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To the Honorable Members of the Board of Pesticide Control,

I work with hundreds of Maine growers of Specialty Crops with food safety, GAP audits, and the Produce Safety Rule.

I myself do not have a pesticide license, however part of my work involves educating growers about the laws of Maine and FSMA's Produce Safety Rule. I stumbled upon the fact that Maine's Chapters 10 and 50 require growers to document their use of sanitizers for maintaining the quality of wash water and for cleaning food contact surfaces.

This has come as a surprise to many people, including state food inspectors. A restaurant might use the same sanitizer to wash their produce and food contact surfaces and not have to document use. However if you are a farmer, you do.

I understand that there always exists the option of conducting rulemaking to change the applicability of these regulations and that you are about to conduct rulemaking which will require the opening of Chapter 50 as well as Chapter 10 **and I would like to begin that process.**

The Board of Pesticides Control's regulations are clear about record keeping for pesticides (including sanitizers) used by commercial agricultural producers. If soap is not registered in Maine as a pesticide, its use in routine cleaning would not need to be included in pesticide use records.

I believe there is some confusion because certain uses do not require licensing.

1. BPC issued a policy in 2014 pertaining to agricultural uses of pesticides which states:

For the purpose of determining the requirement for a private applicator of general use pesticide license (Agricultural Basic) per 22 MRS 1471-D (2-D), "food production" will include treatments beginning with the growing media

and ending when the plant or plant product is transferred out of the grower's control.

This includes, but is not limited to:

- *soil or other growing medium applications*
- *seed treatments*
- *foliar or root treatments*
- *soil, root or stem injections*
- *smoke, mist, fumigant or total release fogger applications to greenhouses or hoop houses, when food plants are present*
- *post-harvest treatments, such as dips, fumigation, produce rinsing with a disinfectant, etc.*

Therefore the agricultural use of sanitizers on containers, benches and other surfaces, in and of themselves, would not require a license. However, under this policy, use of sanitizers for post-harvest treatment would require, at minimum, an agricultural basic license.

2. BPC Chapter 10 includes the following language, pertaining solely to commercial applicators, which may have caused further confusion:

Ch 10 §2(I) "*Commercial applicator*" means any person, unless exempted in I(4) hereunder, whether or not the person is a private applicator with respect to some uses, who:

(4) The following classes of applicators are exempt from commercial certification/licensing requirements. Applications not listed below must be performed under the direct on-site supervision of a licensed commercial applicator Master and/or Operator.

(b) Persons applying general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings of buildings during the course of routine cleaning procedures.

This language provides the exemption that allows restaurants, kitchens, delis, etc. to conduct routine cleaning (possibly using sanitizers and disinfectants) without needing to employ licensed commercial applicators to do so.

3. BPC Chapter 10 also includes definitions for agricultural pesticide application and commercial agricultural producer, which helps explain the applicability of Chapter 50 record keeping requirements.

Ch 10 § 2(B) "*Agricultural pesticide application*" means any application of a pesticide upon an agricultural commodity which is performed by or for a commercial agricultural producer.

Ch 10 § 2(H) *“Commercial agricultural producer” means, for the purposes of Chapter 50, any person who produces an agricultural commodity for commercial purposes.*

4. Chapter 50 describes *the types of records and reports which commercial applicators, commercial agricultural producers, limited/restricted use pesticide dealers, spray contracting firms and monitors must maintain and submit to the Board.*

Ch 50 §1(A)(I) *Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II below for a period of two years from the date of application.*

(II) *Pesticide application records shall include, at a minimum:*

- a. *Site information including town and location, crop or site treated, target organism, customer (where applicable); and*
 - i. *for broadcast applications, size of treated area (when completed);*
 - ii. *for volumetric applications as described on the label, the volume treated;*
 - iii. *for non-broadcast applications (such as spot treatments, crack and crevice or stump treatments) a practical description of the scope or extent of the application (such as number of trees, stumps or rooms treated).*
- b. *Application information. For each distinct site, records must include date and time of application(s), brand name of pesticide(s) applied, EPA registration number(s), active ingredient(s), restricted entry interval(s) and/or ventilation period(s) (where applicable), method of application (type of equipment), dilution agent(s) (other than water), the applicator's name and certification number (where applicable) and spray contracting firm (where applicable).*
- c. *Rate information. For each distinct site, application rate information must be maintained as follows:*
 - i. *Restricted Use Pesticides. For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).*
 - ii. *General Use Pesticides. For general use pesticides, applicators shall record:*
 - (1) *rate information as described in (i.) above; or*
 - (2) *the mix ratio and the total mix applied; or*

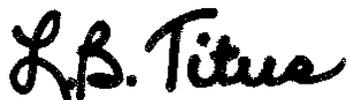
(3) *the mix ratio and the mix per unit area applied.*

The definition of commercial agricultural producer in Ch 10 and the summary of applicability in Ch 50 make no reference to licensure requirements. Further, they do not specifically exempt certain types of applications made to agricultural commodities. So, even if the agricultural producer was not required, for some reason, to hold an agricultural basic license—they would still be required to record the use of sanitizers for post-harvest treatment.

I have spoken to Maine Organic Farmers and Gardeners Association, the Maine Vegetable and Small Fruit Growers and some Pomological Society members and they have expressed interest in supporting this change. I realize the process make take as long as a year. Please let me know next steps and I will follow through.

Lastly, I wish to acknowledge Megan Patterson's assistance with pulling this information together.

Sincerely,

A handwritten signature in black ink that reads "L.B. Titus". The letters are cursive and fluid, with a prominent loop on the "L" and a long tail on the "s".

CC: Lisa Turner, President of MVSFGA
Dave Colson, MOFGA
Joel Gilbert, Maine Pomological Society
Ellen MacAdam, Orchardist
Marilyn Meyerhans, Orchardist