



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

October 24, 2014

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

AGENDA

8:30 AM

1. Introductions of Board and Staff
2. Minutes of the September 12, 2014, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

3. Consideration of Enforcement Action against Daniel Brown of Blue Hill, Maine

In matters involving substantial threats to the environment or the public health, or in which there is dispute over material facts or law, the Board's enforcement protocol specifies that the matter be brought to the attention of the Board. This case involves the purchase and application of a Restricted Use Pesticide (Gramoxone) by an unlicensed applicator. The staff has been unable to resolve the violation. The Board's Enforcement Protocol specifies that such matters should be placed on the Board's agenda. Since all similar cases have resulted in a small penalty, the staff is recommending that the matter be referred to the Office of the Attorney General for enforcement.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Determine appropriate enforcement response

4. Review and Potential Adoption of Proposed Amendments to Chapters 20, 22, 28, 31, 32, 33 and 41

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

On July 16, 2014, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, 28, 31, 32, 33 and 41. A public hearing was held on August 8, 2014, at the Deering Building. The Board reviewed the rulemaking record on September 12, 2014, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. The Board will now review the changes to the proposed amendments, the Response to Comments, Basis Statements and the

Statement of Impact on Small Businesses and determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation by: Henry Jennings
Director

Action Needed: Provide direction to the staff on further refinements or adopt the amendments

5. Consideration of a Consent Agreement with Province Lake Golf Club of Parsonsfield, Maine

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 involved application of pesticides at the club without a valid certified and licensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

6. Consideration of a Consent Agreement with Penobscot Cleaning Services Inc. of Brewer, Maine

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 involved commercial application of mold control products with lapsed applicator and firm licenses.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

7. Review of Board Policy Limiting Continuing Education Video Credits

Current Board Policy limits the number of continuing education credits a certified applicator may receive from watching videos. Private applicators and commercial operators are limited to two credits per certification period while three credits are currently permitted for master certification. However, applicators may receive all of their credits through online courses. Consequently, the staff determined it was appropriate to review the Board policy.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to the staff

8. Interpretation of Chapter 27, Section 2(B)(2) Requirements that IPM Coordinators Receive Comprehensive Training within One Year of Appointment

Chapter 27 of the Board's rules requires School IPM Coordinators to receive three types of IPM training: (1) overview, (2) comprehensive and (3) at least one hour of annual continuing education. The staff has received an inquiry about what the Board intended by way of the "comprehensive training." Consequently, the staff is seeking Board input on its interpretation of the requirement.

Presentation By: Kathy Murray
IPM Specialist

Action Needed: Provide guidance to the staff

9. Other Old or New Business

- a. Variance Permit to Boyle Associates for control of phragmites
- b. Variance Permit to The Lawn Dawg for control of invasive plants
- c. Other?

10. Schedule of Future Meetings

December 5, 2014, and January 14 (Maine Agricultural Trades Show) and March 13, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: 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 Chamberlain, at the Board's office or anne.chamberlain@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

September 12, 2014

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

MINUTES

8:30 AM

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

1. Introductions of Board and Staff

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

2. Minutes of the August 8, 2014 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- **Flewelling/Jemison: Moved and seconded to approve the August minutes as written.**
- **In favor: Unanimous**

3. Workshop Session to Review the Rulemaking Record on the Proposed Amendments to Chapters 20, 22, 28, 31, 32, 33 and 41

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

On July 16, 2014, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, 28, 31, 32, 33 and 41. A public hearing was held on August 8, 2014, at the AMHI Complex, Deering Building, in Augusta, and the written comment period closed at 5:00 PM on August 22, 2014. Three people spoke at the public hearing and nine written comments were received by the close of the comment period. The Board will now review the rulemaking comments and determine how it wishes to proceed with the rulemaking proposals.

Presentation by: Henry Jennings
Director

Action Needed: Discussion and determination on how the Board wishes to proceed with the rulemaking proposals

- Jennings discussed the comments, referencing the Summary of Comments. Moving to Chapter 22, Eckert asked if the drift management plan was something the Board needed to discuss. Jennings explained that since 1988 the Board has been issuing the same variance to MDOT and the railroads as long as they include a plan for public notice and that they institute strategies to minimize pesticide drift (for powered equipment). Previous Board discussions concluded that if the Board is requiring the same standards every year by way of variance, wouldn't be easier for all parties to just place those standards in rule. This is the reason that proposal includes a drift management plan. The Board could change it from "plan" to "strategies" or remove drift management plans from the rule altogether. Chapter 22 has strategies to minimize drift in any case. Variances emphasized drift reduction because they were part of the drift rule. Strategies include use of adjuvants, coarse droplets, etc. The Board never intended to require more in a revised rule than what was required for a variance.
- Jennings pointed out that there were several comments on Chapter 28. The proposed language created the unintended requirement for notification for applications using non-powered equipment, Chapter 22 applies only to powered equipment, and Chapter 28 applies to all outdoor applications, so although the Board intended to trade the requirement for identification of sensitive areas in Chapter 22 for a notification requirement in Chapter 28 it inadvertently created a new burden for those applications that had been exempt in Chapter 22. Power lines are generally done with non-powered backpacks; we don't get a lot of questions on private rights-of-way. They target only woody brush with the potential to grow tall enough to interfere with the conductors and leave the short species. They have also done a good job of dealing with public concerns. CMP, for instance, offers no-spray agreements. And, anyone can be notified by making a request under Chapter 28. The public rights-of-way, particularly trails, are where the public has some interest in knowing about spraying. It might be a good idea to have notice for those situations. However, newspapers are expensive and there's evidence that fewer people read them. It might make sense to look at alternatives. For example, some trails have clear points of ingress and egress where it may make sense to post; other trails are more challenging to post. The staff thinking is that notice should be limited to public rights-of-way and the rule should leave the precise notification methods to Board policy, where we can have a series of options, and it will be easy to update.
- Eckert said that she thinks in terms of what situations in these two categories present a significant risk of public exposure or a significant risk of worker exposure.
- Jennings said that when MDOT did some work on Japanese knotweed along a trail, they put signs where the knotweed was; they weren't required to do that, but, in that case, there were distinct patches and posting was practical and effective. Sidewalks are impossible to post. It would make more sense to give applicators and/or administrators a menu of notification options so they can choose what makes sense for the situation.
- Granger remarked that the primary difference between powered versus non-powered equipment is the drift potential. When we're talking about restricted entry intervals, the concern is about exposure.
- Hicks replied that one of the major differences between agricultural label instructions and non-agricultural labels is that non-agricultural instructions often stay "stay off until dry," whereas agricultural labels give a specific reentry time frame; that is because of the total exposure risk; farm workers have greater exposure risk than some other situations.
- Jennings noted that there was one comment on the amendment around antibacterial hardware, but that the person thought it might be referring to UV disinfection systems, which the Board clearly was not intending.
- Jennings said that there was general support for the changes in waiting periods for exams in Chapters 31, 32 and 33. There were two comments on the amendments around hexazinone in Chapter 41; one from Hammond, who was in support, and one from an individual who was opposed to removing the restriction on air-assisted sprayers. Jemison questioned why someone

would use an air-blast sprayer for an herbicide, especially hexazinone, as you would get very uneven coverage, over-applying in some places and under-applying in others. Jennings said that when the rule was written, some growers only had one piece of equipment. Now they usually use boom sprayers for certain applications. He agreed that it would not be advisable to use an air-blast sprayer for this material. Jemison said that if the Board takes the restriction out of the rule, someone will do it and there will be drift issues. Bohlen asked whether it was necessary to treat hexazinone differently from other similar compounds—in terms of water risks, is it more of a drift risk than other herbicides? Is there more of a risk of drift onto neighbors? Jemison said he didn't think hexazinone is worse than other herbicides, but the crop production method is different—blueberries are different from other crops.

- Flewelling said that if you drift with hexazinone, it will be obvious, so most growers are hopefully smart enough to realize that.
- Morrill suggested the Board consider each chapter individually beginning with Chapter 20.

Chapter 20:

- **Consensus to keep amendments to Chapter 20 as drafted.**

Chapter 22:

- Morrill commented that there is already a lot of language in the rule on what is required for managing drift. He suggested scrapping the requirement for drift management plans because drift is already covered in the rule.

- **Consensus for Chapter 22 to remove the language requiring a drift management plan; other amendments to remain as drafted.**

Chapter 28:

- Jennings noted that most of the comments were around public notice, on page eight. One option is to rewrite so that it only applies to public rights-of-way and, for those, there might be a requirement to implement a public notification consistent with Board policy, which would have a menu to choose from. The Board doesn't get many calls on railroad rights-of-way except where the tracks are essentially in the water. The greatest interest is with trails and sidewalks.
- Bohlen suggested that public versus private might not be the best way to distinguish where there is significant benefit to public notification. Land trusts are privately owned, but they may have public trails. Jennings suggested borrowing wording from the commercial licensing criteria: "areas open to use by the public."
- Bohlen and Morrill agreed that requiring newspaper ads may no longer make sense. Is there anything the Board can do to encourage other channels of communication?
- Fish pointed out that there are a lot of calls about sidewalk applications, especially when done on the back of a golf cart. People wonder whether they can walk on them right away. Flewelling noted that people aren't going to look in newspapers for that. Fish noted that posting is difficult.
- Jennings suggested that towns may be in the best position to inform the residents—posters in the town office, posting on the town website.
- Morrill noted that there is agreement on public notice based on categories. He suggested putting in text about where posting is not practical, such as sidewalks, a notice be published on the town website.
- Jennings said that he preferred a policy because we don't know how things will change. In some circumstances posting will work well. Using the words "open to the public" would cover trails and sidewalks.

- Morrill noted that that covered 6B, but what about 6A. Bohlen said he would be uncomfortable writing a rule for people who are trespassing.
- Hicks noted that an applicator can't control whether a municipality posts notice on the town website. The requirement should be that it be sent to the town.
 - **Consensus was reached to change section B to sidewalks and trails open to the use by the public, and change newspaper notice to methods approved in Board policy.**

Chapter 31

- Bohlen referred to the comment about antimicrobial hardware and asked whether the definition was clear. Jennings said that it clearly says metal. Eckert suggested sending him a letter explaining the Board's interpretation.
 - **Consensus was reached to keep all amendments as drafted.**

Chapters 32 and 33

- **Consensus was reached to keep all amendments as drafted.**

Chapter 41

- Flewelling asked if hexazinone was used only on blueberries. Granger said there was limited use for Austrian pine and Scotch pine.
- Flewelling asked why air-blast sprayers were prohibited. He noted that blueberry barrens are generally rough. Jennings said they had transitioned to boom sprayers for many applications, but some smaller growers might have only one piece of application equipment.
- Jennings reminded the Board that the original request from a constituent was to repeal the entire section on hexazinone because all growers will soon be licensed because of the new Ag Basic license requirement. There was a question about whether homeowners might be able to buy and use hexazinone, but decided that it would be impractical. The Board directed the staff to remove all except the licensing part from the hexazinone section.
- Eckert said, if the point was to control drift, is there something that can be put in the rule? Morrill said drift is covered under Chapter 22. Jennings said it was not just about drift; air-blast sprayers don't provide uniform coverage. Air-blast sprayers tend to apply more material near the sprayer, and less material farther away. There's potentially an increased risk of leaching where soil concentrations are higher. Patterson noted that the Velpar label requires "uniform coverage"; would that cover the concerns?
- Granger stated that he is concerned about telling growers how to apply pesticides on their own property, as long as there's no issue of drift. Even with insecticides, there's not always uniform coverage, so he sprays from both directions when using an air-blast sprayer. Are we getting too restrictive putting constraints on growers, as long as they're not affecting others and they're not putting on more per acre than allowed?
- Bohlen said he thought the issue was water contamination. Is the method of application relevant to water contamination? Jennings said that any time you have high concentration of material in one spot it increases the likelihood of water contamination.
- Morrill noted that it would damage the crop; no one wants to buy the product, spend time putting it out, just to kill the crop.

- Eckert described the two cases she remembered. One was spraying an adjacent property, which was a sensitive area because there was a house, and the other was spraying a neighbor's blueberry field by mistake. Morrill replied that in both of those instances, it didn't have to do with the product or the application method, it had to do with applicator misapplying, which is covered in Chapter 22.
- Stevenson said that because applicators are certified, they will have training. Fish noted that someone getting an Ag Basic license will not have to read the blueberry-specific manual, or take the exam, which include information on hexazinone. Eckert suggested that the information be included in general training, including drift, water concerns, and talking to neighbors. Hicks noted that those concerns are not unique to hexazinone.

- **Consensus to keep all amendments as drafted.**

4. Consideration of a Consent Agreement with Maine Organic Therapy of Ellsworth, Maine

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 involved use of an unregistered pesticide and use of pesticides inconsistent with the product labels.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors summarized the agreement; it started with a marketplace inspection. There was a summary sheet listing products. The inspector asked personnel at the facility to send him confirmation of products that the company had purchased. Because of those findings, the inspector did an inspection at the Biddeford growing site and documented only two products that they acknowledged using: one used during some construction repair to control insects and the other, sulfur, which was not on the original list, but was found on the site. When the inspector asked about the products documented as having been sold to the company he was told they were given to the employees to take home. Because the products purchased by the company were similar to products used by other dispensaries for insects and diseases on medical marijuana, the staff took the position that the available evidence indicated a likelihood of use on medical marijuana.
- Jemison asked what the current regulation around pesticides on marijuana is. Jennings replied that they can use any pesticide where the use is not contraindicated on the label. If the label is specific as to the site(s) on which it may be applied, or the type of crops, then it can't be used. Most labels are not general enough to be used; there are some products that say for use on all plants; they tend to be FIFRA exempt (25b) products, but there are a handful of registered pesticides available also.
- Jennings noted that there are two types of growing facilities: dispensaries and caregivers. The Board does not have access to the identity of authorized facilities. The staff does not have confidence that all facilities are aware of or following the rules. They are required to have an Ag Basic license.
- Fish said that there are stores catering to this industry around every corner. We are trying to get them licensed as general use dealers, then we can send them information. The inspectors are visiting, getting them licensed, checking that the products are registered. Jennings noted that they would probably not be a great ally for communicating with growers because they

would essentially be telling the growers they couldn't use the products that the stores are selling.

- Granger noted that part of the rationale for settlement was the use of an unregistered product. If the product was sold in Maine, should the grower be penalized for that? Connors replied that the regulations are clear that products must be registered in Maine in order to be used in Maine. Granger said that he buys a lot of products and doesn't check the registration. He would hate to think that he was liable for using a product that he purchased locally. Fish said that the staff constantly reminds growers that they need to check that. You have to know that you're applying products that have been approved, especially to food. Jennings remarked that the compliance staff generally does not go after the end user for use of an unregistered product. Tomlinson said that the staff does go after the companies to get the products registered. Granger reiterated that we should not penalize people for something that is not practical to check on a routine basis. Jennings noted that this is usually not a problem in agricultural areas, because the distributors check registration. But this industry is not using common agricultural products.
- Bohlen said that if product registration was the only problem, there probably wouldn't be a consent agreement. In this case it is part of a pattern of not looking at the rules. Also, the Board shouldn't get in between those making the agreements, or take a tool away that the enforcement staff has. The issue should go up the food chain to the distributors and/or manufacturers.
- Connors noted that one reason for a consent agreement is to serve as a deterrent. It also serves as an educational tool to let people in an industry know about the regulatory requirements. It's not just part of the enforcement process, but part of the educational process also.
- Stevenson noted that as a homeowner he would never look at whether things are registered, he trusts the store, but, as a business, they check everything they use.
- Morrill agreed that, as it's written, it looks like the grower assumes all the responsibility where it should really be shared with the distributor. Connors replied that the Board hasn't traditionally penalized a distributor selling unregistered products, choosing instead to work on correcting the problem. In some states, that is an automatic penalty. The Board can decide if that's how they want it to be enforced. Randlett observed that it might be more appropriate for the Board to discuss "big picture" enforcement priorities relative to all pesticide law at another meeting and not in the context of this consent agreement.

- **Stevenson/Flewelling: Moved and seconded to accept consent agreement as written.**
- **In Favor: Unanimous**

5. Other Old or New Business

- a. ERAC sampling update—M. Tomlinson
 - Tomlinson explained that the 20 sites have been sampled for sediments. The staff is waiting for a rain event for the stormwater sampling. Jennings said water sampling may have to wait until next year. He wanted to recognize the amount of effort that went into this, especially from Tomlinson, Patterson and Nelson—deciding what to sample for, finding labs, locating sites, and then getting out there at low tide. Tomlinson said that, in addition to samples shipped to Montana and SWRI, samples were also sent to the UMaine soil lab. She said she met a lot of interesting people who were interested and supportive of what the Board was doing. She felt it was a good public relations exercise.

- b. Pollinator Health and Safety Conference update—G. Fish
 - The conference is scheduled for November 20; it has been advertised widely, mostly through emails to everyone we could think of. Cooperative Extension is taking care of the registration process. It's a good agenda; it was difficult to get speakers, but Jim Dill did a good job.
- c. Other?
 - Jennings mentioned that the Department is working on amending statutes around budworm spraying, both for the Forest Service and in the BPC statute. The requirements for monitors and spotters are no longer necessary with current technology.

6. Schedule of Future Meetings

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

Note: Interest was expressed in having a meeting during the Agricultural Trades Show again next year. The Show is scheduled for January 13-15, 2015.

Action Needed: Adjustments and/or Additional Dates?

- **The Board added January 14, at the Agricultural Trades Show, and March 13, as meeting dates.**

7. Adjourn

- **Granger/Eckert: Moved and seconded to adjourn at 10:28 AM**



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GOVERNOR

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WALTER WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

September 16, 2014

Daniel E. Brown
40 Gravelwood Farm Lane
Blue Hill, ME 04614

RE: **Unresolved Consent Agreement**

Dear Mr. Brown,

On April 27, 2012, an inspector from this office conducted a routine restricted use pesticide dealer inspection at Northeast Agricultural Sales in Detroit. As part of that inspection, Board inspector Brian Barrett documented that you purchased a 2 ½ gallon container of the restricted use pesticide Gramoxone Inteon Herbicide on April 13, 2010. Restricted use pesticide may only be legally purchased and applied by certified pesticide applicators. Since you were not certified as a pesticide applicator at that time, your purchase and use of the Gramoxone Inteon violated both state and federal pesticide law. Over the last 25 years, the Board has levied monetary penalties in every instance where uncertified applicators purchase and apply restricted use pesticides. For these reasons, our staff has determined it is appropriate to seek a penalty in this case.

On August 5, 2014, I mailed you a proposed Administrative Consent Agreement in an effort to resolve this violation. You called on August 13, 2014, to say you would not settle the Consent Agreement by paying a penalty. Consequently, we have elected to present the matter to our Board for review at their meeting scheduled for October 24, 2014. The meeting is set for room 319 in the Deering Building, on the AMHI Complex, 90 Blossom Lane in Augusta. It starts at 8:30 AM.

Our intention is to present information that is both accurate and unbiased. For this reason, we request that you review the enclosed case investigation summary and notify us prior to October 10, 2014, if there are any errors or if you have additional information which you feel is pertinent to the case.

We encourage you to attend this meeting and speak on your behalf if you wish. You should understand that this will not constitute a formal hearing; however, the Board will likely determine how to proceed to resolve this case. You may have an attorney present if you so desire.

We will forward a copy of the agenda to you approximately one week prior to the meeting. If you have any questions, please do not hesitate to contact me at 287-2731.

Sincerely,

Raymond Connors
Manager of Compliance
Maine Board of Pesticides Control

Enclosure (3)

CASE INVESTIGATION SUMMARY

Company: Dan Brown (Gravelwood Farm)

License: None

Origin of Case: Restricted use pesticide dealer inspection at Northeast Agricultural Sales in Detroit on 4-27-12

Dates of Incident: 4-13-2010

Pesticide(s) Involved: Gramoxone Inteon

Summary of Allegation(s): A Board inspector did a routine restricted use pesticide dealer inspection at Northeast Agricultural Sales in Detroit on April 27, 2012. As part of that inspection, the inspector asked for and received random, representative copies of Northeast Agricultural Sales sales transactions records for some 2010 restricted use pesticide sales. A review of those records revealed that Daniel E. Brown Jr. (Gravelwood Farm) purchased two 2 ½ gallon containers of Gramoxone Inteon on April 13, 2010. Gramoxone Inteon is a restricted use pesticide that requires a pesticide applicator license to purchase. Brown was not licensed.

Staff Action: A Board inspector collected a copy of Northeast Agricultural Sale's transaction record showing Brown's purchase of the restricted use pesticide. Board staff attempted to resolve the violation through a consent agreement sent to Brown. Brown opposed the consent agreement and would not sign it.

Staff Findings: Brown purchased a restricted use pesticide without a pesticide applicator license.

Attachment(s):

- Consent agreement for Dan Brown
- Northeast Agricultural Sales transaction 1221 showing Dan Brown's purchase of Gramoxone Inteon.

Applicable Citations of Law: CMR 01-026 Chapter 40 Section 1(D) - Restricted use pesticides may be purchased and used only by applicators licensed by the Board as provided in Chapters 31 and 32.

Staff Recommendation(s): Since the staff has been unable to reach a settlement, it recommends referring the case to the Office of the Attorney General.

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL

Daniel E. Brown)	ADMINISTRATIVE CONSENT AGREEMENT
40 Gravelwood Farm Lane)	AND
Blue Hill, ME 04614)	FINDINGS OF FACT

This Agreement, by and between Daniel Brown 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 April 27, 2012, a Board inspector conducted a routine pesticide dealer inspection with Northeast Agricultural Sales, Inc. in Detroit.
2. That during that inspection, the inspector collected and reviewed transaction document # 1221. That document indicated that Brown purchased a 2 ½ gallon container of Gramoxone Inteon Herbicide on April 13, 2010.
3. That Gramoxone Inteon Herbicide is classified as a restricted use pesticide.
4. That CMR 01-026 Chapter 40 Section 1(D) specifies restricted use pesticides may be purchased and used only by applicators licensed by the Board as provided in Chapters 31 and 32 of the Board's regulations.
5. That Brown was not certified or licensed at the time of the pesticide purchase described in paragraph two.
6. That the circumstances described in paragraphs one through five constitute a violation of CMR 01-026 Chapter 40 Section 1(D)
7. That the Board has regulatory authority over the activities described herein.
8. That Brown 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.
9. That this Agreement shall not become effective unless and until the Board accepts it.
10. That in consideration for the release by the Board of the cause of action which the Board has against Brown resulting from the violation referred to in paragraph six, Brown agrees to pay a penalty to the State of Maine in the sum of \$100.00. (Please make checks payable to Treasurer, State of Maine).

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

DANIEL BROWN

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

Transaction Date 04/13/2010
 Due Date 04/13/2010
 Customer ID CashDe
 Payment Method Check
 625
 Time 09:12 (04/13/2010)

Cash Sales Detroit

Comment Dan Brown /FA 53236

Quantity	Description	UPC Code	Unit Price	Total \$
2.500 Gal	Cornerstone Plus		17.00 / Gal	42.50
2.500 Gal	Gramoxone Inteon 2 x 2 1/2 Gall	RUP	41.00 / Gal	102.50
1.000 Qts	Alias Qt		25.00 / Qts	25.00

Handwritten notes:
 RD
 OK # 625
 LMP

Sub Total ~~170.00~~
 Sales Tax 0.00
 Discount 0.00
Total Due ~~170.00~~
 Amount Tendered ~~170.00~~
 Change 0.00

Signature *[Handwritten Signature]*

STATE OF MAINE
MAINE REVENUE SERVICES
COMMERCIAL FARMING EXEMPTION
(SEE REVERSE SIDE FOR RESTRICTIONS)
EXPIRES 06-30-2010

BROWN JR DANIEL E FA53236
40 GRAVELWOOD FARM LN
BLUE HILL ME 04614

ISSUED: 03-01-2007 ACTING EXECUTIVE DIRECTOR
[Signature]

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Ted Quaday Maine Organic Farmers and Gardeners Association	Ch. 20 – Supports the proposal to require positive identification of the application site. Questions what the Board policy will require. Supports use of at least two means of identification. Suggests periodic review and updating of the policy.	Written	20—Requirements are in the policy, which has been in effect for several years; can be changed fairly easily since it is in policy.
Chuck Cotton Lucas Tree Experts	Ch. 20, 31, 32, 33 and 41 – Supports changes as proposed.	Written	
Christian Bulleman III Commercial Applicator	Ch. 31 – Questions the exemption for antimicrobial hardware. Unclear whether it applies to UV and IR mechanical systems as written, and believes that it should not.	Written	31—Board believes the rule as written is clear that it refers only to metal hardware and that there is no intention to include UV and IR mechanical systems. Did not change the proposed amendments.
Dennis Shellabarger	Ch. 41 – Opposes deregulation of hexazinone as proposed which would no longer prohibit application by air assisted equipment.	Written	41—Board does not believe there is much likelihood of growers using air assisted equipment for hexazinone applications because it would result in uneven distribution. Board does not believe its role is to regulate how a grower applies pesticides unless there is an issue of drift or water contamination. Did not change the proposed amendments.

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

Basis Statement

Every year, the Board receives complaints of commercial applicators making applications to the incorrect site. In 2005 the Board adopted a policy requiring applicators to positively identify the proper treatment site using a method detailed in the policy. The Board would like the requirement to be in rule in order to be enforceable. Details regarding methods and procedures will continue to be in policy so as to easily adapt to changing technologies.

The only comments received during the comment period were in favor of the amendment; no changes were made.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 20—Special Provisions

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

There are approximately 450 small businesses that make pesticide applications to residential properties in Maine.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

There are no additional costs to businesses since businesses have already been implementing this requirement for over nine years. Also, this is a commonsense business practice that helps companies avoid potentially costly mistakes.

Brief Statement of the Probable Impact on Affected Small Businesses

There will be no impact on businesses because they have already been required to do this by policy. Even if not in rule, failing to properly identify the application site could be a costly mistake for a business.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

SUMMARY: These provisions regulate the use, storage and disposal of pesticides with specific emphasis on registered pesticides, right of way and aquatic applications and employer/employee requirements.

Section 1. Registered Pesticides

- A. The use of any pesticide not registered by the Maine Board of Pesticides Control in accordance with Title 7 M.R.S.A. §601 is prohibited except as otherwise provided in this chapter or by FIFRA, Section 2(ee).
- B. The use of registered pesticides for other than registered uses, or at greater than registered dosages, or at more frequent than registered intervals is prohibited, provided that application or use of unregistered pesticides and unregistered applications or uses of registered pesticides may be made for experimental purposes if in accordance with requirements of the Maine Board of Pesticides Control, and the U.S. Environmental Protection Agency.
- C. Retailers and end users of pesticides no longer registered in Maine may continue to sell and use those items provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other Federal law.
- D. In conducting review of registration or re-registration pursuant to 7 M.R.S.A. §607-A, the Board may consider the potential for environmental damage by the pesticide through direct application on or off-target or by reason of drift. If the Board finds that the use of the pesticide is anticipated to result in significant adverse impacts on the environment, whether on or off-target, which cannot be avoided or adequately mitigated, registration or re-registration will not be granted unless the Board finds that anticipated benefits of registration clearly outweigh the risks. In any case where the Board may request data in connection with registration or re-registration of any pesticide, such data may include that concerning pesticide residues, propensity for drift and testing therefor. Such data, if requested, shall provide information regarding residues and residue effects on plant tissues, soil and water and other potential deposition sites, and shall take into consideration differences in plants, soils, climatic conditions at the time of application and application techniques.

Section 2. Right-of-Way

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous

growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

Section 3. Pesticide Storage and Disposal

- A. Unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
- B. Obsolete, expired, illegal, physically or chemically altered or unusable pesticides, except household pesticide products, shall be either:
 - 1. stored in a secure, safe place under conditions that will prevent deterioration of containers or any contamination of the environment or risk to public health, or
 - 2. returned to the manufacturer or formulator for recycling, destruction, or disposal as appropriate, or
 - 3. disposed of in a licensed hazardous waste facility or other approved disposal site that meets or exceeds all current requirements of the Maine Department of Environmental Protection and the U.S. Environmental Protection Agency for facilities receiving such waste.

Section 4. Aquatic Applications

No person, firm, corporation or other legal entity shall, for the purpose of controlling aquatic pests, apply any pesticide to or in any waters of the state as defined in 38 M.R.S.A. §361-A(7) without approval of the Maine Department of Environmental Protection.

Section 5. Employer/Employee Requirements

- A. Any person applying pesticide shall instruct their employees and those working under their direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and shall instruct such persons as to the proper steps to be taken to avoid such hazards.
- B. Any person applying pesticides shall provide and maintain, for the protection of their employees and persons working under their direction, the necessary safety equipment as set forth on the label of the pesticide to be used.

Section 6. Authorization for Pesticide Applications

- A. Authorization to apply pesticides to private property is not required when a pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of establishing or maintaining such easement or right of way.
- B. When the Maine Center for Disease Control and Prevention (CDC) has identified that an organism is a vector of human disease and the vector and disease are present in an area, a government entity shall obtain authorization for ground-based applications by:
1. Sending a written notice to the person(s) owning property or using residential rental, commercial or institutional buildings within the intended target site at least three days but not more than 60 days before the commencement of the intended spray applications. For absentee property owners who are difficult to locate, mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice; and
 2. Implementing an “opt out” option whereby residents and property owners may request that their property be excluded from the application by submitting written notice to the government entity at least 24 hours before spraying is scheduled to commence. Authorization is considered given for any property for which written notice was submitted and no “opt out” request was received by the sponsoring government entity.
- C. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government entities are not required to receive prior authorization to apply pesticides to private property, provided that the government entity sponsoring the vector control program:
1. Provides advance notice to residents about vector control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and
 2. Implements an “opt out” option whereby residents and property owners may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and
 3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.
- D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provisions apply:
1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal

occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.

2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
 - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

Section 7. Positive Identification of Proper Treatment Site

- A. Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

STATUTORY AUTHORITY: Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:
July 6, 1979

AMENDMENT EFFECTIVE:
April 1, 1985
January 1, 1988
May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

AMENDED:
May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65

September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

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

CORRECTIONS:

February, 2014 – agency names, formatting

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

Basis Statement

Three sections of Chapter 31 were the subject of amendments proposed by the Board:

- 1) Certain types of pesticide applications that fell under the requirements for an applicator's license under Chapter 31 didn't make sense from a public benefit perspective and have been exempted by Board policy: adults applying repellents to children and persons installing antimicrobial metal hardware. Consequently, the Board determined it made sense to incorporate these exemptions into rule.
- 2) The process of certifying and licensing an applicator is a lengthy process. In an emergency situation, such as a mosquito-borne disease epidemic, time is of the essence. The Board felt it made sense to offer reciprocal licenses for aerial applicators in an emergency situation, as long as the staff reviewed pertinent laws prior to initial applications.
- 3) Based on suggestions from constituents, the Board proposed to shorten the time period a person must wait before re-taking an exam they had failed.

The only comments received by the Board supported the proposed changes. Consequently, the Board found it appropriate to adopt the amendments as originally proposed.

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

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

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

Currently there are about 1,800 licensed commercial pesticide applicators in Maine. Anyone attempting to become a commercial applicator, people attempting to recertify via examination or anyone attempting to add a licensing category will be affected by this amendment. It will reduce the time it takes for someone to complete licensing requirements if they fail to pass exams and need to retake them.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

None

Brief Statement of the Probable Impact on Affected Small Businesses

The proposed amendment would make it a quicker and easier for businesses attempted to add licensees or categories.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

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

2. Categories of Commercial Applicators

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

I. Agricultural Animal and Plant Pest Control

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

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

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

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

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

II. **Forest Pest Control**

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

III. **Ornamental and Turf Pest Control**

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

IV. **Seed Treatment**

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

V. **Aquatic Pest Control**

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

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

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

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

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

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

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

VIII. **Public Health Pest Control**

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

IX. **Regulatory Pest Control**

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

X. **Demonstration and Research Pest Control**

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

XI. **Aerial Pest Control**

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

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

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

I. Agricultural Animal and Plant Pest Control

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

II. Forest Pest Control

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

III. Ornamental and Turf Pest Control

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

IV. **Seed Treatment**

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

V. **Aquatic Pest Control**

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

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

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

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

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

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

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

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

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

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

VIII. **Public Health Pest Control**

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

IX. **Regulatory Pest Control**

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

X. **Demonstration and Research Pest Control**

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

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

XI. **Aerial Pest Control**

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

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

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

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

5. Certification Procedures for Commercial Applicators

A. Initial Certification

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

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

II. Appointment for Exams

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

III. Exams

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

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

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

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

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

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

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

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

B. **Recertification of Applicators**

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

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

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

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

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

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

6. Licensing

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

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

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

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

a. Ground applicators:

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

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

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

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

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

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

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

7. ~~Grandfathering and Transitions~~

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

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

EFFECTIVE DATE:

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

AMENDED:

December 29, 1982

January 1, 1984

January 1, 1984 - Section 7

May 20, 1984 - Section 6

May 13, 1985 - Section 5

Emergency amendment effective April 18, 1986 - Section 6

August 3, 1986 - Section 6

November 30, 1986 - Section 3

May 23, 1987 - Section 1

April 27, 1988

April 29, 1990

January 1, 1996 (adopted by Board October 7, 1994 - see Section 8 for transition dates)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

March 4, 2007 – filing 2007-69

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

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 32—CERTIFICATION AND LICENSING
PROVISIONS/PRIVATE APPLICATOR**

Basis Statement

Based on suggestions from constituents, the Board proposed to shorten the time period a person must wait before re-taking an exam they had failed.

The only comments received by the Board supported the proposed change. Consequently, the Board found it was appropriate to adopt the amendment as proposed.

Impact on Small Business

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

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

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 32—Certification and Licensing Provisions/Private Applicator

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

There are almost 1,200 licensed private applicators in Maine. Anyone attempting to become a private applicator or to recertify via examinations will be affected by this amendment. It will reduce the time it takes for someone to complete licensing requirements if they fail to pass exams and need to retake them.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

None

Brief Statement of the Probable Impact on Affected Small Businesses

The proposed amendments will reduce the time required to obtain a private applicators license for small businesses if an applicant fails an exam.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 32: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS

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

1. Competency Standards for Certification - Private Applicator

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

2. Certification Procedures for Private Applicators

A. Initial Certification

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

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

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

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

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

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

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

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

B. Recertification

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

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

3. Licensing

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

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

December 6, 1987

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

August 25, 1997 – fees

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

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 33—CERTIFICATION & LICENSING
PROVISIONS/PRIVATE APPLICATORS OF GENERAL USE PESTICIDES
(AGRICULTURAL BASIC LICENSE)**

Basis Statement

Based on suggestions from constituents, the Board proposed to shorten the time period a person must wait before re-taking an exam they had failed.

The only comments received by the Board supported the proposed change. Consequently, the Board found it appropriate to adopt the amendment as proposed.

Impact on Small Business

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

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

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 33—Certification & Licensing Provisions/Private Applicators of General Use Pesticides (Agricultural Basic License)

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

About two hundred growers currently have a license under Chapter 33. As many as 2,000 more small businesses may need to obtain a license by April of 2015. Anyone attempting to become a private applicator of general use pesticides will be affected by this amendment. It will reduce the time it takes for someone to complete licensing requirements if they fail to pass the exam and need to retake them.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

None

Brief Statement of the Probable Impact on Affected Small Businesses

The proposed amendment will reduce the amount of time required to obtain a license under Chapter 33 if an applicant fails the exam.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

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

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

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

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

SECTION 2. Certification Procedures for Private Applicators

A. Initial Certification

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

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

B. Recertification

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

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

SECTION 3. Licensing

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

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

STATUTORY AUTHORITY: 22 M.R.S. §1471-D(2-D), 22 M.R.S. §1471-M(1)(C-1)

EFFECTIVE DATE:

December 26, 2011 – filing 2011-474

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 41—SPECIAL RESTRICTIONS ON PESTICIDE USE**

Basis Statement

Restrictions to hexazinone were originally put into place because of concern for its tendency to leach into water. The rule required that products containing hexazinone be sold only by licensed distributors and used only by licensed applicators. In addition, the rule prohibited application of hexazinone by air-assisted application equipment.

A constituent requested that the requirements for hexazinone be repealed because the new Agricultural Basic License requirement would ensure that anyone using the product would be licensed anyway and the requirement to check licenses was a hardship on distributors. The Board agreed, and proposed repealing most of the restrictions for hexazinone from Chapter 41, except that it proposed retaining the requirement that the product only be applied by licensed applicators.

One comment was received in opposition; the person did not think the Board should remove the restrictions on air-assisted application equipment. After much discussion, the Board determined it was appropriate to adopt the amendments as proposed, feeling that it is not the Board's role to regulate how a grower applies a pesticide unless there is an issue of drift or water contamination.

Impact on Small Business

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

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

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 41—Special Restrictions on Pesticide Use

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

There are approximately 510 wild blueberry growers in Maine, of which possibly 500 are small businesses that may potentially be impacted by this amendment. There are four in-state agricultural chemical suppliers that may be impacted by this amendment, but it's unlikely that any are small businesses.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

The amendments will reduce (slightly) the recordkeeping burden on distributors.

Brief Statement of the Probable Impact on Affected Small Businesses

Minimal, since agricultural chemical distributors generally maintain detailed sales records for their own purposes.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE

SUMMARY: This chapter describes special limitations placed upon the use of (1) aldicarb (Temik 15G) in proximity to potable water bodies; (2) trichlorfon (Dylox, Proxol); (3) hexazinone (Velpar, Pronone), (4) aquatic herbicides in the State of Maine and (5) plant-incorporated protectants.

Section 1. ALDICARB (TEMIK®)

The registration of aldicarb (Temik 15G) is subject to the following buffer zone requirements:

- A. Aldicarb (Temik 15G) shall not be applied within 50 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in the range of one to ten parts per billion (ppb). The 50 foot buffer would be mandatory for one year with a required retesting of the water at the end of the period.
- B. Aldicarb (Temik 15G) shall not be applied within 100 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in excess of 10 ppb. The 100 foot buffer would be mandatory for one year with a required retesting of the water at the end of this period.

Section 2. TRICHLORFON (DYLOX, PROXOL)

The registration of trichlorfon (Dylox, Proxol) is subject to the following requirements:

- A. Trichlorfon shall only be used for control of subsurface insects on turf.
- B. Prior to application the target pest must be identified and the severity of the infestation must be determined, including the extent of the damage.
- C. Only infested areas shall be treated with trichlorfon. Broadcast treatments of the entire turf area are prohibited.
- D. Following application, the trichlorfon must be watered into the soil with at least ½ inch of water and according to the label directions. The applicator must assure that the appropriate watering will take place prior to re-entry by any unprotected person.

Section 3. **HEXAZINONE (VELPAR, PRONONE)**

The registration of hexazinone is subject to the following limitations and conditions.

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

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

B. **Licenses Required**

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

II. No person shall:

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

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

C. ~~Records and Reporting~~

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

Section 4. **AQUATIC HERBICIDES**

The registration of pesticides for which there is an aquatic herbicide use on the product label shall be subject to the following limitations and conditions.

A. **Board Publication of List**

The Board of Pesticides Control will publish by May 23, 2003 and by March 15th of each year thereafter a list of herbicide products registered in Maine for which the manufacturer has verified that there is an aquatic use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of aquatic vegetation. Pesticides labeled solely for use in aquariums and antifouling paints, are specifically exempt from this list.

B. **Licenses Required**

I. Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's

annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.

II. No person shall:

- a. Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or
- b. Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.

III. Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

C. **Disclosure**

The Board will make a disclosure form available to dealers distributing any aquatic herbicides identified on the Board's annual listing. The Board requests that dealers present to customers the disclosure form that advises purchasers that, (1) an aquatic discharge license must be obtained from the Maine Department of Environmental Protection before any application may be made to any surface waters of the State as defined in 38 M.R.S.A. Section 361-A(7) including any private ponds that may flow into such a body of water at any time of year, (2) that Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection on the use of aquatic herbicides are available.

D. **Records and Reporting**

Dealers distributing any aquatic herbicides identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

E. **Use of Best Management Practices**

Aquatic herbicides applied to private ponds and not subject to an aquatic discharge permit may only be applied consistent with Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection.

Section 5. PLANT-INCORPORATED PROTECTANTS

The registration, distribution and use of plant-incorporated protectants are subject to the following limitations and conditions:

A. Definitions

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

B. License Required

No person shall distribute any plant-incorporated protectant without either a general use pesticide dealer license or a (restricted or limited use) pesticide dealer license from the Board.

C. Dealer Requirements

Dealers distributing plant-incorporated protectants are subject to the following requirements:

- I. General use and (restricted or limited use) pesticide dealers shall notify the Board of their intent to distribute plant-incorporated protectants on all initial license and license renewal application forms provided by the Board.
- II. General use and (restricted or limited use) pesticide dealers shall maintain sales records showing the list of the names and addresses of all purchasers of plants, plant parts or seeds containing plant-incorporated protectants. These records must be made available to representatives of the Board for inspection at reasonable times, upon request, and must be maintained for two calendar years from the date of sale.
- III. Any general use and (restricted or limited use) pesticide dealer who discontinues the sale of plant-incorporated protectants shall notify the Board in writing and shall provide the Board, upon request, with all records required by Section 5(C)II of this chapter.

D. Grower Requirements

- I. All users of plant-incorporated protectants shall maintain the records listed below for a period of two years from the date of planting. Such records shall be kept current by recording all the required information on the same day the crop is planted. These records shall be maintained at the primary place of business and shall be available for inspection by representatives of the Board at reasonable times, upon request.
 - a. Site and planting information, including town and field location, a map showing crop location and refuge configuration in relation to adjacent crops within 500 feet that may be susceptible to cross-pollination;

- b. Total acres planted with the plant-incorporated protectant and seeding rate;
 - c. Total acres planted as refuge and seeding rate;
 - d. Detailed application information on any pesticide applied to the refuge as described in Section 1(A) of Chapter 50, "Record Keeping and Reporting Requirements"; and
 - e. Planting information for each distinct site including:
 - i. date and time of planting; and
 - ii. brand name of the plant-incorporated protectant used.
- II. There are no annual reporting requirements for growers.

E. Product-Specific Requirements

- I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
- a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.
 - b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
 - c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
 - i. the request must be made prior to planting of the Bt-corn crop;
 - ii. the request must identify the non-Bt-corn crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or
 - 2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.

d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.

II. Dealers distributing Bt-sweet corn shall only sell the seed in quantities large enough to plant one acre or more.

F. Confidentiality

Any person providing information to the Board in connection with the record-keeping and reporting requirements of Section 5 of this chapter may designate that information as confidential in accordance with 7 M.R.S.A. §20.

STATUTORY AUTHORITY: 5 M.R.S.A. §§ 8051 *et seq.*
7 M.R.S.A. §§ 601-610
22 M.R.S.A. §§ 1471-A, 1471-B, 1471-C, 1471-D, 1471-M

EFFECTIVE DATE:
March 8, 1981 (Captan)

AMENDED:
May 7, 1981 (Trichlorfon)
January 2, 1984 (Aldicarb)
May 8, 1988 (Trichlorfon)
August 5, 1990 (Captan)
August 17, 1996 (Hexazinone)
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

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

CONVERTED TO MS WORD:
March 11, 2003

AMENDED:
May 12, 2003 - Section 4 added

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

AMENDED:
February 2, 2004 - Section 4, 1st paragraph and sub-section A, filing 2004-31
April 30, 2007 – filing 2007-154
February 3, 2008 – filing 2008-36
July 16, 2009 – filing 2009-253 (final adoption, major substantive)
May 3, 2012 – filing 2012-99 (final adoption, major substantive)

CORRECTIONS:
February, 2014 – agency names, formatting

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Ted Quaday Maine Organic Farmers and Gardeners Association	Ch. 28 – Supports public notification of pesticide use. Questions the efficacy of newspaper notices. Suggests revisiting the automated web-based notification system discussed previously by the Board.	Written	28—Board agrees that newspapers may not be effective in reaching target audience. Amended rule to require public notice using methods approved in Board policy.
Darin Hammond Jasper Wyman & Son	Ch. 22 – The Board is asking companies to implement drift management plans when spraying under categories 6A and some aspects of 6B. Chapter 22 no longer references a drift management plan. Believes Ch. 22 adequately addresses drift management as it is.	Oral and written	22—Board agreed that the chapter as a whole addresses drift adequately. Amended rule to remove requirement for implementing a drift management plan.
Nicolas Hahn, Gerry Mirabile Central Maine Power Company	Ch. 22 – Support exempting category 6B from the requirement to identify sensitive areas. Ch. 28 – Believe posting of substations is unnecessary and excessive for substations since access is restricted anyway. Propose exempting restricted-access substations. Oppose publication of advance notice of category 6A applications since they are targeted applications made by non-powered equipment. Propose exempting utility ROWs.	Oral and written comments	28—Board agrees that public notification is not necessary for private ROWs; most of the questions arise from trails and sidewalks. Amended rule to require public notice only for 6B applications made to trails and sidewalks open to use by the public. Board agreed there was no value to posting substations and exempted substations in the final rule.
Chris Everest Commercial Applicator	Ch. 22 – Observes there are a lot of sensitive areas to identify for mosquito applications. Ch. 28 – Appreciates that the Board is willing to make changes that alleviate administrative burdens.	Written	Board agrees with comments.

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Brian Chateauvert Railroad Weed Control	Ch. 28 – Posting of category 6B areas could be very difficult on the railroad sidings. These are large open areas where the public is normally not allowed.	Oral	28— Board agreed there was no value to posting railroad sidings and exempted railroad sidings in the final rule.
Chuck Cotton Lucas Tree Experts	Ch. 22– Supports changes as proposed. Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Opposes the new requirement mainly because they do a lot of applications on small industrial or residential sites for which newspaper advertising would serve no purpose, might discourage some clients and would therefor damage their business.	Written	28—Board agrees that public notice does not serve a purpose in some instances, especially for 6A applications. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.
Glenn Nadeau Emera Maine	Notes discrepancies in the category names as described in various Board rules. Ch. 28 – Clarifies that the proposal will now require newspaper notices for applications made under category 6A [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).].	Written	28— Board agrees that newspapers may not be effective in reaching target audience. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Mark Lamberton Emera Maine	Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Questions the efficacy of newspaper notices. Notes that utility lines are linear and therefor cross through many towns and are often remote, making them difficult to describe in a way that is meaningful to the public. Additional newspaper and posting requirements would be a financial burden. Proposes exempting category 6A from the newspaper notification and suggests that utility companies include vegetation management information on the company website.	Written	28—Board agrees that newspapers may not be effective in reaching target audience. Board agrees that public notification about applications made to private ROWs is unnecessary; most of the questions arise from trails and sidewalks. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Ted Quaday Maine Organic Farmers and Gardeners Association	Ch. 28 – Supports public notification of pesticide use. Questions the efficacy of newspaper notices. Suggests revisiting the automated web-based notification system discussed previously by the Board.	Written	28—Board agrees that newspapers may not be effective in reaching target audience. Amended rule to require public notice using methods approved in Board policy.
Darin Hammond Jasper Wyman & Son	Ch. 22 – The Board is asking companies to implement drift management plans when spraying under categories 6A and some aspects of 6B. Chapter 22 no longer references a drift management plan. Believes Ch. 22 adequately addresses drift management as it is.	Oral and written	22—Board agreed that the chapter as a whole addresses drift adequately. Amended rule to remove requirement for implementing a drift management plan.
Nicolas Hahn, Gerry Mirabile Central Maine Power Company	Ch. 22 – Support exempting category 6B from the requirement to identify sensitive areas. Ch. 28 – Believe posting of substations is unnecessary and excessive for substations since access is restricted anyway. Propose exempting restricted-access substations. Oppose publication of advance notice of category 6A applications since they are targeted applications made by non-powered equipment. Propose exempting utility ROWs.	Oral and written comments	28—Board agrees that public notification is not necessary for private ROWs; most of the questions arise from trails and sidewalks. Amended rule to require public notice only for 6B applications made to trails and sidewalks open to use by the public. Board disagreed there was no value to posting substations and retained that requirement in the rule.
Chris Everest Commercial Applicator	Ch. 22 – Observes there are a lot of sensitive areas to identify for mosquito applications. Ch. 28 – Appreciates that the Board is willing to make changes that alleviate administrative burdens.	Written	Board agrees with comments.

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Brian Chateauvert Railroad Weed Control	Ch. 28 – Posting of category 6B areas could be very difficult on the railroad sidings. These are large open areas where the public is normally not allowed.	Oral	28— Board disagreed there was no value to posting railroad sidings and retained that requirement in the rule..
Chuck Cotton Lucas Tree Experts	Ch. 22– Supports changes as proposed. Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Opposes the new requirement mainly because they do a lot of applications on small industrial or residential sites for which newspaper advertising would serve no purpose, might discourage some clients and would therefor damage their business.	Written	28—Board agrees that public notice does not serve a purpose in some instances, especially for 6A applications. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.
Glenn Nadeau Emera Maine	Notes discrepancies in the category names as described in various Board rules. Ch. 28 – Clarifies that the proposal will now require newspaper notices for applications made under category 6A [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).].	Written	28— Board agrees that newspapers may not be effective in reaching target audience. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Mark Lamberton Emera Maine	Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Questions the efficacy of newspaper notices. Notes that utility lines are linear and therefor cross through many towns and are often remote, making them difficult to describe in a way that is meaningful to the public. Additional newspaper and posting requirements would be a financial burden. Proposes exempting category 6A from the newspaper notification and suggests that utility companies include vegetation management information on the company website.	Written	28—Board agrees that newspapers may not be effective in reaching target audience. Board agrees that public notification about applications made to private ROWs is unnecessary; most of the questions arise from trails and sidewalks. Amended rule to require public notice using methods approved in Board policy and only for 6B applications made to trails and sidewalks open to use by the public.

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

Basis Statement

The requirement to identify and map sensitive areas (which include areas likely to be occupied) serves little purpose in a residential area. Consequently the Board exempted common residential ornamental, turf, and outdoor structural general pest control applications when the rule was originally promulgated in 1987. Instead, the Board required applicators to post treated areas under Chapter 28. In recent years, the Board observed that there are now a couple of other types of common residential pesticide applications: biting fly and tick applications and certain types of application made under the industrial/commercial/municipal vegetation management category. Consequently, the Board proposed exempting these applications from the requirement to identify sensitive areas under Chapter 22 in exchange for a posting or notification requirement in Chapter 28. Applicators treating vegetation on trails and sidewalks would need to also implement a drift management plan

In addition, the Board saw little value in identifying sensitive areas for common right-of way (category 6A) spraying and proposed exempting this category from the requirement to identify sensitive areas in exchange for implementing a drift management plan and publishing notice of the application in the newspaper under Chapter 28.

Comments received during the comment period were mostly positive, however some questioned the need for a “drift management plan” since the entirety of Chapter 22 is intended to control drift. The Board agreed with these comments and determined the public interest is best served by adopting the amendments as proposed except for the requirement to implement drift management plans for vegetation control programs (category 6A and sidewalks and trails in category 6B).

Impact on Small Business

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

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 22—Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

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

There may be as many as 200 small businesses making residential and right-of-way pesticide applications that will be affected by the proposed amendments to Chapter 22.

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed amendments will significantly reduce the administrative costs for businesses that treat for ticks and biting flies and/or do certain types of vegetation management applications.

Brief Statement of the Probable Impact on Affected Small Businesses

Record keeping for small businesses that make treatments as described above should be significantly reduced.

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

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

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

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

SECTION 1. EXEMPTIONS

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

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

SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS

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

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

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

B. Weather Conditions

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

C. Identifying and Recording Sensitive Areas

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

D. Presence of Humans, Animals

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

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

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in

order to avoid adverse impacts on off-target areas and to protect public health and the environment.

SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES

A. Positive Identification of the Target Site

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

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

B. Site Plans Required

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

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

C. Site-Specific Application Checklist

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application

checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

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

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

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

E. Wind Speeds for Aerial Applications

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

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

A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides

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

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

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

- (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. **Consent**

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

SECTION 5. **VARIANCES FROM STANDARDS**

A. **Variance Permit Application**

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

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

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

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

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

SECTION 6. EMERGENCIES

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

aerial application in the affected regions and the approximate dates that the emergency may continue.

- IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
 - V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.
- B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

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

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

EFFECTIVE DATE:
January 1, 1988

AMENDED:
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

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

CORRECTIONS:
February, 2014 - formatting

Rulemaking Statement of Impact on Small Business

5 MRSA §8052, sub-§5-A

Agency

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

Chapter Number and Title of Rule

CMR 01-026, Chapter 28—Notification Provisions for Outdoor Pesticide Applications

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

The Board estimates that there are approximately 150 small businesses that perform residential and vegetation management applications that are affected by the proposed amendments

Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed amendments will require companies making tick and biting fly applications, and certain vegetation management applications to post those applications. Signs cost about \$1.50 each and would likely take about five minutes to post. So the total cost per customer may be as high as \$4.00. However, many companies are already posting tick and biting fly treatments, and there is some company name recognition value to posting. Moreover, the additional cost of posting under the Chapter 28 amendments will be offset by the reduced administrative costs under Chapter 22 since applicators will no longer be required to identify and record sensitive areas.

In addition to the added posting requirements described above, the proposed amendments will require some form of public notification to treat sidewalks and trails open to use by the public. The method of notification would be based on a menu of options contained in Board policy. Municipalities and land trusts are often making similar efforts already. The Board decided against requiring costly newspaper notices in these circumstances, however, the administrative costs of the new notification methods may run as high as \$100 for pesticide applications to public sidewalks and trails.

Brief Statement of the Probable Impact on Affected Small Businesses

The proposed amendments to Chapter 28 may add nominal new posting and/or notification costs, but in many cases, the new costs will be offset by reduced administrative costs arising from Chapter 22, since the need to identify and record sensitive areas will be eliminated.

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

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

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 28—NOTIFICATION PROVISIONS FOR OUTDOOR
PESTICIDE APPLICATIONS**

Basis Statement

Chapter 28 requires applicators to post certain types of treatments commonly made in residential areas instead of identifying sensitive areas under Chapter 22. In recent years, the Board observed that there are now a couple of other types of common residential applications: ticks and mosquitoes (licensing category 7E) and certain types of vegetation management applications made under licensing category 6B (except trails and sidewalks). Consequently, the Board proposed adding these types of applications to the list of licensing categories that require posting.

Applications for rights-of-way vegetation management are routinely given variances from the Chapter 22 requirement to map sensitive areas provided the applicator publishes notice in a newspaper and implements a drift management plan. The Board felt it made sense to put these requirements in rule, thus eliminating the necessity of applying for a variance every year. Consequently, the Board proposed adding to Chapter 28 the requirement for a newspaper notice for right-of-way spraying, including trails and sidewalks.

Comments received during the comment period observed that the proposal as written would now require newspaper notice for applications that have always been exempted from Chapter 22 (applications made with non-powered equipment) and therefore never had to identify sensitive areas. In addition, posting would be now required for certain types of vegetation management applications that are not residential in nature (power substations, which are fenced, and railroad sidings, which are not open to the public), which raised questions about the public benefit of the proposal.

The Board found that newspaper notices are expensive and of questionable value and determined that the public interest is best served by eliminating this requirement from the rule. However, the Board observed that there is often public interest in pesticide applications made to trails and sidewalks open to use by the public. The Board determined that the public interest is best served by requiring applicators to implement effective public notice method(s) based on a policy the Board would develop that allows various options tailored to specific circumstances.

Finally, the Board agreed that posting of power line substations and railroad sidings provided little public benefit. Consequently, in the final rule, the Board exempted applications to these sites from the requirement. After incorporating the changes outlined herein, based on the rulemaking record, the Board found the revised proposal is consistent with the public interest and voted to adopt the amendments.

Impact on Small Business

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS**

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

Section 1. Requesting Notification About Outdoor Pesticide Applications

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

A. Requests for Notification; How Made

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

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

B. Procedure of Notification

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

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

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

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

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

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

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

A. Individuals to be Included on the Registry

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

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

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

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

C. Registry Provided to Commercial Applicators

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

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

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

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

E. Exceptions

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

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

F. Exemption from this section

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

G. Fee

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

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

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient

information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

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

A. Sidewalks and Trails

Public notice must be provided consistent with methods approved in Board policy for the outdoor commercial application of pesticides within category 6B to sidewalks and trails open to use by the public.

B. Posting

1. Categories Requiring Posting

- a. 3A (outdoor ornamentals)
- b. ~~III(b)— 3B (turf), and VII(a)—~~
- c. 6B (industrial/commercial/municipal vegetation management), except applications to sidewalks and trails open to use by the public; railroad sidings; and power substations
- d. 7A (general pest control)
- e. 7E (biting fly & other arthropod vectors)

2. Posting Requirements

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

- ~~A.~~a. The sign must be at least five (5) inches wide and four (4) inches high;
- ~~B.~~b. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- ~~C.~~c. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- ~~D.~~d. The sign must bear:
 - ~~1.~~i. the word CAUTION in 72 point type;
 - ~~2.~~ii. the words PESTICIDE APPLICATION in 30 point type or larger;

- ~~3~~.iii. the Board designated symbol;
- ~~4~~.iv. any reentry precautions from the pesticide labeling;
- ~~5~~.v. the name of the company making the pesticide application and its telephone number;
- ~~6~~.vi. the date and time of the application; and
- ~~7~~.vii. a date and/or time to remove the sign.

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

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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STATUTORY AUTHORITY: 22 MRSA §1471-M(2)D

EFFECTIVE DATE:

September 22, 1998

AMENDED:

April 27, 1999

June 26, 2000

March 4, 2007 – Section 1(B)(e), filing 2007-68

December 26, 2011 – filing 2011-473

CORRECTIONS:

February, 2014 – agency names, formatting

**BASIS STATEMENT FOR ADOPTION OF
CMR 01-026, CHAPTER 28—NOTIFICATION PROVISIONS FOR OUTDOOR
PESTICIDE APPLICATIONS**

Basis Statement

Chapter 28 requires applicators to post certain types of treatments commonly made in residential areas instead of identifying sensitive areas under Chapter 22. In recent years, the Board observed that there are now a couple of other types of common residential applications: ticks and mosquitoes (licensing category 7E) and certain types of vegetation management applications made under licensing category 6B (except trails and sidewalks). Consequently, the Board proposed adding these types of applications to the list of licensing categories that require posting.

Applications for rights-of-way vegetation management are routinely given variances from the Chapter 22 requirement to map sensitive areas provided the applicator publishes notice in a newspaper and implements a drift management plan. The Board felt it made sense to put these requirements in rule, thus eliminating the necessity of applying for a variance every year. Consequently, the Board proposed adding to Chapter 28 the requirement for a newspaper notice for right-of-way spraying, including trails and sidewalks.

Comments received during the comment period observed that the proposal as written would now require newspaper notice for applications that have always been exempted from Chapter 22 (applications made with non-powered equipment) and therefore never had to identify sensitive areas. In addition, posting would be now required for certain types of vegetation management applications that are not residential in nature (power substations, which are fenced, and railroad sidings, which are not open to the public), which raised questions about the public benefit of the proposal.

The Board found that newspaper notices are expensive and of questionable value and determined that the public interest is best served by eliminating this requirement from the rule. However, the Board observed that there is often public interest in pesticide applications made to trails and sidewalks open to use by the public. The Board determined that the public interest is best served by requiring applicators to implement effective public notice method(s) based on a policy the Board would develop that allows various options tailored to specific circumstances.

Finally, the Board disagreed that there was no public value to posting of power line substations and railroad sidings, and observed there was little cost or effort required for such posting. Consequently, the Board retained this requirement in the final rule. After incorporating the changes outlined herein, based on the rulemaking record and Board findings, the Board found the revised proposal to be consistent with the public interest and voted to adopt the amendments.

Impact on Small Business

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

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS**

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

Section 1. Requesting Notification About Outdoor Pesticide Applications

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

A. Requests for Notification; How Made

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

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

B. Procedure of Notification

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

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

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

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

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

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

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

A. *Individuals to be Included on the Registry*

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

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

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

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

C. Registry Provided to Commercial Applicators

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

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

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

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

E. Exceptions

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

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

F. Exemption from this section

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

G. Fee

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

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

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient

information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

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

A. Sidewalks and Trails

Public notice must be provided consistent with methods approved in Board policy for the outdoor commercial application of pesticides within category 6B to sidewalks and trails open to use by the public.

B. Posting

1. Categories Requiring Posting

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

2. Posting Requirements

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

- ~~A.~~a. The sign must be at least five (5) inches wide and four (4) inches high;
- ~~B.~~b. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- ~~C.~~c. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- ~~D.~~d. The sign must bear:
 - ~~1.~~i. the word CAUTION in 72 point type;
 - ~~2.~~ii. the words PESTICIDE APPLICATION in 30 point type or larger;

- ~~3~~.iii. the Board designated symbol;
- ~~4~~.iv. any reentry precautions from the pesticide labeling;
- ~~5~~.v. the name of the company making the pesticide application and its telephone number;
- ~~6~~.vi. the date and time of the application; and
- ~~7~~.vii. a date and/or time to remove the sign.

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

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

STATUTORY AUTHORITY: 22 MRSA §1471-M(2)D

EFFECTIVE DATE:

September 22, 1998

AMENDED:

April 27, 1999

June 26, 2000

March 4, 2007 – Section 1(B)(e), filing 2007-68

December 26, 2011 – filing 2011-473

CORRECTIONS:

February, 2014 – agency names, formatting

Proposed Administrative Consent Agreement

Background Summary

Subject: David Porter

Province Lake Golf Club
18 Mountain Road
Parsonsfield, ME 04047

Date of Incident(s): 2012 season through November 2, 2013

Background Narrative: Province Lake Golf Club is a public golf course. Because the golf course is open to the public, pesticide applications at the course must be made or supervised by a licensed commercial pesticide applicator. In addition, each commercial pesticide application company, including golf courses that make their own pesticide applications, must employ at least one Master Applicator. This facility's golf course superintendent and master pesticide applicator were terminated on December 31, 2011. A Board inspector documented that unlicensed commercial pesticide applications were made at the course from 2012 through November 2, 2013.

Summary of Violation(s):

- 22 M.R.S. § 1471-D (1)(A) No commercial applicator may use or supervise the use of any pesticide within the State 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.
- CMR 01-026 Chapter 31, Section 1(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.
- CMR 01-026 Chapter 31, Section 1 (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.

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL**

David Porter)	
Province Lake Golf Club)	ADMINISTRATIVE CONSENT AGREEMENT
18 Mountain Road)	AND
Parsonsfield, ME 04047)	FINDINGS OF FACT

This Agreement, by and between Province Lake Golf Club (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.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 the Company operates an 18 hole public golf course. One full hole and two half holes are in New Hampshire, the balance of the course is in Parsonsfield, Maine.
2. That the golf course is considered open to use by the public in accordance with 22 M.R.S.A. § 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.A. § 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).
5. That each company that employs commercial applicators must employ at least one master applicator as required by CMR 01-026 Chapter 31, Section 1(D).
6. That all commercial applicator licenses are affiliated with a company/agency and, in accordance with CMR 01-026 Chapter 31, Section 1(B), terminate when the employee leaves the employment of that company or agency.
7. That on December 31, 2011, Michael Foster's commercial master applicator license was terminated at the Company when he left employment there. Since that date, no one was employed by the Company as a commercial applicator.
8. That on November 11, 2013, an ex-employee of the Company called the Board and stated that unlicensed people were making pesticide applications at the course.
9. That on November 13, 2013, a Board inspector met with Kris Bouchard, the assistant superintendent at the Company to do a follow up inspection. Bouchard initially denied that he made any pesticide applications at the course. Eventually, the inspector learned from Bouchard that he did make an application of Malice 75 WSP insecticide to tees 1-13, on September 30, 2013.
10. That during the inspection described in paragraph nine, the inspector collected a copy of Company records with the heading "Fertilizer Applications 2013" from Bouchard. From a review of those records, it was determined that eleven pesticide applications were made in 2013 involving various combinations of sixteen pesticides. According to Bouchard, those applications were made by Donald Bye. Bye was a licensed pesticide applicator in New Hampshire; he was not licensed in Maine.
11. That from the inspection described in paragraph nine, the inspector also noted that Bouchard informed him that Tom Small, an employee of the course made pesticide applications in 2012 as did employee Bob Walch who made pesticide applications late in 2012. Neither Bouchard nor Walch were licensed pesticide applicators.

12. That the Company made unlicensed commercial pesticide applications at the course from 2012 through November 2, 2013.
13. That the circumstances described in paragraphs one through twelve would constitute multiple violations of CMR 01-026 Chapter 31, Section 1(A) and (D) and of 22 M.R.S.A. § 1471-D (1)(A). While the Company does not admit the violations, and believes there are or may be mitigating factors and/or factual disputes involving the alleged violations, the Company does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.
14. That the Board has regulatory authority over the activities described herein.
15. 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;
16. That this Agreement shall not become effective unless and until the Board accepts it.
17. 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 violations referenced in paragraph thirteen, and without acknowledging violations, the Company agrees to pay to the State of Maine the sum of \$400.

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

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

PROVINCE LAKE GOLF CLUB

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: George Bishop
Penobscot Cleaning Services Inc.
565 Wilson Street
Brewer, Maine 04412

Date of Incident(s): Throughout 2012

Background Narrative: Penobscot Cleaning Services Inc. is a Brewer based company that does commercial cleaning and mold remediation work. Their master applicator was licensed from December of 2005 through December 31, 2011. At that time, both the master applicator's license and firm license were terminated because the master applicator's recertification cycle expired and he did not have the necessary credits to renew. The company continued to make commercial pesticide applications throughout 2012 without a certified or licensed applicator or firm license.

Summary of Violation(s):

- 22 M.R.S. § 1471-D(1)(A) No commercial applicator may use or supervise the use of any pesticide within the State 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

- CMR 01-026 Chapter 31 Section 1(A)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.

- CMR 01-026 Chapter 31 Section 6(d) 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

Rationale for Settlement: The staff compared the violation to similar cases settled by the Board, the extent of the unlicensed applications and the applicator's lack of candor in formulating the penalty proposal.

Attachments: Proposed Consent Agreement

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL

George Bishop)
Penobscot Cleaning Services Inc.) ADMINISTRATIVE CONSENT AGREEMENT
565 Wilson Street) AND
Brewer, Maine 04412) FINDINGS OF FACT

This Agreement, by and between Penobscot Cleaning Services Inc. (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 is located in Brewer, Maine at 565 Wilson Street and is in the business of commercial cleaning and mold remediation.
2. That on April 11, 2013, a Board inspector conducted a records/operations check inspection with the Company because they were suspected of making unlicensed commercial pesticide applications in 2012. Both their spray contracting firm license and master applicator's license had expired on December 2011.
3. That during the inspection in paragraph two, the inspector documented that the Company did make numerous unlicensed commercial pesticide applications in 2012.
4. 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.
5. That a custom application is defined in 22 M.R.S. § 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.
6. That the pesticide applications made by the Company in 2012 as described in paragraphs above constitute custom applications under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for those applications.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the pesticide applications described in paragraph three.
8. That the circumstances described in paragraphs one through seven constitute multiple violations of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
9. That CMR 01-026 Chapter 31 Section 6(d) requires that 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.
10. That the circumstances described in paragraphs one through seven and nine constitute a violation of CMR 01-026 Chapter 31 Section 6(d)

11. That the Board has regulatory authority over the activities described herein.
12. 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.
13. That this Agreement shall not become effective unless and until the Board accepts it.
14. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs eight and ten, the Company agrees to pay to the State of Maine the sum of \$350. (Please make checks payable to Treasurer, State of Maine.)

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

PENOBSCOT CLEANING SERVICES INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General

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

Section 2. Requirements for All Schools

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



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

September 16, 2014

David R. Brenneman
Boyle Associates
25 Dundee Rd
Gorham, ME 04038

RE: Variance Permit from CMR 01-026, Chapter 29 to Control Phragmites

Dear Mr. Brenneman:

Your request for a variance from Chapter 29 to control phragmites was discussed at the July 26, 2013 Board of Pesticides Control meeting. The Board appreciated the completeness of the application, and the well-developed plan for protecting the local environment.

Following the discussion, the Board voted to grant a variance from Chapter 29, Section 6 for the treatment of phragmites during 2013.

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

By way of the letter, your variance is extended until December 31, 2016.

If you have any questions, feel free to call or email. Please report back on the success of your venture; we look forward to hearing more about it.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control



PAUL R. LePAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER
HENRY JENNINGS
DIRECTOR

September 10, 2014

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

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

Dear Mr. Devou:

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

By way of this letter, your request for a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 is hereby granted for the treatment of Japanese knotweed at 163 Washington Ave in Portland. This variance is valid until December 31, 2016. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your variance application; also, the Board does require that you notify them if there is a change in products to be used.

We will alert the Board at its October 24, 2014 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control