide enforcement.</i> <i>(ii) Have completed an EPA-approved pesticide safety train-the-trainer program for trainers of workers.</i> <i>(iii) Be currently certified as an applicator of restricted use pesticides under part 171 of this chapter.</i> 	Intentionally blank.	Maine has no rules pertaining to the Worker Protection Standard or training for workers and handlers. See below for certification and licensing rules that pertain to certification criteria for private applicators of general use pesticides.

Table: Federal/State Regulation Comparison continued			
Topic	Federal Regulation	State Rule	Comment
Certification	<p>§171.5 Standards for certification of private applicators</p> <p>(a) Competence in the use and handling of pesticides by a private applicator will be determined by procedures set forth below. State standards must conform and be at least equal to those prescribed herein. As a minimum requirement for certification, a private applicator must show that he possesses a practical knowledge of the pest problems and pest control practices associated with his agricultural operations; proper storage, use, handling and disposal of the pesticides and containers; and his related legal responsibility. This practical knowledge includes ability to:</p> <p>(1) Recognize common pests to be controlled and damage caused by them.</p> <p>(2) Read and understand the label and labeling information—including the common name of pesticides he applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.</p> <p>(3) Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity</p>	<p>Title 22, Section 1471-D</p> <p>2. Certification required, private applicators. No private applicator shall use or supervise the use of any limited or restricted use pesticide without prior certification from the board, provided, that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator.</p> <p>2-D. Certification required; private applicator of general use pesticides for food production. A private applicator of general use pesticides may not use or supervise the use of general use pesticides for food production without prior certification from the board, except that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. Additional certification under this section is not required for a person certified as a commercial applicator or a private applicator under subsection 1 or 2, respectively.</p> <p>BPC Chapter 33, Section 1</p> <p>Competency Standards for Certification—Private Applicator of General Use Pesticides (Core exam)</p> <p>A. No person shall be certified as a private applicator of general-use pesticides unless the person has fulfilled requirements demonstrating knowledge of pest problems and pest-control practices, including, as a minimum, the ability to</p>	<p>Maine certification competency requirements for private applicators of general use pesticides are equivalent to federal competency requirements for private applicators.</p>

	<p><i>dispersed in a given period of operation.</i></p> <p><i>(4) Recognize local environmental situations that must be considered during application to avoid contamination.</i></p> <p><i>(5) Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.</i></p> <p><i>(b) Such competence of each private applicator shall be verified by the responsible State agency through the administration of a private applicator certification system which ensures that the private applicator is competent, based upon the standards set forth above, to use the restricted use pesticides under limitations of applicable State and Federal laws and regulations. A certification system shall employ a written or oral testing procedure, or such other equivalent system as may be approved as part of a State plan.</i></p>	<p><i>recognize common pests and the damage they cause, to understand the pesticide label and to apply pesticides in accordance with label instructions and warnings.</i></p> <p><i>B. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides and the potential adverse effect of pesticides on plants, animals or humans.</i></p> <p><i>ME Complete Pesticide Rules Webpage: http://www.maine.gov/dacf/php/pesticides/laws.shtml</i></p>	
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Proposed Administrative Consent Agreement Background Summary

Subject: Benjamin Goodall
Goodall Enterprises DBA NaturaLawn of America
121A Target Industrial Circle
Bangor, Maine 04401

Date of Incident(s): June 8, 2016

Background Narrative: The Board received a call on June 9, 2016, alleging that Goodall Enterprises DBA NaturaLawn of America made an unauthorized pesticide application to a residential lawn in Rockport.

The homeowner contacted the company branch manager by phone and a meeting time was arranged for a consultation at her home about an insect problem on her lawn. However, a company applicator arrived at the homeowner's property before the agreed upon meeting time and made an insecticide application to her lawn when she was not there.

A Board inspector conducted a follow-up inspection with both the branch manager and the company applicator. The inspector learned that the branch manager instructed the applicator to make the application to the lawn. The branch manager said there was a miscommunication between him and the homeowner.

Board regulations require that an applicator obtain prior authorization from the property owner before making a pesticide application to their property.

Summary of Violation(s):

CMR 01-026 Chapter 20 Section 6(D)2 No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term "legal occupant" includes tenants of rented property.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board.

Attachments: Proposed Consent Agreement

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

In the Matter of:)
Goodall Enterprises DBA NaturaLawn of America) ADMINISTRATIVE CONSENT AGREEMENT
121A Target Industrial Circle) AND
Bangor, Maine 04401) FINDINGS OF FACT

This Agreement by and between Goodall Enterprises DBA NaturaLawn of America (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 15261 issued by the Board pursuant to 22 M.R.S. § 1471-D(1)(B).
2. That on June 9, 2016, Joanne Cook called the Board to report that the Company made an unauthorized pesticide application to her lawn at 20 Ledgewood Drive in Rockport on June 8, 2016.
3. That Cook stated that she scheduled a consultation with the Company for two PM on June 8, 2016, to discuss options about an ant problem. The applicator arrived a one PM when Cook was not home and made an unauthorized pesticide application.
4. That in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with Erin Smith, a licensed pesticide applicator with the Company, on June 10, 2016. Bill Moody the Company branch manager was also present.
5. That from the inspection described in paragraph four, it was determined that Moody phoned Smith and instructed her to apply DeltaGard G to Cook's lawn on June 8, 2016, and Smith made the application.
6. That during the inspection described in paragraph three, Moody told the inspector there was miscommunication between he and Cook and he thought she wanted the application done.
7. That during the phone call described in paragraph two, Cook said she had spoken to the Company branch manager but never authorized a pesticide application.
8. That during the inspection in paragraph four the Company could not document that they had authorization to make the June 8, 2016, pesticide application to Cook's lawn.
9. That CMR 01-026 Chapter 20 Section ~~6(B)~~6(D)2 requires prior ~~consent authorization~~ from the property owner before a person can apply pesticides to ~~the property of another~~their property.
10. That the Company did not have Cook's ~~consent authorization~~ for the June 8, 2016, application of pesticide to her property.

11. That the circumstances described in paragraphs one through ten constitute a violation of CMR 01-026 Chapter 20 Section ~~6(B)~~6(D)2.

12. That the Board has regulatory authority over the activities described herein.

13. That the Company 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.

14. That this Agreement shall not become effective unless and until the Board accepts it.

That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph eleven, the Company agrees to pay a penalty to the State of Maine in the sum of \$500. (Please make checks payable to Treasurer, State of Maine).

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

GOODALL ENTERPRISES DBA NATURALAWN OF AMERICA

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

Proposed Administrative Consent Agreement Background Summary

Subject: Matt Ten Eyck
Salmon Falls Resort and Golf Club LLC
PO Box 240
Hollis Center, Maine 04042

Date of Incident(s): Two occasions in June of 2016

Background Narrative: On June 23, 2016, an inspector conducted a routine records and operations inspection at Salmon Falls Resort and Golf Club LLC in Hollis.

The inspector determined that an employee at the facility made two fungicide applications to the golf course in June of 2016.

The regulations require that any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.

No one at Salmon Falls Resort and Golf Club was certified or licensed as a commercial pesticide applicator at the time the pesticide applications were made.

Summary of Violation(s):

Any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A) III.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board.

Attachments: Proposed Consent Agreement

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

Salmon Falls Resort & Golf Club LLC)	ADMINISTRATIVE CONSENT AGREEMENT
PO Box 240)	AND
Hollis Center, ME 04042)	FINDINGS OF FACT

This Agreement, by and between Salmon Falls Resort & Golf Club LLC (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S. §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 the Company operates a golf course in Hollis Maine.
2. That the golf course is considered open to use by the public in accordance with 22 M.R.S. § 1471-C(5-A).
3. That the use of any pesticide in an area open to use by the public constitutes a commercial pesticide application in accordance with 22 M.R.S. § 1471-C(5).
4. That commercial pesticide applications can only be made or supervised by licensed commercial applicators pursuant to CMR 01-026 Chapter 31, Section 1(A) and (D) and 22 M.R.S. § 1471-D(1)(A).
5. That each company that employs commercial applicators must employ at least one commercial master applicator as required by CMR 01-026 Chapter 31, Section 1(D).
6. That on June 23, 2016, a Board inspector conducted a records and operations inspection at the company. From that inspection it was determined that Matt Ten Eyck, a Company employee, made two pesticide applications to the golf course in June of 2016.
7. That neither Ten Eyck nor any other employee of the company was licensed as a commercial applicator or commercial master applicator at the time the pesticide applications described in paragraph six were made.
8. That the circumstances described in paragraphs one through seven constitute violations of CMR 01-026 Chapter 31, Section 1(A) and (D) and of 22 M.R.S. § 1471-D(1)(A).
9. That the Board has regulatory authority over the activities described herein.
10. That the Company 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;
11. That this Agreement shall not become effective unless and until the Board accepts it.
12. That, in consideration for the release by the Board of the causes of action which the Board has or may have against the Company resulting from the violation referenced in paragraph eight, the Company agrees to pay to the State of Maine the sum of \$400.00.

(Please make checks payable to Treasurer, State of Maine).

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

SALMON FALLS RESORT & GOLF CLUB LLC

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General



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

PAUL R. LEPAGE
 GOVERNOR

WALTER E. WHITCOMB
 COMMISSIONER

To: Board of Pesticides Control Members
 From: Mary Tomlinson, Pesticides Registrar/Water Quality Specialist
 RE: Label language interpretation/policy for FIFRA EXEMPT (25b) Pesticides
 Date: May 3, 2017

In 1996, EPA exempted minimum risk pesticides from federal regulation under FIFRA 152.25(f). These products are pesticides, but do not require registration at the federal (EPA) level. They are not tested for safety or efficacy, are not subjected to any regulatory review, and reports to the EPA of any adverse reactions resulting from their use are not required. Labeling of these pesticides has become increasingly problematic, particularly with regard to skin-applied repellents and lawn and garden pesticides.

The Pesticide Control Act of 1975 has not been revised to reflect the new reality of minimum risk pesticides. A few states have established, by statute or policy, specific minimum labeling requirements for these pesticides. In general these align with the accepted minimum EPA labeling standards. An informal coalition of eight states, of which Maine is a leading member, has agreed on a set of these minimum labeling standards. Some of the states have statutory support for the enforcement of all the standards, but Maine is not one of those.

Companies take advantage of the vagueness in the Code of Federal Regulations and inconsistency among state pesticide registration programs to avoid commonly accepted labeling standards. Typically this includes unsubstantiated claims promoting the “safety” of their products, the omission of an appropriate signal word (“Caution” is the lowest-risk signal word) and the Child Hazard Statement (“Keep Out of Reach of Children,” also known as the “KOOROC” statement). For pesticides for which federal labeling is required, these statements must be prominent on the front of the label, grouped together, and set off from other text or graphic content. Some registrants try to meet these requirements by placing these statements inconspicuously among other text on the back of the product label or in associated labeling materials. We do not believe that this is sufficiently protective, especially given the intense demand among some consumers for “safe” control or repellent materials. These products are pesticides. Their use is not without risk, and we believe that the labels and labeling should accurately reflect that fact, even for this lower-risk category of products.

Title 7 §605 and §607 are silent on specific labeling language related to minimum risk pesticides because this class did not exist when the law was written. Because these sections address pesticides in general, they have been interpreted to also apply to minimum risk pesticides. A label without a signal word and KOOROC statement has been considered to be misbranded under §605(2)(B-1) “Lack of certain information. As applied to any pesticide means that: The label does not contain a

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warning or caution statement that may be necessary and that, if complied with, together with any requirements imposed under FIFRA, Section 3(d), would be adequate to protect health and the environment;” Due to a lack of clarity, companies are strongly encouraged to add these components, but registrations have not been withheld if the company fails to comply.

We request that the Board provide definitive guidance allowing us to require the minimum protective language of “caution” and the KOOROC statement, as described above, for all pesticide products registered in Maine. We suggest language such as the following to accomplish this goal:

“the Board requires that all pesticides, including products classified as low-risk, generally recognized as safe, 25(b), or any other materials for which pesticidal claims are made, to have at a minimum the signal word ‘CAUTION’ and the statement “Keep Out of the Reach of Children” prominently displayed on the front of the label, grouped together, and with sufficient prominence relative to other front panel text and graphic material to ensure that they will not be overlooked under customary conditions of purchase and use as per the guidance set forth in 40 CFR 156.60(b).”

**Report to the Joint Standing Committee on
Agriculture, Conservation and Forestry
128th Maine State Legislature**

**Pursuant to 7 M.R.S. § 607(6), Grants Funded,
Adequacy of the Product Registration Fee**

**Submitted by the
Maine Board of Pesticides Control
February 15, 2017**

INTRODUCTION

7 M.R.S. § 607(6) requires the Maine Board of Pesticides Control (BPC) to monitor revenue and expenditures in the Pesticide Control Fund and to provide an annual report to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry by February 15. The report must detail any grants provided by the BPC and include a recommendation about whether the pesticide product registration fee is adequate to fund the operation of the BPC and related programs, and to fund the annual grants outlined under 7 M.R.S. § 607(6).

SUMMARY OF GRANTS PROVIDED AND ADEQUACY OF THE FEE FOR ALL PURPOSES

During 2016, the BPC provided the following grants:

- The annual legislature transfer to the University of Maine Cooperative Extension of \$135,000 pursuant to Title 7 Section 607 (6)
- The annual grant to the University of Maine Cooperative Extension of \$65,000 for pesticide education
- A \$50,000 grant to the Maine CDC for mosquito borne disease surveillance pursuant to Title 7 Section 607 (6)
- An ongoing grant to the Maine Migrant Health Program for \$3,675 for providing pesticide safety training to migrant farm workers

CURRENT HEALTH OF THE PESTICIDES CONTROL FUND

During calendar year 2016, expenditures from the Pesticides Control Fund exceeded revenues by approximately \$700,000. The BPC has been conserving funds for a few years to fund an ambitious software development effort that will provide an online self-service application that will allow the public to apply for exams, licenses and product registrations, submit reports, track continuing education credits and otherwise manage company personnel that interact with the BPC. These expenditures together with costs for the final phases of the project will essentially exhaust the cash reserves to the recommended contingency buffer (10%). No further grants are advisable during 2017.

ADEQUACY OF THE PESTICIDE PRODUCT REGISTRATION FEE

Maine's pesticide product registration fee is slightly higher than the national average while the population and market potential are below the national average. The fee appears adequate to fund Department programs and the two grant areas outlined in Title 7 Section 607 (6). No change in the fee is recommended at this time.



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BOARD OF PESTICIDES CONTROL
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PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

Date: May 2, 2017
To: Board Members
From: Staff
Subject: Review of Continued Board Homeowner Education Efforts

The Board has continued to discuss various ideas and approaches for improving education of homeowners on the use of Integrated Pest Management and the proper use of pesticides. Staff has provided oral updates to the Board at each Board meeting since the August 19, 2016 Board meeting. The following list details the outreach projects staff are currently or will be implementing as of the last Board meeting:

Presentations

- Presentation at live-streamed Rockport Conservation Committee
- Presentation at 2017 Maine Land Trust Conference
- Presentation of four Master Gardener pesticide talks
- Invited adult education talk in Lincoln—garden pest management /beneficial insect protection

Social Media

- GovDelivery- BPC staff have been posting bulletins on BPC GovDelivery page under the following topics:
 - BPC Board Meeting
 - Pesticide Continuing Education Credit Calendar
 - Yard, Garden and Home
- Utilizing Facebook page for outreach

Articles/Publications

- Working on new version of GUP dealer sign

Website content

- Review of Board websites is underway—HealthyMaineLawns and GotPests—repairing broken links and updating content

Other

- Obsolete Pesticide Collection Program—contacted DEP Waste Management official, Sandy Moody, who is holding training for transfer station operators. Obsolete pesticide brochures and advertisement posters (see attached documents) were provided to Moody for dissemination to training attendees.

HENRY JENNINGS, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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

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**MAINE BOARD OF PESTICIDES CONTROL POLICY—DEFINITION OF
BIOLOGICAL PESTICIDE AS IT RELATES TO CHAPTER 29 SECTION 5**

Revised March 31, 2017

BACKGROUND

The Board discussed questions that arose during the spring of 2016 relative to interpretation of the term “biological pesticide” as used in Section 5 of Chapter 29, which regulates pesticide applications for control of browntail moth adjacent to marine waters. The staff pointed out that when this rule was originally written, it contemplated that “biological pesticide” would primarily include strains of *Bacillus thuringiensis* and similar microbial pesticides. With the recent increase in browntail moth populations, questions have arisen about other active ingredients which are derived from organisms. Staff indicated that the term “biological pesticide” is now commonly perceived to include pesticide active ingredients consisting of single cell organisms or products derived from organisms. At the January 11, 2017 meeting, the Board reviewed various options and adopted an interpretation of the term “biological pesticide,” which was subsequently amended at the March 31, 2017 meeting.

POLICY

For the purposes of Chapter 29, Section 5, the term “biological pesticide” includes any microbial pesticide that contains the microorganism and byproducts normally associated with the organism, as approved by the Board.

As of March 31, 2017 the Board has approved:

Spinosad
Bacillus thuringiensis variety *kurstaki*
Azadirachtin

May 1, 2017
14 Melrose Circle South
Rockland, ME 04841

Maine Board of Pesticides Control
28 State House Station
Augusta, ME 04333-0028

CC Raymond Connors, BPC

Dear Board of Pesticides Control Members;

We are writing regarding the registration in Maine of products containing the pesticide Paraquat. The individuals of our group, which meets regularly in Camden, are all impacted by Parkinson's Disease. Some of us suffer from the disease, some of us care for those with Parkinson's. One way or another we all live with and are affected by this progressive degenerative neurological condition.

Paraquat is produced in the United Kingdom primarily by Syngenta a corporation based in Switzerland. However its use is banned both in the United Kingdom and the European Union. A 2011 article in the European Journal of Epidemiology reported on a study that people who work with or live near fields sprayed with paraquat and two other pesticides are more likely to suffer from Parkinson's Disease. Earlier in the same year a study published by the National Institutes of Health found that people who used paraquat or the pesticide Rotenone were 2 1/2 times more likely to suffer from Parkinson's. This last study, known as the Farming and Movement Evaluation (FAME) drew on a broad US government project called the Agricultural Health Study which tracked more than 80,000 farmers and their spouses, as well as other people who applied pesticides, in Iowa and North Carolina.

It is our understanding that three pesticide products containing Paraquat are currently registered for use in Maine. We understand our rights and responsibilities regarding notification of pesticide use. However it seems that unless a person is specifically aware of a pesticide's application, there is no way of knowing where and when a pesticide is being used or will be used. In fact, there is no substantive database that reflects more than the most general information about the *amount* of restricted use products used in Maine, and even then only commercial applicators are required to provide such information *at the end of the season*. People who live near blueberry fields are aware of pesticide use. But where are Paraquat products even being used in Maine? Croplands? Roadsides? Power cuts? Without this information how can we act on our "rights and responsibilities"?

Understanding as we all do the deep impact of a disease like Parkinson's on a person's life and the lives of family members; and **seeing no clear way to protect Maine residents from exposure to Paraquat**, we respectfully request that Maine follow the lead of the UK and the Europe Union and ban the use of pesticides containing Paraquat in Maine. In the absence of compelling reasons for the application of such products, we feel that it is hard to justify their continued use in Maine.

We look forward to hearing from you regarding this matter at the above address.

With thanks for your time and consideration, sincerely,

Members of the Parkinson's Support Group, Camden

FOLIAR HERBICIDE PLAN FOR CENTRAL MAINE POWER TRANSMISSION LINE RIGHTS-OF-WAY

During the 2017 calendar year, Central Maine Power Company (CMP) will be treating approximately 7,000 acres as part of our regular vegetation management program. Some of this acreage is comprised of agricultural and industrial uses, and only needs to be patrolled. Integrated vegetation management techniques are employed on the remaining acreage to minimize the use of herbicides.

The first phase of the program requires that a contract crew patrol each right-of-way cutting all hardwood species over 8 feet tall and most of the softwood species. The stumps of trees capable of resprouting are treated with a herbicide. This reduces the amount of foliage that must be treated each cycle. Areas not suitable for foliar herbicide application during the summer are to be entirely cut at this time, and stump treatment to be used where appropriate.

The second phase of this year's program requires that the contract crew patrol each transmission line a second time, treating all remaining tree species capable of growing into the conductors or that block access to the right-of-way. The herbicides are applied with a backpack, hand pressurized spray tank. The tank pressure is low, so the potential for off target movement of the mix is minimized. A contract crew composed of 5 to 8 people will selectively treat the capable species.

A no spray zone is maintained around wells, municipal water supplies or any open water. The buffer zone will vary depending on the topography, a minimum of 25 feet is maintained on all water and a minimum 100-foot buffer is maintained on drinking water supplies. These buffers provide an additional margin of safety.

A low-pressure foliar application technique will be used on the majority of right-of-way scheduled this year. The herbicides and adjuvants, including a drift control agent, are mixed in water at rates of 1/8% - 5%. A hand-pressurized backpack sprayer is used to selectively apply the mix directly to the leaves of the undesirable species. The large droplet size, low tank pressure, and drift control agents, combined with the selective application technique, reduces the potential for drift to a very minimal level. The following is a list of herbicides CMP may use depending on species composition, density and environmental factors:

- Garlon 4 Ultra EPA Reg. No. 62719-527
- Arsenal Powerline EPA Reg. No. 241-431
- Milestone VM EPA Reg. No. 62719-537
- Rodeo EPA Reg. No. 62719-324
- Stalker EPA Reg. No. 241-398
- Aquifact (adjuvant)
- HY-Grade I (carrier)
- Liberate (adjuvant)
- Penetron (adjuvant)
- Propylene Glycol (carrier) - used in winter cst mix

Before a treatment technique or herbicide is selected, a review of the right-of-way is conducted including a list of landowner maintenance agreements, known municipal water supplies, and brush densities. This information helps CMP personnel select the herbicides and determine the mix rates.

A form is given to each crew foreman before the job starts listing all special arrangements, herbicides, and mix rates. All the work is performed by licensed contract crews. The contract crews will post a sign on the first structure on each side of all public roads stating the date and herbicide used. If herbicides are not applied near the road crossing structure, the first structure where herbicides are used will be posted.

Each town that has a transmission right-of-way scheduled for herbicide work in 2017 will be notified in advance. A landowner maintenance agreement is available to any landowner or municipality objecting to the use of herbicides. The landowner agrees to keep brush to a height less than 10 feet and a CMP inspector looks over each area annually. CMP personnel will notify the staff of the Board of Pesticide Control at the start of the season of general work locations. Daily locations are available at CMP's General Office.

The following list identifies the CMP transmission section numbers and general locations for 2017 scheduled work. Plan and profile maps for each right-of-way are on file at the General Office in Augusta.

2017 CMP TRANSMISSION VEGETATION MANAGEMENT SCHEDULE

Line	Line Name
1	Winslow to Augusta E. Side
4	Winslow to Detroit
11	Topsham to Bath
19	Bowman Street to Augusta E. Side
20	Searsport to Jct. L. 26
22	Lisbon Falls to Worumbo Hydro
26	Belfast to Searsport
27	Lisbon Falls to Masonite
30	Topsham to Brunswick Hydro
31	Topsham to Brunswick W. Side
31A	Jct. L. 31 to Topsham (old)
32	Rangley to Stratton

32A	Jct. L. 32 to Bigelow
33	Augusta E. Side to Augusta K-5
38	Rice Rips to Augusta E. Side
38A	Jct. L. 38 to W. Waterville
38B	Jct. L. 38 to Bond Brook
40	Winslow to Fort Halifax
42	Deer Rips Hydro to Hotel Road
43	Crowley's to Topsham
45	Gulf Island to Deer Rips Hydro
46	Gulf Island to Deer Rips Hydro
54	Frye to Rangeley
55	Bath to Washington Street
56	Winslow to Rice Rips
56A	Jct. L. 56 to W. Waterville
58	Bath to Washington Street
63	Wyman Hydro to Starks
63A	Jct. L. 63 to Williams Hydro
69	Bath to Surowiec
70	Jct. L.26 & 20 to Prospect
75	Lewiston Lower to Hotel Road
76	Gulf Island to Topsham
76C	Jct. L. 76 to Pejepsco Paper Co.
77	Mason to Bath
77A	Jct. L. 77 to Bath North End
81	Mason to Surowiec
81A	Jct. L. 81 to Topsham
92	Bridgton to Lovell
97	Lovell to Fryeburg
115	Bassett to South Berwick
117	Quaker Hill to Bassett
118	Quaker Hill to Bassett
139	Ogunquit to Bragdon Commons
139A	York Beach to York Harbor
147	Lewiston to Lewiston Lower
148	Great Falls to Lewiston
149	Deer Rips Hydro to Great Falls
151	Pleasant Hill to Cape
151A	Jct. L. 151 to Tank Farm
158	Skelton Hydro to Louden
159	Louden to Vallee Lane
170	Bonny Eagle to Hiram Hydro
173	Moshers to Prides Corner
178	Bolt Hill to Bragdon Commons
179	Red Brook S/SI to Pleasant Hill
181	Spring Street to Red Brook S/S
185	Sanford Switch to Butlers Corner
185A	Butlers Corner to Lebanon
192	Saco-Lowell #2 to Factory Island

194	Spring St to Long Creek
195	Red Brook S/S to Western Avenue
196	Spring Street to Long Creek
206	Highland to Park Street
206A	Jct. L. 206 to Dragon Products
207	Mason to Bath
207A	Jct. L. 207 to Maine Yankee
209	Raymond to Kimball Road
278	Starks to Livermore Falls
279	Starks to Madison Paper
375	Surowiec to Maine Yankee
377	Maine Yankee to Surowiec
3038	Buxton to Surowiec

MEPCO

Line	Line Name
3001MPS	Kesswick, NB to Penobscot River
3015	Chester SVC to Keene Rd



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WALTER E. WHITCOMB
COMMISSIONER

April 26, 2017

Don Weimann
Asplundh Tree Expert Co.-Railroad Division
720 County Rd 400
Ironton, OH 45638

RE: Variance permit for CMR 01-026 Chapter 29

Dear Mr. Chateauvert:

This letter will serve as your variance permit for Section 6 of Chapter 29 for vegetation control on railroad rights of-way.

The Board recently authorized the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2018, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of significant changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

I will alert the Board at its May 12, 2017 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Anne Chamberlain
Policy & Regulations Specialist
Maine Board of Pesticides Control

HENRY JENNINGS, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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March 29, 2017

Brian Chateauvert
RWC, Inc.
P.O. Box 876
248 Lockhouse Road
Westfield, MA 01086-0876

RE: Variance permit for CMR 01-026 Chapter 29

Dear Mr. Chateauvert:

This letter will serve as your variance permit for Section 6 of Chapter 29 for vegetation control on railroad rights of-way.

The Board recently authorized the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2018, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of significant changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

I will alert the Board at its May 12, 2017 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Anne Chamberlain
Policy & Regulations Specialist
Maine Board of Pesticides Control



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WALTER E. WHITCOMB
COMMISSIONER

March 29, 2017

Ryan Minzner
The Woodlands Club
39 Woods Road
Falmouth, Maine 04105

Re: 2017 Variance Permit

Dear Mr. Minzner:

This letter will serve as The Woodlands Club's Chapter 29 variance permit for your 2017 pest management program. Please bear in mind that this variance permit is dependent upon following the measures outlined in the variance application, particularly Section IX: Method to assure equivalent protection.

We will alert the Board at its May 12, 2017 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Anne Chamberlain
Policy & Regulations Specialist
Maine Board of Pesticides Control

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