



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**November 4, 2016**

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

**AGENDA  
8:30 AM**

1. Introductions of Board and Staff
2. Minutes of the September 23, 2016 Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

3. Update on the Browntail Moth Population Trends in Maine

Based on 2016 Maine Forest Service surveys, in 2017 browntail moth is projected to see a population surge across a broad swath of southern Maine. Staff from the Maine Forest Service Insect and Disease Laboratory will update the Board with the most recent information.

Presentation By: Charlene Donahue  
Forest Entomologist

Action Needed: None – Informational Only

4. Discussion of Board Approved Products for Control of Browntail Moth within 250 feet of Marine Waters

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates the use of insecticides used to control browntail moth within 250 feet of marine waters. Section 5 limits insecticide active ingredients to those approved by the Board. The Board agreed with its Environmental Risk Advisory Committee recommendations on a list of acceptable products. Since that time, a number of newer chemistries are now registered for use and far more data is available

on the efficacy of many products. Consequently, the Maine Forest Service has suggested that it is appropriate to review the list of acceptable active ingredients.

Presentation By: Charlene Donahue  
Forest Entomologist

Action Needed: Determine Which Products Are Acceptable for Browntail Moth Control

5. Discussion of Pesticide Sales and Use Data Submitted to the Board

At the September 23, 2016 Meeting, the Board watched two presentations related to Maine pesticide sales and use data reported to the Board. Gary Fish delivered a presentation explaining the methodology used by Board staff to estimate Maine lawn and landscape use trends. Megan Patterson delivered a presentation detailing current pesticide sales/use reports, current sales/use reporting requirements and the nature of the information that is received by the Board.

Presentation By: Henry Jennings  
Director

Action Needed: Determine next steps

6. Consideration of Consent Agreement with Plants Unlimited, Inc., Rockport, 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 a private applicator's failure to maintain sufficient application records, failure to provide Worker Protection Standard (WPS) training for agricultural workers, failure to post pesticide application information at a central location, and use of a pesticide in a manner inconsistent with its label directions.

Presentation By: Raymond Connors  
Manager of Compliance

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

7. Consideration of Consent Agreement with TruGreen Lawncare, Westbrook, 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 failure of a commercial applicator to notify an individual listed on the registry prior to conducting an outdoor, non-agricultural pesticide application within 250 feet of the property boundary of the listed residence.

Presentation By: Raymond Connors  
Manager of Compliance

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

8. Other Old or New Business
  - a. BPC Obsolete Collection Overview
  - b. Update on Homeowner Education Activities
  - c. City of South Portland Pesticide Use Ordinance

9. Schedule of Future Meetings

December 16, 2016; January 11, 2017; and February 17, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

10. 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](http://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](mailto: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.



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**September 23, 2016**

**Conference Room  
Maine DOT John E. Dority Training Center  
10 Mountain Ave, Fairfield, Maine**

**MINUTES**

**8:30 AM**

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

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Fish, Hicks, Patterson, Tomlinson, Tourtelotte

2. Minutes of the August 19, 2016, Board Meeting

Presentation By: Megan Patterson  
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

- Jemison pointed out that the statement on page three which reads ‘50 two-and-a-half pound bags’ should be ‘50 two-and-a-half gallon jugs’
  - **Granger/Stevenson: Moved and seconded to adopt as amended**
  - **In Favor: Unanimous**

3. Consideration of Enforcement Action Against Stone Wall Farms, Lincoln, Maine

In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. This case involves the use of a pesticide in a careless, negligent or faulty manner and the use of a pesticide in a manner inconsistent with product labeling, which resulted in the death of two dogs.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

- Connors reviewed the details of the case for the Board. He stated that on April 23, 2016, Alfred Fugazzi mixed one ounce of Lannate® with four slices of crumbled bread and placed it in three locations in the field he leased and farms. At 3:00pm that day Ann Thornton, walking her English setter and dachshund, entered the field with her dogs off leash, but near her. The dogs ate some of the Lannate® treated bread crumbs and perished.
- Connors listed several violations Fugazzi made with the application:
  - Use of a pesticide in a negligent or faulty manner
  - Use inconsistent with the label:
    - The max application rate for Lannate® is 1lb. per acre and Fugazzi used one ounce on 4 slices of bread.
    - The water soluble bags are not supposed to be cut, torn or opened. Fugazzi opened the bags in order to get to the Lannate® to put on the bread crumbs
    - Required personal protective equipment not worn: respirator, eyewear, apron, chemical resistant gloves and footwear
  - No records of application were kept
- Randlett stated the most significant violation was the reckless manner of use, but other violations were considered. He continued that three types of penalties can be invoked. The most commonly used is the civil penalty, which carries a maximum fine of \$1,500. Randlett said there is a provision in the law that would make a violation criminal if the conduct was intentionally or knowingly done. The third type is the revocation or suspension of license.
- Connors presented a PowerPoint presentation showing the route Thornton took with her dogs, the location of the three piles of breadcrumbs and posted entrances to the property. In the photos taken after the incident, signs were present at the main entrance to the farm and where Thornton entered the field with her dogs. The signs read: 'Sprayed-Keep Out'.
- Connors stated that on April 23, 2016 the responding officer reported that Thornton told him no sign was present where she entered the property. Thornton made a statement to the BPC inspector on April 23, 2016 that no signs were posted. A photo taken on April 23, 2016 showed that a sign was in place.
- Fugazzi stated he is very aware he used the Lannate® in an incorrect manner. Fugazzi continued that crows are a severe and annual problem at his farm; 200-300 at a time. The day he made the application using the treated bread he stated he had had to replant, call in extra help to do so, could not keep the row cover on his seedlings, and lost his temper. He said he remembered he had some bread in his truck. Fugazzi also relayed to the Board that he has had trouble with vehicles driving into the field, so he blocked the road with rocks. As a lessee, Fugazzi stated, he does not allow anyone into the field and is upset his efforts to keep people from entering the field were ignored by individuals letting their animals run through his planted crops.
- Granger asked Randlett if the land was legally posted from his understanding. Randlett responded that it appeared to be posted, but does not know if this is particularly relevant in respect to whether a violation was committed or even to whether the use was conducted in a reckless manner. Randlett continued that use in a reckless manner applies not only to the public, but to wildlife as well, and other wildlife, such as deer or an endangered species, may have come into contact with the bread. Randlett concluded that the postings may be a

consideration when deciding if the application was posted correctly, but has limited relevance when talking about the use of this pesticide and if it was done in a way to cause harm.

- Granger asked if the posting was sufficient for the application. Eckert stated the sign was for spraying, and the area was not posted for this bait application.
- Connors stated he spoke with Robin Dyer, State Director/Certified Wildlife Biologist for the United States Department of Agriculture, USDA, and was informed that there are legal methods that can be taken to deter crows. Farmers can obtain a permit to shoot by contacting Inland Fisheries and Wildlife (IFW). Jemison added that Avipel® is an option for the field corn. Connors voiced that Dyer informed him sound cannons and effigies are additional options. Fugazzi interjected that Dyer visited his field and told him that poisoning was legal for dairy farms, but not vegetable growers. Dyer said Fugazzi could shoot the crows, but Fugazzi stated once he would shoot one crow, all the others would disappear. Fugazzi said he purchased two noise cannons and the neighbors destroyed one and he finally shut the other one off because he received so many complaints.
- Jemison asked Fugazzi about using Avipel®. Fugazzi stated Avipel® is only for the corn, and he has cucumbers, squash, and other crops that the crows go after. Jemison said the Special Local Needs 24(c) for Avipel® expires in 2017 and maybe they can take a look at broadening the listed crops for the product. Jemison asked staff to contact the Avipel® Company before the next meeting and find out if any other states are registering it for vegetable seeds other than field corn. Hicks responded that she would look into this.
- Thornton told the Board she has walked that route for the four years she has lived there and stated the location of the bait shown on the PowerPoint presentation is not where her dogs ate it. Thornton stated her dogs were maybe a foot into the edge of the field when she saw them eat something. She continued that 20 seconds after eating it, the dogs dropped. Thornton also said, with regard to posting, she knew about the sign at the front of the property, but had never seen postings on the back of the property. Thornton concluded the dogs were with her that day, and did not wander into Fugazzi's planted field or onto the row covers.
- Jemison asked if Fugazzi has a Good Agricultural Practices (GAP) certification. Fugazzi does not.
- Randlett asked that the Board not arrive at any conclusions today, but to discuss the matter as a Board and to direct the staff. Randlett continued that the other appropriate thing to do would be to provide some guidance to Connors regarding the Board's perceived seriousness of the offense and the range of acceptable conclusions.
- Bohlen interjected he wished to abstain from the decision because he came in late.
- Jemison stated it would be helpful to him to know how the farm was operating other than this incident. He asked if a standard inspection was done in addition to responding to the complaint, and if this was an isolated event or have there been other inappropriate findings. Tourtelotte responded she had conducted an inspection at the farm one month after the incident and found no issues. Connors stated there have been nine inspections at this farm over the years and there has never been a warning letter or consent agreement sent to them.
- Granger added that farmers know pesticides are dangerous and take steps to post and try to keep people out, and when people ignore those signs and go onto posted land, they leave themselves open to things like this happening. Granger asked staff to keep this in mind.

- Eckert stated there are definite and serious violations and there needs to be a serious penalty. She added that the application was not safe and perhaps not effective either. Jemison stated he completely agreed, but also wants to explore ways to ensure this does not occur again.
- Morrill stated staff needs to remember they are to take into consideration the pesticide violation and not the trespassing violation. He added that if the label had been followed, we would not be sitting here. Morrill also raised the issue regarding this behavior being learned or found somewhere and wondered if this was an isolated incident.
- Morrill suggested that the staff move forward with negotiating a consent agreement and stated this is one of the most serious violations they have had come before them.
- Fish stated that in the past there has been discussion of methomyl being used as bait to target animals, not only birds, but rodents and other things. He added that it is a reoccurring problem that needs to be checked. Fish suggested there needs to be an educational component and a deterrent.
  - **Morrill/Stevenson: Moved and seconded to move forward with negotiating a consent agreement**
  - **In Favor: Five; Abstained: One**

4. Consideration of Enforcement Action Against Joseph Fazekas, Harpswell, Maine

In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. This case involves an unauthorized pesticide application.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

- The Fazekases and Ryan Dumas, the lawyer representing them, were present. Dumas asked permission to place an audio recorder near Connors to make a recording of the proceedings. Connors agreed.
- Connors stated this case involved the unauthorized application of glyphosate to a shorefront property in Harpswell, Maine owned by Debbie Thomas and Ned Douglas. Connors indicated the location of the Douglas/Thomas and Fazekas properties on the assessor map he provided to the Board. Connors explained view easements the Fazekases have on the Douglas/Thomas property to allow them to maintain their view of the ocean.
- Connors related the details of the case beginning with the damage first being noticed by an arborist in the area and being reported to the BPC on July 2, 2015. On July 10, 2015, a BPC inspector visited the Douglas/Thomas property and took photos and samples. The inspector took some of the photos and samples to a plant pathologist at the Maine Forest Service. The pathologist responded by email that it was clear an herbicide had been used. The pathologist stated if it was naturally occurring, it is usually host specific and this was a wholesale killing of all vegetation in the area. The two vegetation samples were sent to the lab and combined and tested as one sample. The results showed the presence of glyphosate at 8.9 ppm. A consent agreement was sent to the Fazekases on June 28, 2016 and Connors received back a letter from Fazekases' legal counsel contesting the agreement. Connors visited the site and took photos on August 15, 2016.

- Jemison asked how effective glyphosate is when sprayed on the soil. Granger stated glyphosate is not at all effective via soil; it is a systemic pesticide that must be taken in through green foliage. Granger added that the top part of a mature tree would not die from an application of glyphosate at its base, and he does not believe the large pine, shown in the photo, died from glyphosate. He continued that a lot of the photos did not look symptomatic of Roundup® damage, but some of them did. Granger concluded it looked like more than one pesticide was used, and it appeared as if the bottom of the large pine died more recently than the top. Patterson stated there was a hole at the base of the tree, but it was not evident if it had been drilled.
- Randlett stated it now comes to the Board for consideration, and they need to give the staff direction regarding whether to continue to pursue enforcement. Randlett told the Board they could: do nothing, refer to Attorney General’s office, or send the case back to staff to continue negotiation.
- Dumas stated his clients became aware of this this summer when they received the consent agreement in the mail. Dumas continued that the Fazekases have view easements to maintain their view of the ocean, and there is no direct evidence that their clients applied anything. Dumas also added that the maple tree is the tree they were interested in trimming. The prior two years they have asked to trim the maple tree and were told no. The Fazekases left the matter there because they were selling the property anyway and have since moved. Dumas stated the primary view that is blocked is the one blocked by the maple tree, not the area that had damage.
- Eckert commented she would like to know what happened but does not think pursuing an action against the Fazekases will give us that answer. Bohlen also agreed he does not see a pathway to finding a resolution that would let the Board find out what happened.
- Jemison asked what the original consent agreement was set at. Mr. Fazekas stated it was \$1,000.
  - **Granger/Bohlen: Motioned that the staff pursue no further enforcement action in this matter.**
  - **In Favor: Unanimous**

5. Consideration of Consent Agreement with Granite Bay Care, Inc., Portland, 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 indoor application of an unregistered pesticide by an unlicensed applicator to an area open to use by the public.

Presentation By:       Raymond Connors  
                                   Manager of Compliance

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

- Connors informed the Board that Granite Bay Care, Inc. provides assisted living to individuals. The BPC received a call from the parents of a patient alleging that unlicensed Granite Bay Care staff applied borax and Raid® roach traps/spray. A BPC inspector went to the facility and it was determined that employees at the facility were making unlicensed applications.



- Connors stated that one product, Bed Bug Bully, was not registered in Maine at the time of the inspection. The product was purchased on Amazon. A discussion of the ingredients in Bed Bug Bully followed. Connors stated Tomlinson is the staff member who pursues unregistered products.
- Connors said he sent a consent agreement for \$250 to Granite Bay Care and the company agreed to the facts as documented.
- Morrill asked if the company was told they need to use licensed applicators in the future. Connors responded that the inspector did inform them of the requirement and the importance of making legal pesticide applications.
  - **Eckert/Bohlen: Motioned to approve consent agreement**
  - **In Favor: Unanimous**

6. Overview of Historical Maine Lawn and Landscape Pesticide Use Estimates

At the August 19, 2016, meeting, the Board requested an explanation of the methodology used by Board staff to estimate Maine lawn and landscape pesticide use trends. The analysis utilized annual sales and use reports submitted to the Board by pesticide dealers and commercial applicators. Gary Fish, the State Horticulturist, will provide an overview of past estimates.

Presentation By: Gary Fish  
State Horticulturist

Action Needed: None—Informational Only

- Fish delivered a PowerPoint presentation and discussed the popularized graphic which indicates a 700% increase in pesticide sales.
- Fish stated he began recording pesticide sales in 1995 and used data from a few different reports. The largest reports were yearly dealer reports of pesticides sold into the state. Fish explained that these are dealer reports of what was purchased, so we have no idea what was sold to an end user and, if after being sold, if it was used. Fish added that he also used restricted use pesticide dealer reports, because they generally sold general use pesticides as well. He also included annual reports from commercial applicators and would try to account for the products sold to commercial applicators so that products were not double counted. Fish stated he gleaned through all these reports for the information on the products he knew homeowners used.
- Fish estimated it took him approximately 24 working hours each year the report was compiled and that it took such a short time because he did not do a lot of work with the data, but tried to get an estimate as quickly as possible. Fish stated that he used the same process each year he compiled the report.
- Fish said he tried to make it clear whenever he spoke to people that it does not represent what was actually used, and that graphic represented pounds of pesticides, not pounds of active ingredient, a.i. The large majority of the items are less than 5% a.i, especially the weed ‘n feed which is approx. 2% a.i. and the rest is fertilizer. Fish stated the only accurate component of the graphic is probably the trend line because he used the same process each year. The changing attitudes about landscaping, pesticides, mosquito and insect borne diseases are reasons, Fish felt, that pesticide use has trended up.
- Fish concluded that all he intended to point out with this graph was that people were using a lot of pesticides and he was trying to communicate ‘think first spray last’, which has been the

Board's motto for many years. That was the only point behind this, Fish reiterated; it was not meant to alarm everyone.

- Morrill thanked Fish for the presentation clarifying the graph and asked if Fish has ideas on how to improve the current intake of data to raise the level of accuracy. Hicks responded that she has also used the data and agrees with Fish that it is a mess.

7. Review and Discussion of Board Homeowner Education Efforts

At the August 19, 2016, meeting, the Board requested a presentation of an updated outreach plan at the following meeting and progress updates at all subsequent meetings. Over the last several months, the Board discussed various ideas and approaches for improving education of homeowners on the use of Integrated Pest Management and the proper use of pesticides. Staff will provide an update to the Board about activities planned for the winter and spring of 2016 and 2017.

Presentation By: Megan Patterson  
Manager of Pesticide Programs

Action Needed: Determine next steps

- Patterson explained to the Board some of the recent homeowner education outreach undertakings by staff. Patterson stated the staff has been setting up talks for the coming spring with garden centers and have been in contact with both Tom Estabrook and Jeff O'Donal. A booth has been reserved at the Maine Flower Show in Portland and there have been discussions about presenting there. The staff will be signing up for the Bangor Flower Show, once it is available. Discussions have taken place with Kelly Donnelly, who is in charge of the Bangor Flower show and she has asked the staff about presenting there as well.
- Patterson informed the Board that staff will be attending the Independent Garden Centers Annual Meeting and coming up with a few topics and presentation dates.
- Patterson has been setting up GovDelivery where the public can visit the BPC page and sign up for topics of interest. This would allow the general public who is not normally involved with the BPC to go to GovDelivery and find and sign up for BPC events/presentations and receive other information. This information goes out automatically and is coordinated with Facebook and Twitter accounts.
- Patterson and Couture have been working on compiling a list of expert speakers, including Fish and Kathy Murphy, to give invited presentations on topics.
- Patterson relayed to the Board that the GotPests website received about 10k hits last month and woodpeckers were near the top of the list of concerns, as well as tomatoes and other garden-related topics. We have also begun revamping the retail signs.
- Morrill asked if there were any questions from the audience or if anyone had ideas on how to reach out to homeowners and how to educate the general public. Fish offered himself and his staff to assist with homeowner education. Fish stated he recalled doing these things for many years and he felt it had some impact, but that more impact comes from trying to get sensational advertising to attract attention. Fish added that presenting at garden centers takes up a lot of staff time and we get a small bang for our buck. He suggested focusing more on trying to find advertising that will attract more attention and be more effective. Fish also stated that the BPC gets greater impact out of the GotPests website and other online and big media ventures.

8. Overview of Pesticide Sales and Use Data Submitted to the Board

At the August 19, 2016, Meeting, the Board requested a presentation detailing current pesticide sales and use reports. The staff will explain the current requirements and the nature of the information that is received by the Board.

Presentation By: Megan Patterson  
Manager of Pesticide Programs

Action Needed: None—Informational Only

- Patterson listed the types of reports the pesticide sales information is derived from, and what information is contained within those reports. Patterson explained many items are exempt from reporting requirements, such as: indoor household use items, all aerosols, insect repellents, pet products, disinfectants, any products with less than 3% a.i., and others. Patterson covered some of the problems with the data that is collected, such as inaccurate EPA registration numbers, data discrepancies, the issues with making a one to one ratio comparison between liquid and solid products, how some of the information needed to do those calculations cannot be found on the labeling of homeowner products, issues with obtaining specific gravity, and issues with the percentage of the reported weight of products that is attributable to packaging.
- Patterson stated that from 1998-2000, reports on pesticide sales were provided to the legislature and the legislature did not find it particularly useful and asked Board staff to collect the information in a more useful manner. In 2000-2001 the Board was directed to research methods of data improvement. Patterson related to the Board that the legislature then asked to have reports based on pounds of a.i., so the BPC had one staff member dedicate all of her time to calculating this data, and she was able to compile a database for 500 products in three months. Chamberlain added that we currently register over 11,000 products.
- Patterson stated California collects pesticide sales and use data, but they have a sophisticated program for collecting this and reports are submitted to them electronically. They have a multiple data accuracy checks they run on each report and have to frequently send reports back to companies to be fixed, resubmitted, and rechecked.
- Eckert asked if there was a way to get some of this data federally. Fish responded that the EPA does not specifically record what is sold in Maine; they do reports, usually three years behind, and issue information on general overall distribution of pesticide sales throughout the country. Patterson stated that in the past Board staff has worked on agricultural pesticide use/sales and that information is much more descriptive than what we are able to collect on homeowner products.
- Morrill stated that Bohlen and Henry were interested in this topic and it should be discussed again at the next meeting.

9. Other Old or New Business

- a. Chapter 29 Variance for Vegetation Control Service, Inc.
  - b. Revision of Chapter 29 Variance for Vegetation Control Service, Inc.
  - c. Chapter 29 Variance for Maine Coast Heritage Trust
  - d. Chapter 29 Variance for Town of North Yarmouth
- e. Inclusion of articles in the Board Packet
- Chamberlain stated there has been discussion recently about what has and has not been included in the recent Board packets. Chamberlain explained that a few months ago, because of ongoing work with Pega, she stopped being able to go through the news and pull out articles. In the near future, the Board packets will only include items sent to the

Board by constituents, because staff does not have time to go through the newspapers thoroughly anymore. Chamberlain stated all items for the Board packet need to be sent to [pesticides@maine.gov](mailto:pesticides@maine.gov), by 8:00 AM, three days in advance of the scheduled Board meeting, and not to any individual staff members. This way the staff can ensure nothing inadvertently gets left out. Board members may also submit articles.

- Jodi Spear asked the Board if they had comments on the correspondence sent to them from her and Paul Schlein. There were no comments from the Board.

#### 10. Schedule of Future Meetings

November 4, 2016; December 16, 2016; January 11, 2017 and Feb 17, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Jemison suggested having the meetings at the Fairfield DOT building on a regular basis. There was also a discussion about changing the meeting start time to 9:00 AM.
- Eckert asked Randlett about the legality of participating by phone. Randlett stated these are public meetings and it is not encouraged because they want all Board members to be present to the fullest extent when voting and making decisions. Randlett added that in a rare instance if someone really was unable to attend they could call in, but it is not encouraged.
- Morrill stated that going forward if there is a scheduling conflict with Jennings' schedule, the Board and staff will postpone and move the meeting date so that Jennings can attend all meetings.
- The Board decided to hold the next meeting in Augusta, but change the start time to 9:00 AM.

#### 11. Adjourn

- **Granger/Stevenson: Moved and seconded to adjourn at 11:45am**
- **In Favor: Unanimous**

### NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at [www.thinkfirstspraylast.org](http://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](mailto: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.



**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 Members  
 FROM: Lebelle Hicks, MS PhD DABT  
 RE: Review of Potential Browntail Moth Control Products  
 DATE: 10/26/2016

\*\*\*\*\*

The current resurgence of browntail moth populations is likely to present challenges for residents and pest managers in 2017. Chapter 29, Section 5 of the Board of Pesticides Control’s rules establishes standards for the use of insecticides to control browntail moths within 250 feet of marine waters, and limits which active ingredients can be used in that zone to those approved by the Board. Active ingredients currently used in the 50-250 foot zone for control of browntail moth include diflubenzuron, permethrin, tau-fluvalinate and cyfluthrin. A number of new chemistries have emerged since the Board’s Environmental Risk Advisory Committee recommended the current list. Additionally, more information is available on the efficacy of available insecticides. Consequently, the Maine Forest Service has suggested the time is right to update the list of appropriate products.

In addition to the question of which products should be approved for browntail moth control, there are two questions relating exemptions contained in CMR 01-026, Chapter 29, Section 5 (A), which is excerpted below:

***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.*

The first question relates to the definition of the term “biological pesticides”. At the time this section of the rule was adopted, the intention of the exemption was to permit the use of *Bt* and similar microbial pesticides. However, the term is not currently defined in Maine law and questions have arisen about non-microbial products, such as spinosad, derived from living organisms.

The second question relating to the exemptions is the broad question about injecting neonicotinoids and other persistent insecticides into trees pollinated by bees, given recent concerns for pollinators.

Table 1—which follows—contains a list of products registered in Maine that are labeled for use on moths in ornamental hardwood residential landscapes together with efficacy data provided by the Maine forest service.



<b>Table 1. Summary of Products Registered in Maine in 2016 for Use for Moths</b>				
<b>Efficacy <sup>(4)</sup></b>	<b>Compound (Chemcode) <sup>(1)</sup></b>	<b># prods</b>	<b>Chemical Class</b>	<b>MOA</b>
yes	Abamectin (122804)	2	Mectins	Chloride channel activators
yes	Emamectin benzoate (122806)	3		
yes	Acephate (103301)	12	Organophosphate	Cholinesterase inhibition
yes	Malathion (57701)	1		
yes	Carbaryl (56801)	5	Carbamate	
yes	Diflubenzuron (108201)	2	Insect growth regulator	Chitin inhibitors
unknown	Azadirachtin (121701)	13	Neem	Ecdysone agonist
unknown	Methoxyfenozide (121027)	2	Diacylhydrazine	
unknown	Tebufenozide (129026)	1		
unknown	Bta strain ABTS 1857 (6523)	1	<i>Bacillus thuringiensis</i>	Membrane disruption in gut
unknown	Btk Strain ABTS-351 (6522)	8		
unknown	Btk strain SA-11 (6519)	1		
unknown	Btk strain SA-12 (6518)	1		
yes	Acetamiprid (99050)	7	Neonicotinoid	nAChR activators
yes	Clothianidin (44309)	9		
yes	Dinotefuran (44312)	2		
yes	Imidacloprid (129099)	42		
yes	Spinosad (110003)	6	Spinosyns	nAChR allosteric activators
unknown	Chlorantraniliprole (90100)	2	Diamide	Ryanodine receptor modulators

<b>Table 1. Summary of Products Registered in Maine in 2016 for Use for Moths</b>				
<b>Efficacy</b> <sup>(4)</sup>	<b>Compound (Chemcode)</b> <sup>(1)</sup>	<b># prods</b>	<b>Chemical Class</b>	<b>MOA</b>
unknown	Cyantraniliprole (90098)	2		Ryanodine receptor modulators
unknown	Indoxacarb (67710)	1	Other	Sodium channels blocker
yes	Bifenthrin (128825)	33	Pyrethroid	Sodium channel modulators
yes	Cyfluthrin (128831)	3		
yes	Cyfluthrin-beta (118831)	4		
yes	Cyhalothrin-lambda (128897)	18		
yes	Cypermethrin (109702)	1		
yes	Cypermethrin-zeta (129064)	1		
yes	Deltamethrin (97805)	5		
yes	Fluvalinate (109302)	2		
yes	Permethrin (109701)	5		

- 1) National Pesticide Information Retrieval System (NPIRS, 2016) <http://nspirs.ceris.purdue.edu/>
- 2) BTM Product search methods 10/21/2016 LRH; for list of products by type of application see; tree moth all by method 10-24-16.XLXS <http://nspirs.ceris.purdue.edu/>
- 3) Scanning Label review of EPA approved Master Labels using EPA's Pesticide Product Label System (PPLS) <https://ofmpub.epa.gov/apex/pesticides/f?p=PPLS:1>
- 4) AI = active ingredient
- 5) Master List of Active ingredients and Mechanisms of Action Master List of AIs and MOA.XLS





# Proposed Administrative Consent Agreement Background Summary

**Subject:** Hammon Buck  
Plants Unlimited  
629 Commercial Street  
Rockport, Maine 04856

# 6

**Date of Incident(s):** 2014-2015 growing season

**Background Narrative:** On August 19, 2015, a Board inspector completed a records and operations check at this nursery/greenhouse business. Through the inspection, it was determined that a pesticide labeled for outdoor residential use only was applied inside this commercial greenhouse on April 23<sup>rd</sup>, June 26<sup>th</sup>, and August 28<sup>th</sup>, of 2014.

No pesticide application records were kept for the 2015 growing season and records were insufficient for the 2014 growing season. Additionally the grower did not train his agricultural workers, and there was no information about pesticide applications posted at a central information display as required by the federal Worker Protection Standard.

### **Summary of Violation(s):**

- CMR 01-026 Chapter 50 Section 1 A: No pesticide application records for 2015 growing season and records were insufficient for the 2014 season.
- Federal Worker Protection Standard, 40 CFR, Part 170.
  - Training agricultural workers is required.
  - Posting information about pesticide applications at a central location is required.
- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F). Using a pesticide inconsistent with its label directions.

**Rationale for Settlement:** The staff compared the violations to similar cases settled by the Board and these were repeat violations within a four year period.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	
Plants Unlimited, Inc.	)	ADMINISTRATIVE CONSENT AGREEMENT
c/o Hammon Buck	)	AND
PO Box 374	)	FINDINGS OF FACT
Rockport, Maine 04856	)	

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

The parties to this Agreement agree as follows:

1. That the Grower produces agricultural crops for commercial purposes at a greenhouse/nursery business that utilizes pesticides bearing language requiring conformance with the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
2. That the Grower employs one or more workers as defined under 40 CFR, Part 170.3 to assist in the production of the crops described in paragraph one.
3. That a Board inspector conducted a records and operations inspection at the Grower's facility on August 19, 2015.
4. That from the inspection done in paragraph three, it was determined that the Grower did not train its agricultural workers, and there was no WPS information at a central information display as required by the federal Worker Protection Standard, 40 CFR, Part 170.
5. That the circumstances in paragraphs one through four constitute multiple violations of the federal Worker Protection Standard, 40 CFR, Part 170.
6. That CMR 01-026 Chapter 10 Section 2(H), specifies that a commercial agricultural producer "means, for the purposes of Chapter 50, any person who produces an agricultural commodity for commercial purposes".
7. That CMR 01-026 Chapter 50 Section 1(A), requires that commercial agricultural producers shall maintain pesticide application records.
8. That from the inspection done in paragraph three, it was determined that the Grower did not maintain the pesticide application records as required by CMR 01-026 Chapter 50 Section 1(A) for 2015 applications and that the records maintained for the 2014 applications were insufficient.
9. That the circumstances described in paragraphs three and six through eight, constitute a violation of CMR 01-026 Chapter 50 Section 1(A).
10. That from the inspection in paragraph three it was determined that the Bayer Advanced All-In-One Rose & Flower Care was applied inside a greenhouse on April 23, 2014, June 26, 2014 and August 28, 2014.
11. That the Bayer Advanced All-In-One Rose & Flower Care label specifies that it is for outdoor residential use only.

12. That the circumstances described in paragraphs three, ten, and eleven constitute use of a pesticide inconsistent with the product labeling and in violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
13. That the Grower entered into a Consent Agreement with the Board on March 20, 2014, for violations in connection with an inspection made on May 2, 2012. The Grower did not keep pesticide application records in 2012 and did not train its workers as required by the federal Worker Protection Standard. Consequently, the violations described in paragraphs five, nine, and twelve are all subsequent violations for the purposes of the enhanced penalty provisions in 7 M.R.S. § 616-A (2)(A).
14. That the Board has regulatory authority over the activities described herein.
15. That the Grower 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 Grower resulting from the violations referred to in paragraphs five, nine, and twelve the Grower 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.

PLANTS UNLIMITED

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** TruGreen Lawncare  
2 Delta Drive  
Westbrook, Maine 04092

7

**Date of Incident(s):** April 29, 2016

**Background Narrative:** On April 29, 2016, the Board received a call from Sarvi Maisak, a Cape Elizabeth resident who resides at 24 Wood Road and is a registrant on the 2016 Maine Pesticide Notification Registry (non-ag). Maisak said she and her two-year-old son and her friend with her two and a half- year-old son were outdoors and the two mothers noticed a TruGreen pesticide applicator in the process of spraying an abutting lawn at 22 Wood Road. Maisak asked the applicator if he was applying a pesticide. Maisak said the applicator did not stop to discuss anything but just confirmed that he was applying pesticides. No advance notification of the pending application was given. Maisak, her friend and the children left Maisak's property when they learned a pesticide application was being made.

A Board inspector conducted a follow-up inspection with TruGreen on May 3, 2016, and confirmed that the above pesticide application was made without the required notification to the registry member. The applicator applied TruPower 3 Selective Herbicide and Barricade R4L herbicide.

**Summary of Violation(s):** CMR 01-026 Chapter 28, Section 2(D)1. Commercial applicators shall notify individuals listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet to the property boundary of the listed registry residence.

CMR 01-026 Chapter 28, Section 2 (D)5. Notification must be received between 6 hours and 14 days prior to the pesticide application.

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board and this company settled three prior consent agreements within a four year period of this current violation.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	ADMINISTRATIVE CONSENT
TruGreen Lawncare	)	AGREEMENT
2 Delta Drive	)	AND
Westbrook, Maine 04092	)	FINDINGS OF FACT

This Agreement by and between TruGreen Lawncare (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3,1998.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 15084 issued by the Board pursuant to 22 M.R.S. § 1471-D (1)(B).
2. That a Board inspection on May 3, 2016, showed that on April 29, 2016, Robert Thoits, a Company employee and a licensed commercial applicator, applied Trupower 3 Selective herbicide and Barricade 4FL herbicide to the lawn at Larry Braziel's residential property at 22 Wood Road in Cape Elizabeth, Maine.
3. That Sarvi Maisak who resides at 24 Wood Road in Cape Elizabeth is listed as a registry member on Maine's 2016 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2, and Susan and Larry Braziel are listed as abutters within 250 feet of Maisak's property.
4. That the Maine Pesticide Notification Registry is distributed to commercial applicators annually.
5. That commercial applicators are required by CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registrant's listed property.
6. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2 (D). No notification was provided to Maisak prior to making the application described in paragraph two.
7. That the actions described in paragraphs two through six constitute a violation of CMR 01-026 Chapter 28, Section 2(D).
8. That the Company entered into Administrative Consent Agreements with the Board for a registry notification violation occurring on May 2, 2012, an unauthorized application on July

20, 2012, and an unauthorized application on August 2, 2012. Consequently, the violation described in paragraph seven is a subsequent violation pursuant to 7 M.R.S. § 616-A (2)(B).

9. That the Board has regulatory authority over the activities described herein.
10. That the Company expressly waives:
  - A. Notice of or opportunity for hearing;
  - B. Any and all further procedural steps before the Board; and
  - C. The making of any further findings of fact before the Board.
11. That this Agreement shall not become effective unless and until the Board accepts it.
12. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph seven, the Company agrees to pay a penalty to the State of Maine in the sum of \$2,750.00. (Please make checks payable to Treasurer, State of Maine).
13. In addition to payment of the penalty amount required in paragraph 12, at the time of returning the signed consent agreement, the Company shall submit a written policy to the Board containing procedures to ensure that persons on the Pesticide Notification Registry are given notice in accordance with CMR 01-026 Chapter 28, Section 2 (D).

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

TRUGREEN LAWCARE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_

Henry Jennings, Director

APPROVED:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE  
Mayor

DON GERRISH  
Interim City Manager

EMILY F. CARRINGTON  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

8c

IN CITY COUNCIL

ORDINANCE #2-16/17

District One  
CLAUDE V. Z. MORGAN

District Two  
PATRICIA A. SMITH

District Three  
EBEN C. ROSE

District Four  
LINDA C. COHEN

District Five  
BRAD FOX

At Large  
MAXINE R. BEECHER

At Large  
THOMAS E. BLAKE

THE COUNCIL of the City of South Portland hereby ordains as follows:

**Section 1. Findings.**

WHEREAS, the State of Maine is one of only seven states, and the District of Columbia, that allows local governments to restrict the use of pesticides, and so this is an opportunity for the City to affect positive change;

WHEREAS, the United States Environmental Protection Agency (EPA), the Committee on Environmental Health of the American Academy of Pediatrics, the National Academy of Sciences, and the President's Cancer Panel have all concluded that exposure to many synthetic pesticides is linked to reproductive disorders, birth defects, learning disabilities, neurological disease, endocrine disorders, and cancer;

WHEREAS, the EPA acknowledges, along with the esteemed Mt. Sinai Children's Environmental Health Center, that children, with their still-developing bodies and brains, are especially vulnerable to the harmful effects of lawn and garden pesticides; and children's behavior (e.g., hand to mouth interactions, proximity to the ground, walking or running through lawns instead of paved sidewalks, especially where there are none), exposes children to far more contact with lawn pesticides than adults;

WHEREAS, many synthetic pesticides are harmful to pets, wildlife, including threatened and endangered species, soil microbiology, plants, and natural ecosystems;

WHEREAS, the City has five streams designated by the Maine Department of Environmental Protection (MEDEP) as "urban impaired" for failing to meet state water quality standards primarily due to adverse impacts from surrounding development;



WHEREAS, all of these “urban impaired” streams drain to Casco Bay, which is widely recognized as a natural asset of significant ecological and economic value;

WHEREAS, water quality testing by Friends of Casco Bay has demonstrated that pesticides are known to migrate off lawns and other properties and flow into the Casco Bay estuary;

WHEREAS, in some cases these pesticides were detected in stormwater flowing into Casco Bay in amounts that the Environmental Protection Agency has determined may be harmful to fish and other aquatic life;

WHEREAS, scientists have stated that crustaceans, including amphipods and lobsters, face numerous risks from pesticide exposures, even at low levels;

WHEREAS, the use of pesticides known or suspected to cause serious health problems is not necessary to create and maintain green lawns and landscapes, given the availability of viable alternative practices and products;

WHEREAS, many citizens desire to be protected from exposure to pesticides in the air, water or soil that inevitably results from chemical drift and contaminated runoff; and

WHEREAS, a growing number of communities and municipalities are embracing a precautionary approach to the use of pesticides in order to adequately protect people and the environment from their harmful effects.

**Section 2.** The text of Chapter 32, “Pesticide Use Ordinance,” of the “Code of Ordinances of the City of South Portland, Maine” be and hereby is enacted as shown below (additions are underlined):

## **Chapter 32**

### **PESTICIDE USE ORDINANCE**

#### **Sec. 32-1. Title.**

This ordinance shall be known as the “City of South Portland Pesticide Use Ordinance.”

#### **Sec. 32-2. Purpose.**

The purpose of this ordinance is to safeguard the health and welfare of the residents of the City and to conserve and protect the City’s waterways and natural

resources by curtailing the use of pesticides for turf, landscape and outdoor pest management.

### **Sec. 32-3. Definitions.**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Broadcast application.** The spreading of pesticides over an entire area.

**Commercial Agriculture.** The production of crops for sale, crops intended for widespread distribution to wholesalers or retail outlets and any non-food crops.

**EPA.** The United States Environmental Protection Agency.

**FIFRA.** The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

**Golf course.** An area of land laid out for playing the game of golf with a series of 9, 18 or more holes. Mini-golf courses are not considered golf courses.

**Golf course playing surfaces.** The tees, fairways, greens and roughs of a golf course.

**Golf course non-playing areas.** Areas of golf courses that are not golf course playing surfaces, such as lawns, driveways, paths, patios, trees, shrubs, ornamental plantings and gardens.

**Inert ingredient.** Any substance (or group of structurally similar substances if designated by the EPA), other than an active ingredient, that is intentionally included in a pesticide product.

**Invasive Species.** A plant or insect that is not native to a particular ecosystem, and whose introduction does or is likely to cause economic or environmental harm or harm to human health. Invasive species include those plants listed under the Maine Department of Agriculture, Conservation and Forestry's Natural Areas Program as currently invasive, potentially or probably invasive, and highly likely but not currently invasive, as well as those insects listed by the Maine Forest Service as threats to Maine's forests and trees.

**Natural, organic or "non-synthetic."** A substance that is derived from mineral, plant, or animal matter and does not undergo a "synthetic" process as defined in the Organic Foods Production Act, 7 U.S.C. § 6502(21), as the same may be amended from time to time.

**Organic pest management.** An extension of the principles and practices of organic agriculture to the care of turf and landscape.

**Person.** Any individual natural person, partnership, joint venture, society, association, company, club, trustee, trust or corporation; or any officer, agent, employee, or personal representative of any thereof, in any capacity acting either for her or himself or for any other person under either personal appointment or pursuant to law.

**Pest.** This term shall have the same meaning as the term set forth in 40 C.F.R. § 152.5, as the same may be amended from time to time.

**Pesticide.** Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the EPA. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

**Pests of significant public health importance.** Pests listed by the EPA, in conjunction with the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, as pests of significant public health importance.

**Preemptive application.** The application of pesticides as a measure against something possible, anticipated or feared, *i.e.*, as a preventive or deterrent measure.

**Public utility.** Any transmission and distribution utility, telephone utility, water utility, gas utility, or natural gas pipeline utility that is subject to the jurisdiction of the Maine Public Utilities Commission.

**Synthetic.** A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring sources, except that such term shall not apply to substances created by naturally occurring biological processes.

**Water body.** Any great pond, river, stream or tidal area as those terms are defined in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

**Wetland.** A coastal or shoreland freshwater wetland as those terms are defined in the City's Zoning Ordinance, Chapter 27 of the Code of Ordinances.

**Sec. 32-4. Pest Management Advisory Committee (PMAC).**

**(A) Composition; appointment; terms of office.**

The Pest Management Advisory Committee (PMAC) is hereby established. The PMAC shall consist of seven members as follows:

- (i) The City's Stormwater Program Coordinator;
- (ii) One practicing agronomist appointed by the City Council;
- (iii) Two Maine Board of Pesticides Control-licensed landscape professionals, at least one of whom has experience in organic land care management and is accredited by the Northeast Organic Farming Association in Organic Land Care, each appointed by the City Council; and
- (iv) Three resident or taxpayer representatives appointed by the City Council.

The terms of office of the six PMAC members appointed by the City Council shall be three year terms, except that the initial appointments after the establishment of the PMAC shall be such that the terms of office of no more than two members shall expire in any single year. The terms of office for the City employee PMAC member shall be for as long as the employee holds said employment position.

**(B) Duties.**

The duties of the PMAC include serving in an advisory capacity to the City Council and the Sustainability Coordinator to oversee this ordinance through the following:

- (i) Advising the City Council and the Sustainability Coordinator of any problems encountered or amendments that may be required to achieve the full and successful implementation of this ordinance;
- (ii) Reviewing and acting upon waiver applications when applicable;
- (iii) In coordination with the Sustainability Coordinator, developing and implementing outreach and education as specified in this ordinance;
- (iv) Seeking the participation, advice and counsel of experts in the fields of organic turf and landscape management, maintenance of trees and shrubs, and organic pest protocol;
- (v) Encouraging broad community participation, from parents, schools, advocates, and local arboriculture and landscaping businesses, in the activities of the PMAC;
- (vi) Reviewing annual data and issuing a summary report annually to the City Council;
- (vii) On or before May 1, 2019, and every three years thereafter, conducting an evaluation of this ordinance, including a review of pilot project results and reporting data, and providing recommendations to the City Council and the Sustainability Coordinator for any ordinance amendments it deems appropriate; and

(viii) Additional responsibilities as may be deemed necessary by the City Council.

(C) Officers, meetings and records.

(i) The members shall annually elect a chair from their membership. If not provided to the PMAC by the City Manager, the members shall also annually elect a secretary for the purpose of taking minutes and related duties.

(ii) All meetings of the PMAC shall be open to the public. Notice of each meeting shall comply with the City's notice policies and Maine's Freedom of Access Act.

(iii) A quorum shall consist of four members.

(iv) The PMAC shall meet regularly.

(v) Minutes shall be kept of all meetings with a copy filed with the City Clerk. An annual report of the PMAC's activities shall be submitted to the City Council in March of each year.

(vi) The chair and one other member, at least one of whom must be a Maine Board of Pesticides Control-licensed landscape professional, shall serve as the Waiver Committee, authorized to review and decide waiver applications. The PMAC shall annually designate the two members who shall serve as the Waiver Committee for the ensuing year.

#### **Sec. 32-5. Applicability of Ordinance.**

(A) Allowed and prohibited pesticides.

Subject to the applicability dates set forth in Sec. 32-14 herein, for turf, landscape and outdoor pest management activities in the City, the following shall apply:

(i) Synthetic substances are prohibited unless specifically listed as "allowed" on the U.S. Department of Agriculture's National List of Allowed and Prohibited Substances (the "National List");

(ii) Non-synthetic substances are allowed unless specifically listed as "prohibited" on the National List;

(iii) Pesticides determined to be "minimum risk pesticides" pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and listed in 40 C.F.R. § 152.25(f)(1) or (2), as may be amended from time to time, are allowed; and

(iv) The use or application of pesticides (whether natural, organic, "non-synthetic," synthetic or otherwise) within 75 feet of of a water body or wetland is prohibited.

(B) Exempt pesticides.

- (i) The following activities or materials are exempt from the provisions of this ordinance (and so are allowed):
  - (a) Commercial agriculture;
  - (b) Pet supplies, such as shampoos and tick and flea treatments, when used in the manner specified by the manufacturer;
  - (c) Disinfectants, germicides, bactericides, miticides and virucides, when used in the manner specified by the manufacturer;
  - (d) Insect repellents when used in the manner specified by the manufacturer;
  - (e) Rat and rodent control supplies when used in the manner specified by the manufacturer;
  - (f) Swimming pool supplies when used in the manner specified by the manufacturer; and
  - (g) General use paints, stains and wood preservatives and sealants when used in the manner specified by the manufacturer.
  
- (ii) The following applications are exempt from the provisions of this ordinance (and so are allowed):
  - (a) Specific health and safety application – Prohibited pesticides may be used to control plants that are poisonous to the touch, such as poison ivy; pests of significant health importance such as ticks and mosquitoes; and animals or insects that may cause damage to a structure, such as carpenter ants or termites;
  - (b) Golf course playing surfaces application – Prohibited pesticides may be used on non-City owned golf course playing surfaces and on the tees and greens of City-owned golf courses provided that the course is designated through Audubon International as a Certified Audubon Cooperative Sanctuary;
  - (c) Invasive insect application – Prohibited pesticides may be used to control the Emerald Ash Borer, Asian Longhorned Beetle, Hemlock Woolly Adelgid, Browntail Moth and other insects identified as invasive by the Maine Forest Service; and
  - (d) Right-of-way spraying – Prohibited pesticides may be used by a public utility that maintains a right-of-way through the City.

**Sec. 32-6. Waivers.**

- (A) In situations that threaten the public health and safety or for the control of invasive species that pose a threat to the environment, persons may apply to the PMAC for a waiver from the provisions of this ordinance prior to the use of a prohibited product or prior to the conduct of a prohibited application.

(B) The waiver application shall be filed with the PMAC, on a form prescribed by the PMAC, and shall include the following: the proposed location(s); details on the timing(s) of use, substance(s) and amounts to be applied; date(s) of application; management plan that excludes broadcast and preemptive applications; a pest identification and threshold report; and reason for requesting the use/application of a prohibited pesticide. In order to approve a waiver application, the PMAC must first find that all of the following criteria are met:

- (i) A situation exists that threatens the public health and safety and/or where invasive species pose a threat to the environment;
- (ii) The applicant has carefully evaluated all alternative methods and materials;
- (iii) The applicant will, to the greatest extent practical, minimize the impact of the application on abutting properties; and
- (iv) The grant of the waiver will not be detrimental to the public health, safety or welfare.

(C) Waiver applications must be filed with the Waiver Committee, with a copy provided to the Sustainability Coordinator. The Waiver Committee shall act upon a waiver application within five business days of receipt of a completed application. Both members of the Waiver Committee must agree that approval of the application is appropriate in order for the application to be approved; otherwise, the application is deemed denied.

(D) In approving any waiver application, the Waiver Committee may prescribe conditions and safeguards as are appropriate to further the purposes of this ordinance. The decision of the Waiver Committee shall be in writing, with copies provided to the applicant, PMAC, Sustainability Coordinator and City Clerk.

(E) A person aggrieved by a decision of the Waiver Committee shall have five business days to appeal the decision of the Waiver Committee to the City Manager. The appeal shall be in writing and shall state the basis for the appeal. The City Manager shall act upon the appeal within three business days of receipt of the appeal. The decision of the City Manager shall be in writing, with copies provided to the appellant, PMAC, Sustainability Coordinator and City Clerk.

### **Sec. 32-7. Public Notifications and Signage.**

If prohibited pesticides are to be used/applied through an exemption pursuant to Sec. 32-5(B)(ii) or through an approved waiver application pursuant to Sec. 32-6, the following posting requirements shall be complied with by the property owner or applicator.

(A) The owner or applicator shall post warning signs in compliance with this ordinance. These signs must be posted before application activities commence

and left in place for at least 48 hours after actual application or until expiration of the restricted entry interval or reentry time indicated by the pesticide label, whichever is longer.

(B) All signs shall be at least five inches high and four inches wide in size. Signs shall be attached to the upper portion of a dowel or other supporting device so that the bottom of the sign is not less than 12" and the top of the sign is not more than 48" above the ground. The signs shall be of rigid, weather resistant material substantial enough to be easily read for at least 48 hours when placed outdoors.

(C) All notification signs must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green). They shall have lettering that is conspicuous and clearly legible.

(D) The sign must include the following:

- (i) The word "CAUTION" in 72 point type;
- (ii) The words "PESTICIDE APPLICATION" in 30 point type or larger;
- (iii) The Maine Board of Pesticides Control designated symbol;
- (iv) Any reentry precautions from the pesticide labeling;
- (v) The name and telephone number of the entity making the pesticide application;
- (vi) The date and time of the application; and
- (vii) A date and/or time to remove the sign.

(E) All notification signs shall state the chemical and trade name of the pesticide, the date to be applied, the length of time to remain off the treated area as indicated by the pesticide label, and a phone number of the responsible party for more information.

These requirements are in addition to any requirements that may also apply to State of Maine licensed applicators subject to the Maine Board of Pesticides Control rules regarding public notification.

### **Sec. 32-8. Reporting by State of Maine Licensed Applicators.**

In addition to complying with the Maine Board of Pesticides Control rules regarding record keeping and reporting requirements outlined in Chapter 50 of the Code of Maine Rules, all State of Maine licensed applicators are required to submit to the City Clerk an annual summary report on or before February 1 relating to the preceding calendar year. The report shall contain the following information for applications performed in the City in the prior calendar year: target site, pesticide brand name, EPA registration number, total undiluted formulation (in pounds or gallons), and total area treated as listed and as amended on the Commercial Applicator Annual Summary Report required by the Maine Board of Pesticides Control.



**Sec. 32-9. Outreach and Education.**

- (A) The Sustainability Coordinator or his/her designee shall publish notice of this ordinance in a newspaper of general circulation in the City upon adoption of this ordinance and shall provide periodic notice of this ordinance to identified retailers and lawn, garden, and tree-care providers serving South Portland as well as to churches, schools, and other institutions in South Portland.
- (B) The PMAC shall prepare and publish materials designed to educate the community about the role of pesticides in the local environment and the benefits of organic pest management. This outreach shall include: a community-based social marketing campaign targeting City households and businesses; promotion of professional education and training for State of Maine licensed applicators; distribution of information and news about City practices through South Portland internet and web-based resources; SPC-TV public service announcements; news releases and news events; tax bill inserts; posters and brochures made available at City events and applicable locations that serve the public; workshops, trainings, and demonstration projects; targeted outreach to schools; and any additional methods deemed appropriate by the PMAC.
- (C) The PMAC shall also develop a program to work directly with retailers that sell pesticides in South Portland to:
- (i) Provide educational training for all retail store employees who recommend and sell pesticides for use in the home and garden, highlighting the following:
    - (a) federal, state, and local pesticide regulations;
    - (b) principles of organic pest management;
    - (c) pesticide toxicity and health and environmental concerns;
    - (d) proper pesticide display and storage; and
    - (e) the role of personal protective equipment, pesticide poisoning symptoms, and emergency procedures in case of spills.
  - (ii) Implement a toolkit consisting of educational materials and signage (i.e., posters, signs, stickers) that can be customized, printed, and placed in stores to help consumers understand this ordinance and alternatives to prohibited pesticides.

**Sec. 32-10. Violations.**

Any person violating any of the provisions of this ordinance or failing or neglecting or refusing to obey any order or notice of the Sustainability Coordinator

and/or the PMAC issued hereunder shall be subject to enforcement action as provided herein.

**Sec. 32-11. Enforcement.**

It shall be the duty of the Code Enforcement Officer to provide investigative assistance and to enforce the provisions of this ordinance in collaboration with the City's Sustainability Coordinator. The Sustainability Coordinator shall work with alleged violators of this ordinance to bring them into compliance by providing the individual(s) with educational materials and advice on the use of less toxic chemicals to achieve their desired results. The Sustainability Coordinator will maintain a listing of complaints of alleged violations of this ordinance and how they were resolved. The listing will include the nature of the complaint, a summary of the situation and a brief description of how each complaint was resolved. This information will be reported on the City's website in aggregate by Assessor's tax map number and not by specific property address or Assessor's lot number.

**Sec. 32-12. Severability.**

Should any section or provision of this ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

**Sec. 32-13. Conflicts with Other Ordinances.**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.

**Sec. 32-14. Effective date; Applicability dates.**

This ordinance shall become effective pursuant to Section 225 of the City Charter. In order to allow time for residents and businesses to become familiar with the requirements of this ordinance, the prohibitions on the use of certain products and/or applications (and the related public notification, signage and reporting requirements) shall be phased in as follows:

**Phase One:** Commencing May 1, 2017, the provisions set forth in Sec. 32-5 on the use or application of certain pesticides for turf, landscape and outdoor pest management activities shall apply to City-owned property (but not to any golf course).

**Phase Two:** Commencing May 1, 2018, the provisions set forth in Sec. 32-5 on the use or application of certain pesticides for turf, landscape and outdoor pest management activities shall apply to private property (but not to any golf course).

**Phase Three:** Commencing May 1, 2019, the provisions set forth in Sec. 32-5 on the use or application of certain pesticides on certain portions of golf courses for turf, landscape and outdoor pest management activities shall apply to all golf courses.

Fiscal Note: Less than \$1,000

Dated: August 15, 2016