



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

June 23, 2017

**Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine**

AGENDA

9:00 AM

1. Introductions of Board and Staff
2. Minutes of the March 31, 2017 and May 12, 2017 Board Meetings

Presentation By: Cam Lay
Director

Action Needed: Amend and/or approve minutes from board meetings

3. Overview of Regulations Regarding the Use of Unmanned Aircraft for Pesticide Application

At the March 2017 meeting, the Board discussed current pesticide regulations and the use of unmanned aircraft to apply pesticides. Following that discussion, the Board requested that staff invite Federal Aviation Administration staff to provide an explanation of the current aviation regulations pertaining to the use of unmanned aircraft for the application of pesticides.

Presentation By: Daniel Jockett
FAA Aviation Safety Inspector.

Action Needed: None; informational only

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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4. Continuing Discussion of Rulemaking Priorities

At an earlier meeting, the Board discussed undertaking rulemaking to address Section 5 of Chapter 29 concerning browntail moth. Rulemaking is time-consuming and expensive so a list of all potential rulemaking was developed and, at the March 31, 2017 meeting, the Board pared that list down to Chapters 27, 29 and 36. The Board will now discuss whether to proceed with rulemaking and consideration of amendments.

Presentation By: Cam Lay
Director

Action Needed: Determine whether to initiate rulemaking and schedule a hearing

5. Continuing Discussion of Funding for University of Maine Cooperative Extension PSAT and PSEP Positions

At the May 12, 2017 meeting, the Board tabled discussion of a request from Jim Dill of the UM CES for \$65,000 per year in recurring funding for a combined UM PSEP (Pesticide Safety Education Program) and PAT (Pesticide Applicator Training) position. Dr. Dill provided draft job descriptions for both positions. Details of Dr. Dill's presentation and the discussion to table the motion are in the minutes of that meeting.

Presentation By: Cam Lay
Director

Action Needed: Determine whether to provide funding for this position, and in what amount

6. Draft Interim Policy Regarding Interpretation of "Dominated by Emergent or Aquatic Plants" as Used in Chapter 29 Section 6A(V)

At the May 12, 2017 meeting, the Board discussed whether the definition of wetlands in Chapter 29 Section 6A(V)(c) is intended to include small areas without standing water which contain plants typically associated with a wetland habitat. The Board also discussed whether manmade depressions containing surface water, such as equipment ruts and roadside ditches, should be considered as wetlands for the purpose of this section. The Board requested that staff draft a policy based on the discussion. That policy is attached for the Board's review.

Presentation By: Cam Lay
Director

Action Needed: Revise and/or adopt policy

7. Chapter 29 Variances

At the April 24, 2015 meeting the Board began a two-year trial period in which staff could issue new variances from Chapter 29 for pesticide applications within 25 feet of surface water in railroad and DOT

rights-of-way under criteria detailed in a memo from Henry Jennings and related Board discussions. The staff would like the Board to now provide guidance for drafting a formal policy for initial variances and renewals. The original memo and minutes are attached for reference. Staff would like to know if flood-control levees and utility lines should be included in the policy as well.

Presentation By: Cam Lay
Director

Action Needed: Evaluate trial program, provide guidance for draft policy

8. Consideration of Consent Agreement with Jason Douin of JD Landscapes Inc. of Augusta, Maine

The Board's Enforcement Protocol authorizes staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves the application of a pesticide by an unlicensed individual.

Presentation By: Raymond Connors
Manager of Compliance

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

9. Other Old or New Business

- a. Letter to Joint Standing Committee on State and Local Government from Board re LD 1505 An Act to Create Consistency in the Regulation of Pesticides
- b. Pega business management software update and demo
- c. Status of complaint summary report: in progress, will be complete by next meeting
- d. Articles and correspondence submitted by Board constituents:
 - Email and CNN news article submitted by Heather Spalding
 - Letter from Emera, Inc.
 - Email from Nancy Jezior
 - Email and letter submitted by Lynn Hower Allen and Parkinson's Disease support group
 - Email from Scott Longfellow
- e. Legislative items:
 - LD 174 An Act To Limit the Use of Pesticides on School Grounds—Committee Amendment
 - Public Law 2017 Chapter 59 An Act To Modify the Definition of "General Use Pesticide" (LD 594)—signed by the Governor on May 11, 2017
- f. Variances Renewed:
 - Dubois Contracting, vegetation control on Fort Kent dike.
 - Maine Department of Transportation, control of woody brush on roadsides in various towns
 - Stantec, Inc, control of Japanese knotweed in Phippsburg

10. Schedule of Future Meetings

August 4, September 15, October 27 and December 8, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- The August 4, 2017 meeting will be held in Fairfield

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 Board's office or pesticides@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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WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

March 31, 2017

Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine

MINUTES

9:00 AM

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

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Hicks, Patterson, Tomlinson

2. Minutes of the February 17, 2017 Board Meeting

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

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

9a. Determination of whether *Bt* should be added to the list of biological pesticides pursuant to Chapter 29, Section 5

The Board received input from the Maine Forest Service and Stephen Nicholson at Valent Biosciences requesting that the Board consider adding *Btk* to the list of biologicals approved for application against browntail moth within 250 feet of the mean high water mark.

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Presentation By: Lebelle Hicks
Toxicologist

Action Needed: Discussion of Policy Addition

- The Board moved agenda item 9a to the beginning of the agenda to discuss and clarify for applicators what chemistries can be applied for browntail moth within 250 feet of the mean high water mark. There has been much discussion about whether or not this includes *Bt*.
- Agenda item 9a is a draft document with the two definitions the Board initially voted on. Morrill stated that the Board's intention was to use the number two definition, and a list of Board-approved chemistries, and asked if they can go back to that verbiage.
- Chamberlain asked if this would require the policy to be re-adopted. Randlett responded that the policy is being amended and it will have to be readopted. Randlett asked staff to attach the list of Board-approved pesticides to the policy and include it on the website as well so people have easy access to the information.
- The pesticides included on the Board approved list are: Spinosad, *Btk* (*Bacillus thuringiensis kurstaki*), and Azadirachtin.
 - **Morrill/Jemison: Moved and seconded to amend policy to use the second definition of biological pesticide in the document for Agenda item 9a, and a list of products as approved by the Board**
 - **In Favor: Unanimous**

2a. Board Director Appointment

Presentation By: Ann Gibbs
Director of Animal and Plant Health

Action Needed: Discussion by the Board

- Walt Whitcomb, DACF Commissioner, was in attendance. He thanked the Board for serving in this capacity, and also thanked staff for helping get us through this challenging time. Whitcomb stated the process for filling the vacant seat on the Board has also advanced and is in the process of getting clearance. He added that he also plans to meet with the Board to discuss the budget process.
- Whitcomb introduced Cam Lay to the Board as the candidate for the BPC Director position that the selection team chose as the best person to offer the Board. Whitcomb stated that there is a statutory responsibility for the department to go through a routine and very thorough hiring process and then present their selection to the Board for approval.
- Whitcomb addressed concerns about why a Board member was not included on the selection committee. He stated that it was his decision because there were a number of highly qualified candidates and he felt it imperative for all that they maintain an absolute degree of fairness. All of the candidates were very qualified people, and he wanted to put together a hiring team that would give the fairest assessment of the candidates, which is why he included an individual that did not know any of the applicants.
- Whitcomb concluded that the Board does have the final decision on which individual is selected as Director.
- Morrill thanked the Commissioner for his time today, and stated he appreciated him being forthcoming on the decision process.
- Lay gave the Board an overview of his professional background.

- **Morrill/Flewelling: Moved and seconded for the Board to enter into executive session at 9:34am, pursuant to 1 M.R.S.A § 405(6)(A)**
- **In Favor: Unanimous**

At 10:45am, the Board exited executive session and reconvened

- **Morrill/Flewelling: Moved and seconded to approve Cam Lay as the new Director of the BPC**
 - **In Favor: Five; Opposed: Granger**
- Morrill welcomed Lay and thanked him for coming to speak with the Board. Lay replied he is delighted and will do his best not to disappoint them.
 - Morrill thanked the staff for keeping the ship afloat for the last several months.

3. Continuing Discussion About the Board's Budget

At the last three meetings, the Board reviewed the budget with a goal of identifying potential resources that could be allocated to Board priorities. The Department has prepared additional documents per the Board's request to help illustrate the budget process and the current status of the Pesticide Control Fund.

Presentation By: Ann Gibbs
 Director of Animal and Plant Health

Action Needed: None—Informational Only

- Gibbs presented the Board with breakdowns of the budget detailing: fiscal year 2016, calendar year 2016, and cash flow to show when money comes in and the projection for the rest of 2017.
- Gibbs stated that under Title 7, Chapter 103, §607(6), the Board is obligated by statute to fund an annual grant of no less than \$135,000 to University of Maine Cooperative Extension, and provide funding for public health-related mosquito monitoring programs, or other pesticide stewardship and integrated pest management programs as funds allow.
- Gibbs included for the Board descriptions of all positions funded and went over these positions with the Board. The positions included five plant health care positions, which fall under the supervision of the state horticulturalist. Flewelling asked when the BPC began funding those positions. Gibbs responded that it was when Bob Tardy was chair of the Agriculture committee, probably in the early 1990's, when there was a shortfall of funding. She continued that there were originally two assistant horticulturists and an entomologist, who was also the apiarist at that time. Gibbs stated the Entomologist III is the IPM Coordinator and has always been funded by the Board. Morrill asked why the Entomologist III was not under the purview of the BPC. Hicks responded that it was thought better to have that position separate from oversight by the Board that registers pesticides so as to avoid conflicts of interest, because the Entomologist III position provides pest control recommendations to the public.
- Gibbs stated the State Horticulturalist position was added approximately five years ago when the BPC was put under purview of Plant and Animal Health.
- Flewelling asked how DICAP is derived. Gibbs responded that it is a department wide percentage allocation that is based on our expenditures.

- There was a discussion about the yearly estimate for Pega, which costs approximately \$6800 per month. In June the Board will pay \$120,000, but that is because development is still ongoing.
- Morrill asked what the Board's requirement is by statute. Randlett stated that the budget is generally prepared by the department and the department then advises the Board. Gibbs stated if the Board wants to fund something specific, please put it forward and it can be determined how to put it into the budget process.
- Bohlen thanked Gibbs and stated he appreciated the budget being explained, and there was insight gained by being able to look at the budget and understand how it fits together. He added that he has been on the Board for six years and this is the first time he has been able to take a look at the numbers like this. Morrill added that the Board wants to understand Board expenditures and revenues to ensure funds are going to causes important to the Board.
- Morrill asked Gibbs for another budget report at fiscal year-end.
- Stevenson asked why revenues are \$1.7 million and the expenses are \$2.7 million. Gibbs responded the reason is Pega, and it does not look like that every year. Morrill added that the revenue from federal grants brings revenues up to around \$2.1 million.
- Morrill thanked Gibbs for putting the budget information together for the Board.

4. Review of the Annual Grant to the University of Maine Cooperative Extension for Manual Development

Public Law 1987, Chapter 723 created a fiscal year 1988-89 state budget allocation of \$22,000 for the purpose of providing a grant to Cooperative Extension to develop and revise pesticide applicator training manuals. Over the subsequent years, Extension increased its funding request until it reached the current level of \$65,000 annually. Donald Barry, the Extension employee who worked on manuals, recently retired. James Dill from the Extension has proposed revising the job duties of this position and requested an opportunity to discuss the future of the position with the Board.

Presentation By: James Dill
University of Maine Cooperative Extension

Action Needed: Approve/Disapprove/Revise Grant

- Jim Dill, University of Maine Cooperative Extension (UMCE), is in attendance to review the Board's annual grant to UMCE. Jemison asked to be recused from the discussion, as an employee of UMCE.
- Dill stated that Don Barry, the individual who worked on the pesticide applicator training manuals, retired on February 1, 2017. He added that he is here today to find out if UMCE will still receive this funding on an annual basis before they start advertising the position. Dill stated they would like to revise the job description for the position to include more of the education and training. Dill stated that this has been an ongoing grant UMCE has been receiving for about 30 years and there is still the MOU at the state and federal level that tasks UMCE with education and the Board with regulation.
- There was a discussion about the history of this grant and how that amount was reached. Dill stated that in 1991 the amount was increased to \$31k, because \$22k was not covering the position and the director at that time wrote a request and justification to the commissioner. The grant increased from \$31k to \$35k in 2000 and then from \$35k to \$50k in 2010. Dill stated that it was raised to the current \$65k in 2012, which covered about $\frac{3}{4}$ of the position for the person who just retired.

- Dill stated that along with the MOU, the EPA used to fund both the education and regulation side, but now EPA does not grant any funds to UMCE for pesticide education.
- Bohlen asked if there was a schedule for reviewing and updating the manuals. Dill stated that he would sit down with Don Barry and Gary Fish and decide which manuals needed to be revised most urgently. Dill added that it takes about ten months to a year to write a manual from scratch, and there are 20 manuals that constantly need revising.
- Morrill asked where the revenue UMCE receives for selling the manuals goes. Dill replied that it goes to printing.
- Bohlen stated he thinks it is a very important thing to be doing, but if he was contracting for someone to do this work he would want a yearly progress report and he has never seen one. Dill replied that a report is sent to EPA annually.
- There was discussion around how the \$135,000 annual grant from the Board to UMCE for the development and management of ipm program is used. Morrill asked that the Board be given a copy of this year's Annual fund report that was submitted to the Legislature.
- Stevenson asked what the training that would go along with the new hire's position would be. Dill responded that it would be working directly with the growers.
- Morrill asked about working with homeowners. Dill stated homeowner education is really hard to fulfill, because homeowners are not as interested as growers and applicators to come and sit down as a group.
- Morrill asked if they have reached out to municipalities. Dill stated UMCE has in the past, but not in the last few years. Dill stated that he is supposed to be neutral, so once municipalities have his contact info, it is their decision on whether or not to reach out.
- Morrill asked if any money from the \$135,000 grant is being used to educate at the homeowner level. Dill stated that it is not, but they have written about 65-80 homeowner fact sheets and they do about 2,500 identifications of specimens a year, from plant pathology to insect and tick identification. Dill stated that that is truly homeowner outreach, and they do reach many homeowners, but are not specifically targeting a large number of homeowners at once. Dill added that they also do programs with greenhouses, like Longfellow's and O'Donal's, and will get 10-20 people to show up but it is not large numbers. Dill stated he is open to any suggestions and very willing to try new ideas.
- Morrill stated he was of the opinion that all grants should be evaluated yearly and they should achieve some measurable goals.
- Granger spoke about efforts in trying to reach a disinterested audience and suggested trying a newsletter as a way to reach them. Patterson stated that staff are currently using GovDelivery as a digital newsletter and recently collaborated with UMCE and MFS to arrange meetings about btm to help provide more comprehensive coverage of the topic.
- Morrill stated he would like to see Dill's new job description for Don Barry's old position and asked that it be added to the agenda for the next meeting. Morrill added that he is leery to say the Board will guarantee that grant every year, as grants are to be project-based and measurable.
 - **Morrill/Flewelling: Moved and seconded to adjourn for lunch**
 - **In Favor: Unanimous**

The Board adjourned for lunch for one hour and reconvened the meeting at 1:00pm.

5. Discussion About the Board Subsidizing Speaker Costs to Help Contain the Costs of Jointly Sponsored Pesticide Applicator Training Seminars

Each year the Board and the University of Maine Cooperative Extension jointly sponsor a series of pesticide applicator training seminars. An effort is made to identify subjects and speakers that represent the latest developments in IPM. This often results in contracting with expert speakers from other states, which adds to the cost of hosting training sessions. One way to reduce the costs to the regulated community is for the Board to pay the costs of the speakers, either by contracting with them directly or by providing an annual grant—up to \$5,000—to Extension for that purpose. Before considering those expenditures, the Department believes it's appropriate for the Board to determine whether it supports this use of funds.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Department and Staff

- Patterson noted that the Board has expressed that recertification courses should not be more than \$100. Cooperative Extension (UMCE) has requested that BPC cover speaker costs, including travel expenses, while they pay for the meeting room and food. Next week there are two meetings with speakers from UMass and the Board is paying for the speakers, contracting with each of the speakers. In the fall we are hosting Kirby Stafford and Bobby Corrigan; their fees will be substantially higher than the speakers from UMass. In the long run the Board can continue to contract with speakers, or give a \$5,000 grant to UMCE to cover the speaker costs.
- Morrill noted that the Board is responsible for policy, and according to Jim Dill, UMCE is responsible for education. Taking the education aspect and turning it into a fundraising scheme on the backs of applicants is an issue. How is this currently handled? Patterson replied that Cooperative Extension has handled everything, because contracting through the state is difficult, especially for venues—have to go out to bid if it's over a certain amount—but for speaker fees, which are fairly low, the contracts are not as difficult.
- Morrill asked how many talks are given annually. Patterson replied that there are 4-5 invited speakers annually and some by Board staff and some by UMCE staff. Jemison noted that he is happy to give talks about things he knows, but if you ask if about something outside his area of expertise, he is hesitant. There is no one at Extension who is an expert on turf. Patterson added that topics were deliberately chosen because expertise is not available at UMCE or UMaine.
- Jemison also noted that when his shop organizes talks, the goal is to break even.
- Bohlen stated that the Board needs to spend dollars with purpose. What are we trying to get from these workshops and are we spending the money wisely to get what we need. What is the big goal, how does this move us toward that goal?
- Morrill replied that there are two objectives: to gain knowledge and to get CEUs for license. As an employer, there is a cost, both for the meetings but also their wages, and the fact that they are not producing while they are attending. The Board should try to keep cost down but keep quality content and CEUs available up. If applicators are going to pay for the day, they want to get as many CEUs as possible.
- Patterson noted that usually these meetings are 4 hours for 4 credits. UMCE stated that they have found that 4 hours is the maximum of what people are willing to commit. UMCE has anecdotally indicated that full day meetings are not as well attended as half day meetings.

- Morrill asked how many speakers the Board has paid for in the past 2 to 3 years. Patterson replied one. Hicks pointed out that the Board paid to have Vincent Covello at the Ag Trades Show a few years back.
- Bohlen pointed out that there is a cost to managing contracts and it might be beneficial to give a grant to UMCE to save the cost of managing the process.
- Morrill asked how many talks UMCE hosts each year that require outside speakers. Jemison replied that it depends on the topic covered. UMCE provides presentations at the Trades Show, Farm Days, things like that. The Potato Conference is two days each year and UMCE tries to bring in new speakers so people don't get bored. UMCE people speak, but also UMCE also invites other speakers to provide presentations on current issues. Outside speakers add credibility to subject matter. Applicators pay \$20/day, which covers the costs of outside speakers. Flewelling noted that there is a Trade Show, which helps cover costs.
- Morrill stated that there are a lot of unanswered questions. Morrill feels like the Board is giving an extra \$5,000 to do what it's already paying UMCE to do. Morrill was not okay with authorizing a grant to cover speakers.
- Patterson asked if the Board was okay paying of the ones already committed to this year. Morrill said he is okay if we're already committed.
- There was a brief discussion about the value of industry reps doing recertification talks.
- Bohlen asked if there are goals on how many people need to get credits each year. Are we meeting those goals? Are we putting our resources in the right place? Are people showing up, and are they getting anything out of it.

6. Overview of Pesticide Laws that Currently Pertain the Use of Unmanned Aircraft for Pesticide Application

At the February 2017 meeting, the Board discussed the propriety of the using unmanned aircraft to apply pesticides. Following that discussion, the Board requested that the staff return to the next meeting with an overview of the current laws that would apply to the use of unmanned aircraft.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: None—Informational Only

- Patterson explained that the Board was given a copy of the rules that pertain. Only commercial applicators can do aerial applications, not private. As Coutts stated at the board meeting they attended, they can oversee applications from a bucket truck. There is nothing in our rules to require that. If you're in the airplane, you can see what's happening. There is nothing in our rules that says they have to have a means to see where spray is going to prevent drift.
- Bohlen stated that the rules on aerial application clearly do not envision applications in small areas, which UAVs could be. Also, would need to change the notification requirements; maybe not be as rigid about distances to notify. They make sense on 75 acres, not on 2 acres.
- Flewelling said that it would be easier to classify UAVs as a separate application method. Define and write specific rules. Not really ground, not really aerial.
- Morrill agreed that the rules are blurred, except for Chapter 51. We tend to think of UAVs as small, but they could get bigger. If you're spraying ounces over an oak tree at 8 inches, that's different than spraying gallons over a larger area. Not just acreage but also the size of the

equipment. He asked where things stand now as far as being able to spray. Patterson replied that a UAV operator has to be permitted by FAA. Other permits are required for applying pesticides, flying over heavily populated areas, and carrying hazardous chemicals. If they get those permits, there is nothing in Maine's rules to prevent them from doing an application.

- Morrill suggested talking to applicators to determine what should be done. Hicks noted that most labels specify 10 feet over crops for aerial applications; it might be worth looking at them as EPA is slow to add anything to labels.

7. Continuing Discussion of Rulemaking Priorities

At the last two meetings, the Board discussed pending rulemaking needs and subsequently requested that the staff organize the potential rulemaking topic areas by level of complexity and to provide a brief explanation of each item.

Presentation By: Anne Chamberlain
Policy & Regulations Specialist

Action Needed: Determine Whether to Initiate Rulemaking and Schedule a Hearing

- **The Board looked at the list and decided not to consider rulemaking to Chapters 10, 26, 28, 31, 41, and 50. They asked the Board to return with Chapters 27, 29, and 36 next meeting.**

8. Consideration of Consent Agreement with Greenscapes of Maine from Kennebunk, Maine

The Board's Enforcement Protocol authorizes staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves the commercial use of a pesticide by an unlicensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

- Ray summarized the case, explained that the Board received a call in May about an unlicensed application at a housing complex in Wells. The inspector found that the owner had made an application of a fertilizer and weed control product—it had a low percent of herbicide to control crabgrass. The owner acknowledged but said he didn't realize that using granules required a license. He has signed the consent agreement and paid.
- Flewelling asked if he is licensed now; Connors replied yet.
 - **Flewelling/Jemison: Moved and seconded to accept consent agreement**
 - **In Favor: Unanimous (Bohlen no longer present)**

9a. Determination of whether *Bt* should be added to the list of biological pesticides pursuant to Chapter 29, Section 5

The Board received input from the Maine Forest Service and Stephen Nicholson at Valent Biosciences requesting that the Board consider adding *Btk* to the list of biologicals approved for application against browntail moth within 250 feet of the mean high water mark.

Presentation By: Lebelle Hicks
 Toxicologist

Action Needed: Discussion of Policy Addition

- See discussion above.

9. Other Old or New Business

- b. Homeowner outreach update
- c. Email and article submitted by Paul Schlein
- d. Second email and article submitted by Paul Schlein
- e. Email submitted by Jody Spear
- f. LD 993 An Act To Protect Pollinators From Neonicotinoid Pesticides
- g. LD 594 An Act To Modify the Definition of “General Use Pesticide”
- h. LD 699 An Act To Enact the Toxic Chemicals in the Workplace Act
- i. LD 418 An Act To Educate the Public on the Proper Use of Pesticides and To Promote Integrated Pest management Using Existing Resources

10. Schedule of Future Meetings

May 12, 2017, June 23, 2017, and August 4, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- The August 4, 2017 meeting will be held in Fairfield

Adjustments and/or Additional Dates?

- **No dates were added.**

11. Adjourn

- **Morrill/Stevenson: Moved and seconded to adjourn**
- **In Favor: Unanimous**



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BOARD OF PESTICIDES CONTROL

May 12, 2017

**Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine**

DRAFT MINUTES

9:00 AM

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

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff Present: Couture, Connors, Couture, Hicks, Lay, Patterson, Tomlinson

2. Minutes of the May 12, 2017 Board Meeting

Presentation By: Cam Lay
Director

Action Needed: Amend and/or Approve

- **Morrill/: Moved and tabled approval of minutes**
- **In Favor: Unanimous**

3. Consideration of Three Plant Incorporated Protectants (PIP) for Late Blight Control in Potatoes

J.R. Simplot Company submitted registration requests for three new seed potato products that contain VNT1 protein and feature late blight protection. The Board toxicologist and the Chair of the PIP Technical Committee have reviewed the VNT1 protein technology and are prepared to present and discuss their findings.

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Presentation By: Lebelle Hicks
Staff Toxicologist

John Jemison
Board Member and PIP Technical Committee Chair

Action Needed: Approve/Disapprove PIP Registration Request or Pursue a Medical Advisory Committee and/or a PIP Technical Committee Review of the Late Blight Resistant PIP Products

- Sharon Fitzpatrick, J.R. Simplot Company, is present to field Board questions. Fitzpatrick stated the potatoes they are requesting registration for are modified with a wild potato gene that adds resistance to late blight and cuts down on the number of fungicide applications required in a late blight affected field.
- There was discussion about whether the potatoes would be used to extend breeding stock. Fitzpatrick stated that right now the Atlantic and the Snowden are appropriate for the chipping market, and there are some manufacturers accepting GMO products for the fresh market as well. Fitzpatrick added that they are beginning to use these seed potatoes for breeding, but every time they are bred, they change a little and Simplot has had to go through regulatory approval three separate times.
- Jemison inquired to what extent these potatoes would lessen the reliance on fungicides. Fitzpatrick stated they recommend one early season application, one to two applications mid season and one late season application. Only active growing tissue responds to the presence of the fungus. Since it is a single gene protection, they like to have the dual action of the PIP's and the fungicide. Fitzpatrick added that under very high pressure they recommend supplemental applications. Jemison asked Flewelling how often he currently applies fungicides. Flewelling responded that he usually sprays on a five to seven day cycle. These potatoes would bring them out to a two week schedule.
- Jemison asked how much more expensive these seed potatoes would be. Fitzpatrick responded in a non-late blight area the pricing would be different because they would not be leveraging the weight of that need.
- Jemison asked if there would be any special labeling on the chips. Fitzpatrick stated many chips do say "produced with genetic engineering" and many food companies have chosen to do that preemptively.

- **Jemison/Flewelling: Moved and seconded to approve PIP registration request**
- **In Favor: Unanimous**

4. Syngenta Crop Protection, Inc., Request for FIFRA Section 24(c) Registration for Callisto Herbicide on Lowbush Blueberries in the Bearing and Nonbearing Years

Syngenta Crop Protection, Inc. is requesting a Special Local Need [24(c)] Application to allow use of Callisto® herbicide for broadleaf weed control on low bush blueberries in the bearing and non-bearing years. This request is supported by Dave Yarborough, University of Maine Blueberry Extension Specialist. The expiring 24(c) for Callisto is for use in low bush blueberries during the crop-bearing year. Because the additional applications will be made in the non-bearing year, residues are expected to be below the established tolerance.

Presentation By: Mary Tomlinson
Pesticides Registrar

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson stated the current SLN is expired. The new requests combine the old SLN and an additional treatment in the non-bearing year. Tomlinson turned the discussion over to Dave Yarborough.
- Yarborough stated that essentially this looks at the renewal in a crop year. Growers have requested this. If they have a real weedy year it gives them something to use. The traditional non-bearing year use is six ounces per acre. They were targeting it at the growth stage of the plant as a directed spray. The rate has not changed, just the way they will go about it.
 - **Flewelling/Granger: Moved and seconded to approve 24(c) Registration Request**
 - **In Favor: Unanimous**

5. Loveland Products, Inc., Request for FIFRA Section 24(c) Registration for Malathion 8 Aquamul on Blueberries

Loveland Products, Inc. is requesting a Special Local Need [24(c)] registration to increase the maximum application rate of Malathion 8 Flowable agricultural insecticide to control spotted wing drosophila (SWD) on high and low bush blueberries. This request is supported by David Yarborough, University of Maine Blueberry Extension Specialist, and is based on economic considerations. The SLN is for the same rate as the current SLN for Gowan Malathion 8 Flowable.

Presentation By: Mary Tomlinson,
Pesticides Registrar

Action Needed: Approve/Disapprove 24(c) Registration Request

- **Flewelling/Granger: Moved and seconded to approve 24(c) Registration Request**
- **In Favor: Unanimous**

6. Arkion Life Sciences LLC Request to extend FIFRA Section 24(c) Registration for the Use of Avipel Hopper Box (dry) Corn Seed Treatment to Discourage Consumption of Corn Seed by Grackles, Black Birds, and Crows

Arkion Life Sciences LLC is requesting an extension of the Special Local Need [24(c)] registration for the use of Avipel® Hopper Box (dry) Corn Seed Treatment (anthraquinone) to reduce predation of corn seed by grackles, black birds, and crows. This extension is supported by Richard Kersbergen, University of Maine Cooperative Extension Corn Specialist.

Presentation By: Mary Tomlinson,
Pesticides Registrar

Action Needed: Approve/Disapprove the Section 18 Emergency Exemption Registration Request

- Tomlinson stated they are covered for this year, but there is a better chance of getting an approval from EPA if they can get the application in before it has expired.
- Richard Kersbergen states that the hopper product taste repellent for birds has been extremely effective. Farmers have stopped using it and then returned to using it. It is not used on 100% of planted acres, but only where bird predation is a problem.
- Flewelling asked if it is a liquid or dry product. Kersbergen responded that it is a dry formulation on seed in a hopper box.
- Granger asked if it would only be applied to corn. Tomlinson responded that it would.
 - **Jemison/Flewelling: Moved and seconded to approve 24(c) extension request**
 - **In Favor: Unanimous**

7. Overview of Pesticide Laws that Currently Pertain the Use of Unmanned Aircraft for Pesticide Application

At the March 2017 meeting, the Board discussed current pesticide regulations and their pertinence to the use of unmanned aircraft to apply pesticides. Following the March discussion, the Board requested that staff invite Federal Aviation Administration staff to provide explanation of the current aviation regulations pertaining to use of unmanned aircraft for the application of pesticides.

Presentation By: Daniel Jockett,
FAA Aviation Safety Inspector

Action Needed: None—Informational Only

- **Morrill/Granger: Moved and seconded to table Agenda items 7 and 8**
- **In Favor: Unanimous**

8. Continuing Discussion of Rulemaking Priorities

At an earlier meeting, the Board discussed undertaking rulemaking to address Section 5 of Chapter 29 concerning browntail moth. Rulemaking is time-consuming and expensive so a list of all potential rulemaking was developed and, at the last meeting, the Board pared that list down to Chapters 27, 29 and 36. The Board will now discuss whether to proceed with rulemaking and consideration of amendments.

Presentation By: Megan Patterson,
Manager of Pesticide Programs

Action Needed: Determine Whether to Initiate Rulemaking and Schedule a Hearing

9. Discussion of the Definition of Wetlands as it Pertains to Chapter 29 Section 6

Ron Lemin, Crop Production Services, has requested that the Board clarify whether the definition of wetlands in Chapter 29 Section 6(c): “dominated by emergent or aquatic plants” was intended to include dry areas which contain plants such as phragmites, cattails, purple loosestrife, etc. The Board will now discuss the attached memo and provide clarification on the intended interpretation of the definition of wetlands.

Presentation By: Megan Patterson,
Manager of Pesticide Programs

Action Needed: Provide Definition Interpretation Clarification

- Jennings drafted a letter to Ron Dyer to explain the historic intent of the Board was not to attempt to define wetlands, but to say a marsh or wetland that met the other three listed points in Chapter 29 Section 6 must have a 25 foot buffer around it. The Board tried to stay away from defining wetlands because the definition was complicated for a lay person. Patterson explained the issue and stated the rule was not intended to cover man-made wetlands that provide habitat for emergent species. Jemison added that was also his memory of what the Board’s intent had been and the goal of the original rule was to protect water quality.
- There is concern that the rule, as written, could apply to ditches and skidder ruts. Patterson explained to the Board that staff need clarification on how far they want wetlands to extend, and if they mean to include more than marshes, swamps, and bogs.
- There was Board discussion about what should be considered when defining a site as a wetland requiring a buffer, such as: surface water, emergent species, a possible size threshold, level of risk to water quality, etc.
- Flewelling asked Ron Lemin to describe the situation to the Board. Lemin referenced the photos he submitted to the Board which showed roadside ditches and skidder tire depressions containing emergent species, such as cattails. Lemin stated buffering these small pockets of water is time consuming and costly.
- Patterson stated that is why they need to know the intent of the rule and if those small areas were intended to be defined as wetlands, or if they had to meet all three of the other points listed in the rule.
- Morrill asked staff to draft a clarification to be viewed by the Board at the next meeting.
- Randlett counseled the Board that original intent is important and to be taken into consideration, but the current Board does not have to make their decision based on that. Randlett stated that in the long run the Board should consider amending the rule, even to giving a definition of wetland. He added that some guidance should be given to the public in the interim.
- Morrill stated the confusion comes from the word ‘or’ that is inbetween b and c of Chapter 29 Section 6V.
- Staff will bring a draft clarification to the Board next meeting.

10. Discussion of Provision of Worker Protection Standard Handler and Worker Training by Licensed Agricultural Basic Pesticide Applicators

In June of 2016, staff submitted an equivalency request to EPA regarding certification requirements for trainers of handlers and workers as defined by the Worker Protection Standard (WPS). The equivalency request argued that the licensing and certification requirements for Maine Private Applicators of General Use Pesticides (ag basic applicators) exceed the federal standards for certification of private applicators certified to use restricted use pesticides. Agreement with this argument would allow licensed and certified agricultural basic applicators to train their workers/handlers in compliance with the WPS. The Board will now discuss the attached staff memo and equivalency request and determine whether to consider agricultural basic applicators suitably trained to provide training to workers and handlers as defined by the WPS.

Presentation By: Megan Patterson,
Manager of Pesticide Programs

Action Needed: Determine Whether to Consider Ag Basic Applicators as Equivalent to Private Applicators for the Sole Purpose of Training WPS Defined Workers and Handlers

- Patterson explained the issue. The newly revised Worker Protection Standard, WPS, only allows applicators who are certified to apply restricted use pesticides to conduct worker and handler WPS training. Maine's ag basic level applicators are not certified by the state of Maine to apply restricted use pesticides, but by federal standards they receive a level of training equal to that of private applicators who are certified to apply restricted use pesticides, and to conduct WPS training. Staff has requested that ag basic applicators also be able to conduct WPS training.
- Bohlen commented that EPA's response was to handle this how the state saw fit.
 - **Jemison/Flewelling: Moved and seconded to allow ag basic applicators to conduct WPS worker and handler training**
 - **In Favor: Unanimous**

11. Consideration of Consent Agreement with Goodall Enterprises DBA NaturaLawn of America of Bangor, Maine

The Board's Enforcement Protocol authorizes staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves the unauthorized application of a pesticide by a commercial applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained the violation. The complainant had previously been a customer of Goodall Enterprises DBA Naturalawn of America some years back. In 2016, the complainant had an ant problem and scheduled a consultation with the company. An applicator showed up an hour prior to the scheduled application and made an application. The complainant stated this was an unauthorized application that had not been consented to.
 - **Jemison/Bohlen: Moved and seconded to approve consent agreement**
 - **In Favor: Unanimous**

12. Consideration of Consent Agreement with Salmon Falls Resort & Golf Club LLC

The Board's Enforcement Protocol authorizes staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves the commercial use of a pesticide by an unlicensed applicator.

Presentation By: Raymond Connors
 Manager of Compliance

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

- Connors summarized the violation. During a routine records check it was determined that applications made that required a commercial applicator license. This applicator was not licensed at the time of the applications.
- Flewelling asked if the individual had been previously licensed. Connors responded that he was licensed at another golf course and then left there and started his own company. He was licensed at his own company, but he was not licensed at this golf course and there were no other licensed applicators at the course.
- Morrill asked if the individual could have been contracted by the course to do the application. Connors stated he could have done that, but since he was an employee of the golf course he was required to be licensed with his employer. He also could have had a concurrent license for his company and the course, but he did not. Randlett added it states in Chapter 31 that all companies are required to have a master applicator.
- Jemison asked if the individual argued that he did hold a master's license. Connors explained that the consent agreement is with the company, not the individual, and they did not contest it.
 - **Jemison/Stevenson: Moved and seconded to approve consent agreement**
 - **In Favor: Unanimous**

13. Request for Clarification of Minimum State-level Labeling Requirements for Minimum Risk (Section 25(b) of FIFRA) Pesticides

In 1996, EPA exempted minimum risk pesticides from federal regulation under section 25(b) of FIFRA. The Pesticide Control Act of 1975 has not been revised to reflect the new reality of minimum risk

pesticides. Staff request that the Board provide definitive guidance on requiring the minimum protective language of “caution” and the Child Hazard Statement for all pesticide products registered in Maine.

Presentation By: Cam Lay
Director

Action Needed: Approve/Disapprove Proposed Minimum Label Language

- Lay stated staff are looking for guidance on this issue since EPA has no standards, but he had an extensive discussion with staff and it appears they need to discuss it in more detail. Bohlen stated it was not clear on what level staff would like Board to act on this and asked if staff could return with this issue when it is clearer what level of response is legally appropriate.
 - **Morrill/Granger: Moved and seconded to table until staff is ready to bring back to Board**
 - **In Favor: Unanimous**

14. Election of Officers

The Board’s statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Cam Lay
Director

Action Needed: Nominations and Election of Officers

- **Granger/Jemison: Moved and seconded to nominate Morrill as Chair**
- **In Favor: Unanimous**

- **Granger/Jemison: Moved and seconded to nominate Bohlen as Vice-Chair**
- **In Favor: Unanimous**

15. Other Old or New Business

- a. Board fund report
- b. Homeowner outreach update
 - Patterson relayed recent homeowner outreach efforts to the Board. These included: browntail moth meetings, working on updating websites, fixing broken links, and overhauling the YardScaping website content. Patterson did an IPM presentation for the Rockport Conservation Committee and general public which was live-streamed. Patterson also presented at a land trust conference about herbicide use on land trusts. Through conversations at the conference Patterson learned that the majority of land trusts do not have a licensed applicator that works with them.
 - Patterson told the Board that this season’s Master Gardener talks are finished. Staff have been working on amending the self-service sign to make it more eye-catching. The obsolete pesticide collection contract for this October has been completed. Staff have begun advertising for the obsolete collection, and are also working with DEP to get information about the collection to

transfer stations so operators there can inform citizens about it. Staff is not only focused on advertising the event, but also using that opportunity to talk about ways to reduce pesticide use and proper use of pesticides.

- c. Revised biological policy pertaining to browntail moth control
- d. Email and article submitted by Heather Spalding
- e. Email and letter submitted by Lynn Hower Allen
- f. Email and articles submitted by Heather Spalding
- g. CMP 2017 Foliar Herbicide Plan
- h. Asplundh variance
- i. RWC variance
- j. Woodland Club variance
- k. Cooperative Extension pesticide manual writer/editor position
 - Jemison, as a university employee, is abstaining from this agenda item due to a conflict of interest.
 - Jim Dill discussed the position that is now open after Don Berry's retirement in February. Dill suggested that the Board continue funding this position. He has redrafted the position description to include pesticide safety education in addition to writing manuals to make the job more palatable than sitting in an office eight hours a day. The revised job description draft has not been run by through the university yet. Maine has more than twenty categories and commercial commodities which makes for a lot of manuals to keep up on. Dill would like the new individual to also take over the coordination of the training program. Dill stated the base salary for the position would be around \$40,000, and the benefits add another 50%, so he is asking for \$65,000. He added that the EPA used to grant them \$30,000 per year for training but now the university does not receive any training funds from the EPA. Dill asked the Board to fund for three years and they will report back to the Board annually. If the Board is satisfied with the work being accomplished then they can continue the funding.
 - Morrill stated the university does not receive money from EPA for training, but the Board gives additional money. Dill responded that that \$135,000 is for IPM and helps support all their programs, not for training. It is used for all soft money- equipment, supplies, and part of salaries to plug gaps. Dill added that the monies they are asking for are just a continuation of what they have been receiving and he is only here because Berry retired.
 - Bohlen commented that a lot of state budgets he works with cannot make a budget commitment beyond three years. Randlett concurred that the Board cannot make a commitment beyond the budget year. Bohlen asked Randlett about doing a statement of understanding, or subject to funding. Randlett stated they are not able to bind future money and even a statement of intent may not have any binding effect, but the Board can state that.
 - Morrill commented that the Board would like to postpone this until they can meet with the Commissioner and see where they are with the budget.
 - **Morrill/Stevenson: Moved and seconded to table until next meeting**
 - **Five In Favor; Jemison abstained**

k. LD 1505

- Morrill stated the Agriculture committee has asked the Board to weigh in on LD 1505, which seeks to limit municipalities' ability to regulate pesticides in some way. He added that they have an amendment from Representative Pickett, an amendment that was done in committee and a third amendment from the governor's office. A fourth amendment, written by Granger, was

distributed at the meeting. Randlett told the Board it is up to them whether and how they respond to this. Jim Dill commented that the committee will often reach out to experts to get information on legislation that the committee is dealing with. The various proposed amendments constitute a range of options, and the committee would like the Board to weigh in.

- The Board had a lengthy discussion. Issues discussed included:
 - the potential of having 500 different ordinances would be difficult for businesses;
 - personal rights vs community rights;
 - restricting homeowner's rights on their own property;
 - home rule;
 - education about BPC and pesticides;
 - how does/should the Board provide support to municipalities;
 - using Chapter 60 Designation of Critical pesticide Control Areas;
 - recognizing that values are an important part of the discussion;
 - education about IPM;

- The Board drafted a proposed amendment to LD 1505. Jemison said he could not approve something without giving it a lot more consideration. Bohlen said he could not support it because it invalidated existing ordinances and that was not fair to the towns and citizens who put a lot of work into them. He recommended a memo that the Board has consensus on ideas, including education and IPM.
 - **Morrill/Jemison: Moved and seconded that the staff draft a memo to the Committee on State and Local Government summarizing the Board's discussion and explaining that they had approved the proposed language by a vote of 4-2. The Board's concept language, Chapter 60 Designation of Critical Pesticide Control Areas, Existing IPM Definitions from statutes and board rules and the State Policy to Minimize Reliance on Pesticides should be attached.**
 - **In Favor: Unanimous**
 - Note: Memo and concept language are attached as part of the minutes

- At 1:00 pm (prior to the above vote):
 - **Flewelling/Stevenson: Moved and seconded to cancel the scheduled meeting with the Commissioner**
 - **In Favor: Flewelling, Stevenson, Morrill, Granger, Jemison. Opposed: Bohlen**
 - **Morrill/Jemison: Moved and seconded that the Board break for lunch, reconvene at 1:45 and postpone the meeting with the Commissioner until 3:00 pm.**
 - **In Favor: Unanimous**

6. Schedule of Future Meetings

June 23, 2017; August 4, 2017; September 15, 2017; October 27, 2017; December 8, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- The August 4, 2017 meeting will be held in Fairfield

Adjustments and/or Additional Dates?

- **The Board added September 15, October 27, and December 8, 2017 as tentative Board meeting dates.**

17. Adjourn

- **Flewelling/Bohlen: Moved and seconded to adjourn at 2:35 pm**
- **In Favor: Unanimous**



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

Joint Standing Committee on State and Local Government
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

May 16, 2017

Dear Senator Davis, Representative Martin and members of the Joint Standing Committee on State and Local Government:

The Maine Board of Pesticides Control (Board) met on Friday, May 12, 2017 and reviewed LD 1505 An Act to Create Consistency in the Regulation of Pesticides as drafted as well as several potential amendments. The Board thanks the Committee for seeking its input, and recognizes the importance of this sensitive issue.

The Board recognizes Maine's longstanding history of home rule, and recognizes that there may be localized natural or economic resources that warrant special consideration. At the same time, the Board is keenly aware of the challenges and inefficiencies that municipal ordinances pose for companies and agencies with statewide or regional pest management responsibilities.

After a lengthy and spirited discussion, the Board approved, by a vote of 4 to 2, the attached draft language—intended as a conceptual framework for the Committee's consideration.

While there was a diversity of viewpoints on the overall merits of municipal pesticide ordinances, the Board agrees that there is a definite need to address this issue and found unanimous agreement on the following concepts:

- Inconsistency in municipal ordinances, and the potential of having 500 different ordinances presents significant difficulties for businesses that work statewide (highway, power line, railroad and gas-line right-of-way maintenance) and businesses that work in multiple towns (lawn care, home pest control, etc);
- The increased costs associated with complying with municipal ordinances will ultimately be passed on to rate payers and tax payers;
- The Board struggled to find the appropriate balance between the rights of the community and the rights of the individuals within the community;

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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- The Board fully supports:
 - the concept of integrated pest management (IPM) as defined in current state law (7 M.R.S. § 2401; CMR 01 026 Chapter 10 Section 2-W; CMR 01 026 Chapter 26 Section 1-D; CMR 01 026 Chapter 27 Section 1-A);
 - enhanced educational efforts at the community level to help address concerns identified by municipal leaders;
 - increased outreach to the public on ways to minimize the public health and environmental risks of pesticide applications;
 - increased outreach to the public on ways to reduce reliance on pesticides through best management practices and IPM.

A majority of the Board supports educational efforts through grant funding, if additional revenue sources (*e.g.* product registration fees) can be identified and developed. Increasing registration fees will require changes to 7 M.R.S. Section 607 (6), which sets pesticide registration fees at \$160 per product per year. Registration fees were last raised in 2013 and are already high for a small population state, so careful consideration is warranted when contemplating the merits of fee increase.

Additionally, the Board would like the Committee to be aware that CMR 01 026 Chapter 60 Designation of Critical Pesticide Control Areas (statutory authority 5 M.R.S. § 8051 et seq. and 22 M.R.S. §§ 1471-F and M) is an existing Board rule which provides criteria under which groups or individuals can request that an area be designed as a Critical Pesticide Control Area, in which restrictions on pesticide use have the force of state law. The Board suggests that the criteria of Chapter 60 could be broadened to help address the specific needs of municipalities.

The Board looks forward to working collaboratively with the Committee on this sensitive and difficult issue.

Sincerely,

A handwritten signature in cursive script that reads "C. C. Taylor" on the top line and "Deven Morrill" on the bottom line. The signature is written in black ink.

Deven Morrill
Chairman, Maine Board of Pesticides Control

Attachments:

Board concept language

CMR 01 026 Chapter 60 Designation of Critical Pesticide Control Areas

Existing IPM definitions:

7 M.R.S. § 2401

CMR 01 026 Chapter 10 Section 2-W

CMR 01 026 Chapter 26 Section 1-D

CMR 01 026 Chapter 27 Section 1-A

22 M.R.S. § 1471-X State Policy: Public and Private Initiatives to Minimize Reliance on Pesticides

Adopted by Maine Board of Pesticides Control, May 12, 2017 by a vote of 4 to 2.

Sec. 2. 30-A MRSA subsection 3007, sub-subsection 7 is enacted to read:

Prior to adoption of any ordinance that regulates the sale or use of pesticides a municipality must specify what steps it will take to educate its citizens on how to minimize reliance on pesticides through best management and Integrated pest management practices. The board may provide grants to municipalities to help offset the cost of developing compliant ordinances. Revenue to support such grants may be funded through a limited increase in the registration fee for all pesticide products sold in Maine.

In developing Board compliant ordinances, municipalities may ban or regulate any or all pesticide use on publicly owned land, publicly leased land, or land trust property, except for state sponsored public health protection efforts. A municipal ordinance may specifically apply to pesticides, including without limitation ordinances relating to pesticide use limitations, use notification, local distribution, and applicator training except the ordinance shall not be applicable to persons licensed or certified under 1471-D. Towns shall report instances of illegal use on private land to the board for enforcement action.

Municipal pesticide ordinances in force at the time this statute becomes effective must become compliant with it within two years.



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

To: Board Members
From: Staff
Re: Rulemaking
Date: May 12, 2017

Based on the Board discussion at the March 31, 2017 meeting, the list of potential rulemaking activities has been reduced to the chapters listed below. See the attached documents for more details.

If the Board wants amendments to Chapter 29 regarding browntail moth to be in effect for next spring, the Chapter needs to be submitted to the Legislature at the beginning of January, 2018. A public hearing should be scheduled for the September board meeting.

Chapter		
27 Section 2(B)(4)ii	Change wording “a list of pesticide applications conducted on school grounds” to clarify that all pesticide applications must be included in log	housekeeping
27 Section 2(B)(5)	Change wording from “made in school buildings and on school grounds” to clarify that it includes the exterior of buildings	housekeeping
27 Section 3(A)	Add insect repellents to the list of exemptions	housekeeping
27 Section 3(C)	Change wording “When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt...” to clarify that all applications are exempt not just mosquito control applications.	housekeeping
29 Section 5	Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters	Requires discussion

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29 Section 6	Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Plants that Pose a Dermal Toxicity Hazard	Incorporate policy
29 Section 6	<p>Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Invasive Plants</p> <p>Note: Currently the Board requires quite a bit of information for a variance (see policy). Removing the requirement for a variance means the Board would not receive this information, unless some requirements were added to the rule itself.</p>	Incorporate policy Requires discussion
36	<p>Certification and Licensing Provisions/Monitors and Spotters for Forest Insect Aerial Spray Program. Requirements were repealed in statute.</p> <p>Repeal entire chapter</p>	housekeeping

Chapter 27 Section 2(B)(4)(ii)

Section 2. Requirements for All Schools

- 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:
- (4) maintain and make available to parents, guardians and staff upon request:
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.

Discussion

Is it unclear that applications made in and to school buildings are included in 2(B)(4)(ii)?

Chapter 27 Section 2(B)(5)

Section 2. Requirements for All Schools

- 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:
- 5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and

Discussion

Is it clear that applications made to the exterior of school buildings are included in Section 2(B)(5)?

Chapter 27 Section 3(A)

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:
- (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,

- (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
- (3) application of paints, stains or wood preservatives that are classified as general use pesticides.

Section 4. Notification

Section 5. Integrated Pest Management Techniques

Discussion

Should insect repellents be added to the list of exemptions?

Chapter 27 Section 3(C)

Section 3. Exemptions

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).

Section 4. Notification

- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
 - (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.

Section 5. Integrated Pest Management Techniques

- C. Prior to any pesticide application the following steps must be taken and recorded:
 - (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.

Discussion

Should Section 3(C) be amended to say that powered applications for control of the identified arthropod vector are exempt, rather than powered applications for mosquito control are exempt.

Chapter 29 Section 5

Section 5. Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters

Pesticide applications for control of browntail moths within 250 feet of the mean high tide mark adjacent to coastal waters and extending upriver or upstream to the first bridge are subject to the requirements of this section:

A. Exemptions

The prohibitions and restrictions in Section 5 do not apply to biological pesticides, to the injection of pesticides directly into the soil or shade and ornamental trees or to the application of pesticides by licensed commercial pesticide applicators using non-powered equipment.

B. Prohibitions and Restrictions

- I. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark.
- II. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.
 - a. Only products with active ingredients specifically approved by the Board for this purpose may be applied.
 - b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
 - c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
 - d. Applications may not be made when the wind is blowing toward marine waters.
 - e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

Discussion

How does rule need to be amended to address current browntail moth situation?

Chapter 29 Section 6

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:

- I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15 minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) 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 application date(s);
 - VI. The type(s) of application equipment to be employed; and
 - VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:
- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
 - II. Demonstrate an appropriate balance of risk and benefit; and
 - III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the procedures described in his variance request 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.

The Board delegates the authority to the staff to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of invasive plants. “Invasive plants” may include, but are not limited to: plants listed by the Invasive Plants Atlas of New England website, http://www.eddmaps.org/ipane/ipanespecies/current_inv.htm.

The request for a variance must include a detailed description of the area, photographs showing the area and relation to water, an agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland. The variance must also include a multi-year control strategy, a plan for re-vegetation of the site, and demonstrate knowledge of efficacy and appropriate practices. The variance may be granted for up to a three year period, conditional upon compliance with all variance requirements.

Policy 2

The Board delegates the authority to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of plants that pose a dermal toxicity hazard. Those plants may include, but are not limited to:

- Wild Parsnip (*Pastinaca sativa*)
- Giant Hogweed (*Heracleum mantegazzianum*)
- Poison Ivy (*Toxicodendron radicans*)
- Poison Oak (*Toxicodendron toxicarium*)
- Poison Sumac (*Toxicodendron vernix*)
- Poison Hemlock (*Conium maculatum*)

The variance must include agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland.

Discussion

Unless the rule requires it, Board will not receive any kind of notice/plan for invasive control.

Chapter 36

Suggested Change

Repeal Chapter

Discussion

Requirements for monitors and spotters for forest insect aerial spray programs were repealed in statute because they are no longer necessary with the GPS equipment used by aircraft.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 27: STANDARDS FOR PESTICIDE APPLICATIONS AND PUBLIC NOTIFICATION IN SCHOOLS

SUMMARY: This rule establishes procedures and standards for applying pesticides in school buildings and on school grounds. This rule also sets forth the requirements for notifying school staff, students, visitors, parents and guardians about pending pesticide applications.

Section 1. Definitions

- A. **Integrated Pest Management.** For the purposes of this rule, Integrated Pest Management (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:
- (1) understanding the system in which the pest exists,
 - (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control,
 - (3) monitoring pests and natural enemies,
 - (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and
 - (5) systematically evaluating the pest management approaches utilized.
- B. **School.** For the purposes of this rule, School means any public, private or tribally funded:
- (1) elementary school,
 - (2) secondary school,
 - (3) kindergarten or
 - (4) nursery school that is part of an elementary or secondary school.
- C. **School Building.** For the purposes of this rule, School Building means any structure used or occupied by students or staff of any school.

- 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:

- i. the specific name of the pest and the IPM steps taken, as described under Section 5C of this rule; and
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.
- (5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and
- (6) ensure that any applicable notification provisions required under this rule are implemented as specified.
- C. By September 1, every school shall inform the Board of the identity and the contact information for the IPM Coordinator. This requirement can be fulfilled through a Board approved reporting system.

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:
 - (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,
 - (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
 - (3) application of paints, stains or wood preservatives that are classified as general use pesticides.
- B. The following pesticide uses are exempt from the requirements of Section 4 of this rule:
 - (1) pesticides injected into cracks, crevices or wall voids,
 - (2) bait blocks, gels, pastes, granular and pelletized materials placed in areas inaccessible to students,
 - (3) indoor application of a pesticide with no re-entry or restricted entry interval specified on its label but entry to the treated area is restricted for at least 24 hours.

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).
- D. School education facilities utilized for agricultural or horticultural education, and not normally used by the general school population, such as, but not limited to, greenhouses, nursery plots or agricultural fields, are exempt from the application limitations contained in Section 5E and notification provisions contained in Section 4B(1) provided that parents, staff and students are informed about the potential for pesticide applications in such areas. The posting requirements contained in Section 4B(2) must be complied with. In addition, students entering treated areas must be trained as agricultural workers, as defined by the federal Worker Protection Standard.

Section 4. Notification

- A. A notice shall be included in the school's policy manual or handbook describing the school's IPM program including that a school integrated pest management policy exists and where it may be reviewed, that pesticides may periodically be applied in school buildings and on school grounds and that applications will be noticed in accordance with Section 4B hereof. This notice shall describe how to contact the IPM Coordinator and shall also state that the school's IPM Policy, a copy of the *Standards for Pesticide Applications and Public Notification in Schools* rule (CMR 01-026 Chapter 27), and the Pest Management Activity Log, are available for review.
- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
 - (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.
 - (2) In addition to the notice provisions above, whenever pesticide applications not exempted by Section 3 are performed in a school building or on school grounds, a sign shall be posted at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least forty-eight hours following the application. Posting of the notification signs as required by this rule satisfies the posting requirements of Chapter 28 of the Board's rules (CMR 01-026 Chapter 28).

- a. The signs shall:
 - i. be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue, red or green).
 - ii. bear the word CAUTION in 72 point type,
 - iii. bear the words PESTICIDE APPLICATION NOTICE in 30 point type or larger,
 - iv. state any reentry precautions from the pesticide labeling in at least 12 point type,
 - v. state the approximate date and time of the application in at least 12 point type, and
 - vi. state the name of the company or licensed applicator making the pesticide application and a contact telephone number in at least 12 point type,
- b. The signs for indoor applications must:
 - i. be at least 8.5 inches wide by 11 inches tall,
 - ii. state the trade name and EPA Registration number(s) of the pesticide(s) to be applied in at least 12 point type,
 - iii. state the location of the application in at least 12 point type, and
 - iv. state the reason(s) for the application in at least 12 point type.
- c. The signs for outdoor applications must:
 - i. be at least 5 inches wide by 4 inches tall,
 - ii. be made of rigid, weather-resistant material that will last at least ninety-six (96) hours when placed outdoors,
 - iii. bear the Board designated symbol (see appendix A), and
 - iv. state a date and/or time to remove the sign.

Section 5. Integrated Pest Management Techniques

- A. All pest management activities shall be undertaken with the recognition that it is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. In all cases, applications should be conducted in a manner to minimize human risk to the maximum extent practicable using currently available technology.

-
- B. All pest management activities should be conducted using appropriate elements of integrated pest management as described in the latest Cooperative Extension or Department of Agriculture training manuals for pest management in and/or on school property. Pest management activities should also be conducted in accordance with the Best Management Practices for Athletic Fields & School Grounds, or other applicable Best Management Practices approved by the Board.
- C. Prior to any pesticide application the following steps must be taken and recorded:
- (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.
- D. When a pesticide application is deemed necessary, the applicator must comply with all the requirements of CMR 01-026 Chapter 31–Certification and Licensing Provisions/Commercial Applicator. The applicator must also take into account the toxicity of recommended products and choose lowest risk products based on efficacy, the potential for exposure, the signal word on the pesticide label, the material safety data sheet, other toxicology data and any other label language indicating special problems such as toxicity to wildlife or likelihood of contaminating surface or ground water.
- E. Indoor pesticide use must be limited to placement of baits and wall void or crack and crevice and pool and spa disinfectant treatments unless the pest threatens the health and safety of persons in the buildings as determined by the school's integrated pest management coordinator.
- F. Pesticide applications must not be conducted when people are in the same room to be treated except that applicators may set out bait blocks, pastes or gels when only informed staff members are present. When space, spot, surface or fumigation applications are conducted the ventilation and air conditioning systems in the area must be shut off or the entire building must be evacuated. Applications should be planned to occur on weekends or vacations to allow maximum time for sprays to dry and vapors to dissipate.
- G. Outdoor applications should be scheduled so as to allow the maximum time for sprays to dry and vapors to dissipate and shall not occur when unprotected persons are in the target area or in such proximity as to likely result in unconsenting exposure to pesticides. Applications must also be conducted in accordance with all other applicable Board rules designed for minimizing pesticide drift and posting of treated sites. Spot treatments should be considered in lieu of broadcast applications.

Section 6. Requirements for Commercial Pesticide Applicators Making Applications in School Buildings or on School Grounds

- A. Prior to conducting a pesticide application not exempted in Section 3 in a school building or on school grounds, commercial pesticide applicators shall obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.
 - B. Commercial pesticide applicators shall, within one business day of each pesticide application, provide the IPM Coordinator with a written record of the application including the date, time, location, trade name of the product applied, EPA Registration number and the name of the licensed applicator. If the product has no EPA Registration number then the applicator will provide a copy of the label.
 - C. Commercial pesticide applicators shall inform the IPM Coordinator about any pest monitoring activity and results. If it is acceptable to the IPM Coordinator, this may be achieved by recording them in the Pest Management Activity Log.
-

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X

EFFECTIVE DATE:

August 30, 2003, filing 2002-408 accepted October 24, 2002.

AMENDED:

July 5, 2005 – filing 2005-266

March 4, 2007 – Section 3(C), filing 2007-67

August 29, 2013 – filing 2013-188 (Final adoption, major substantive)

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 29: STANDARDS FOR WATER QUALITY PROTECTION

SUMMARY: These regulations establish standards for protecting surface water. This chapter establishes a fifty-foot setback from surface water for mixing and loading of pesticides, sets forth requirements for securing containers on sprayers and cleaning up spills occurring within the setback zone, establishes restrictions on pesticide applications to control browntail moths near marine waters and requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near waters of the State.

Section 1. Protecting Waters of the State during Pesticide Mixing and Loading Operations

- A. No person shall mix or load any pesticides or fill a sprayer or mix tank within fifty (50) feet from the high water mark of any surface waters of the State as defined in 38 M.R.S.A. §361-A(7).
- B. No person shall use a pump that pumps pesticide concentrate or formulation or any hose that has been in contact with pesticide solution to draw liquid from any surface waters.
- C. All pesticide pumping systems that come in contact with any surface waters shall be equipped with an anti-siphoning device.

Section 2. Securing Pesticide Product Containers and Mix Tanks on Sprayers, Nurse Vehicles and Other Support Vehicles during Transportation

No person shall transport any pesticide unless it is secured so as to prevent release of pesticides onto the vehicle or from the vehicle. All tanks, liquid containers, cartons and bags must be securely held so they may not shift and become punctured or spilled.

Section 3. Cleaning up Pesticide Spills within Setback Zone in Section 1

Any person who spills a pesticide within fifty (50) feet from the high water mark of any surface water shall take immediate steps to recover the pesticide by the most efficient means available and remove all contaminated soil to prevent water contamination.

Section 4. Exemptions

The following persons are exempt from Section 1(A) regarding mixing and loading within fifty (50) feet of the high water mark of any surface water:

- A. Applicators with a variance approved by staff for an impervious mixing/loading pad with containment features. Applications for a variance must be submitted to the Board on or before December 31, 1999;
- B. Applicators using chemigation equipment specified on labels to draw water from their tail-water ponds;
- C. Commercial applicators using small individually packaged concentrates to mix no more than five (5) gallons for use in non powered equipment; and
- D. Commercial applicators making aquatic applications from boats and barges.

Section 5. Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters

Pesticide applications for control of browntail moths within 250 feet of the mean high tide mark adjacent to coastal waters and extending upriver or upstream to the first bridge are subject to the requirements of this section:

A. Exemptions

The prohibitions and restrictions in Section 5 do not apply to biological pesticides, to the injection of pesticides directly into the soil or shade and ornamental trees or to the application of pesticides by licensed commercial pesticide applicators using non-powered equipment.

B. Prohibitions and Restrictions

- I. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark.
- II. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.
 - a. Only products with active ingredients specifically approved by the Board for this purpose may be applied.
 - b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
 - c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
 - d. Applications may not be made when the wind is blowing toward marine waters.
 - e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:
- I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15-minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) 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 application date(s);
 - VI. The type(s) of application equipment to be employed; and
 - VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:

- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
- II. Demonstrate an appropriate balance of risk and benefit; and
- III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the procedures described in his variance request 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.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

April 14, 1999

AMENDED:

February 3, 2008 – filing 2008-35 (except that the major substantive language of Section 6, which was undergoing legislative review)

May 1, 2008 - filing 2008-154, including Section 6's final adoption

CORRECTIONS:

February, 2014 – agency names, formatting



PAUL R LEPAGE
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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WALTER E WHITCOMB
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**MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY TO
DELEGATE AUTHORITY TO THE STAFF TO APPROVE REQUESTS FOR
VARIANCE FROM CMR 01-026 CHAPTER 29 FOR CONTROL OF PLANTS
THAT POSE A DERMAL TOXICITY HAZARD**

Adopted November 18, 2011

BACKGROUND

In September 1995, the Board delegated the authority to approve repeated requests for variance from the sensitive area identification requirements of CMR 01-026 Chapter 22. Since that time, the Board delegated similar authority for certain variance requests for broadcast pesticide applications within the 25-foot untreated buffer zone required by CMR 01-026 Chapter 29.

In Chapter 29, applications to control arthropod vectors of human disease and stinging insects are exempted, but applications to control vegetation that causes public health issues are not.

Recently, a variance request was submitted for control of poison ivy. There was urgency to the request, since it involved an infestation that blocked the landowner's only access to the waterfront. However, due to the timing, the request had to wait five weeks to be considered at the next Board meeting. The Board granted the variance and asked the staff to develop a policy to allow the staff to approve similar requests in the future with an emphasis on Best Management Practices (BMPs). For BMP information, applicants can be directed to the Board's *GotPests?* website, where there are seven fact sheets that provide excellent management information.

The staff recommends the following interim policy:

POLICY

The Board delegates the authority to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of plants that pose a dermal toxicity hazard. Those plants may include, but are not limited to:

- Wild Parsnip (*Pastinaca sativa*)
- Giant Hogweed (*Heracleum mantegazzianum*)
- Poison Ivy (*Toxicodendron radicans*)
- Poison Oak (*Toxicodendron toxicarium*)
- Poison Sumac (*Toxicodendron vernix*)
- Poison Hemlock (*Conium maculatum*)

The variance must include agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland.



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MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY TO DELEGATE AUTHORITY TO THE STAFF TO APPROVE REQUESTS FOR VARIANCE FROM CMR 01-026 CHAPTER 29 FOR CONTROL OF INVASIVE PLANTS

Adopted December 13, 2013

BACKGROUND

In September 1995, the Board delegated the authority to approve repeated requests for variance from the sensitive area identification requirements of CMR 01-026 Chapter 22. Since that time, the Board delegated similar authority for certain variance requests for broadcast pesticide applications within the 25-foot untreated buffer zone required by CMR 01-026 Chapter 29.

On November 18, 2011, an interim policy was approved by the Board to permit staff to approve Chapter 29 requests for variances to control vegetation that pose a dermal toxicity hazard. However, no policy exempts applications to control invasive vegetation.

Several requests for variances to control invasive vegetation within twenty-five feet of surface water have recently been received and granted by the Board. Invasive plants are a common problem near surface water, involve an increasing variety of species, are difficult to eradicate, and easily re-establish. Because management is complex and requires a multi-year approach the Board directed the staff to develop a policy that allows the staff to approve multi-year variance requests provided that the request:

- includes specific pesticide use strategies designed to minimize contamination of surface water
- incorporates a long term control plan that includes re-vegetation of the site and consideration of appropriate best management practices (BMPs) specific to the target invasive species.

For BMP information and fact sheets, applicants can be directed to the Board's *GotPests?* website, <http://www.maine.gov/dacf/php/gotpests/index.html>.

POLICY

The Board delegates the authority to the staff to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of invasive plants. "Invasive plants" may include, but are not limited to: plants listed by the Invasive Plants Atlas of New England website, http://www.eddmaps.org/ipane/ipanespecies/current_inv.htm.

The request for a variance must include a detailed description of the area, photographs showing the area and relation to water, an agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland. The variance must also include a multi-year control strategy, a plan for re-vegetation of the site, and demonstrate knowledge of efficacy and appropriate practices. The variance may be granted for up to a three year period, conditional upon compliance with all variance requirements.

University of Maine
PAT Professional Job Description

Revision Date: 01/02/2013

Reports to: James Dill

Title: PAT Professional

Dept: Cooperative Extension (Pest Management Office)

Position Type: Regular/Full time contingent upon funding & adequate performance

Essential Functions

- Edits, updates, revises, writes and adapts study material for use in Maine's PAT program.
- Assist in the delivery of educational programs in support of PAT that align with the UMCE mission and plan of work.
- Assist in the daily aspects of the Pest Management Office as it relates to computer software and the PAT program.
- Maintains various aspects of the web site for PMO
- Assists in the implementation of IPM programs in various commodities
- Assists in the design and implementation of a plan of work that addresses priorities in Pest Management, especially in PAT.
- Assists in the delivery of workshops and short courses that enhance client knowledge and capacity for applied learning.
- Work collaboratively with other agencies, organizations, and citizen advisory groups to uniquely address priority issues with an emphasis on greatest potential audience impact through statewide and multi-state programs.
- Collaborate with Extension colleagues and other agency staff to deliver programs in community settings
- Assist and extend faculty efforts in securing external grants and contracts for program expansion and sustainability.
- Draw upon existing educational resources and materials for use in educational programs.
- Support faculty in assessing local needs as part of grant development and implementation.
- Serve local, regional and state program development teams.
- Serve on organizational development and governance committees.
- Report program activities and impacts on Plugged-In.
- Ensure compliance with affirmative action and equal employment opportunity guidelines.
- Develop and sustain a professional development plan in support of one's professional and organizational priorities.

Secondary Functions:

- Participate in PMO Extension Staff meetings as a member of the PMO as appropriate
- Participate in organizational program meetings to support program development that reflects the PMO programs.
- Other duties as assigned that relate to UMCE Pest Management mission, especially as they relate to the PAT program.

Knowledge & Skill Qualifications:

- Master's degree in biological sciences or agronomy related fields or bachelor's degree within three year's experience with PC computers and word processing, desk top publishing and demonstrated writing ability.
- Skill in developing and delivering educational programs.
- Oral and written communications skills.
- PC computer proficiency.
- Ability to work independently and as part of a team.
- Ability to be self-motivated and directed.
- Skill in working collaboratively with other agencies and organizations.
- Strong commitment to serving diverse audiences and supporting equal opportunity and affirmative action goals.
- Background and skills in supervising other preferred.

Work Environment:

The PAT Professional is expected to:

- Work out of the Pest Management Office with statewide and some multi-state responsibilities.
- Assume work responsibilities including evening and weekend commitments.
- Work with colleagues and appropriate agencies to create an annual plan of work that addresses the changing issues and needs of the citizens who benefit from Extension PAT programs.
- In-state travel normally requiring a driver's license. Is required with reimbursement at the contract rate.

Work Schedule:

University of Maine Cooperative Extension office hours are 8:00 am to 4:30 pm. The PAT Professional will work a flexible schedule to meet the requirements of the position that may involve work beyond regular office hours.

Work Year:

The PAT Professional is a regular full time position.

Performance Evaluation Schedule:

Performance evaluation will be conducted according to the UMPSA agreement.

University of Maine
Pesticide Safety Education Program Professional Job Description

Date: 05/02/2017

Reports to: James Dill

Title: PSEP Professional

Dept: Cooperative Extension-(Pest Management Office (PMO))

Position Type: Regular/Full time contingent upon funding & adequate performance

Essential Functions

- Edits, updates, revises, writes and adapts study material for use in Maine's PSEP program.
- Coordinates the daily aspects of the PSEP program.
- Delivers/coordinates educational programs in support of PSEP that align with the University of Maine Extension's mission and plan of work.
- Assists in the implementation of IPM programs in various commodities including outreach to communities.
- Assists in the design and implementation of a plan of work that addresses priorities in Pest Management, especially in PSEP.
- Coordinates the delivery of workshops, webinars, and short courses that enhance client knowledge and capacity for applied learning in pesticide safety, pest management including commercial, private, and the general public.
- Work collaboratively with other agencies, organizations, and citizen advisory groups to uniquely address priority issues with an emphasis on greatest potential audience impact through statewide and multi-state programs.
- Collaborate with Extension colleagues and other agency staff to deliver programs in community settings
- Assist and extend efforts in securing external grants and contracts for program expansion and sustainability.
- Create new or draw upon existing educational resources and materials for use in educational programs.
- Support faculty in assessing local needs as part of grant development and implementation.
- Serve on local, regional and state program development teams related to pest management/pesticide education.
- Serve on organizational development and governance committees.
- Report program activities and impacts on Plugged-In.
- Ensure compliance with affirmative action and equal employment opportunity guidelines.
- Develop and sustain a professional development plan in support of one's professional and organizational priorities.
- Maintains various aspects of the website for PMO programming in pest and pesticide education.

Secondary Functions:

- Participate in PMO Extension Staff meetings as a member of the PMO as appropriate
- Participate in organizational program meetings to support program development that reflects the PMO programs.
- Other duties as assigned that relate to UMCE Pest Management mission, especially as they relate to the PSEP program.

Knowledge & Skill Qualifications:

- Master's degree in biological sciences or plant science related fields
- Skill in developing and delivering educational programs.
- Oral and written communications skills with demonstrated writing ability.
- Computer proficiency with experience in word processing and desktop publishing.
- Ability to work independently and as part of a team.
- Self-motivated and directed.
- Skill in working collaboratively with other agencies and organizations.
- Strong commitment to serving diverse audiences and supporting equal opportunity and affirmative action goals.
- Background and skills in supervising other preferred.

Work Environment:

The PSEP Professional is expected to:

- Work out of the Pest Management Office located in Orono, Maine with statewide and some multi-state responsibilities.
- Assume work responsibilities including evening and weekend commitments.
- Work with colleagues and appropriate agencies to create an annual plan of work that addresses the changing issues and needs of the citizens who benefit from Extension PSEP programs.
- In-state travel normally requiring a driver's license. Is required with reimbursement at the contract rate.

Work Schedule:

University of Maine Cooperative Extension office hours are weekdays from 8:00 am to 4:30 pm. The PSEP Professional will work a flexible schedule to meet the requirements of the position that may involve work beyond regular office hours.

Work Year:

The PSEP Professional is a regular full time position.

Performance Evaluation Schedule:

Performance evaluation will be conducted according to the UMPSA agreement.



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

DRAFT

MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY
REGARDING INTERPRETION OF “DOMINATED BY EMERGENT OR AQUATIC PLANTS”
AS USED IN CHAPTER 29 SECTION 6A(V)

BACKGROUND

At the May, 2017 Board meeting, the Board discussed whether the definition of wetlands in Chapter 29 Section 6A(V)(c), below: “dominated by emergent or aquatic plants” was intended to include small areas without standing water which contain plants such as phragmites, cattails, or other plants typically associated with a wetland habitat. Areas characterized by visible surface water (as in 6 A V b), including small natural depressions and swales and the equipment ruts and roadside ditches associated with normal forestry operations were also discussed.

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.

A review of the historical discussion of this topic indicates that the BPC did not intend for the rule to apply to every small area in which standing water accumulates, even if those conditions persist long enough for a plant community typical of wetlands to develop. The Board agrees that buffering these areas does not provide significant additional protection of the environment or water resources beyond existing rules and pesticide label directions.

POLICY

For the purposes of CMR 01-026 Chapter 26 Section 6A(V)(c), small areas which do not contain standing water do not require buffering even if they contain plant communities normally associated with wetlands. Manmade depressions, such as skidder ruts and road ditches, do not require buffering even if they contain standing water.

CAM LAY, DIRECTOR
32 BLOSSOM LANE, MARQUARDT BUILDING



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



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

PAUL R. LEPAGE
 GOVERNOR

WALTER E. WHITCOMB
 COMMISSIONER

To: Board of Pesticides Control Members.
 From: Cam Lay, Director.
 RE: Scheduled review of policy regarding staff approval of variances
 Date: June 14, 2017

On September 8, 1995, the Board adopted a policy authorizing the staff to approve repeat variance requests but did not define a “repeat variance.”

At the April 24, 2015 meeting the Board discussed allowing the staff to issue new variances from Chapter 29 for pesticide applications within 25 feet of surface water in railroad and DOT rights-of-way if they adhered to the criteria detailed in a memo from Henry Jennings and related Board discussions. The Board also requested that the issue be revisited in two years. The staff would like the Board to now provide guidance for creating a formal policy for initial variances and renewals. The original memo and minutes are attached for reference. Staff would like to know if flood-control levees and utility lines should be included in the policy as well.

Since April 2015 the staff has approved and reported to the Board the following variance renewals (applications attached):

- 1) Dubois Contracting, Fort Kent levee.
- 2) RWC, Inc., Railroad ROWs.
- 3) Asplundh Tree Expert Co, Railroad Division, Railroad ROWs.
- 4) Maine Department of Transportation, roadside ROWs.

For reference, the 2015 Variance Request for the Transmission line at the Kibby Wind Power Project (which was discussed and approved by the Board) is also attached.

CAM LAY, DIRECTOR
 32 BLOSSOM LANE, MARQUARDT BUILDING



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PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

MEMORANDUM

Date: April 15, 2015
To: Board Members
From: Henry Jennings
Subject: Criteria for Issuing Variances from Chapter 29, Section 6 for Railroad Spraying

Companies spraying railroads need to obtain variances from Chapter 29, Section 6 if they wish to make broadcast applications of herbicides within 25 feet of surface water. Railroad companies have traditionally requested to apply herbicides up to 10 feet of water crossings.

Historically, the Board has granted variances for railroad spraying provided that the applicant adheres to the "MDOT model." At the May 16, 2014, meeting the Board granted a one-year variance from Chapter 29 to Asplundh Tree Expert Company—Railroad Division. However, concern was voiced at the meeting about the runoff potential for one of the herbicides listed on the application. Those present came to the realization that no one was completely sure what the "MDOT model" entailed. Consequently, the Board directed the staff to work with MDOT and other experts to develop guidelines/criteria for the issuance of railroad variances prior to next season. Robert Moosmann of MDOT has developed some draft guidelines (attached) and the staff has been researching the available railroad spraying guidelines and the products commonly used.

After considering the purpose of the requirement for which Chapter 29 variances are issued, contemplating the Board's directive, and reviewing related material, the staff came to the conclusion that the principal question relates to the inherent runoff risks related to the product choices. Based on this premise, it led the staff to two possible paths: 1) conduct comprehensive comparative aquatic risk assessments on each of the potential products, or 2) rely on EPA's assessment by way of the surface water advisory statements on the product labels. Given that the staff is currently engaged in a rather ambitious assessment of pesticide risks to marine invertebrates, the latter option appears to be the more prudent choice.

The staff has excerpted the surface water advisories (attached) from the products containing the active ingredients used on last year's projects. A rather wide diversity in the level of concern in the advisories is quickly apparent. The water quality advisories reveal there is relatively little concern for glyphosate and imazapyr products. The Dupont Oust Extra (sulfometuron methyl and metsulfuron methyl) label contains a 25 foot buffer to surface water for railroad applications thereby precluding the Board from issuing a variance for that product. Labels for products containing aminopyralid (e.g. Chaparral), aminocyclopyrachlor (e.g. Streamline) and indaziflam (e.g. Esplande) all include surface water advisories that raise concerns. The staff would like guidance from the Board on whether products with these advisories should qualify for a variance.

In addition to screening for appropriate products for variance consideration, Bob Moosmann has identified a series of criteria the Board may want to consider as requirements for issuing variances for spraying within 25 feet of surface water, such as:

- Requiring the use of products that do not contain surfactants
- Requiring inclusion of a sticker/extender (like pineolene) for which there is scientific data supporting the ability of the adjuvant to adhere the herbicides to the substrate.
- Prohibiting—consistent with some of the ground water advisories—applications when significant precipitation is forecast for the application area within 24 hours
- Considering the time of year when spraying will be conducted. MDOT discourages railroad applications in May or June as these have been very wet months in recent years.

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapters 22 and 28

- Jennings noted that these two rules were major substantive and so required legislative review. There wasn't a lot of discussion about the rules at the hearing or work session; the governor allowed them to become law without signing them. The Board can't change anything at this point: it can only vote on whether to finally adopt the amendments or not.

Chapter 22

- **Jemison/Morrill: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business and the response to comments and for Chapter 22 as written.**
- **In Favor: Unanimous**

Chapter 28

- **Jemison/Stevenson: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business and the response to comments and for Chapter 28 as written.**
- **In Favor: Unanimous**
- **Consensus was reached to support using enforcement discretion during the transition period and encourage applicators to begin posting immediately. Staff was directed to post information on the website and to send an email to applicators clarifying what the requirements are.**

5. Development of Guidelines for the Board Related to the Issuance of Variance Permits for Spraying Railroads Adjacent to Surface Waters

At the May 16, 2014, meeting, the Board granted a one-year variance from Section 6 of Chapter 29 to Asplundh Tree Expert Company—Railroad Division to make broadcast herbicide applications less than 25 feet from surface water. At that time, the Board also directed the staff to develop guidelines/criteria for issuance of railroad variances prior to next season. Robert Moosmann of MDOT has developed some draft guidelines and the staff has been researching the Board concerns. The staff will present its findings and seek feedback from the Board.

Presentation By: Henry Jennings
Director

Action Needed: Establish Criteria for Granting Railroad Variances

- Jennings explained that—for the last 28 years—the Board has been issuing variances to railroads from the Chapter 22 requirement to identify sensitive areas within 500 feet of the application site. Based on the current rulemaking, on May 25, companies conducting applications under category 6A will no longer be required to identify sensitive areas, so variances will no longer be necessary. For the last six or seven years the Board has been issuing two variances to railroads: one for Chapter 22 and one for Chapter 29 relating to broadcast spraying within 25 feet of water. Now we are focused on the latter. Companies are willing to maintain a 10 foot buffer, so we're only talking about a 15 foot strip. The staff had discussions around root uptake and ground water concerns, but this variance to Chapter 29 is only about surface water. The staff spent a lot of time looking for best management practices (BMP); there are a fair number for roadsides and transmission lines but not much for railroads. The management goals are very different: roadsides need to keep woody plants in control; railroads need to eliminate all vegetation in ballast. Bob Moosmann's document did an excellent job

of explaining what they're trying to do and why. This is rock ballast, usually with a steep embankment. It has the characteristics of a high risk area, but the variance only relates to a 15 foot wide strip. It looks like rock on the surface, but there is organic matter underneath. The staff began thinking we needed BMPs but ended up thinking it's really just about the products and the timing. The entire discussion started around a particular product that was listed in a variance request and whether that product was appropriate for this use. The Board could do a risk assessment covering all products, but that would take a lot of resources, so the staff decided to focus on the surface water advisories. Then the staff received a comparative risk assessment of products, submitted by Bayer, which was not in agreement with the label advisories. In talking with Brian Chateauvert from Railroad Weed Control, who has done the bulk of this work in Maine in the last 30 years, it became apparent that we need to consider weed resistance. One key component of resistance management is being able to change modes of action and chemistries. If resistance develops the application rates will go up, which will conflict with the water quality protection goals. Maybe the Board should focus on encouraging applicators to use other practices such as staying away from soap-like surfactants, using a sticker/extender instead; avoid spraying when rain is forecast; avoid spraying early in the year when the water table is high; using the lowest effective rates; using multiple chemistries. The staff discussed various options quite a bit, but there isn't sufficient information available that lets us tell them which products to use and which products to not use. Their programs already include their risk assessment balanced against the need for efficacious control. Remember that this variance is all about a 15 foot strip; there is no current evidence that this is causing issues. Bayer's assessment indicates a concern for sensitive vascular plants. When EPA does a risk assessment for aquatic risks they assume a worst case scenario as far as application rates, the volume of water being impacted. Dilution may be the solution, because the scenarios we're anticipating in Maine involve a higher volume of water than what's used in the EPA model.

- Hicks said there was nothing inherently wrong with Bayer's assessment. There were three products used in Maine that weren't included; she tried to find toxicity data for them. EPA hasn't done anything on glyphosate in recent years; in an earlier review that she did of glyphosate she found that much of its toxicity is from the surfactant, not from the glyphosate itself. Hicks handed out a chart comparing the products; the ones in gray were not included in Bayer's assessment.
- Bohlen noted that this discussion is on a 15 foot strip, sometimes along lake shores. Are there implications for this policy on operations elsewhere? If the Board makes recommendations for areas adjacent to water, how will that affect what is done away from the water. Chateauvert replied that they treat 12 feet in both directions from the center of the track. At a road crossing, where visibility is needed, they go out further. Where there's water they narrow the pattern and shut off some nozzles. Applicators essentially use the same chemistry throughout the project. There's no way to change chemistry on the fly. There are two tanks but they have to get out of the vehicle and manually change over. The separate tanks are used to extend the length of track that can be treated before stopping and loading on additional water. Along Sebago they apply glyphosate for five miles and once they're away from the water they change the mix, but they can't do that everywhere. When the booms are shut off, a gutter comes up to collect drips.
- Morrill asked what the protocol is within 10 feet of the water. Chateauvert said that if there is a weed issue, the railroad company goes in and turns up stones. This is very expensive. Usually the abutment is way back from the water and you can spray right up to the bridge. He noted that they are making just one application a year, at maintenance rates. For Streamline the maximum rate is 11.5 (ounces per acre) and they are using 6 (ounces per acre); The maximum rate for Esplanade is 10 (fluid ounces per acre) and they're using 4.75 to 5 (fluid ounces per acre).
- Morrill remarked that Bob Moosmann's report is great; really explains the treatments, the why and how. The Board is looking at the same variance permits year after year; if it's the same variance then it is a good rule. The product label directions also provide protection. Morrill isn't sure the Board should handcuff applicators by limiting product choices. He doesn't want to have to issue permits every year; why create a rule and then provide variances so no one has to follow it. Jennings

suggested there may be a public benefit to the variance since it generates this kind of discussion. The Board could grant multi-year permits. There may be circumstances where you would want the 25 foot buffer.

- Stevenson asked whether variances come before the Board; Jennings said that the first one does, but the Board has said the staff can re-issue variances if there are no changes. Or the Board can choose to see them every year. Last year when a specific variance (which included Streamline) came before the Board you granted a one-year variance but asked the staff to study the subject. Morrill noted that the Board has always said “follow the MDOT model” but couldn’t really define what that was, so it wanted to look at BMPs. Hicks noted that the biggest BMP is to follow the label. Morrill agreed, and the second is to follow the Board’s drift rule. Chateauvert noted that there is a large disincentive to mess up. Jennings remarked that there is not a high risk of drift because they are using large droplets and low boom height.
- Bohlen commented that the aquatic risk is more about rain events. The suggestions on the memo address those risks.
- Morrill agreed that that the ideas in the memo are good. He prefers to leave off specific product names; a better product might come along. He asked what “significant rain event” means. Fish suggested half an inch. Jennings said that in a drought half an inch isn’t very much, but if the soil is saturated then it’s a lot. Morrill suggested changing the language from significant rain event to rain forecast within 12 hours.
- Bohlen noted that the intent is to say that if it’s going to rain, don’t spray. The concern is about an elevated water table. It’s not just about precipitation. Can the language be rephrased to specifically address the water table, location specific?
- Granger said that a lot of herbicides are more effective at lower rates early in the season. He suggested leaving it to the judgment of the applicators.
- Bohlen suggested saying consider the condition of the water table when spraying early in the season. Chateauvert noted that if the ground is saturated, they shouldn’t be spraying anyway.
 - **Morrill/Stevenson: Moved and seconded: if variance permit request meets the criteria (from memo, as amended above) the staff can approve the variance for two years, otherwise bring requests to the Board; review the policy in two years.**
 - **In Favor: Unanimous**

6. Review of Interim Guidelines for Forest Pesticide Applications Intended to Prevent Discharges of Pesticides to Waters of the State

On June 27, 2012, the Board approved *Interim Guidelines for Forest Pesticide Applications* with the statement: “These guidelines were not developed for and are not intended to serve as standards for permitting purposes.” At that time there was not a general pesticide permit to cover pesticide applications made over or near water and these guidelines were intended to help prevent discharges of pesticides. In April, 2015, the Maine Department of Environmental Protection finalized a general permit for aerial application of forest pesticides and referenced BPC Best Management Practices. Additionally, at the Joint Standing Committee on Agriculture, Conservation and Forestry work session for LD 817, An Act Regarding Aerial Pesticide Spray Projects, there was discussion about adding references to technological advances for aerial spraying. Should anything be added to improve this document? Should the condition be removed given that the document has been referenced in a state permit?

Presentation By: Henry Jennings
Director

Action Needed: Provide Guidance to the Staff

**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Gerald L. Blase (215) 603-1841
Name Telephone Number

Asplundh Tree Expert Co. - Railroad Division
Company Name

740 County Rd 400 Ironton OH 45638
Address City State Zip

II. Gerald L. Blase CMA 1303
Master Applicator (if applicable) License Number

919 Phillips Rd Warminster PA 18974
Address City State Zip

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to pesticides@maine.gov**

IV. Area(s) where pesticide will be applied:

St Lawrence & Atlantic Railroad Right of Way- 24' pattern (12' each side of Center of track) leaving a minimum of 10' buffer zone from Lakes, Streams, Rivers, and flowing Surface water.

V. Pesticide(s) to be applied:
Accord XRTII (EPA# 62719-517) 1-2 pts/ac ; Esplanada 200SC(EPA#432-1516) 3-4oz/ac;
Opensight (EPA# 62719-597)3oz/ac ; Oust Extra(EPA#352-622) 3-4oz/ac
all products mixed and applied in 25-30 gal of water/ acre

VI. Purpose of pesticide application:
The purpose of the application is to maintain the rail ballast and shoulder adjacent to the ballast vegetation free for the following reasons including: 1) To allow for proper safety inspection of the ties, switches, and rails 2) to maintain proper drainage. 3) To allow for the inspection of trains. 4) to remove health and safety hazards for the employees and public. 5) to improve working conditions. 6) To reduce fire hazards. 7) To improve visibility at road crossings.

VII. Approximate dates of spray application:
between Mid-May 2015 through September

VIII. Application Equipment:
Hy-Rail Truck Equipment with fixed mounted booms approximately 18" above the rail

IX. Standard(s) to be varied from:
Chapter 29 Section 6 A , I to V-- Buffer Requirements (prohibiting pesticide applications within 25 feet of the mean high water mark).

Asplundh has chosen to use products that are proven to maintain the ballast weed free by using the lowest use rates possible to achieve the results. By following the State of Maine regulations with regard to buffer zones in which no spraying will occur and lowest use rates, and incorporating a good IPM program including track maintenance, that the risk to the Public and the Environment will be minimized.

X. Method to ensure equivalent protection:
Asplundh will monitor weather conditions in advance of applications cancel applications when rainfall is predicted.

The railroad will supply an advance hy-rail truck in which the patrolman will have the track charts that show river and stream crossings, ponds, and grade crossings. Radio Communication between the patrolman and the spray truck operator will allow advance notice to the operator of bridges , culverts, and water courses. Asplundh will leave a minimum 10' buffer from lakes, streams, rivers, and flowing surface water. The railroad will employ alternative methods to control vegetation in those skipped areas if required. Asplundh uses a drift control product (41-A) in every mix. A sticker product (like New Film IR) will also be used to help the mixture "stay in place" on the rail bed, and NO surfactants will be added to any mixture. None of the proposed herbicides are volatile.

Signed:  Date: 5/6/15

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**
OR E-mail to: pesticides@maine.gov

**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Don Weimann (215) 806-8951
Name Telephone Number

Asplundh Tree Expert Co.- Railroad Division
Company Name

720 County Rd 400 Ironton OH 45638
Address City State Zip

II. Don Weimann CMA 43017
Master Applicator (if applicable) License Number

720 County Rd 400 Ironton OH 45638
Address City State Zip

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to pesticides@maine.gov**

IV. Area(s) where pesticide will be applied:
St Lawrence & Atlantic Railroad Right of Way- 24' pattern (12' each side of Center of track)
leaving a minimum of 10' buffer zone from Lakes, Streams, Rivers, and flowing Surface
water.

V. Pesticide(s) to be applied:
Razor Pro(EPA# 228-366) 1-2 pts/ac ; Esplanada 200SC(EPA#432-1516) 3-4oz/ac;
Opensight (EPA# 62719-597)3oz/ac ; Spyder Extra(EPA#228-690) 3-4oz/ac
all products mixed and applied in 25-30 gal of water/ acre

VI. Purpose of pesticide application:
The purpose of the application is to maintain the rail ballast and shoulder adjacent to the
ballast vegetation free for the following reasons including: 1) To allow for proper safety
inspection of the ties,switches,and rails 2) to maintain proper drainage. 3) To allow for
the inspection of trains. 4) to remove health and safety hazzards for the employees and
public. 5) to improve working conditions. 6) To reduce fire hazzards. 7) To improve
visibility at road crossings.

VII. Approximate dates of spray application:
between Mid-May 2017 through September

VIII. Application Equipment:
Hy-Rail Truck Equipment with fixed mounted booms approximately 18" above the rail

IX. Standard(s) to be varied from:
Chapter 29 Section 6 A , I to V-- Buffer Requirements (prohibiting pesticide applications within 25 feet of the mean high water mark).

Asplundh has chosen to use products that are proven to maintain the ballast weed free by using the lowest use rates possible to achieve the results. By following the State of Maine regulations with regard to buffer zones in which no spraying will occur and lowest use rates, and incorporating a good IPM program including track maintenance, that the risk to the Public and the Environment will be minimized.

X. Method to ensure equivalent protection:
Asplundh will monitor weather conditions in advance of applications cancel applications when rainfall is predicted.

The railroad will supply an advance hy-rail truck in which the patrolman will have the track charts that show river and stream crossings, ponds, and grade crossings. Radio Communication between the patrolman and the spray truck operator will allow advance notice to the operator of bridges , culverts, and water courses. Asplundh will leave a minimum 10' buffer from lakes, streams, rivers, and flowing surface water. The railroad will employ alternative methods to control vegetation in those skipped ares if required. Asplundh uses a drift control product (CONTROL) in every mix. A sticker product (like New Film IR) will also be used to help the mixture "stay in place" on the rail bed, and NO surfactants will be added to any mixture. None of the proposed herbicides are volatile.

Signed: Donald Weimann Date: 3/24/17

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**
OR E-mail to: pesticides@maine.gov

**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Robert W. Moosmann (207) 592-0774
Name Telephone Number

Maine Department of Transportation, Bureau of Maintenance & Operations
Company Name

16 State House Station Augusta Maine 04333-0016
Address City State Zip

II. Area(s) where pesticide will be applied:

- Selected State maintained roads and other transportation facilities such as buildings, maintenance lots, bridges, and railroads, and adjacent areas within the right of way thereof.
- Selected target plants include: evergreen trees up to 3 feet high and deciduous trees up to 6 feet high; grasses and weeds in guardrail areas, in pavement cracks, invasive plants; plants that present a health risk; or other plants necessary to control for transportation purposes.

III. Pesticide(s) to be applied:

The following products or equivalents may be used as the only product in the mix or in various combinations and concentrations.

Garlon 4 Ultra (triclopyr), Escort or MSM_60 (metsulfuron methyl), Arsenal Powerline Herbicide (imazapyr), Krenite S (fosamine ammonium), Streamline (aminocyclopyrachlor and metsulfuron methyl), Rodeo or Glyphosate 5.4 (glyphosate), Endurance (prodiamine), Oust or SFM_75 (sulfometuron methyl)

IV. Purpose of pesticide application:

- 1) Control of woody brush on roadsides to maintain safety clear zones, sight distances, enhance winter solar access to pavement, and provide snow storage.
- 2) Control of grasses and weeds in cracks in pavement in preparation for asphalt surface treatments.
- 3) Control of grasses and weeds in guardrail areas to enhance sight distances, visibility of and access to structures, signs, and other devices.
- 4) Control of invasive plants
- 5) Control of plants that present a health risk to department or contract workers.
- 6) Control of other plants necessary to control for transportation purposes.

V. Approximate dates of spray application: April 27, 2015 to December 1, 2015

VI. Application Equipment:

- Hypro 10 gpm diaphragm piston pump hydraulic sprayer with handgun or equivalent, 100 to 700 gallon tanks.
- Low pressure, low application rate, side mounted off center nozzles for roadside weed control spraying
- Low pressure, low application rate, no drift raindrop nozzle, handgun with extension wand
- Backpack and hand pump sprayers

VII. Standard(s) to be varied from:
Chapter 29 - Section 6. Buffer Requirement Part (A)

VIII. Reason for variance:

To provide control of brush, annual, or perennial plants growing within a distance from 25 feet to 10 feet from waters as defined in the regulation. Brush and other plants targeted for control will be those which impede visibility of the road, signs, guardrail, entrances, and other structures; cause shading of the road surface; are considered an invasive plant; are a health risk: or other plants necessary to control for transportation purposes.

IX. Method to assure equivalent protection:

- 1) Roadside brush control: use large nozzle disc size for enlarged droplet size, use a tank mix particulating agent for enlarged droplet size, use sticker-spreader-extender to adhere spray materials to ground or leaf surface and make rain fast, use pump pressure of 25-125 psi to maintain spray stream trajectory of less than 40 feet, use low volatile chemicals at lowest effective rates, maintain notification signage on spray trucks, offer no-spray agreements. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.
- 2) Roadside broadleaf weeds: use low pressure of 30 to 100 psi, low volume per acre techniques with side mounted off center nozzles that produce large droplets over a controlled spray pattern of 6 to 20 feet, use a slow ground speed of 15 mph or less, use a sticker extender to adhere spray materials to the ground or leaf surfaces and make rain fast, use low volatile chemicals at lowest effective rates, maintain notification signage on spray trucks, offer no-spray agreements. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.
- 3) Cracks in pavement, guardrail, invasive plants, plants that are a health risk, or other plants: use a low pump pressure of 25 to 50 PSI; use a tank mix particulating agent for enlarged droplet size, use a spray gun and spray nozzles that will produce raindrop size particles with no fine particle sizes that can drift away from target, use non-volatile chemicals at lowest effective rates, use a sticker-spreader-extender to adhere spray materials to ground or leaf surface and make rain fast, maintain notification signage on spray trucks. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.



Signed: _____ Date: 4/12/2015

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

OR E-mail to: pesticides@maine.gov

BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)

I. Robert W. Moosmann Office: (207) 624-3600 Cell: (207) 592-0774
Name Telephone Number

Maine Department of Transportation, Bureau of Maintenance & Operations
Company Name

16 State House Station Augusta Maine 04333-0016
Address City State Zip

II. Area(s) where pesticide will be applied:

- Selected State maintained roads and other transportation facilities such as buildings, maintenance lots, bridges, and railroads, and adjacent areas within the right of way thereof.
- Selected target plants include: evergreen trees up to 3 feet high and deciduous trees up to 6 feet high; grasses and weeds in guardrail areas, in pavement cracks, invasive plants; plants that present a health risk; or other plants necessary to control for transportation purposes.

III. Pesticide(s) to be applied:

The following products or equivalents may be used as the only product in the mix or in various combinations and concentrations.

Garlon 4 Ultra (triclopyr), Escort or MSM_60 (metsulfuron methyl), Arsenal Powerline Herbicide (imazapyr), Krenite S (fosamine ammonium), Rodeo (glyphosate), Endurance (prodiamine), Oust or SFM_75 (sulfometuron methyl)

IV. Purpose of pesticide application:

- 1) Control of woody brush on roadsides to maintain safety clear zones, sight distances, enhance winter solar access to pavement, and provide snow storage.
- 2) Control of grasses and weeds in cracks in pavement in preparation for asphalt surface treatments.
- 3) Control of grasses and weeds in guardrail areas to enhance sight distances, visibility of and access to structures, signs, and other devices.
- 4) Control of invasive plants
- 5) Control of plants that present a health risk to department or contract workers.
- 6) Control of other plants necessary to control for transportation purposes.

V. Approximate dates of spray application: May 15, 2017 to December 31, 2017

VI. Application Equipment:

- Hypro 10 gpm diaphragm piston pump hydraulic sprayer with handgun or equivalent, 100 to 700 gallon tanks.
- Low pressure, low application rate, side mounted off center nozzles for roadside weed control spraying
- Low pressure, low application rate, no drift raindrop nozzle, handgun with extension wand
- Backpack and hand pump sprayers

VII. Standard(s) to be varied from:
Chapter 29 - Section 6. Buffer Requirement Part (A)

VIII. Reason for variance:

To provide control of brush, annual, or perennial plants growing within a distance from 25 feet to 10 feet from waters as defined in the regulation. Brush and other plants targeted for control will be those which impede visibility of the road, signs, guardrail, entrances, and other structures; cause shading of the road surface; are considered an invasive plant; are a health risk: or other plants necessary to control for transportation purposes.

IX. Method to assure equivalent protection:

- 1) Roadside brush control: use large nozzle disc size for enlarged droplet size, use a tank mix particulating agent for enlarged droplet size, use sticker-spreader-extender to adhere spray materials to ground or leaf surface and make rain fast, use pump pressure of 25-125 psi to maintain spray stream trajectory of less than 40 feet, use low volatile chemicals at lowest effective rates, maintain notification signage on spray trucks, offer no-spray agreements. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.
- 2) Roadside broadleaf weeds: use low pressure of 30 to 100 psi, low volume per acre techniques with side mounted off center nozzles that produce large droplets over a controlled spray pattern of 6 to 20 feet, use a slow ground speed of 15 mph or less, use a sticker extender to adhere spray materials to the ground or leaf surfaces and make rain fast, use low volatile chemicals at lowest effective rates, maintain notification signage on spray trucks, offer no-spray agreements. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.
- 3) Cracks in pavement, guardrail, invasive plants, plants that are a health risk, or other plants: use a low pump pressure of 25 to 50 PSI; use a tank mix particulating agent for enlarged droplet size, use a spray gun and spray nozzles that will produce raindrop size particles with no fine particle sizes that can drift away from target, use non-volatile chemicals at lowest effective rates, use a sticker-spreader-extender to adhere spray materials to ground or leaf surface and make rain fast, maintain notification signage on spray trucks. Spray when ground is dry and not saturated with water. Avoid spraying when forecasts show a threat of heavy rains. Do not spray on rainy days and cease spray operations if rain is in the immediate forecast.



Signed: _____ Date: 4/27/2017

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

OR E-mail to: pesticides@maine.gov

**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. BRIAN CHATEAUVERT (413) 562-5681
Name Telephone Number

RWC, INC.
Company Name

P.O. BOX 876, 248 LOCKHOUSE ROAD WESTFIELD, MA 01086-0876
Address City State Zip

II. BRIAN CHATEAUVERT CMA3046/6A 6B
Master Applicator (if applicable) License Number

11 STONEGATE CIRCLE WILBRAHAM, MA 01095
Address City State Zip

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to pesticides@maine.gov**

IV. Area(s) where pesticide will be applied:
Orrington Rail Project - Orrington, ME
Pan Am Railways-48' pattern (24' each side center of track)
Belfast Moosehead Lake Railroad-24' pattern (12' each side center of track)
Presque Isle Industrial Council formerly Aroostook Valley Railroad-24' pattern (12' each side center of track)
Maine-State owned Railroad Tracks-48' pattern (24' each side center of track)
Sappi Fine Paper Mill, Hinkley, Maine-24' pattern (12' each side center of track)
Eastern Maine Railroad-48' pattern (24' each side center of track)
Maine Eastern Railroad-48' pattern (24' each side center of track)
Turner Island LLC Railroad, S. Portland, Maine-24' pattern (12' each side center of track)
Maine Northern Railway-48' pattern (24' each side center of track)
Central Maine & Quebec Railway-24' pattern (12' each side center of track)

V. Pesticide(s) to be applied: Various combinations of Aquaneat (Glyphosate), Polaris AC Complete (Imazapyr), Escort XP (Metsulfuron Methyl), Opensight (Potassium Salt of Pyridine), Esplanade 200SC (Indaziflam), Streamline (Aminocyclopyrachlor Metsulfuron methyl), in 30-60 gallons of water per acre.

VI. Purpose of pesticide application: the ballast, shoulder and areas adjacent to shoulder sections of the right-of-way (diagrams of typical spray patterns enclosed) must remain weed, grass and brush free for just some of the following reasons:
a. To allow for proper inspection of tie fastenings, switches & rails
b. To maintain proper drainage
c. To allow for inspection of trains
d. To remove health and safety hazards
e. To improve working conditions
f. To reduce fire hazards
g. To improve visibility at road crossings

VII. Approximate dates of spray application: June 1 through September 30, 2015

VIII. Application Equipment:
Hy-rail Truck Equipment with fixed mounted booms approximately 18 inches
above the rail.

IX. Standard(s) to be varied from:
Chapter 29 Section 6A, I to V - Buffer requirements (prohibiting pesticide
applications within 25 feet of the high water mark).

X. Method to ensure equivalent protection:
The railroad patrolmen have track charts which show rivers, streams, ponds,
road crossings, etc. He normally is in a track vehicle running ahead of the
spray unit and through the use of radio communication, gives a warning signal
where there are culverts, bridges with running water underneath and other
sensitive areas adjacent to the track. RWC, Inc. has mounted in cab controlled
gutters on the rear of our equipment to assure that no pesticides drip or enter
the waterways of the State of Maine when going over the bridges. RWC, Inc.
will leave a buffer of ten feet (10') from lakes, rivers, streams and surface
waters and in the case of a public water supply will only apply Glyphosate,
for a distance of one half mile before the site and one half mile beyond. Within
the ten-foot (10') buffer, alternative methods will have to be employed to control
vegetation. RWC Inc. will use drift control agents to reduce the chance of drift
and enlarged droplet size continue using nozzles that enlarge droplet size,
continue to use sticker-spreader-extender to adhere spray materials to ground
or leaf surface, continue to use low volatile chemical, continue to monitor
weather conditions and cancel applications when rainfall is predicted. RWC
will conduct the applications in a manner which protects surface water as
defined in Chapter 29, Section 6A.

Signed: Brian Chateauvert Date: 5/7/2015

Return completed form to: Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028
OR E-mail to: pesticides@maine.gov

FIGURE 1
RAILROAD AREAS REQUIRING VEGETATION CONTROL

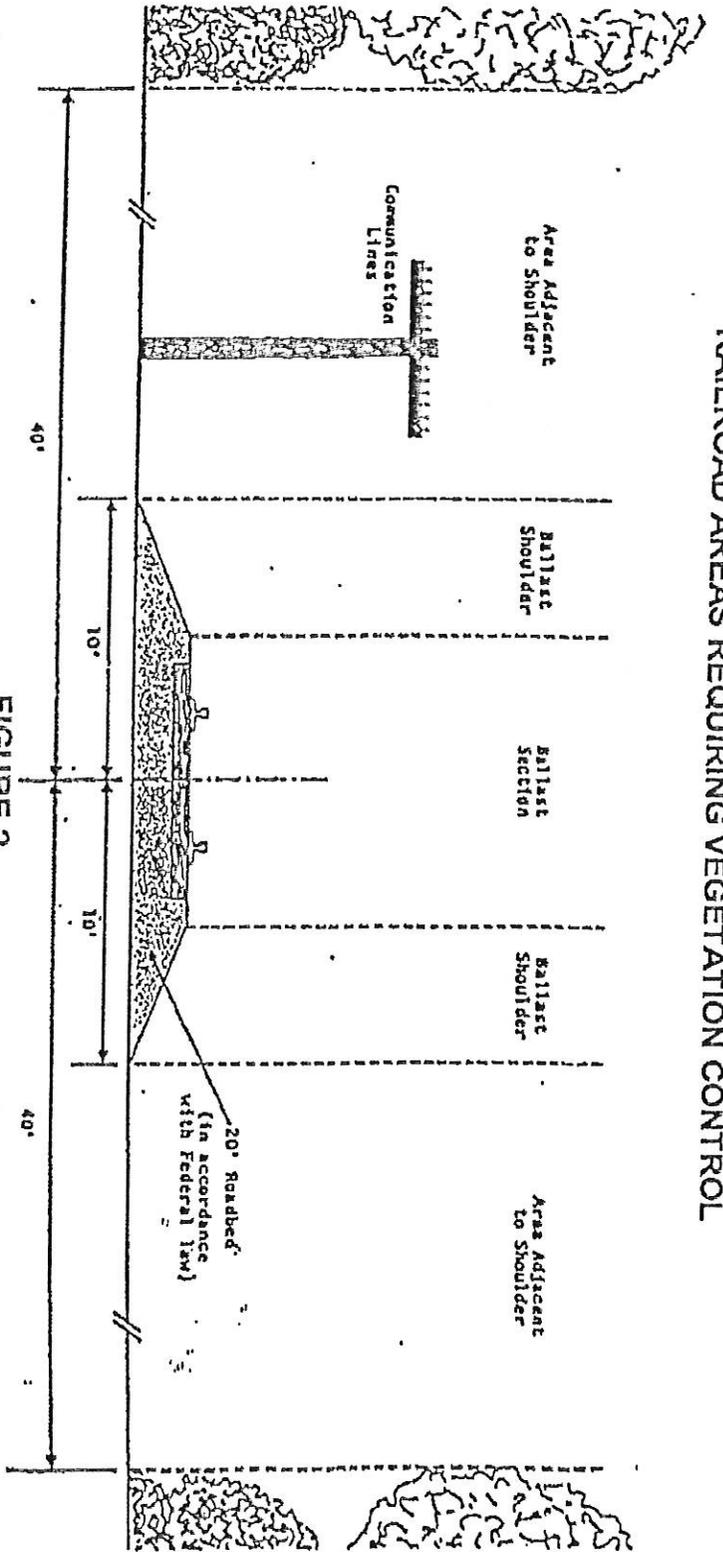
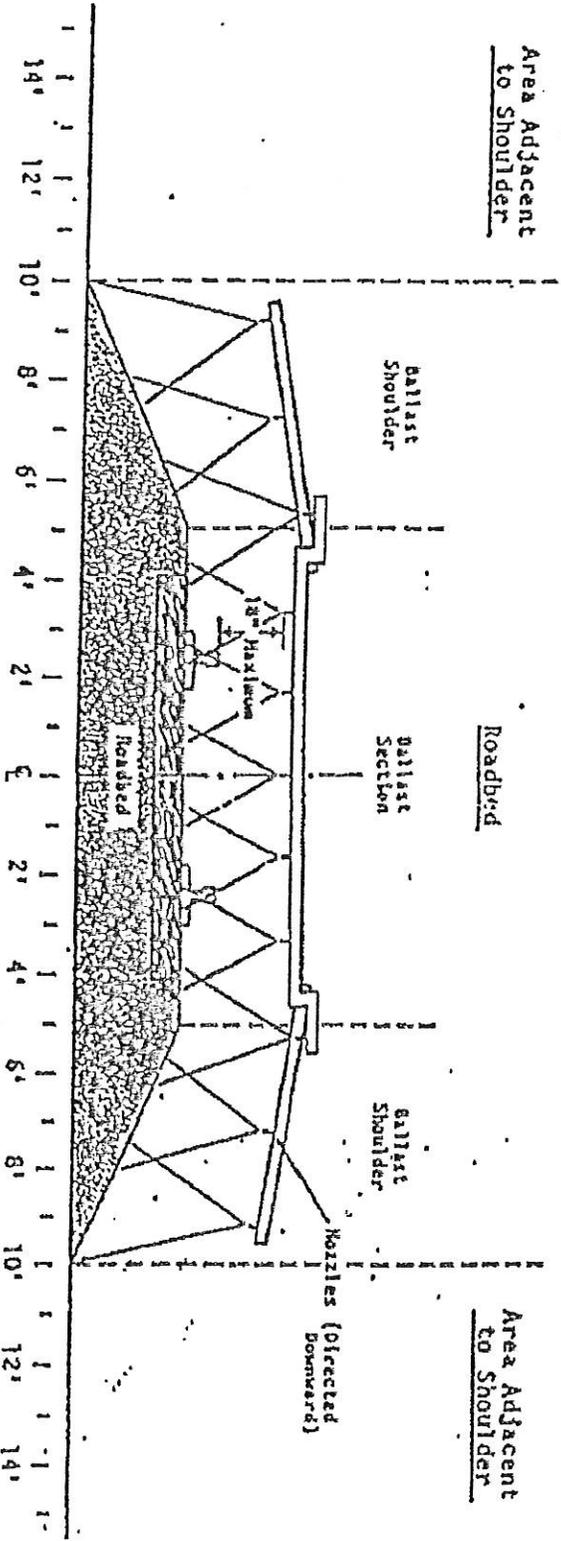


FIGURE 2

Notes: Spray can be controlled to selectively treat all portions (Ballast, Shoulder, and Adjacent Area) or any of the individual portions alone.



**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. BRIAN CHATEAUVERT (413) 562-5681
Name Telephone Number

RWC, INC.
Company Name

PO BOX 876, 248 LOCKHOUSE RD WESTFIELD, MA 01086-0876
Address City State Zip

II. BRIAN CHATEAUVERT CMA3046/6A 6B
Master Applicator (if applicable) License Number

11 STONEGATE CIRCLE WILBRAHAM, MA 01095
Address City State Zip

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to pesticides@maine.gov**

IV. **Area(s) where pesticide will be applied:**

Pan Am Railways-48' pattern (24' each side center of track)

Belfast Moosehead Lake Railroad – 24' pattern (12' each side center of track)

Presque Isle Industrial Council – 24' pattern (12' each side center of track)

Maine – State owned Railroad Tracks – 48' pattern (24' each side center of track)

Sappi Fine Paper Mill, Hinkly, Maine – 24' pattern (12' each side center of track)

Eastern Maine Railroad – 48' pattern (24' each side center of track)

Turner Island LLC Railroad, S. Portland, Maine – 24' pattern (12' each side center of track)

Maine Northern Railway – 48' pattern (24' each side center of track)

Central Maine & Quebec Railway 48' pattern (24' each side center of track)

V. **Pesticide(s) to be applied:** Various combinations of Aquaneat (Glyphosate), Polaris AC Complete (Imazapyr), Escort XP (Metsulfuron Methyl). Opensight (Potassium Salt of Pyridine), Esplanade 200SC (Indaziflam), Viewpoint (Aminocyclopyrachlor Imazapyr Metsulfuron methyl) Method 50SG (Aminocyclopyrachlor), in 30-60 gallons of water per acre.

VI. **Purpose of pesticide application:** the ballast, shoulder and areas adjacent to shoulder sections of the right-of-way (diagrams of typical spray patterns enclosed) must remain weed, grass and brush free for just some of the following reasons:

- a. To allow for proper inspection of tie fastenings, switches & rails
- b. To maintain proper drainage
- c. To allow for inspection of trains
- d. To remove health and safety hazards
- e. To improve working conditions
- f. To reduce fire hazards
- g. To improve visibility at road crossings

- VII. **Approximate dates of spray application:** May 15th through September 30, 2017
- VIII. **Application Equipment:** Hy-rail Truck Equipment with fixed mounted booms approximately 18 inches above the rail for weed and grass control and brush booms with fixed directa spray and mini wobbler tips.
- IX. **Standard(s) to be varied from:**
Chapter 29 Section 6A, I to V – Buffer requirements (prohibiting pesticide applications within 25 feet of the high water mark).
- X. **Method to ensure equivalent protection:**
The railroads patrolmen have track charts which show rivers, streams, ponds, road crossings, etc. He normally is in a track vehicle running ahead of the spray unit and through the use of radio communication, gives a warning signal where there are culverts, bridges with running water underneath and other sensitive areas adjacent to the track. RWC, Inc. has mounted in cab controlled gutters on the rear of our equipment to assure that no pesticides drip or enter the waterways of the State of Maine when going over the bridges. RWC, Inc. will leave a buffer of ten feet (10') from lakes, rivers, streams and surface waters and in the case of a public water supply will only apply Glyphosate, for a distance of one half mile before the site and one half mile beyond. Within the ten foot (10') buffer, alternative methods will have to be employed to control vegetation. RWC, Inc. will use drift control agents to reduce the chance of drift and enlarged droplet size continue using nozzles that enlarge droplet size, continue to use sticker-spreader-extender to adhere spray materials to ground or leaf surface, continue to use low volatile chemical, continue to monitor weather conditions and cancel applications when rainfall is predicted. RWC will conduct the applications in a manner which protects surface water as defined in Chapter 29, Section 6A.
- Signed: __Brian Chateauvert____ Date: __January 24, 2017_____

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**
OR E-mail to: pesticides@maine.gov

FIGURE 1
RAILROAD AREAS REQUIRING VEGETATION CONTROL

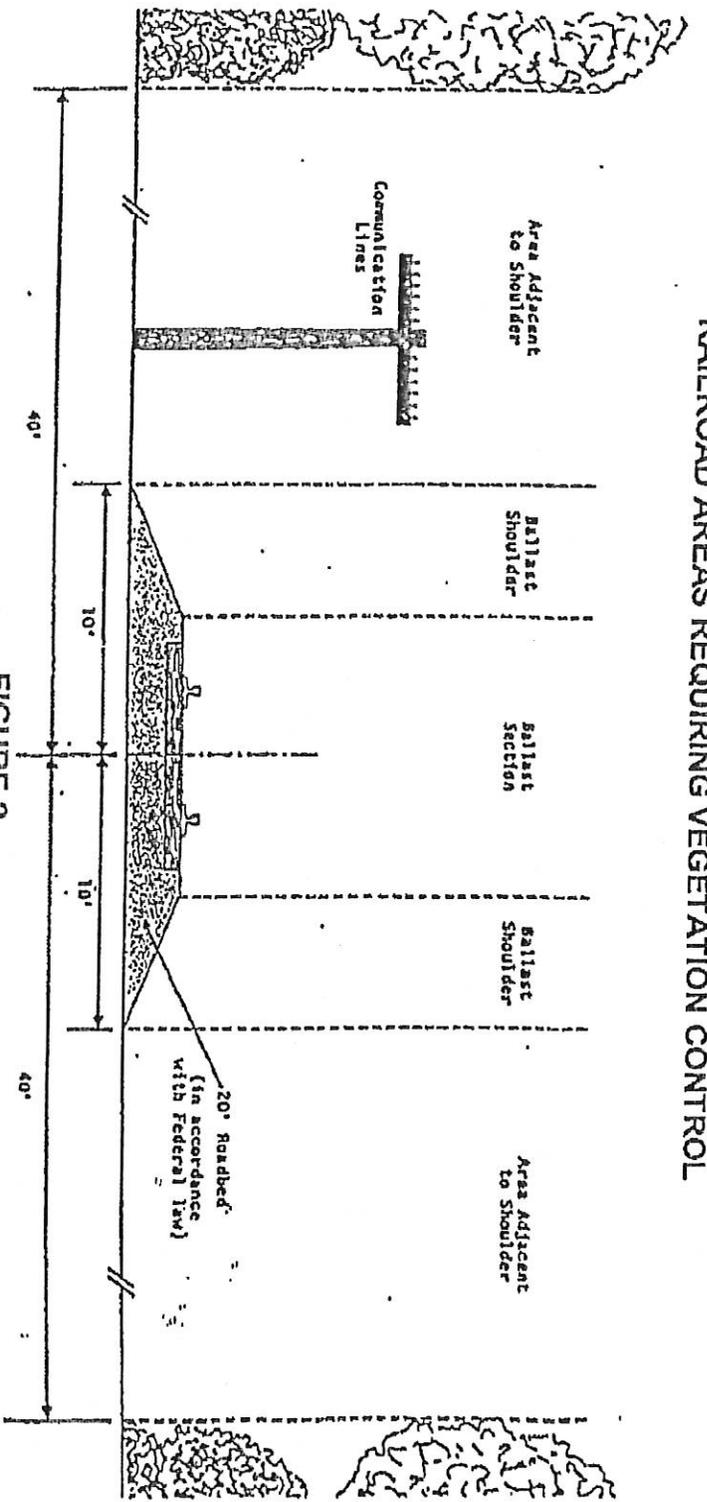
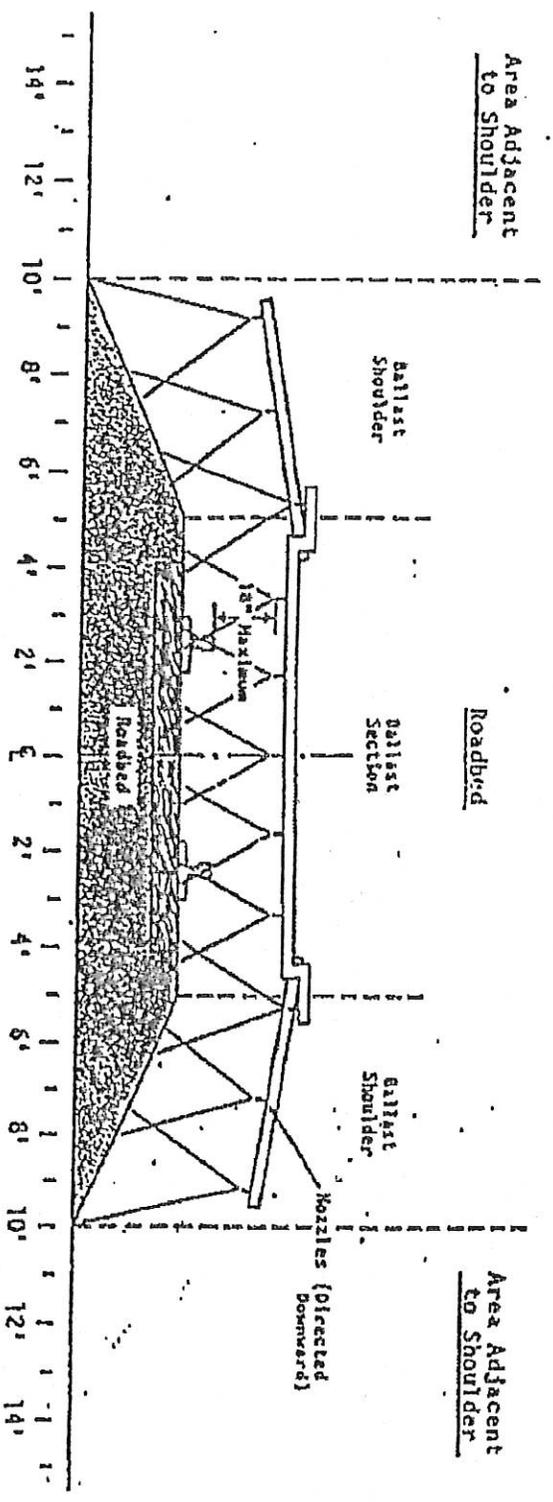


FIGURE 2

Note: Spray can be controlled to selectively treat all portions (Ballast, Shoulder, and Adjacent Area) or any of the individual portions alone.



**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Donald Dubois (207) 316-8016
Name Telephone Number
Dubois Contracting
Company Name
295 St. John Road Font Kent Maine 04743
Address City State Zip

II. Donald Dubois CMA 44820/3A3B 6A6B
Master Applicator (if applicable) License Number
295 St. John Road Font Kent Maine 04743
Address City State Zip

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to pesticides@maine.gov**

IV. Area(s) where pesticide will be applied:
Font Kent Dike along the St. John
and Fish Rivers

V. Pesticide(s) to be applied:
Rodeo, Liberate, Blue Dye

VI. Purpose of pesticide application:
Total elimination of all vegetation
on the rocky portion of the dike on
the river side. Per requirements of
Army Corp of Engineers, Federal Gov.

VII. Approximate dates of spray application:

June 1 to August 30 2015 while vegetation is active and river is at its lowest

VIII. Application Equipment:

Manual Back Packing

IX. Standard(s) to be varied from:

Allowable use of this product on a dry Flood Plain (Rodeo) use within 25' of high water mark

X. Method to ensure equivalent protection:

Will incorporate use of low pressure back pack application with Rodeo instead of Round up to minimize leaching, Use Liberate is a non-ionic surfactant containing drift control agent & deframer all in one. Will use blue dye to reduce over application. We are also planning application date of June 1 to August 30 to assure river level is at its lowest with no wind where temperature will allow for fastest drying time & no suspension of spray.

Signed:

Paul [Signature]

Date:

4/18/16

Return completed form to: Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028
OR E-mail to: pesticides@maine.gov

BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)

I. Donald Dubois (207) 316-8016
Name Telephone Number
Dubois Contracting
Company Name
295 St John Rd Fort Kent Me 04743
Address City State Zip

II. Donald Dubois CMA 44820/3A3B6A6B
Master Applicator (if applicable) License Number
295 St John Rd Fort Kent Me 04743
Address City State Zip

III. As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to pesticides@maine.gov

IV. Area(s) where pesticide will be applied:
Fort Kent Dike along the St John
and Fish Rivers

V. Pesticide(s) to be applied:
Rodeo, Milestone, A1700, Blue Dye

VI. Purpose of pesticide application:
Total elimination of all vegetation on
the rocky portion of the dike on the
river side Per requirements of the
Army Core of Engineers, Federal Gov.

VII. Approximate dates of spray application:

June 1 to August 30, 2017 while
vegetation is active & river is at its lowest

VIII. Application Equipment:

Manual Back Packing

IX. Standard(s) to be varied from:

Allowable use of these products on a
dry Flood Plain use within 25' of
high water mark

X. Method to ensure equivalent protection:

Will incorporate use of Low Pressure backpack
application to minimize leaching of spray
solution. Herbicide application of Rodeo and
Milestone will be made for complete control
of any tall vegetation growing in said area. Will
also use LI 700, a non ionic surfactant containing
drift control & defoamer all in one. Will also use
Blue dye to reduce any over application.
Application date of June 1 to August 30 to assure
river level is at its lowest, with no wind where
temperature will allow for fastest drying time & no
suspension of spray.

Signed:

Daniel O'Brien

Date:

5/26/17

Return completed form to: Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028
OR E-mail to: pesticides@maine.gov

APR 06 2015



Vegetation Control Service, Inc.

2342 MAIN STREET
ATHOL, MA 01331
OFF: 978-249-5348
FAX: 978-249-4784
800-323-7706

56 HILL ROAD
FRANKLIN, NH 03235
OFF: 603-934-4665
FAX: 603-934-6260

134 LEVERETT ROAD
SHUTESBURY, MA 01072
413-250-1414

April 2, 2015

Henry Jennings
Board of Pesticide Control
28 State House Station
Augusta, ME 04333-0028

Dear Mr. Jennings:

Included is another *Application for Variance Permit (pursuant to Chapter 29, Section 6 of the Board's Regulations)* for the southern half of TransCanada's 115 kV Transmission line at the Kibby Wind Power Project. This is the same request accepted by the Board in 2012 (see enclosed).

We are applying for this in order to use Mistblowers (motorized back pack sprayers) in wetlands where there is no surface water present and 25 feet from any surface water. Our program is described in detail in the previously submitted Operational Vegetation Management Plan approved by LURC and Maine DEP.

If you have any questions, please do not hesitate to contact myself, or Wendy Priestley at (978) 249-5348 or wendy@vegetationcontrol.com.

Thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads 'Jeffrey M. Taylor'.

Jeffrey M. Taylor,
VCS Senior Consultant

Enc.

**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Jeffrey Taylor of Vegetation Control Service, Inc. on behalf of David Murray, Environmental Specialist (603) 445-6803 (VCS: 978-249-5348)

TransCanada Energy Ltd, Kibby Wind Power Project
Company Name

Walpole Office, 2 Killeen Street North Walpole NH 03609
Address City State Zip

II. Area(s) where pesticide will be applied:

The southern half of the 115 kV Transmission line at the Kibby Wind Power Project (see Approved Vegetation Management Plan). No herbicides will be sprayed within 25 feet of any surface water (in wetlands, streams, rivers, ponds, etc...). However, according to specification in the attached VMP, Section 5.8, starting on page 43, treatments will take place in wetlands when there is no surface water present.

III. Pesticide(s) to be applied:

Rodeo (EPA reg. #62719-324, Arsenal Powerline (EPA Reg. #241-431) and Escort XP (EPA Reg. #352-439)

IV. Purpose of pesticide application:

Selective Treatment of woody plant species capable of interfering with the conductor zones on the 115 kV Transmission line at the Kibby Wind Power Project, with treatment to invasive plant species as identified in the field.

V. Approximate dates of spray application:

July 27th to August 17th, ~~2012~~ 2015

VI. Application Equipment:

Motorized Back Pack Sprayers (Mistblowers)

VII. Standard(s) to be varied from:

Use of Motorized Back Pack Sprayer in Wetlands along a 14 mile stretch of 115 kV right-of-way

VIII. Reason for variance:

This highly selective method allows for the treatment of the extensive amount of resprouts currently present on the right-of-way in this first treatment to the southern half of the right-of-way since construction. Selective mistblower applications will typically use less herbicide and water mixture per acre as compared to other non-motorized foliar techniques, particularly in dense target situations. There also is little to no excess "herbicide drip" from treated vegetation, resulting in less impact to understory, non-target organisms. Anti-drift additives are always included with all of our tank mixtures which help reduce potential drift and enhance target vegetation selectivity.

IX. Method to assure equivalent protection:

1). The treatment crews will strictly follow the specifications detailed in the attached VMP and all applicable state and federal laws and regulations. 2). The herbicide applications will strictly be selective to capable species (as described above in VIII) under an IVM program using herbicides labeled for use in wetlands. 3). The week of July 9th in advance of the treatment crew, a three man survey crew will walk the entire right-of-way and mark in the field and in TransCanada's GIS database system, the location of all sensitive areas including waterbodies and wetlands. 4). No herbicides will be used within 25 feet of any surface water; mechanical treatment methods will be used instead, primarily hand cutting with chainsaws. 5). All Herbicides applications will be directed away from the surface water buffer. 6). The company performing the 2015 herbicide application is Vegetation Control Service, Inc. a pioneer in IVM and selective motorized herbicide applications with 49 years' experience in the field, in vegetation management consulting and 17 years' experience in GIS database development.

Signed: Jeffrey M. Ingle Date: 4/8/15

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

OR E-mail to: pesticides@maine.gov

**Statement submitted to the Maine Pesticide Board regarding the Application
for Variance Permit pursuant to Chapter 29, Section 6
by Vegetation Control Service, Inc. (VCS)
on behalf of TransCanada Energy Ltd, Kibby Wind Power Project**

TransCanada has submitted this application to treat within wetlands on the southern half of the Kibby 115 kV transmission line right-of-way with hand held motorized back pack sprayers.

All vegetation maintenance activities at Kibby are guided by a New England utility industry standard *selective* Integrated Vegetation Management (IVM) program. Under this program, the primary ecological communities or “natural areas” that TransCanada intends to establish, encourage and support are natural areas of early successional primarily lower growing herbaceous and scrub-shrub vegetation, in order to comply with Federal clearance standards:

1. Primary targets: woody plants capable of maturing over twelve feet in height.
2. “Noxious Weeds” including poisonous and invasive species.
3. Grasses, herbaceous growth and shrubs or woody vegetation that matures less than twelve feet in height (except where they are capable of interfering with the electric structures) will be reasonably avoided and encouraged to flourish.

GENERAL WETLANDS SPECIFICATIONS

1. TransCanada will maintain mechanical only areas twenty-five feet by horizontal measurement from the banks on either side of surface waterbodies/open surface waters in wetlands.
2. Herbicide applications in wetlands are limited spray areas in which only appropriately labeled herbicides with low toxicity ratings are applied using low-volume, selective hand-held application methods when there is no surface water present.

From initial field survey’s including the mapping of all “sensitive areas” by TRC Engineering Services during the permit process, and two field survey’s by VCS senior consulting staff, there are only a few wetlands that meet the criteria of Chapter 26 (no great ponds, only a few characterized by visible surface water or dominated by emergent or aquatic plants). All crew personnel are also trained to the specifics of the Kibby project before being allowed to apply herbicides to the right-of-way.

The plan for 2015 is to use hand cutting and back pack hand pumps in the designated wetlands under Chapter 26. These are areas in which there are few target species, which tend to grow at a slower rate due to the wetland conditions.

We request that the board review this Variance Application as an initial review of the *Vegetation Management Plan* approved by LURC and Maine DEP in 2011. Future application in wetlands would benefit from a selective, directed spray by motorized pack back applications that allow the applicator to minimize the impact to non-target organisms in the understory.

Thank You for the opportunity to submit this request,


Jeffrey M. Taylor, ISA Arborist

Proposed Administrative Consent Agreement Background Summary

Subject: Jason Douin
JD Landscapes Inc.
275 Mount Vernon Avenue
Augusta, Maine 04330

Date of Incident(s): On or about July 19, 2016, and multiple dates prior to this.

Background Narrative: A Board staff member observed a JD Landscapes crew working at a commercial business in Augusta. One of the crew members had a plastic hand pump pressurized spray container, approximately one gallon in size. The container was translucent and was about half full of liquid. The crew was just completing a job and walking back to their work truck.

A Board inspector later phoned Douin and arrangements were made to meet. Two Board staff members later met with Douin to interview him about his company's commercial use of pesticides. Douin said he usually subcontracts with a commercial applicator when the property of one of his customers needs a pesticide application but acknowledged that at times his company makes unlicensed commercial pesticide applications. When asked about what his employee applied on the date he was observed with the hand sprayer in Augusta, Douin said he would have to meet with his employee and ask what he was spraying. Douin later called Board staff and said his employee was going to apply roundup herbicide to a customer's gravel driveway but the nozzle was not working so he was not able to spray.

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

No one at JD Landscapes Inc. was certified or licensed as a commercial pesticide applicator at the time of the pesticide applications made by the company.

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....

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

Attachments: Proposed Consent Agreement

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

Jason Douin)	
JD Landscapes Inc.)	ADMINISTRATIVE CONSENT AGREEMENT
275 Mount Vernon Avenue)	AND
Augusta, Maine 04330)	FINDINGS OF FACT

This Agreement, by and between JD Landscapes 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, owned by Jason Douin, is a commercial landscaping company that offers services in the Augusta area.
2. That on or about July 19, 2016, Board staff observed a Company crew at Augusta Foot & Ankle at 26 Eastern Ave in Augusta.
3. That the crew had completed its work at the site and was loading equipment onto a Company truck. One of the crew members had a plastic hand pump pressurized spray container, approximately one gallon in size. The container was translucent and was about half full of liquid. The applicator with the spray container was telling the other crew members that the spray nozzle dripped.
4. That the observations described in paragraph three were conveyed by the Board staff to a Board inspector.
5. That a Board inspector called Jason Douin multiple times and left voice messages asking for a return call to arrange a follow up inspection about the incident described in paragraph three.
6. That on August 5, 2016, the inspector placed another call to Douin. Douin called back saying he was near the Board's office and would come there. Douin did come to the BPC's Augusta office and met with two BPC staff members.
7. That during the meeting described in paragraph six, Board staff informed Douin about the observations described in paragraph three. Douin said he would have to talk to his employees and ask them what work they did when at the Augusta Foot & Ankle as described in paragraph three. Douin stated that he hires the Turf Doctor to do most of his pesticide applications but at times his company does do some commercial pesticide applications and that no work was supposed to be done without his knowledge and approval. Douin acknowledged that at one time he held a commercial applicator license but let it lapse.
8. That on August 31, 2016, Douin called BPC staff back with an update of what he learned from his employee about the spray incident described in paragraph three. Douin said his employee with the hand sprayer, Shawn Morey, told Douin that he pulled the sprayer out of the truck and was going to spray roundup herbicide on the gravel driveway but the nozzle was not working so he was not able to spray.
9. 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.

10. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) includes 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.
11. That the circumstances described in paragraphs one through ten constitute custom applications of pesticides in accordance with 22 M.R.S. § 1471-C (5-A).
12. That the Company did not employ a master applicator, and no one from the Company had a commercial pesticide applicator's license at the time of the applications described in paragraphs three and seven.
13. That the circumstances described in paragraphs one through twelve constitute violations of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
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 against the Company resulting from the violations referred to in paragraph thirteen, the Company agrees to pay to the State of Maine the sum of \$500. (Please make checks payable to Treasurer, State of Maine).

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

JD LANDSCAPES INC.

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED

By: _____ Date: _____

Mark Randlett, Assistant Attorney General



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

Joint Standing Committee on State and Local Government
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

May 16, 2017

Dear Senator Davis, Representative Martin and members of the Joint Standing Committee on State and Local Government:

The Maine Board of Pesticides Control (Board) met on Friday, May 12, 2017 and reviewed LD 1505 An Act to Create Consistency in the Regulation of Pesticides as drafted as well as several potential amendments. The Board thanks the Committee for seeking its input, and recognizes the importance of this sensitive issue.

The Board recognizes Maine's longstanding history of home rule, and recognizes that there may be localized natural or economic resources that warrant special consideration. At the same time, the Board is keenly aware of the challenges and inefficiencies that municipal ordinances pose for companies and agencies with statewide or regional pest management responsibilities.

After a lengthy and spirited discussion, the Board approved, by a vote of 4 to 2, the attached draft language—intended as a conceptual framework for the Committee's consideration.

While there was a diversity of viewpoints on the overall merits of municipal pesticide ordinances, the Board agrees that there is a definite need to address this issue and found unanimous agreement on the following concepts:

- Inconsistency in municipal ordinances, and the potential of having 500 different ordinances presents significant difficulties for businesses that work statewide (highway, power line, railroad and gas-line right-of-way maintenance) and businesses that work in multiple towns (lawn care, home pest control, etc);
- The increased costs associated with complying with municipal ordinances will ultimately be passed on to rate payers and tax payers;
- The Board struggled to find the appropriate balance between the rights of the community and the rights of the individuals within the community;

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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

- The Board fully supports:
 - the concept of integrated pest management (IPM) as defined in current state law (7 M.R.S. § 2401; CMR 01 026 Chapter 10 Section 2-W; CMR 01 026 Chapter 26 Section 1-D; CMR 01 026 Chapter 27 Section 1-A);
 - enhanced educational efforts at the community level to help address concerns identified by municipal leaders;
 - increased outreach to the public on ways to minimize the public health and environmental risks of pesticide applications;
 - increased outreach to the public on ways to reduce reliance on pesticides through best management practices and IPM.

A majority of the Board supports educational efforts through grant funding, if additional revenue sources (*e.g.* product registration fees) can be identified and developed. Increasing registration fees will require changes to 7 M.R.S. Section 607 (6), which sets pesticide registration fees at \$160 per product per year. Registration fees were last raised in 2013 and are already high for a small population state, so careful consideration is warranted when contemplating the merits of fee increase.

Additionally, the Board would like the Committee to be aware that CMR 01 026 Chapter 60 Designation of Critical Pesticide Control Areas (statutory authority 5 M.R.S. § 8051 et seq. and 22 M.R.S. §§ 1471-F and M) is an existing Board rule which provides criteria under which groups or individuals can request that an area be designed as a Critical Pesticide Control Area, in which restrictions on pesticide use have the force of state law. The Board suggests that the criteria of Chapter 60 could be broadened to help address the specific needs of municipalities.

The Board looks forward to working collaboratively with the Committee on this sensitive and difficult issue.

Sincerely,

A handwritten signature in cursive script that reads "C. C. Taylor" on the top line and "Deven Morrill" on the bottom line. The signature is written in dark ink.

Deven Morrill
Chairman, Maine Board of Pesticides Control

Attachments:

Board concept language

CMR 01 026 Chapter 60 Designation of Critical Pesticide Control Areas

Existing IPM definitions:

7 M.R.S. § 2401

CMR 01 026 Chapter 10 Section 2-W

CMR 01 026 Chapter 26 Section 1-D

CMR 01 026 Chapter 27 Section 1-A

22 M.R.S. § 1471-X State Policy: Public and Private Initiatives to Minimize Reliance on Pesticides

Adopted by Maine Board of Pesticides Control, May 12, 2017 by a vote of 4 to 2.

Sec. 2. 30-A MRSA subsection 3007, sub-subsection 7 is enacted to read:

Prior to adoption of any ordinance that regulates the sale or use of pesticides a municipality must specify what steps it will take to educate its citizens on how to minimize reliance on pesticides through best management and Integrated pest management practices. The board may provide grants to municipalities to help offset the cost of developing compliant ordinances. Revenue to support such grants may be funded through a limited increase in the registration fee for all pesticide products sold in Maine.

In developing Board compliant ordinances, municipalities may ban or regulate any or all pesticide use on publicly owned land, publicly leased land, or land trust property, except for state sponsored public health protection efforts. A municipal ordinance may specifically apply to pesticides, including without limitation ordinances relating to pesticide use limitations, use notification, local distribution, and applicator training except the ordinance shall not be applicable to persons licensed or certified under 1471-D. Towns shall report instances of illegal use on private land to the board for enforcement action.

Municipal pesticide ordinances in force at the time this statute becomes effective must become compliant with it within two years.

Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 413: INTEGRATED PEST MANAGEMENT

§2401. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 609, §2 (NEW).]

1. Integrated pest management. "Integrated pest management" means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:

- A. Understanding the system in which the pest exists; [1991, c. 609, §2 (NEW).]
- B. Establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control; [1991, c. 609, §2 (NEW).]
- C. Monitoring pests and natural enemies; [1991, c. 609, §2 (NEW).]
- D. When needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression; and [1991, c. 609, §2 (NEW).]
- E. Systematically evaluating the pest management approaches utilized. [1991, c. 609, §2 (NEW).]

[1991, c. 609, §2 (NEW) .]

SECTION HISTORY

1991, c. 609, §2 (NEW).

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01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 10: DEFINITIONS AND TERMS

SUMMARY: These definitions and terms are defined as they specifically relate to the use of pesticides, the certification and licensing of pesticide applicators and dealers, and other areas as regulated by the Board in succeeding chapters.

Section 2. Definitions

- W. "Integrated Pest Management" (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including: (1) understanding the system in which the pest exists, (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control, (3) monitoring pests and natural enemies, (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and (5) systematically evaluating the pest management approaches utilized.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 26: STANDARDS FOR INDOOR PESTICIDE APPLICATIONS AND NOTIFICATION FOR ALL OCCUPIED BUILDINGS EXCEPT K - 12 SCHOOLS

SUMMARY: These regulations establish procedures and standards for applicators applying pesticides inside occupied private and public buildings other than K - 12 schools that are covered by Chapter 27. This chapter also sets forth the requirements for notification about pending pesticide applications to residents of rented space, employees of agencies, businesses and institutions, and parents or guardians of children in licensed child care facilities and nursery schools.

Section 1. Definitions

- D. **Integrated Pest Management.** For the purposes of this regulation, Integrated Pest Management (IPM) is a process that utilizes regular monitoring to determine if and when a treatment is needed. It employs physical, mechanical, cultural, chemical, biological and educational programs to keep pest populations low enough to prevent intolerable damage or annoyance. Pesticides should be only one of many options considered for solving a pest problem, and when required, target-specific, low impact pesticides and application techniques should be employed. Furthermore, pesticide applications are not made according to a pre-determined schedule but are only made when and where monitoring, or a previous history of pest incidence has indicated that the pest will cause unacceptable economic, medical or aesthetic damage. The IPM program must as a result be environmentally, socially, and economically compatible to meet current public expectations.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 27: STANDARDS FOR PESTICIDE APPLICATIONS AND PUBLIC NOTIFICATION IN SCHOOLS

SUMMARY: This rule establishes procedures and standards for applying pesticides in school buildings and on school grounds. This rule also sets forth the requirements for notifying school staff, students, visitors, parents and guardians about pending pesticide applications.

Section 1. Definitions

A. **Integrated Pest Management.** For the purposes of this rule, Integrated Pest Management (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:

- (1) understanding the system in which the pest exists,
- (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control,
- (3) monitoring pests and natural enemies,
- (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and
- (5) systematically evaluating the pest management approaches utilized.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 60: DESIGNATION OF CRITICAL PESTICIDE CONTROL AREAS

SUMMARY: These regulations establish criteria which the Board will use in deciding if an area should be designated as a critical pesticide control area. In addition, these regulations specify the procedures parties must follow in requesting such a designation. These regulations also define the locations that have been designated as critical areas by the Board.

1. Procedure

- A. The Board shall receive, consider and act upon petitions for designation of critical pesticide control areas in accordance with 5 M.R.S.A., Ch. 375, subchapter II. Citizen petitions shall be allowed in accordance with 5 M.R.S.A. §8055. A municipality or county may make such petition in accordance with 22 M.R.S.A. §1471-M, sub-§ 4. In addition, the Board's staff may initiate such a petition.
- B. The Board shall provide public notice and opportunity for public comment on any such petition in accordance with 5 M.R.S.A., Ch. 375, subchapter II.
- C. There shall be opportunity for local participation in Board decisions regarding the designation of critical areas, as provided by 22 M.R.S.A. §1471-V.

2. Information required in Petition

Any person or persons petitioning the Board to designate an area as a critical pesticide control area shall submit the following information in support of the petition:

- A. The name, address and telephone number of the petitioner(s) and a statement of the petitioner's interest in the proposed designation.
- B. The name of the pesticides or group of pesticides for which restrictions are sought. Petitioners may seek restrictions on specific formulations which have enhanced toxicity, rather than on all products containing the active ingredient. For purposes of this regulation, pesticides shall include both active and inert ingredients, and carriers used in any pesticide application.
- C. The name(s) and address(es) of the owner(s) of property within the proposed critical area.
- D. A map of the proposed critical area.
- E. A description of the purposes for which the pesticide(s) is or may be applied within the proposed area (if known).

- F. For petitions for designation under criteria of sections 3(A), 3(B) or 3(C), the name(s) of the species for which protection is sought and a summary of the data establishing adverse effects of pesticides upon the species.
- G. For petitions for designation under criteria of section 3(D), a copy of any applicable town ordinances, a summary of: evidence establishing that the pesticides may enter ground or surface water, hydrogeologic data which adequately defines the proposed critical area, and evidence establishing that the pesticide(s) may have an adverse effect upon the health of current or future users of the ground or surface water.
- H. For petitions for designation under criteria of section 3(E), a summary of medical and/or epidemiological evidence that exposure to the pesticide(s) causes serious and/or longstanding health effects to sensitive individuals or groups of individuals.
- I. For petitions for designation under criteria of sections 3(F) or 3(G), a copy of any management plan for the area or species.
- J. A description of the petitioner's proposed restrictions on the use of pesticide(s) within the proposed critical area.

3. Criteria for designation

The Board of Pesticides Control will use the following criteria to determine whether to designate a critical pesticide control area. Where the Board is persuaded by the evidence that any of these criteria are met, it may designate a critical pesticide control area and adopt additional pesticide use restrictions, prohibitions or management plans for that area as necessary to protect health, welfare and the environment.

- A. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of the habitat or range of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or
 - (3) is an invertebrate species ranked G1, G2 or S1 under the Natural Heritage Program of The Nature Conservancy and which is, in the Board's judgment, of natural significance.
- B. Areas where use of pesticide(s), without additional restrictions, is likely to negatively affect the mortality rate and/or reproductive capability of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or

- (3) is an invertebrate species ranked G1, G2 or S1 under the Maine Natural Areas Program in the Department of Conservation and which is, in the Board's judgment, of natural significance.
- C. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of significant wildlife habitat. "Significant wildlife habitat" is as identified under the Natural Resources Protection Act, 38 M.R.S.A., Ch. 3, subchapter 1, Art. 5-A.
- D. Areas where use of pesticide(s), without additional restrictions, is likely to significantly risk the quality of surface or groundwater supplies used for human consumption.
- E. Areas where use of pesticide(s), without additional restrictions, is likely to cause serious and/or longstanding impairment of the health of sensitive individuals or groups of individuals who normally occupy such areas. The Board contemplates that this designation will require verified medical and/or epidemiological documentation of human sensitivity to one or more pesticides.
- F. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural or other resources owned or managed by a government agency, or is contrary to the duly adopted management plan for an area owned or managed by a government agency.
- G. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural resources within an area which is identified as an exemplary natural community or ecosystem of recognized exceptional qualities and has been designated for long-term ecological research and/or conservation purposes.

4. Designated Critical Pesticide Control Area

A. Dennys River Critical Pesticide Control Area

- (1) The above entitled matter having come up for public hearing on 7 March, 1978, at 2:00 p.m. before the Pesticides Control Board in Room 102 of the Science Building at the University of Maine in Machias; and the Board, having considered the evidence and arguments presented, and with a quorum present, has this day voted to declare a critical area under provisions of Title 22, Chapter 258-A, Sections 1471-F and 1471-M (2)(A), within which critical area no aerial application of pesticide is to be made without prior approval of the Board of Pesticides Control.
- (2) The critical area herein established is described as follows: Commencing at the dam at the foot of Meddybemps Lake and extending down the Dennys River to the Gilman Dam, so-called, the critical area shall include all land within one-half mile of either bank of the Dennys River; commencing at the Gilman Dam, so-called, and extending down the Dennys River to its entrance into Dennys Bay, so-called, the critical area shall include all land within one mile of either bank of the Dennys River.

FISCAL IMPACT: This rule will not impose any fiscal impact on counties or municipalities.

STATUTORY AUTHORITY: 5 M.R.S.A., § 8051 *et seq.* and 22 M.R.S.A., §§ 1471-F and M.

EFFECTIVE DATE:

July 6, 1979

AMENDED:

May 8, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998

July 12, 2000

MINOR CORRECTION:

November 23, 2000 - citation in § 4(C)(4)

AMENDED:

December 24, 2000 - repealed §4(C)

December 26, 2011 – filing 2011-475

CORRECTIONS:

February, 2014 – agency names, formatting

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-X. STATE POLICY; PUBLIC AND PRIVATE INITIATIVES TO MINIMIZE RELIANCE ON PESTICIDES

It is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. The agencies of the State involved in the regulation or use of pesticides shall promote the principles and the implementation of integrated pest management and other science-based technology to minimize reliance on pesticides while recognizing that outbreaks of disease, insects and other pests will necessitate fluctuations in pesticide use. These agencies, in cooperation with private interest groups, shall work to educate pesticide users and the general public in the proper use of pesticides and to determine other actions needed to accomplish the state policy. [1997, c. 389, §2 (NEW).]

SECTION HISTORY
1997, c. 389, §2 (NEW).

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--

From: Heather Spalding
Sent: Thursday, May 18, 2017 12:06 PM
To: Pesticides
Subject: article for next BPC meeting packet

Hi Megan,
I am hoping that you will include this article in the next board meeting packet.
Thanks very much,
Heather Spalding

<http://us.cnn.com/2017/05/15/health/roundup-herbicide-cancer-allegations/index.html>



Christine Sheppard is one of more than 800 cancer patients suing Monsanto, the maker of Roundup, claiming the company failed to warn consumers about a risk of cancer from the weed killer. Monsanto insists Roundup is safe.

Patients: Roundup gave us cancer as EPA official helped the company

Story by [Holly Yan](#), CNN

Photographs by John Francis Peters for CNN

Updated 3:06 PM ET, Tue May 16, 2017

(CNN)Christine Sheppard fantasizes about her life before cancer. Before she had to take painkillers "all the time." Before she had to seriously worry about when she might die.

"I found out something was wrong because my right leg swelled up enormously," Sheppard said. "They did an ultrasound and found I was completely full of these lymph nodes. It was stage IV large-cell lymphoma."

Grueling chemotherapy treatments have started robbing her of mobility. "It's a strange nerve thing," she said. "I don't always know where my feet are. I have to look down to see where they are."

And the symptoms "will be progressively worse. There's no cure. Eventually, I will probably end up fairly immobilized."



Christine Sheppard said she has to take pills every four hours to avoid "hopping and screaming" in pain.

For 12 years, Sheppard had no idea what might have caused her non-Hodgkin's lymphoma -- until [a group of cancer researchers reported](#) (PDF) that glyphosate, the key ingredient in the popular weed killer Roundup, is "[probably carcinogenic to humans](#)" (PDF).

That's the same herbicide Sheppard said she sprayed on her coffee farm in Hawaii for five years.

"I was incensed," said Sheppard, 67. "We had no idea."

Eventually, I will probably end up fairly immobilized.

Christine Sheppard, non-Hodgkin's lymphoma patient

Sheppard is one of more than 800 cancer patients suing Monsanto, the maker of Roundup, claiming the company failed to warn consumers about the risk of cancer associated with Roundup products.

Monsanto says there's no proof that glyphosate is carcinogenic. In fact, it cites a report by the Environmental Protection Agency's Cancer Assessment Review Committee that said glyphosate is "[not likely to be carcinogenic to humans](#)" (PDF).

But the former chairman of that committee [offered to stop an independent review on whether glyphosate could cause cancer](#), according to a plaintiffs' motion to compel his deposition. And that has left Sheppard even more incensed.

Health agency: Glyphosate is 'probably carcinogenic'

The World Health Organization's [International Agency for Research on Cancer](#) caused a stir in March 2015 when it said glyphosate is "[probably carcinogenic to humans](#)" (PDF), meaning it can lead to cancer.

"For the herbicide glyphosate, there was limited evidence of carcinogenicity in humans for non-Hodgkin lymphoma," the report states.

"The evidence in humans is from studies of exposures, mostly agricultural, in the USA, Canada, and Sweden published since 2001. In addition, there is convincing evidence that glyphosate also can cause cancer in laboratory animals."

That report spurred hundreds of non-Hodgkin's lymphoma patients to sue Monsanto.



Sheppard, with her cat Sebastian, said her right leg "swelled up enormously," to the astonishment of her doctor.

Timothy Litzenburg's law firm represents more than 500 of them. He said most of the patients didn't know about a possible link between Roundup and non-Hodgkin's lymphoma until the report came out.

"It would not surprise me in the least if there are 2,000 to 3,000 cases by the end of the year," Litzenburg said. "This is the most-used herbicide in the world ... from the largest farm operations to backyard gardens. It's ubiquitous."

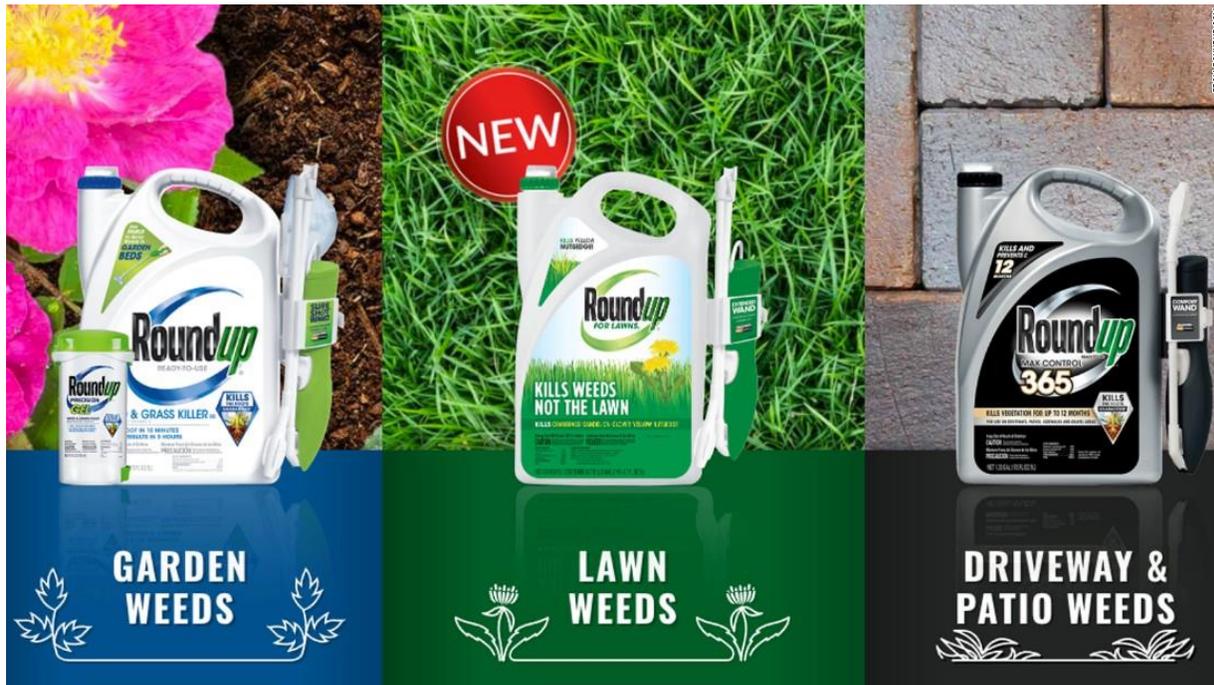
We are suing because our clients got cancer from Roundup.

Plaintiffs' attorney Timothy Litzenburg

But many other companies also sell products containing glyphosate. Why aren't they targeted in these lawsuits?

"This is an oversimplistic answer, but Monsanto invented/discovered it, they held the patent for many years, they are the EPA registrant for glyphosate, and they continue to dominate the market," the attorney said.

"Furthermore, we are not alleging that our clients got cancer from glyphosate alone. We are suing because our clients got cancer from Roundup. ... Roundup contains animal fats and other ingredients that increase the carcinogenicity of the glyphosate."



Litzenburg claims "glyphosate alone is carcinogenic, but the addition of a surfactant has a 'synergistic' effect." Monsanto says more than 800 studies have shown glyphosate's safety.

Monsanto spokeswoman Charla Lord flatly denied those accusations.

"Glyphosate-based herbicides, including Roundup-brand formulated products with surfactants, all have a long history of safe use and do not pose any unreasonable risk to human health when used according to label directions," Lord said.

"The safety of each labeled use of a pesticide formulation must be evaluated and approved by regulatory authorities before it is authorized for sale."

Sheppard said she knows skeptics will say she can't prove that her cancer came from using Roundup. But she said the hundreds of plaintiffs with similar stories -- combined with the report -- show "such strong circumstantial evidence that the total adds up."

Regulatory authorities in the United States, Canada, Japan, New Zealand and Australia have publicly reaffirmed that glyphosate does not cause cancer.

Charla Lord, Monsanto spokeswoman

But Monsanto said there are more than [800 studies demonstrating glyphosate's safety](#), including [studies conducted internationally](#).

"In fact, since IARC classified glyphosate, regulatory authorities in the United States, Europe, Canada, Japan, New Zealand and Australia have publicly reaffirmed that glyphosate does not cause cancer," Lord said.

For example, the European Chemicals Agency said last month that glyphosate is "[not classified as a carcinogen](#)."

Monsanto stressed that the International Agency for Research on Cancer report does not establish a link between glyphosate and an increase in cancer.

Scott Partridge, Monsanto's vice president of global strategy, said plaintiffs' attorneys "are attempting to tie the IARC classification to individual cases of cancer, and they have been running advertisements to recruit plaintiffs. These lawsuits have no merit."

But recently unsealed court documents appear to show Monsanto mounting its effort to discredit the IARC report before it was even released.

Company executive suggests 'ghostwrite'

A month before the IARC report came out in 2015, Monsanto executive William F. Heydens sent an internal email to company toxicologist Donna Farmer with the subject line "RE: IARC planning," according to court documents. In that email, he suggested ghostwriting parts of an "overall plausibility paper" to save money.

These allegations are false. Monsanto scientists did not ghostwrite the paper.

Monsanto statement

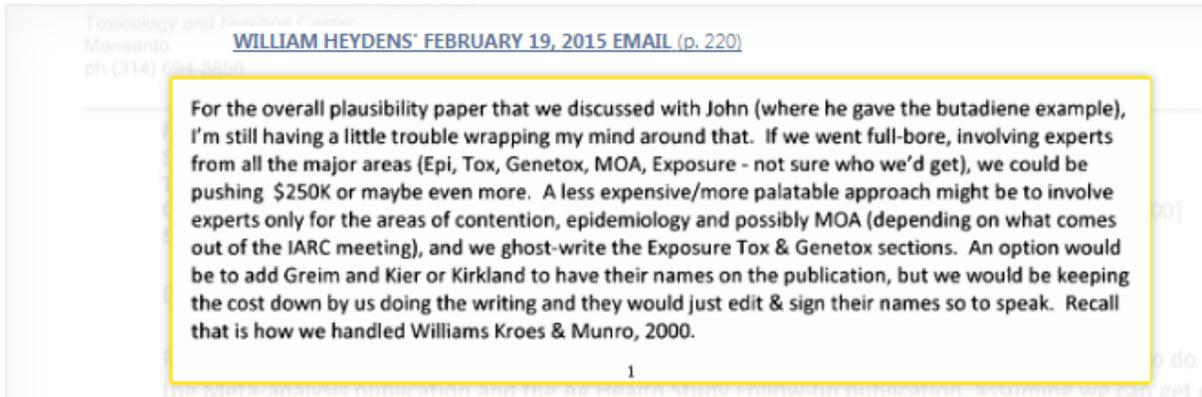
"If we went full-bore (with experts), we could be pushing \$250K or maybe even more," Heydens wrote.

He said a "less expensive/more palatable approach" might be to involve experts only for some of the less contentious parts of the report. Then, Monsanto would "ghost-write the Exposure Tox & Genetox sections."

"[W]e would be keeping the cost down by us doing the writing," the email said. Afterward, scientists outside Monsanto "would just edit & sign their names so to speak."

"Recall that is how we handled Williams Kroes & Munro, 2000," Heydens wrote, [referring to a previous report on glyphosate](#).

[WILLIAM HEYDENS' FEBRUARY 19, 2015 EMAIL](#) (p. 220)



Monsanto executive William Heydens sent an email with the subject "RE: IARC Planning" one month before the IARC's glyphosate report came out. In it, he suggested ghostwriting parts of a plausibility paper.

[View the entire document with DocumentCloud](#)

After the emails were unsealed in March, Monsanto said in a statement that the 2000 report was not ghostwritten and that Heydens' email was taken out of context.

IS GHOSTWRITING COMMON OR UNETHICAL?

Trudo Lemmens, a University of Toronto professor who specializes in health law, said ghostwriting in science "likely is quite common -- although it is difficult to know for sure how often it occurs."

He said ghostwriting is troublesome because "It undermines the entire trust we have in the scientific basis of reports written by experts if we allow them to be ghostwritten and if scientists put their names on it."

But are there any good reasons to ghostwrite a report?

"Science writers often write better than scientific experts themselves, and they have more time to do so at a lesser expense. That is how it is often defended," Lemmens said.

"But it has also clearly been used as a tactic to control the message and the presentation of evidence."

"Recently, in the context of personal injury litigation filed against Monsanto, plaintiffs' attorneys have cherry picked a single email -- out of more than 10 million pages of documents produced -- to allege that Monsanto scientists ghostwrote 'Safety Evaluation and Risk Assessment of the Herbicide Roundup and Its Active Ingredient, Glyphosate, for Humans,' " [the company said](#).

"These allegations are false. Monsanto scientists did not ghostwrite the paper."

The company added that the report, published in 2000 in *Regulatory Toxicology and Pharmacology*, went through that journal's "rigorous peer review process before it was published."

But what about [the 2015 glyphosate paper](#) -- the one that Heydens suggest his company "ghost-write," according to the recently unsealed emails? Did Monsanto actually "ghost-write" parts of that report?

"No," Monsanto spokeswoman Camille Scott told CNN. "The paper and its conclusions are the work of the glyphosate expert panel. The paper also underwent (a) rigorous peer review process before it was published."

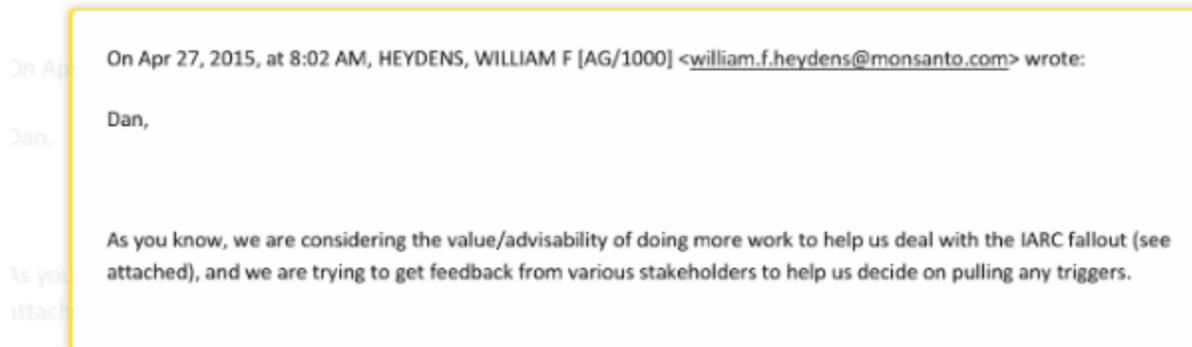
Scott said Monsanto retained a scientific consultant to convene the panel to review the international agency's assessment that glyphosate was "probably carcinogenic to humans."

The experts were asked to examine the agency's data and assess the scope of the research included or excluded, Scott said. They concluded that "[the data do not support IARC's conclusion that glyphosate is a 'probable human carcinogen.'](#)"

Email: EPA official offered to 'kill' study on glyphosate

A month after the report said glyphosate could cause cancer, Heydens sent an email to Monsanto's US agency lead -- the liaison to agencies such as the EPA -- about the possibility of "doing more work to help us deal with the IARC fallout."

[WILLIAM HEYDENS ON 'IARC FALLOUT'](#) (p. 103)



Monsanto executive William Heydens wrote an email to Dan Jenkins, the company's US agency lead at the time, about how to deal with fallout from an International Agency for Research on Cancer report saying glyphosate is "probably carcinogenic to humans."

[View the entire document with DocumentCloud](#)

Dan Jenkins, Monsanto's US agency lead at the time, replied and suggested talking to Jess Rowland, then chairman of the EPA's Cancer Assessment Review Committee.

"He'll give us straight talk," Jenkins wrote in an April 27, 2015, email.

[DAN JENKINS - "STRAIGHT TALK" FROM EPA OFFICIAL](#) (p. 103)

From: JENKINS, DANIEL J [AG/1920]
Sent: Monday, April 27, 2015 11:51 AM
To: HEYDENS, WILLIAM F [AG/1000]
Subject: Re: Glyphosate IARC Question

I think you and I could get on the phone w Jess Rowland and discuss this pretty openly. He'll give us straight talk.

Dan Jenkins

US Agency Lead

Monsanto Company

Dan Jenkins replied to William Heydens' email about how to deal with "IARC fallout."

[View the entire document with DocumentCloud](#)

But the next day, Jenkins said Rowland called him "out of the blue."

"Jess [Rowland] called to ask for a contact name at ATSDR," Jenkins wrote, referring to the federal [Agency for Toxic Substances and Disease Registry](#).

At the time, the registry -- part of the US Department of Health and Human Services -- [was working on its own investigation into glyphosate](#) (PDF).

"(Rowland) told me no coordination is going on and he wanted to establish some saying '[If I can kill this I should get a medal](#),'" Jenkins wrote, as shown in the [plaintiffs' motion to compel the deposition of Rowland](#).

"However, don't get your hopes up, I doubt EPA and Jess can kill this; but its good to know they are going to actually make the effort now to coordinate due to our pressing and their shared concern that ATSDR is consistent in its conclusions w EPA."

effort now to coordinate due to our pressing and their shared concern that ATSDR is consistent in its conclusions w EPA
" IF I CAN KILL THIS I SHOULD GET A MEDAL' " (p. 102)

Also, Jess called to ask for a contact name at ATSDR. I passed on Jesslyn's email. He told me no coordination is going on and he wanted to establish some saying "If I can kill this I should get a medal". However, don't get your hopes up, I doubt EPA and Jess can kill this; but it's good to know they are going to actually make the effort now to coordinate due to our pressing and their shared concern that ATSDR is consistent in its conclusions w EPA.

Dan Jenkins
U.S. Agency Lead

Regulatory Affairs
Monsanto Company

According to a Monsanto email, a Monsanto employee said EPA official Jess Rowland said he "should get a medal" if he could kill a different government agency's investigation into glyphosate. Rowland, who is now retired from the EPA, has not returned requests for comment.

[View the entire document with DocumentCloud](#)

The report on glyphosate by the Agency for Toxic Substances and Disease Registry was never killed. In fact, researchers are still working on it, registry spokesman Larry Furphy said Friday.

"ATSDR is in the process of developing a Toxicological Profile for glyphosate," Furphy wrote in an email to CNN.

"For glyphosate, much of the scientific literature is continuing to emerge, and the agency wants to ensure that we have all the evidence from recent and pending literature reviews."

Furphy said the agency expects to release a draft of the report by the end of the year.

In a separate Monsanto email, dated September 3, 2015, Jenkins told colleagues that Rowland was planning to retire in about five to six months "and could be useful as we move forward with ongoing glyphosate defense."

Rowland has since retired from the EPA and has not responded to requests for comment.

EPA is not a party to the case. Beyond that, the Agency does not comment on active litigation.

an EPA representative

When asked about the litigation, an EPA representative said it is "a dispute between private litigants, and EPA is not a party to the case. Beyond that, the Agency does not comment on active litigation."

Litzenburg said the court documents "seem to show an inappropriately close relationship" between Monsanto and the former EPA official.

But Monsanto spokeswoman Lord said the company has never paid, given gifts to or done anything else to curry favor with anyone from the EPA.

"As part of a highly regulated industry, Monsanto routinely responds to EPA requests for data and information about our products," she said. "Monsanto fully respects the EPA's role in regulating pesticides, and we work to provide accurate information and answer questions to ensure that the agency can make decisions based on thorough and complete science."

Conflicting research on glyphosate

The National Pesticide Information Center acknowledges conflicting reports about the risk of cancer with glyphosate.

Some studies have associated glyphosate use with non-Hodgkin lymphoma.

National Pesticide Information Center

"When high doses were administered to laboratory animals, some studies suggest that glyphosate has carcinogenic potential," [said the center](#), a cooperative between [Oregon State University and the EPA](#).

"Studies on cancer rates in people have provided conflicting results on whether the use of glyphosate containing products is associated with cancer. Some studies have associated glyphosate use with non-Hodgkin lymphoma."

Non-Hodgkin's lymphoma is a common cancer that starts in the lymphatic system. About 72,000 people are expected to be diagnosed this year, according to the [American Cancer Society](#). An estimated 20,000 people will die from it in 2017.

'They took away our dreams, our savings'

While the lawsuits work their way through court -- the next phase of discovery is expected in October -- Sheppard said she's trying to manage her illness the best she can. That means avoiding planes and any crowded place.

"My immune system doesn't allow me to travel much," she said. "If I get sick, I get sick for a long, long time."



Sheppard had to move from Hawaii to California to get better access to cancer treatment.

She and her husband had to sell their coffee farm in Hawaii and move to California for cancer treatment. Sheppard said she has depleted her 401(k) to pay for medical bills.

"They didn't take away my life, thank goodness, but they took away our dreams, our savings," she said.

Sheppard said she now wants two things: Monsanto to stop selling Roundup, and an apology from the company.

She said she doesn't think she'll get the latter.

"I think Monsanto is going to fight this to the bitter end."

Editor's note: This article has been updated to add a response from Scott Partridge, Monsanto's vice president of global strategy.

MAY 11 2017



May 8, 2017

Mr. Robert Batteese
Maine Department of Agriculture
Board of Pesticides Control
28 State House Station
Augusta, Me 04333-0028

Dear Mr. Batteese:

The purpose of this letter is to inform the Board of Pesticides Control that Emera Maine plans to hydraulically spray fifty-three electric substations and switch stations located in our Southern Operation Region (SOR, old Bangor Hydro Electric Company) and forty-three electric substations and switch stations located in our Northern Operation Region (NOR, old Maine Public Service Company).

The motorized hydraulic spraying will be conducted under a drift management plan that will be on file in Emera Maine's place of business. This plan and associated spray operation will work under stringent parameters to minimize the possibility of any off-sight pesticide drift. Our intent is to spray these ninety-six sites hydraulically this year and all our other locations will be sprayed with non-motorized low volume backpack sprayers. New sites may be added next year for potential hydraulic spraying. The board will be notified every year with a new count of sites that will be hydraulically sprayed. As always, EMERA Maine will treat its transmission R-O-W corridors using non-motorized low volume backpack sprayers. This practice will most likely never change.

If you have any questions please feel free to contact me at (207) 973-2582 or mark.lamberton@emeramaine.com

Thank you,

A handwritten signature in black ink, appearing to read "Mark Lamberton", is written over a thin, light-colored line that extends from the signature area towards the contact information above.

Mark Lamberton
Supervisor of Vegetation Management

cc. Tom Kostenbader, Asplundh Tree Ex. Co.
cc. Neil Lyons, EMERA Maine.

Chamberlain, Anne

From: Pesticides
Sent: Thursday, May 18, 2017 1:29 PM
To: Chamberlain, Anne
Cc: Lay, Cam
Subject: FW: GMO Potatoes

-----Original Message-----

From: Nancy Jezior [<mailto:n.jezior@gmail.com>]
Sent: Thursday, May 18, 2017 1:00 PM
To: Pesticides
Subject: GMO Potatoes

To whom this may concern,

I recently read that you have approved 3 types of genetically modified potatoes for planting. Please, I implore you to change your minds. Genetically modified foods have not been thoroughly tested for human consumption.

Stop putting your citizens lives in danger!

Nancy Jezior.

Sent from my iPhone

From: Lynn Hower Allen
Sent: Monday, May 01, 2017 4:10 PM
To: Pesticides
Subject: Attention: Megan P.

Hi Megan,

Thanks for taking my call and helping me out this afternoon.

I am attaching the letter with the scanned page of signatures. I'd appreciate this letter being included in the next meeting of the BPC. Additionally, if you could provide a copy to Ray Connors I'd appreciate it.

I see that you are Manager of Pesticide Programs which includes golf courses and athletic fields. Can you tell me if I can request information from a golf club regarding their use of pesticides?

If you have any questions I can be reached via email or by phone: 329-2188.

Again, thanks for your help,

Lynn

Lynn Hower Allen

Rockland, ME

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

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

CC Raymond Connors, BPC

Dear Board of Pesticides Control Members;

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

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

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

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

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

With thanks for your time and consideration, sincerely,

Members of the Parkinson's Support Group, Camden

My - Howard Allen, Rockland	
DzB Winsky	Rockland
Jonathan Wilkinson, Poyt	Camden
J Gordon Giest	Camden
Rohin Giest	Camden
Henry Hull	Camden
Karen Hull	Camden
David Anna	Belfast
	Thomaston
Charlie Allen	Rockland
Buth Allen	Camden
Robert J. Bink	Washington
 MD	Camden
Ruth Houry	Camden
Katherine A. Moores	Rockland
Jim (Blue)	Rockland
Anne Dodson	Camden
Anne Williams	West Rockport
Cassandra Walters	Rockland

From: Scott Longfellow
Sent: Friday, May 12, 2017 9:23 AM
To: Pesticides
Subject: Support of LD 1505

To Whom It May Concern in the Board of Pesticides Control,

I would like to give my support for the passage of LD 1505. The inconsistency and confusion continuing to grow in the State of Maine by several municipalities creating their own various regulations is a bad direction to be headed. Many residents of these communities are not aware of all the variables and truth about how and when pesticides are being used, and are influenced by emotion rather than facts. Maine needs a consistent set of rules for all to abide by, not a hodgepodge of specific regulations to follow with each different community.

I again urge the passage of LD 1505.

Thank you,

Scott Longfellow

Longfellow's Greenhouses

Manchester, ME 04351

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Date: (Filing No. H-)

AGRICULTURE, CONSERVATION AND FORESTRY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 130, L.D. 174, Bill, “An Act To Limit the Use of Pesticides on School Grounds”

Amend the bill by striking out the title and substituting the following:

'An Act To Require Schools To Submit Pest Management Activity Logs and Inspection Results to the Board of Pesticides Control for the Purposes of Providing Information to the Public'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 22 MRSA §1471-M, sub-§8 is enacted to read:

8. School pesticide data collection; public posting. The board by rule shall require each school to maintain and provide to the board by January 15th of each year a pest management activity log for the previous calendar year that includes a list of pesticide applications on school property. The log must include the date and location of each application, the name of the pest being managed, the trade name of the pesticide applied, the United States Environmental Protection Agency registration number if the pesticide is subject to registration, the name and license or certification number of the applicator and other pertinent information required by the board by rule to be included in the log.

The board shall post on its publicly accessible website all information provided by each school under this subsection. The board shall also post and maintain on its publicly accessible website a current list of all board inspections of pesticide use by each school and the results of those inspections.

For purposes of this subsection, "school" means any public or private school, as defined by the department by rule.'

SUMMARY

This amendment is the minority report of the committee and replaces the bill. The amendment establishes in law certain requirements of the Department of Agriculture,

COMMITTEE AMENDMENT

1 Conservation and Forestry, Board of Pesticides Control related to pest management on
2 school property, including the maintenance of records related to the application of
3 pesticides. It requires this information to be provided annually to the board and requires
4 the board to post that information on its publicly accessible website. It also requires that
5 the board post on its publicly accessible website a list of all board inspections of a
6 school's use of pesticides and the results of those inspections.

7 The fiscal note on the amendment identifies certain requirements in this amendment
8 as a potential state mandate. In order to be a mandate pursuant to the Constitution of
9 Maine, a provision must require a local unit of government to expand or modify its
10 activities so as to necessitate additional expenditures from local revenue. The committee
11 finds the provisions identified as a potential mandate do not require a local unit of
12 government to expand or modify its activities so as to necessitate additional expenditures
13 from local revenue.

14 The requirement in the amendment that a school submit a copy of its pest
15 management activity log, which is already required by rule to be maintained, does not
16 require an expansion or modification of activities so as to necessitate additional
17 expenditures from local revenue. The committee does not feel that the act of submitting
18 once per year a pest management activity log that is already required to be maintained
19 constitutes additional expenditures from local revenue.

20 **FISCAL NOTE REQUIRED**

21 **(See attached)**

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
S.P. 209 - L.D. 594

An Act To Modify the Definition of "General Use Pesticide"

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1471-C, sub-§11-B, as enacted by PL 1987, c. 723, §2, is amended to read:

11-B. General use pesticide. "General use pesticide" means any pesticide ~~which has been registered by the United States Environmental Protection Agency as evidenced by a registration number on the label that is required to be registered by the board pursuant to Title 7, chapter 103, subchapter 2-A and which~~ that is not a restricted use or limited use pesticide, as defined in this section. ~~Pesticides restricted by the United States Environmental Protection Agency are so identified on the label.~~ Pesticides restricted or limited by the ~~Board of Pesticides Control~~ board are listed by the board.



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

May 26, 2017

Mr. Donald J. Dubois
Dubois Contracting
295 St. John Road
Fort Kent, ME 04743

RE: Variance Permit for CMR 01-026, Chapters 29 for Vegetation Control on the Fort Kent Levee

Dear Mr. Dubois:

This letter will serve as your variance permit for 2017 for broadcast application of herbicides along portions of the Ft. Kent levee along the St. John and Fish Rivers. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your application. You also need to receive a new variance if you choose to use any products other than those listed.

I will alert the Board at its June 23, 2017 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Cam Lay
Director
Maine Board of Pesticides Control



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

May 8, 2017

Robert W. Moosmann
Maine Department of Transportation, Bureau of Maintenance & Operations
16 State House Station
Augusta, Maine 04333-0016

RE: Variance permit for CMR 01-026 Chapter 29

Dear Mr. Moosmann:

This letter will serve as your variance permit for Section 6 of Chapter 29 for weed control along state maintained roads and other transportation facilities.

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

Please bear in mind that your permit is based upon your agency employees and contractors adhering to the precautions listed in Section IX of your variance request.

I will alert the Board at its June 23, 2017 meeting that the variance permits have been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Anne Chamberlain
Regulations and Policy Specialist
Maine Board of Pesticides Control

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

30 May 2017

Mr. Bryan Emerson, PWS
Stantec, Inc.
30 Park Drive
Topsham, ME 04086

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

Dear Mr. Emerson:

On December 13, 2013, the Board authorized the staff to issue multi-year permits for broadcast pesticide applications within 25 feet of water for the 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. This letter will document the granting of a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 for your treatment of the invasive plant Japanese knotweed, *Fallopia japonica*, on the Howard property in Phippsburg, Maine.

This variance is valid until 31 December 2018. 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.

I will alert the Board at its June 23, 2017 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Cam Lay
Director
Maine Board of Pesticides Control

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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