

PESTICIDE REGULATIONS

BOARD OF PESTICIDES CONTROL

**Maine Board of Pesticides Control
28 State House Station
Augusta, ME 04333-0028
Tel. 207-287-2731
Fax. 207-287-7548**

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TABLE OF CONTENTS

CHAPTER 10	Definition and Terms
CHAPTER 20	Special Provisions
CHAPTER 21	Pesticide Container Disposal and Storage
CHAPTER 22	Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition
CHAPTER 24	Pesticide Storage Facility Standards/Pesticide Distributors
CHAPTER 26	Standards for Indoor Pesticide Application and Notification for all Occupied Buildings except K-12 Schools
CHAPTER 27	Standards for Pesticide Applications and Public Notification in Schools
CHAPTER 28	Notification Provisions for Outdoor Pesticide Applications
CHAPTER 29	Standards for Water Quality Protection
CHAPTER 31	Certification and Licensing Provisions/Commercial Applicators
CHAPTER 32	Certification and Licensing Provisions/Private Applicators
CHAPTER 34	Certification and Licensing Provisions/Pesticide Dealers
CHAPTER 35	Certification and Licensing Provisions/Spray Contracting Firms
CHAPTER 36	Certification and Licensing Provisions/Monitors and Spotters for Major Forest Insect Aerial Spray Programs
CHAPTER 40	Maine Restricted and Limited Use Pesticides
CHAPTER 41	Special Restrictions on Pesticide Use
CHAPTER 50	Record Keeping and Reporting Requirements
CHAPTER 51	Notice of Aerial Pesticide Applications
CHAPTER 60	Designation of Critical Pesticide Control Areas
CHAPTER 70	Adjudicatory Proceedings
CHAPTER 80	Advisory Rulings
CHAPTER 90	Complaints

Chapter 10 Definitions and Terms

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

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 1. Consistent with Statute

All terms used in these Chapters shall be defined as indicated in Title 22 M.R.S.A., Chapter 258-A unless specifically provided herein.

Section 2. Definitions

- A. "Aerial applicator" means all persons who dispense pesticides by means of any machine or device used or designed for navigation of or flight in the air. All aerial applicators shall be considered commercial applicators and shall be individually certified. An aerial applicator must also possess a "Certificate for Dispensing of Chemicals by Aircraft" from the Maine Bureau of Aeronautics before making any chemical applications.
- B. "Agricultural pesticide application" means any application of a pesticide upon an agricultural commodity which is performed by or for a commercial agricultural producer.
- C. "Air-carrier application equipment" means any application equipment that utilizes a mechanically generated airstream to propel the spray droplets.
- D. "Applicant" means a person or persons who apply for a certification, license or permit authorized in 22 M.R.S.A. §1471-D or §1471-N.
- E. "Branch office" means:
 - 1. any home, store or other business location where an employee of a spray contracting firm directly accepts requests for pest control services from clients through mail, telephone or walk-in inquiries, and
 - 2. any government or university office where employees receive regular direction to apply pesticides in connection with their duties.
 - 3. It does not include the home of an employee who receives work assignments and directions from a branch office with a master applicator.

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- F. "Calibration of equipment" means measurement of dispersal or output of application equipment and adjustment of such equipment to control the rate of dispersal, and droplet or particle size of a pesticide dispersed by the equipment.
- G. "Certification" means the recognition by the Board that an applicant has successfully fulfilled all the appropriate competency criteria as set forth in these Chapters.
- H. "Commercial agricultural producer" means, for the purposes of Chapter 50, any person who produces an agricultural commodity for commercial purposes.
- I. "Commercial applicator" means any person, unless exempted in I(4) hereunder, whether or not the person is a private applicator with respect to some uses, who:
1. Uses or supervises the use of any limited or restricted use pesticide other than as a private applicator; or
 2. Makes or supervises a custom application of a general use pesticide; or
 3. Applies a pesticide in connection with their duties as an official or an employee of federal, state, county, university or local government.
 4. The following classes of applicators are exempt from commercial certification/licensing requirements. Applications not listed below must be performed under the direct on-site supervision of a licensed commercial applicator Master and/or Operator.
 - a. Persons applying ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects for their own personal protection or for patients, minors and other persons under their care or supervision who are unable to apply the material to themselves.
 - b. Persons applying general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings of buildings during the course of routine cleaning procedures.
 - c. Persons applying general use paints, stains or wood preservatives, except for the treatment of standing utility poles.
- J. "Commercial applicator/Master" means a commercial applicator who, unless exempted in Chapter 31, Section 1(Company/Agency Licensing Requirements), is responsible for the major pest control decisions including, but not limited to, identifying unusual pests and choosing the appropriate pest control strategies and techniques. This person is also responsible for establishing policies relating to the operating practices of others applying pesticides within the company or agency. Such practices may include equipment maintenance and calibration, employee training, safety and hygiene, pesticide and container disposal, accident mitigation and ensuring that applications are conducted in compliance with all state and federal laws and regulations.
- K. "Commercial applicator/Operator" means a commercial applicator who:

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1. applies or directs the application of a pesticide according to the instructions of the master when a master is required according to Chapter 31, Section 1 (Company /Agency Licensing Requirements); or
 2. applies or directs the application of a pesticide and performs the function of the master applicator when a separate master is not required according to Chapter 31, Section 1(Company/Agency Licensing Requirements).
- L. "Compact urban line" means that delineation made by the Maine Department of Transportation which denotes a section of the highway where structures are nearer than 200 feet apart for a distance of one-quarter of a mile.
- M. "Compatibility" means that property of a pesticide that permits its use with other chemicals without undesirable results being caused by the combination.
- N. "Competent" means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.
- O. "Common exposure route" means a likely way (oral, dermal, respiratory) by which a pesticide may reach and/or enter an organism.
- P. "Custom application" means any application of a pesticide under contract or for which compensation is received, or any application of a pesticide to a property open to use by the public.
1. For the purposes of this definition, "under contract" includes: verbal or written agreements to provide services which include the use of any pesticide; i.e., private or commercial rental agreements, pest control service agreements, landscape maintenance agreements, etc.
 2. For purposes of this definition, compensation is deemed to have been received for a pesticide application where any form of remuneration has been or will be exchanged, including payment of cash, rent, or other financial consideration, or by the exchange of goods and/or services. This also includes any agreements where crops grown on rented land will be sold to the landowner or are otherwise grown for the benefit of the land owner.
 3. For purposes of this definition, property is deemed to be open to use by the public where its owner, lessee or other lawful occupant operates, maintains or holds the property open or allows access for routine use by members of the public. Persons are considered to be members of the public even though they may pay a fee or other compensation in order to make use of the property or may visit the property for a commercial purpose.
 4. Property open to use by the public includes but is not limited to: shopping centers, office and store space routinely open to the public (i.e. rest rooms, self-service areas and display aisles), common areas of apartment buildings, occupied apartments, public pools and water parks, schools and other institutional buildings, public roads, organized recreational facilities, golf courses, campgrounds, parks, parking lots, ornamental and turf areas around condominiums, apartment buildings, stores malls and retail areas of greenhouses and nurseries if the public is allowed access before the pesticide restricted-entry or re-entry interval elapses.

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5. Examples of property not open to use by the public include without limitation: farms, forest lands, and private residential or commercial property which is not routinely operated or maintained for use by the public or otherwise held open to public use.
 6. Notwithstanding this definition, property shall not be deemed to be open for use by the public in the following cases:
 - a. where the property is devoted primarily to agricultural, forest, ornamental tree or plant production, but this exception shall not apply to campgrounds, leased inholdings or roads within such property which are open for use by the public;
 - b. where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application;
 - c. forestry rights of way where the property has been closed during the time of spraying or during the label restricted entry interval or re-entry period, whichever is greater.
 7. A pesticide application shall not be deemed a custom application where it is undertaken by a licensed private applicator on property owned or rented by him or his employer or in trade for personal agricultural services between producers of agricultural commodities.
- Q. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this state. This also means giving free samples of unregistered products to any person.
- R. "Environment" means water, air, land, and all plants and man and other animals living therein, and the interrelationships that exist among them.
- S. "Forest" means a concentration of trees and related vegetation managed primarily for the production of forest agricultural commodities such as timber, fiber or other wood products, including other similar areas managed for recreation or resource conservation.
- T. "Hazard" means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.
- U. "Host" means any plant or animal on or in which another lives for nourishment, development, or protection.
- V. "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.

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- W. "Integrated Pest Management Coordinator" means the lead person in a school system or school who is knowledgeable about integrated pest management and is designated by each school to implement the school pest management policy.
- X. "License" means a commercial applicator license, a private applicator certification, a dealer license, a permit to chemically control vertebrate animals, or a permit to apply limited use pesticides.
- Y. "Licensing" means the issuance by the Board of a document signifying that the applicant has been certified and has met all applicable employee, fee, insurance and reporting requirements.
- Z. "Major application project" means any pesticide application contract that requires the applicator to apply pesticides to more than 1000 acres in the aggregate within a given year. This does not include repeat applications to the same site.
- AA. "Major pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building owned and/or operated by a pesticide distributor where pesticides are held in storage and which meets one of the following criteria:
1. contains at any one time an amount greater than or equal to 6,000 pounds of dry pesticide product, other than dry formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 2. contains at any one time an amount greater than or equal to 600 gallons of liquid pesticide product, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 3. contains liquid pesticides in containers that are thirty (30) gallons or greater in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- BB. "Minor pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building owned and/or operated by a pesticide distributor where pesticides are held in storage and which meets one of the following criteria:
1. contains at any one time an amount greater than 100 pounds but less than 6,000 pounds of dry pesticide product, other than dry formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 2. contains at any one time an amount greater than 50 gallons but less than 600 gallons of liquid pesticide, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products," or
 3. contains liquid pesticides in containers greater than three (3) gallons but less than thirty (30) gallons in size, other than liquid formulations of products listed in Chapter 24, Section 2, "Exempted Products."
- CC. "Non-agricultural pesticide application" means any application of a pesticide that is not an agricultural pesticide application.
- DD. "Non-powered equipment" means pesticide spray equipment which pumps and disperses pesticides without utilization of an electric, gasoline, wind-driven or other motorized power source. By way of

example, non-powered equipment includes manual pump spray equipment and self-contained aerosol spray cans or bottles but does not include equipment which employs a motor, except one powered only by hand.

- EE. “Non-target organism” means a plant or animal other than the one against which the pesticide is applied.
- FF. "Off-target direct discharge of pesticides" means the direct application of pesticides onto property beyond the boundaries of the target area intended to be treated. Presence of off-target direct discharge of pesticides may be determined by any evidence, through observation, residue samples or other techniques, that an off-target area has received substantially the same dose of pesticide as a target area.
- GG. "Off-target drift of pesticides" means the drifting of pesticides by air currents or diffusion with resulting deposition of pesticides onto property beyond the boundaries of the target area intended to be treated. The detection of pesticides beyond the boundaries of the target area intended to be treated shall be presumed to be as a result of off-target drift unless there is evidence of off-target direct discharge of pesticides.
- HH. "Ornamental plant" means shrubs, trees and related vegetation in and around habitation generally, but not necessarily, located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.
- II. "Other forest pests" means forest pests, other than insects and include, but are not limited to, weeds, mites, nematodes, fungi, bacteria, and viruses.
- JJ. "Owner" means sole proprietor, partner or stockholder.
- KK. "Person" means any individual, partnership, fiduciary, corporation, governmental entity, association or public or private organization of any character, other than the Board.
- LL. "Pesticide" means 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 dessicant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency.
- MM. "Pesticide dealer" means any person who distributes limited or restricted-use pesticides, including but not limited to sales personnel in an outlet, field salesmen, and manufacturers' representatives selling pesticides directly to the consumer or who accept orders for pesticides.
- NN. "Pesticide distributor" means any person required to be licensed to distribute general, restricted or limited use pesticides.
- OO. "Pesticide storage facility" means any fixed-site, totally enclosed building or portion of such building where pesticides are held for storage.
- PP. “Practical knowledge” means the possession of pertinent facts and comprehension together with the ability to use them in dealing with specific problems and situations.

- QQ. "Principal place of business" means the principal location, either residence or office, in the State in which an individual, partnership, or corporation applies pesticides.
- RR. "Private Applicator" means any person who uses or supervises the use of any pesticide which is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person. In situations where the applicator is applying pesticides to crops on rented land, there must be a written contract showing that the grower/applicator retains control over the property as well as the disposition or sale of the harvested crop.
- SS. "Private domestic well" means any well used for drinking water other than one which serves a public water system.
- TT. "Project" means, for the purposes of Chapter 51, the aerial application of pesticides to control an individual forest insect pest complex provided by:
1. Any number of applicator businesses for a single person, or
 2. One applicator business on contiguous parcels of land.
- UU. "Public precautions" means those statements which appear on the pesticide label directed towards the non-applicator public. Public precautions may include, but are not limited to, re-entry intervals.
- VV. "Public water system" means any water supply system that provides water to at least 15 service connections or serves water to at least 25 individuals daily for at least 30 days a year.
- WW. "Regulated pest" means a specific organism considered by a State or Federal agency to be a pest requiring regulatory restrictions, regulations, or control procedures in order to protect the host, man and/or his environment.
- XX. "School" means any public or private elementary or secondary school, kindergarten or nursery school that is part of an elementary or secondary school or a tribally funded school.
- YY. "School Building" means any structure used or occupied by students or staff of any school.
- ZZ. "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 that is under the control of a school.
- AAA. "Self-service sales area" means any area within or immediately outside a retail or wholesale business in which members of the public have direct access to pesticide products. For the purposes of this chapter, self-service sales areas shall be limited to those pesticide products which require a pesticide dealer to be licensed under 22 M.R.S.A. §1471-W, "General Use Pesticide Dealers."
- BBB. "Sensitive area" means any of the following, except where the area involved is the intended target of the pesticide application:

1. Residential buildings, together with any land which is part of the same property and is within 100 feet of such buildings;
 2. School buildings, together with any land which is part of the same property and is within 100 feet of such buildings, and also together with any playgrounds, athletic fields or other such facilities designed for use by persons in the vicinity of school buildings;
 3. Commercial or other buildings where human use occurs (including without limitation places of business, places of worship, and other commercial and institutional buildings), together with any land which is part of the same property and is within 100 feet of such buildings;
 4. Developed recreational areas open to public accommodation, including developed public or commercial campgrounds, developed picnic areas, marked roadside rest areas, marked publicly-owned or maintained hiking trails, developed park and recreation facilities, playgrounds, playing fields and other areas developed for organized sports or recreation;
 5. Apiaries the location of which is registered with the Department of Agriculture, Food and Rural Resources pursuant to 7 M.R.S.A. § 2701;
 6. Critical areas designated by the Board pursuant to 22 M.R.S.A. § 1471-M(2);
 7. Public wells, drinking water springs used by the public, and public water supply intake points, provided the location of the same is known or should reasonably be known to the pesticide applicator;
 8. Private sources of drinking water, where the owner or legal user thereof has given prior notice of the location of such source to the landowner or lessee of the area which will be subject to a pesticide application;
 9. Water bodies, including streams, brooks, rivers, ponds, lakes, estuaries and marine waters, provided that any such water body contains water at the time of the pesticide application and is known to the spray applicator or is reasonably detectable from visual observation, reasonably available maps or reasonable inquiry. This term shall not include:(a) in the case of forest aerial spray programs, streams and brooks that are neither shown on reasonably available maps nor visible from an aircraft operating at 1000 feet in elevation above ground level; and (b) waters that are confined and retained completely upon the property of the person conducting or contracting for spray services, and that do not drain into or connect with any other water body;
 10. Wetlands of Special Significance.
 11. Cleared areas where livestock are contained or pastured, cultivated land, cropland or gardens.
- CCC. "Spray application" means, for the purposes of Chapter 51, the dispensing of pesticides in any manner from an aircraft.
- DDD. "Spray contracting firm" means any person employed or contracted to conduct a public or private custom application of one or more pesticides. This term does not include:

1. the owner or lessee of land to be sprayed and employees of that landowner or lessee,
 2. the Bureau of Forestry and the employees of the Bureau of Forestry,
 3. individuals who are certified as commercial applicators providing that individual does not have in his/her employment one or more others to undertake pesticide applications; or
 4. persons who perform custom applications of pesticides solely on or within a premises which they own or lease.
- EEE. "Spray period report" means a written description of the spray activity certifying the date and time, the area usually sprayed, the pesticide used, and including a description of the weather conditions during spray activity. The report must also include a map showing where spray booms were turned on and off, with notation of any non-target areas that were sprayed.
- FFF. "Standard" means the measure of knowledge and ability that must be demonstrated as a requirement for certification.
- GGG. "Storage" means holding pesticides for distribution in locations other than self-service sales areas.
- HHH. "Susceptibility" means the degree to which an organism is affected by a pesticide at a particular level of exposure.
- III. "Toxicity" means the property of a pesticide to cause any adverse physiological effects.
- JJJ. "Uncertified person" means any person who is not holding a currently valid certification document indicating that he is certified under section 4 of FIFRA in the category of the restricted use pesticide made available for use.
- KKK. "Wetlands of Special Significance" means all coastal wetlands and great ponds. In addition, certain freshwater wetlands are considered wetlands of special significance if they have one or more of the following characteristics.
1. Critically imperiled or imperiled community. The freshwater wetland contains a natural community that is critically imperiled (S1) or imperiled (S2) as defined by the Natural Areas Program.
 2. Significant wildlife habitat. The freshwater wetland contains significant wildlife habitat as defined by 38 M.R.S.A. § 480-B(10).
 3. Location near coastal wetland. The freshwater wetland area is located within 250 feet of a coastal wetland.
 4. Location near GPA great pond. The freshwater wetland area is located within 250 feet of the normal high water line, and within the same watershed, of any lake or pond classified as GPA under 38 M.R.S.A. § 465-A.
 5. Aquatic vegetation, emergent marsh vegetation or open water. The freshwater wetland contains under normal circumstances at least 20,000 square feet of aquatic vegetation,

emergent marsh vegetation or open water, unless the 20,000 or more square foot area is the result of an artificial ponds or impoundment.

6. Wetlands subject to flooding. The freshwater wetland area is inundated with floodwater during a 100-year flood event based on flood insurance maps produced by the Federal Emergency Management Agency or other site-specific information.
 7. Peatlands. The freshwater wetland is or contains peatlands, except that the Department of Environmental Protection may determine that a previously mined peatland, or portion thereof, is not a wetland of special significance.
 8. River, stream or brook. The freshwater wetland area is located within 25 feet of a river, stream or brook.
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STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

July 6, 1979

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April 27, 1988

May 21, 1996

August 17, 1996

October 2, 1996

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AMENDED:

April 14, 1998 - inserted definitions for "Agricultural pesticide application" and "Non-agricultural pesticide application"; renumbered; converted to MS Word.

March 5, 2003

NON-SUBSTANTIVE CORRECTION:

February 17, 2004 - cross reference in Section 2.H

AMENDED:

January 4, 2005 – filing 2004-602

Chapter 20 Special Provisions

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

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

Section 1. Registered Pesticides

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

Section 2. Right-of-Way

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

Section 3. Pesticide Storage and Disposal

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

Section 4. Aquatic Applications

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

Section 5. Employer/Employee Requirements

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

Section 6. Prohibition of Unauthorized Application of Pesticides

- A. Except as provided by Chapter 20.6(D) below, no person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the consent of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
- B. Except as provided by Chapter 20.6(D) below, no person may apply a pesticide to a property of another unless prior consent for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.

- C. Except as provided by Chapter 20.6(D) below, no commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
- i) there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant, or
 - ii) the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.
- D. The requirements of Chapter 20.6(A), (B) or (C) shall not apply when the pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of maintaining such easement or right of way.

Section 7. Transition

This regulation will become effective on January 1, 2008.

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

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July 6, 1979

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Chapter 21 Pesticide Container Disposal and Storage

01 DEPARTMENT OF AGRICULTURE

026 BOARD OF PESTICIDE CONTROL

Chapter 21: PESTICIDE CONTAINER DISPOSAL AND STORAGE

PREFACE: Statutes governing the Board of Pesticides Control make it illegal for "any person to dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or pollute any water supply or waterway; 7 M.R.S.A. § 606(2)(E). The Board's statutes also require it "to regulate the return and disposal of limited and restricted use pesticide containers" by promulgating regulations to (1) establish a deposit to be collected pending return of the container, (2) require stickers to be affixed to all such containers at time of sale, (3) insure triple rinsing or equivalent of the containers, and (4) specify places where rinsed containers may be returned for refund, in addition to the place of business of the dealer; 22 M.R.S.A. § 1471(Q). These regulations shall be effective April 1, 1985.

SUMMARY: These rules set forth the regulations for the management of emptied pesticide containers for limited and restricted use pesticides. They establish deposit amounts, sticker requirements, triple rinse or equivalent procedures, and refund places and procedures. The rules are organized according to classification of the pesticide as to whether it was purchased in-state or out-of-state.

A. Limited and Restricted-Use Pesticides Purchased In-State

1. **Scope.** The rules in this Subchapter A apply to limited and restricted-use pesticides and their containers purchased from licensed Maine dealers. The following types of containers are exempt from these regulations but must be stored, handled and disposed of according to label directions and applicable D.E.P. regulations.
 - a. Paper, cardboard and fiberboard containers and plastic bags.
 - b. Containers of less than one-half pint volume.
 - c. Sealed containers, refillable only by the manufacturer or distributor, provided that such containers are required to be returned by the applicator to the manufacturer or distributor, that a deposit of no less than \$50 per container is charged by the manufacturer or distributor to the applicator or purchaser, and that the manufacturer or distributor establishes and carries out a monitoring system which provides for the identification and tracking of each container.
2. **Deposits.** Dealers shall collect deposits in cash or posted credit charges on each pesticide container at the time of sale or delivery to the purchaser or its agent, as follows:
 - a. Non-refillable containers
 - (1) One-half pint to 30 gallons capacity - \$5.00 per container
 - (2) 30 gallons capacity and over - \$10.00 per container

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- b. Refillable containers. At their option, dealers may collect deposits greater than those required for non-refillable containers.
3. **Stickers.** Prior to or at the time of delivery of the pesticide to the purchaser or its agent, stickers obtained from the Board of Pesticides Control shall be affixed by dealers to pesticide containers.
- a. Dealers shall obtain stickers by making a request, on forms provided for that purpose, to the Board at least two weeks prior to anticipated need. Completed forms shall be forwarded to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333. Arrangements for emergency pick up of stickers may be made by contacting the Board at 207/287-2731. Dealers will be billed and shall pay for the costs of printing and shipping stickers, as assessed by the Board.
- b. Dealers shall affix stickers prominently and securely to containers in a manner that will not obscure or interfere with any trademark or label instructions. Such stickers shall in no event be deemed a part of the label. If an unopened case of containers is to be sold and delivered to the purchaser or its agent, the dealer may securely attach or fasten a sufficient number of stickers (one for each container) to the exterior of the unopened case prior to delivery. In such event, the purchaser or his agent shall either affix stickers to containers immediately upon opening the case, or the containers shall at all times be kept with the case on which the stickers remain affixed, except during actual use of the containers, and shall be returned to the dealer or his agent as a unit for return of deposit and disposal.
- c. Stickers, as supplied by the Board and completed by the dealer at the time of sale or delivery to the purchaser or his agent, shall identify the dealer and the purchaser and shall contain such other information as the Board shall require. Dealers shall keep a record of sticker numbers and corresponding purchasers for each container sold.
- d. It shall be unlawful to remove, deface, or otherwise render illegible a sticker affixed to a container except at the time of recycling or disposal in accordance with these regulations.
4. **Records.** Dealers shall maintain records of all restricted or limited use pesticide sales subject to these regulations for a period of two calendar years. Information required includes the following:
- a. the name and address of the purchaser (and agent, if any), and date of delivery
- b. the registered name of the pesticide and the number and size of each container
- c. the serial number of each sticker affixed to a container
- d. the amount of the deposit paid or posted to credit
5. **Triple rinse or equivalent.** Pesticide containers shall be triple rinsed immediately by the applicator or someone under his direct supervision, or cleaned by another authorized method or procedure equivalent in residue removal effectiveness.
- a. The standard triple rinse procedure is as follows:
- (1) the emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide

formulation drained shall be added to the spray tank mix and shall be applied in accordance with label instructions.

- (2) a solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.
 - (3) the above procedure shall be performed two more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix, to be applied in accordance with label instructions.
- b. In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the residue must be disposed of in accordance with label instructions.
 - c. Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally safe manner. Any person proposing to use an equivalent method that has not been previously authorized by the Board shall first obtain the Board's approval by providing data and information to document the cleaning effectiveness of the method and the environmental safety of residue disposal.
 - d. In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. The removed liners must be handled and disposed of according to the label and D.E.P. regulations. Liners removed from pesticides containers containing pesticides listed as hazardous waste by the D.E.P. are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent by the D.E.P.
 - e. Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent reuse. Glass containers are exempt from this puncture requirement.
6. **Affidavits.** The Board shall provide blank affidavit forms which purchasers or their agents must accurately complete and provide to the dealer or his representative prior to disposal and a refund of the deposit. No deposit shall be returned unless this requirement is satisfied.
- a. The following information must be recorded on the affidavit form:
 - (1) the name and address of the purchaser, and agent if any
 - (2) the registered name of the pesticide and the number and size of each container
 - (3) the serial number of each sticker affixed to a container

- b. The following must be completed by the purchaser or his agent on the affidavit at the time the empty and properly rinsed containers are returned to an authorized collection, recycling or disposal place:
 - (1) The following certification to be signed by the purchaser or his agent and the person performing container rinsing "This is to certify under oath that the container(s) with the sticker number(s) listed herein has(have) been properly rinsed according to regulations adopted by the Board of Pesticides Control."
 - (2) The location and date containers were returned.
- c. The information contained on the affidavit shall be true and correct. It shall be a violation hereof to sign or submit a false affidavit.
- d. The dealer shall retain a copy of the completed affidavit for two years following return or may forward the same to the Board.

7. **Return and refund.**

- a. Containers bearing the Board's stickers that have been properly rinsed according the Board's regulations, and that are accompanied by completed affidavits to that effect, shall be returned for refund of deposit as follows:
 - (1) to an authorized collection, disposal or recycling facility specified by the dealer, provided that arrangement for the use of such facility have been made by the dealer, or
 - (2) otherwise, to the place of business of the dealer who sold the pesticide.
- b. Upon return of the containers and receipt of the affidavit as provided above, cash deposits shall be refunded by the dealer in cash, and deposits that were posted to credit accounts shall be credited to reduce such accounts, except that if such accounts have been paid in full prior to return, then refunds shall be in cash.

B. **Limited and Restricted Use Pesticide Purchased Out-of-State**

- 1. **Scope.** The rules in this Subchapter B apply to limited and restricted use pesticides and their containers purchased out-of-state and brought into the State other than for resale, and which are held for use or used within the State. The following types of containers are exempt from these regulations but must be stored, handled and disposed of according to label directions and applicable D.E.P. regulations.
 - a. Paper, cardboard and fiberboard containers and plastic bags.
 - b. Containers of less than one-half pint volume.
 - c. Sealed containers, refillable only by the manufacturer or distributor, provided that such containers are required to be returned by the applicator to the manufacturer or distributor, that a deposit of no less than \$50 per container is charged by the manufacturer or distributor to the applicator or purchaser, and that the manufacturer or distributor establishes and carries out a monitoring system which provides for the identification and tracking of each container.

2. **Deposits.** Any person who purchases or otherwise acquires pesticides in containers within the scope of the regulations in this Subchapter B shall pay deposits on the containers to the Board of Pesticides Control, as follows:
 - a. All containers
 - (1) One-half pint to 30 gallons capacity - \$5.00
 - (2) 30 gallons capacity and over - \$10.00
 - b. Deposits shall be in cash, check, or money order and must be paid at the time stickers are requested under paragraph 3.
3. **Stickers.** At the time that pesticides are received for use in this State, stickers must be obtained from the Board and shall be affixed to such containers by the purchaser or his agent, as follows:
 - a. Stickers shall be obtained by making a request, on forms provided for that purpose, to the Board at least two weeks prior to anticipated need. Completed forms shall be forwarded to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333. Arrangements for emergency pick up of stickers may be made by contacting the Board at 207/287-2731. All requests must be accompanied by cash, check, or money order in an amount to cover the deposits due and for the costs of printing and shipping the stickers, as assessed by the Board.
 - b. Stickers shall be affixed prominently and securely to containers in a manner that will not obscure or interfere with any trademark or label instruction. Such stickers shall in no event be deemed part of the label.
 - c. It shall be unlawful to remove, deface, or otherwise render illegible a sticker except at the time of recycling or disposal of the container in accordance with these regulations.
4. **Affidavits.** The Board will provide blank affidavit forms to those seeking stickers for containers and the purchaser or his agent must complete such a form prior to returning containers for disposal.
 - a. The following information must be completed on the affidavit form:
 - (1) the name and address of the purchaser, and agent if any
 - (2) the registered name of the pesticide and the number and size of each container
 - (3) the serial number of each sticker affixed to a container
 - b. The following must be completed by the purchaser or his agent on the affidavit at the time the empty and properly rinsed containers are returned to an authorized collection, recycling or disposal place:
 - (1) the following certification to be signed by the purchaser or his agent and the person performing container rinsing "This is to certify under oath that the container(s) with the sticker number(s) listed herein has(have) been properly rinsed according to regulations adopted by the Board of Pesticides Control."
 - (2) The location and date containers were returned.

- c. The information contained on the affidavit shall be true and correct. It shall be illegal to sign or submit a false affidavit.
 - d. The completed and signed affidavit shall be submitted to the Board at the time a request is made for refund of the deposit.
5. **Triple rinse or equivalent.** Pesticide containers shall be triple rinsed immediately by the applicator or someone under his direct supervision, or cleaned by another authorized method or procedure equivalent in residue removal effectiveness.
- a. The standard triple rinse procedure is set forth in Subchapter A, Section 5 a and b of this Chapter.
 - b. Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally sound manner. Any person proposing to use an equivalent method that has not been previously authorized by the Board shall first obtain the Board's approval by providing data and information to document the cleaning effectiveness of the method and the environmental safety of residue disposal.
 - c. In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. All removed liners must be handled and disposed of according to the label and D.E.P. regulations. Liners removed from pesticides containers containing pesticides listed as hazardous waste by the D.E.P. are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent by the D.E.P.
 - d. Following the rinsing, cleaning, or liner removal procedure, plastic or metal containers not designated for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent reuse. Glass containers are exempt from this puncture requirement.
6. **Return for Refund.**
- a. Containers bearing the Board's stickers that have been properly rinsed and punctured according to the Board's regulations shall be returned to an authorized recycling, collection or disposal facility, as follows:
 - (1) completed and signed affidavits must accompany all containers returned
 - (2) the place and date of return shall be confirmed by the operator of the recycling, collection or disposal facility.
 - b. Requests for refund of deposits shall be made, on forms provided for that purpose, to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333. All requests must be accompanied by properly completed and signed affidavits that account for stickers issued by the Board.
7. **Out-of-State Dealer Option.** Any out-of-state dealer may elect to act as if it were an in-state dealer under Subchapter A hereof. In that case such dealer shall apply for stickers from the Board and shall otherwise

comply with the requirements of Subchapter A. Purchasers from such dealers and other handlers shall comply with Subchapter A. The provisions of this Subchapter B shall not apply in such case.

- C. **Held-over Containers.** After April 1, 1985, it shall be unlawful for any person to possess a restricted or limited use pesticide container without a sticker issued by the Board and affixed to the container, except as specifically exempted under Subchapter A and B hereof and except for containers held by dealers for sale. Stickers for pesticide containers subject to this regulation in the possession of applicators or users on April 1, 1985 shall be obtained by making a request, on forms provided for that purpose, to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333.
1. The request must contain the following information:
 - a. The registered name of the pesticide, and the number of the containers.
 - b. The following certification "This is to certify that the pesticide containers described herein were in my possession on April 1, 1985," signed by the person requesting stickers.
 2. Stickers issued by the Board under this Subchapter C shall be supplied without fee.
 3. Stickers provided by the Board must be affixed to the containers described in the request as described in Subchapter B. Such stickers shall not be affixed to any other containers.
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STATUTORY AUTHORITY: 22 M.R.S.A. § 1471-Q

EFFECTIVE DATE:

April 1, 1985

AMENDMENT EFFECTIVE:

May 18, 1986

June 27, 1988

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

Chapter 22 Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

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

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

SECTION 1. EXEMPTIONS.

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

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

SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS.

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

- A. General Requirements.
 - I. Prior to and during pesticide spray activities, applicators shall determine and monitor the condition of the equipment to be used, weather conditions, the boundaries of the area to be treated, surrounding properties, including any sensitive areas in the vicinity, and other pertinent factors. These monitoring efforts must be sufficient to assure that spray activities are conducted in accordance with these regulations, pesticide label requirements and otherwise in a manner which complies with law.

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- II. In any event, spray activities shall immediately cease if there is significant risk that these regulations or label requirements are not being or cannot be satisfied.
- B. Equipment.
- I. Pesticide spray equipment shall be used in accordance with its manufacturer's recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
 - II. Pesticide spray equipment shall be properly calibrated. Calibration shall occur with sufficient frequency, depending on extent and type of use of equipment and pesticides employed, so that equipment remains reasonably close to calibration specifications when in use. Applicators shall maintain work sheets to show types of nozzles, pressure, boom height and speed of equipment at time of calibration and a brief description of the calibration method.
 - III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.
- C. Weather Conditions.
- I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto sensitive areas or otherwise prevent proper deposition of pesticides on target.
 - II. Spray applicators shall be familiar with all weather conditions and related factors which affect settling of pesticides on to or off target. Such factors include temperature, inversion, wind speed and direction, potential for drift and volatilization, equipment functioning and pertinent label instructions.
 - III. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.
 - IV. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 m.p.h.
- D. Identification of Sensitive Areas.
- I. Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record any sensitive area located within 500 feet of the target area. Applicators shall be prepared to demonstrate by production of a map, sketch, field notes, log or other documentation that this requirement has been met. These records of sensitive areas shall be retained by or on behalf of the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request. This requirement shall not apply to turf, ornamental tree and plant or structural pest control applications.

II. Prior to spraying by aerial application, the field or other area to be sprayed shall be clearly identified by means of ground markings or other physical identification characteristics clearly visible from the air.

E. Presence of Humans, Animals.

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

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

F. Other Requirements.

These regulations are intended to be minimum standards. Weather and topographical conditions, proximity to areas of particular sensitivity and other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in order to avoid adverse impacts on off-target areas and to protect public health and the environment. Moreover, these regulations are not designed or intended, nor should they be construed, to affect rights of private citizens in civil actions arising out of the negligent use or other misapplication of pesticides.

These regulations also do not affect pesticide label instructions, which may be more restrictive in certain cases. Under federal and state law, wherever particular label instructions impose standards which are more restrictive than these regulations, such label instructions must be followed. Similarly, these regulations do not affect more restrictive regulations or guidelines applicable to particular types of pesticide applications.

SECTION 3. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE.

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

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

B. Standards for Unconsented, Off-Target Drift.

I. General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of sensitive areas in the vicinity, type of application equipment and other pertinent factors.

II. Prima Facie Evidence of Violation. Without limiting the generality of subsection I above, the presence of pesticide drift residues in excess of any of the following levels shall constitute prima facie evidence that the applicator did not take reasonable precautions to minimize pesticide drift to the maximum extent practicable:

- (i) Pesticide residues in any off-target sensitive area in the vicinity of an application site which exceed 20% of the residues found, or which with proper application technique would have occurred, within the target area. For purposes of this standard, residue levels, within both a target area and an off-target sensitive area, may be determined by evaluation of one or more ground, foliage or other samples, or by extrapolation or other appropriate techniques.
- (ii) Pesticide residues on any off-target sensitive area in the vicinity of an application site which result in damage to crops, vegetation or other species within the sensitive area.
- (iii) Pesticide residues on any off-target organic farm or garden in the vicinity of an application site which causes the organic products thereof to fail to meet the tolerance for organic agricultural commodities because residue testing detects prohibited substances that are greater than five percent of the Environmental Protection Agency's tolerance for the residue detected. This standard shall apply only where, prior to the time the pesticide application occurs, the owner or operator of the organic farm or garden notifies the owner or lessee of the land to be sprayed, with such notice identifying the farm or garden as organic.
- (iv) The residue standards in this subsection II for off-target drift do not apply where the owner or lessee of the off-target area receiving pesticide drift has given authorization and consent as prescribed under subsection C of this section.

III. Standards for Particular Pesticides. The Board may by rule provide more restrictive residue standards than those prescribed herein for particular pesticides, where pesticide toxicity, propensity to drift or other circumstances warrant.

C. Consent; How Given.

- I. Authorization and consent by the owner or lessee of land receiving a pesticide discharge or drift may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in Chapter 10, "Definitions; Sensitive area."

SECTION 4. DRIFT MANAGEMENT PLAN.

A. Purpose.

Landowners, lessees and/or spray applicators may develop a drift management plan to cover applications undertaken by or on behalf of them. The purpose of such a plan shall be to minimize the

occurrence and adverse effects of pesticide drift. Where a drift management plan is in effect and complied with, management flexibility may be enhanced.

B. Contents

A drift management plan must contain measures designed to meaningfully reduce and minimize the incidence and adverse effects of off-target drift of pesticides, with a particular view to protecting sensitive areas. Such measures shall consider and include at least some of the following elements:

- I. The establishment of no-spray buffer zones between spray blocks and sensitive areas to minimize drift;
- II. Spraying only when maximum wind speed and/or direction are as prescribed by the plan, with that prescription being less than the maximum allowable wind speed established under section 3C IV;
- III. The use of coarse spray droplets created by a combination of special nozzles, pressures and particulating agents;
- IV. The use of specialized equipment designed to minimize spray drift;
- V. The use of wind shields or breaks to deflect or contain spray drift away from sensitive areas;
- VI. The use of closest possible points of spray release to the target in order to minimize drift;
- VII. The use of lowest effective rates of application of pesticides;
- VIII. The use of integrated pest management techniques, including planting of pest resistant varieties, removal of pest host plants, long-range planning to rotate crops and monitor fields, and other measures designed to minimize the use of pesticides over the planting season and/or over several planting seasons;
- IX. Posting of the area to be sprayed or other forms of effective public notification, provided that this measure must be accompanied by other measures designed to reduce drift;
- X. Other specific measures stated in the plan which are effective in minimizing the incidence and adverse effects of pesticide drift.

C. Procedure.

Any person wishing to operate under a drift management plan must prepare the plan in writing, stating with specificity the measures which will be used, and how they will be used, in reducing the incidence of drift and protection of sensitive areas. The plan shall also include a map, aerial photograph or sketch of the area(s) to be sprayed, the crops to be treated, the pesticide(s) and equipment which may be used, the target pest(s), and the monitoring techniques and thresholds which will be used in making a decision to spray a given area. The plan shall be dated and signed by the person(s) responsible for carrying out its provisions, who shall also provide an address and telephone number by which (s)he can be reached.

D. Filing; Review by Board.

The drift management plan need not be filed with the Board but must be retained by the person having responsibility for pesticide application. Notification to the Board of the existence of the plan shall be submitted on forms to be prepared by the Board. The Board may from time to time review any plan for adequacy in providing for minimum drift and protection of sensitive areas. If the Board requests a copy of the complete plan, it shall be promptly submitted. If the Board at any time determines that a plan is not adequate, or is not sufficiently detailed to allow for an evaluation of its adequacy, it shall notify the person responsible for the plan and provide an opportunity for that person to amend the plan in order to make it adequate. The Board may notify that person of amendments or conditions which would make the plan acceptable. Any plan determined by the Board to be inadequate shall be declared invalid by the Board.

E. Period of Effectiveness.

A drift management plan shall be effective for a period of two years, after which it must be updated by the person responsible for its preparation. The Board shall be notified in writing of the updated plan.

F. Legal Effect of Plan.

Operating under a drift management plan does not allow an applicator to avoid compliance with the requirements of Section 2 and 3A of these regulations. Departure from the standards of Sections 3 and 4A requires a variance permit under Section 6.

G. Enforcement.

In the event of an incident involving alleged pesticide drift or other misapplication where a drift management plan was in effect, the Board shall examine the adequacy of the plan and may declare the same inadequate or recommend further amendments or conditions. The Board shall take into consideration the existence of and good faith compliance with a plan in determining whether further enforcement action by the Board is necessary.

SECTION 5. VARIANCES FROM STANDARDS

A. Variance Permit Application.

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

- I. The name, address, and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;
- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;
- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.

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

- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct his activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in his application and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B)I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemptions."
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STATUTORY AUTHORITY: 7 M.R.S.A. § 606(2)(G):
22 M.R.S.A. § 1471-M(2)(D)

EFFECTIVE DATE:
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AMENDED:
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EFFECTIVE DATE (ELECTRONIC CONVERSION):
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AMENDED:
September 22, 1998 - also converted to MS Word
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)

Chapter 24 Pesticide Storage Facility Standards/Pesticide Distributors

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 24: PESTICIDE STORAGE FACILITY STANDARDS/PESTICIDE DISTRIBUTORS

SUMMARY: These regulations provide minimum criteria for the siting, construction and operation of facilities and businesses which store pesticides for wholesale or retail purposes. They are intended to protect the public health of employees and persons who live near these facilities and to minimize adverse environmental impacts that might result from emergencies caused by fires or spills. This chapter divides storage facilities into three groups and imposes requirements commensurate with their potential threat to public health and the environment. These regulations also describe display requirements for retail businesses which offer pesticides for sale in self-service areas.

Section 1. Applicability of this Chapter

- A. Pesticide storage facilities owned and/or operated by distributors who are not required to hold either a general use or restricted use pesticide dealer license are exempt from this chapter.
- B. All pesticides held for storage by pesticide distributors to whom this regulation applies must be stored in pesticide storage facilities as set forth in this chapter.

Section 2. Exempted Products

For the purpose of calculating the total amount of pesticide in storage in a pesticide storage facility, the following products shall be exempt from consideration.

- A. Pesticide products with solely household uses and with no more than 3% active ingredients;
- B. Dichlorvos (DDVP) impregnated strips with concentrations not more than 25% in resin strips and pet collars;
- C. Pet supplies such as shampoos, tick and flea collars and dusts;
- D. Disinfectants, germicides, bactericides and virucides;
- E. Insect repellents;
- F. Indoor and outdoor animal repellents;
- G. Moth flakes, crystals, cakes and nuggets;
- H. Indoor aquarium supplies;
- I. Swimming pool supplies;

- J. Pediculocides and mange cure on man;
- K. Aerosol products;
- L. General use paints, stains, and wood preservatives and sealants; and
- M. Dry pesticides with percent active ingredient less than or equal to 5% .

Section 3. Siting and Structural Requirements for New Major Pesticide Storage Facilities

A. Applicability

All major pesticide storage facilities that become operational after the effective date of this chapter must conform with the provisions of this section.

B. Siting Requirements for New Major Pesticide Storage Facilities

I. No new major pesticide storage facility may be located:

- a. in a 100 year flood plain;
- b. overlying any aquifer which has been identified by a municipal as a current or future source of public drinking water; or
- c. overlying any sand and gravel aquifer with a yield greater than 10 gallons per minute which has been mapped by the Department of Conservation, Maine Geological Survey.

II. No new major pesticide storage facility may be sited closer than 1,000 feet from any:

- a. school, hospital, nursing home, correctional facility, or other similar institutional building;
- b. densely populated area as defined by the Maine Department of Transportation Compact Urban Line, unless the storage facility is located next to an office building or retail store which meets the criteria in Section 3(B)III(b) below;
- c. pesticide critical control area as defined by 22 M.R.S.A. §1471-F, "Critical areas" and 01-026 CMR Chapter 60, "Designation of Critical Pesticide Control Areas;" and
- d. water body or well which serves any public water supply.

III. No new major pesticide storage facility may be sited closer than 250 feet from any:

- a. residential building;
- b. office building or retail store, unless it meets one of the following exceptions:
 - i. the office building or retail store is owned and/or operated by the licensed pesticide dealer;

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- ii. the office building or retail store is located in an area zoned or identified by a municipality for industrial use; or
 - iii. the office building or retail store is located in an area zoned by a municipality for business or commercial use and the construction of that pesticide storage facility has been approved by the municipal planning or zoning board;
 - c. state water body;
 - d. wetlands of special significance;
 - e. private domestic well unless it solely serves the building owned and/or operated by the licensed pesticide dealer; and
 - f. area used for livestock.

C. Structural Requirements for New Major Pesticide Storage Facilities

I. Basement

All new major pesticide storage facilities shall be constructed without a basement.

II. Walls and Ceiling

The exterior walls and ceiling of a new major pesticide storage facility shall be constructed to have a fire resistance rating of two hours.

III. Doors

- a. All doors shall have a fire resistance rating of 1 hour.
- b. All new major pesticide storage facilities shall have, at least:
 - i. two means of egress, one of which must be a standard door on which panic hardware is installed. The standard door must latch shut when closed and open outward from where products are stored when a person depresses the horizontal bar on the panic hardware. If there is a smaller room or partitioned area within the facility, it too must have an outward opening standard door with panic hardware as previously described in this sub-section.
 - ii. one outside door at ground level with a minimum opening of 10' by 12'. This door shall not qualify as a means of egress as described in Section 3(C)III(b)i unless it is equipped with a device which allows it to be easily and quickly opened in an emergency.

Section 4. Structural Requirements for All New and Existing Major Pesticide Storage Facilities

A. Applicability

- I. All new major pesticide storage facilities that become operational after the effective date of this chapter must conform with the provisions of this section.

- II. All existing major pesticide storage facilities must be upgraded to conform with the provisions of this section by no later than January 1, 1997.

B. Walls

All major pesticide storage facilities shall be structurally separated by a wall with a fire resistance rating of two hours from office, retail or residential spaces, livestock quarters, water supply sources, and food, feed, fertilizer or seed storages. This does not preclude having a small area for warehouse employees to maintain inventory and shipping records.

C. Doors

Any partitioned area within a major pesticide storage facility must be equipped with a standard door on which panic hardware is installed.

D. Floors

- I. All floors shall be made impervious to liquid and dry pesticide spills.
- II. The outside edges of floors shall have at least a four-inch, sealed concrete berm.
- III. Any floor drains must be sealed or connected to a waste storage tank of sufficient size to hold 25% of liquid volume stored.

E. Lighting

All major pesticide storage facilities shall have:

- I. lighting installed so that labels may be easily read and any leaks quickly detected;
- II. a battery powered emergency lighting system that automatically activates during power outages and illuminates all exits; and
- III. exterior lighting that provides coverage around the perimeter of the building.

F. Heating

- I. All pesticides must be stored at temperatures that conform to label directions.
- II. When and where applicable, heat sources must be provided by one of the following:
 - a. an outside furnace room with hot water fixtures in the pesticide storage area; or
 - b. permanent oil or gas furnaces inside the storage, with sealed flames and an explosion proof thermostat; or
 - c. roof installed heat exchangers; or
 - d. any other heating source which would meet applicable fire safety and electrical codes.

G. Ventilation

All major pesticide storage facilities shall have one of the following:

- I. gravity ventilation to the outside with a capacity of one cubic foot per minute per square foot of floor space; or
- II. mechanical ventilation with on/off switches at points of ingress that is capable of exhausting to the outside at a rate of not less than 150 cubic feet per minute.

H. Security

All major pesticide storage facilities shall have:

- I. locked doors and windows which prohibit unauthorized access; and
- II. an automatic alarm system that is connected to a supervised central station. This system shall have a backup power system so it will operate during power outages.

I. Fire Protection

- I. All major pesticide storage facilities shall be equipped with an automatic heat and smoke detector alarm system connected to a supervised central station. The system shall have both audible and visible devices and shall have a backup power system so it will operate during power outages.
- II. Water sprinkler systems shall not be allowed in any portion of a major pesticide storage facility.

J. Emergency Showers

All major pesticide storage facilities shall have emergency showers available. These emergency showers must be located either in the facility or in an adjacent building on the premises within 200 feet of the major pesticide storage facility. There must also be a plan for collecting any water used in emergency showers.

K. Design Certification

I. New Major Pesticide Storage Facilities

- a. Anyone constructing a new building which is intended to serve as a new major pesticide storage facility shall obtain a certification from a licensed architect or professional engineer that the plans for the facility meet all the requirements of this chapter. Copies of the certified plans shall be included in the building permit application to the municipality and shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.
- b. Anyone converting an existing building or portion of an existing building to a new major pesticide storage facility shall obtain a certification from a licensed architect or professional engineer that the plans for the facility meet all the requirements of this chapter. Copies of the certified plans shall be included in the building permit application to the municipality and shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.

II. Existing Major Pesticide Storage Facilities

- a. A general contractor renovating an existing major pesticide storage facility shall obtain certification from a licensed architect or professional engineer that the plans for the facility meet all the requirements of this chapter. Copies of the certified plans shall be included in the building permit application to the municipality and shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.
- b. A licensed pesticide dealer who undertakes renovations to an existing major pesticide storage facility without the services of a general contractor, licensed architect or professional engineer shall provide written self-certification that the pesticide storage facility meets all requirements of this chapter. This self-certification shall be maintained by the licensed pesticide dealer at the facility and made available to the Board of Pesticides Control or its agents upon request.

Section 5. Structural Requirements for All New and Existing Minor Pesticide Storage Facilities

A. Applicability

- I. All new minor pesticide storage facilities that become operational after the effective date of this chapter must conform with the provisions of this section.
- II. All existing minor pesticide storage facilities must be upgraded to conform with the provisions of this section by no later than January 1, 1997.

B. Walls

Minor pesticide storage facilities shall be structurally separated from and sealed to prevent air movement to other occupied spaces and livestock quarters. This does not preclude having a small area for employees to maintain inventory and shipping records.

C. Doors

Any interior room or otherwise partitioned area in which pesticides are stored within a minor pesticide storage facility must be equipped with a standard door on which panic hardware is installed. The standard door must latch shut when closed and open outward from where the products are stored when a person depresses the horizontal bar on the panic hardware. If there is a smaller room or partitioned area within the facility, it too must have an outward opening standard door with panic hardware as previously described in this sub-section.

D. Floors

All floors shall be made impervious to liquid and dry pesticide spills.

E. Lighting

Minor pesticide storage facilities shall have lighting installed so that labels may be easily read and any leaks quickly detected.

F. Ventilation

Minor pesticide storage facilities shall have one of the following:

- I. gravity ventilation to the outside with a capacity of one cubic foot per minute per square foot of floor space; or
- II. mechanical ventilation with on/off switches at points of ingress that is capable of exhausting to the outside at a rate of not less than 150 cubic feet per minute.

G. Security

Minor pesticide storage facilities shall have doors and windows capable of being locked to prohibit unauthorized access.

Section 6. Operational and Emergency Equipment Requirements for All Major and Minor Pesticide Storage Facilities

- A. All pesticide storage facilities shall be kept securely locked at all times, except when authorized personnel are present.
- B. Each entrance to the pesticide storage facility shall be prominently posted with the words, "Danger - Pesticide Storage - Keep Out."
- C. No smoking shall be allowed in any pesticide storage area. All entrances to the pesticide storage facility shall be posted with signs indicating smoking is not allowed.
- D. All pesticide containers shall be stored in a manner that prevents damage and allows inspection for rusting, bulging or leaking. All containers held in storage shall be in good condition and have full labeling intact. Pesticide distributors must conduct periodic inspection of containers for rust and/or leaks.
- E. Emergency Equipment
 - I. All pesticide storage facilities shall be equipped with at least one eye wash station capable of flushing eyes for a minimum of fifteen minutes.
 - II. All pesticide storage facilities shall be equipped with fire extinguishers that are capable of extinguishing all types of fires that may occur in the pesticide storage facility. These fire extinguishers must be clearly marked as to their fire suppression capabilities. The number and placements of fire extinguishers shall conform with the National Fire Protection Association Standard No. 10.
 - III. All pesticide storage facilities shall be equipped with spill response and clean-up equipment, including, but not limited to, absorbents, empty containers, brooms and shovels and personal protective equipment for employees.
 - a. Compatible absorbents for water and oil-based products shall be present in sufficient quantity to clean up two-times the volume of the largest container stored in the facility.
 - b. Proper personal protective clothing and equipment, as well as training to use that equipment, shall be provided to employees and emergency responders.
 - c. Pesticide distributors may coordinate the provision of spill response equipment with other facilities in the locality as well as with appropriate municipal safety agencies.

- F. Pesticides shall not be stored within 10 feet from products intended for human or animal consumption.

Section 7. Special Requirements for Pesticide Distributor Self-Service Sales Areas

- A. All pesticides, unless they are exempted products under 22 M.R.S.A. § 1471-W(5), shall be displayed in a separate area that is identified by a Board approved sign informing the public where to obtain additional information. The signs must be positioned between four and seven feet above the floor and prominently posted in all areas where non-exempt pesticides are displayed.
- B. All pesticide containers in the self-service sales area shall be in good condition and have full labeling intact. It is prohibited to have torn, punctured, rusted or leaking pesticide containers in the self-service sales area.
- C. All pesticide products not exempted under 22 M.R.S.A. § 1471-W(5) shall not be displayed within 10 feet of food or animal feed products unless they are stored in adjoining aisles separated by a solid barrier. Pesticides shall not be on display above food or animal feed products.
- D. Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements.
- E. Each retail or wholesale establishment must be equipped with spill cleanup materials sufficient to absorb 2 times the volume of the largest container stored. These cleanup materials must be readily available and easily accessible.

Section 8. Local Ordinances

These regulations are minimum standards and are not meant to preempt any local ordinances which may be more stringent.

STATUTORY AUTHORITY: 22 M.R.S.A. § 1471-O and 7 M.R.S.A. § 610(2)(B)

EFFECTIVE DATE:

May 12, 1992

AMENDED:

June 30, 1996

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

March 5, 2003 - filing 2003-59

January 4, 2005 – filing 2004-6704 affecting Sections 3.C.III.b.i., 5.C., 7.A.

Chapter 26 Standards for Indoor Pesticide Application

01 DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES

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

- A. **Applicator.** For the purposes of this regulation, Applicator means a commercial applicator or other persons who apply pesticides to occupied buildings.
- B. **Client.** For the purposes of this regulation, Client is the person who either owns or manages the Occupied Building and who contracts with a commercial applicator to monitor and/or control pests.
- C. **Crack and Crevice Treatment.** For the purposes of this regulation, Crack and Crevice Treatment means using an injector tip and placing the tip inside an opening to apply small amounts of pesticides into cracks and crevices in which pests hide or through which they may enter a building. Such openings commonly occur at expansion joints, between elements of construction, and between equipment and floors. These openings may lead to voids such as hollow walls, equipment legs and bases, conduits, motor housings, and junction or switch boxes. This does not include spraying a band covering the baseboards or mopboards or spraying above the baseboards or mopboards.
- 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.

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- E. **Occupied Building.** For the purposes of this regulation, Occupied Building means any public, private, commercial or institutional structure used or occupied by persons on a regular, long-term basis as a residence or for occupations. These include but are not limited to rented residential buildings, condominiums, licensed childcare facilities and nursery schools, and governmental, commercial and institutional buildings.

Section 2. Exemptions

- A. The following pesticide uses are exempt from the requirements of this Chapter:
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 any person;
 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;
 3. application of paints, stains or wood preservatives that are classified as general use pesticides;
 4. application of pesticides by a resident to his or her own residential unit;
 5. commercial application of pesticides where the resident has contracted for application to his or her own personal residential unit; and
 6. indoor applications of pesticides injected into closed systems for control of nuisance microbial organisms.
- B. The use of baits, gels, pastes, dusts and granular materials placed in areas not readily accessible to residents, employees or children is exempt from the requirements of Section 3 of this Chapter.

Section 3. Notification**A. Notice to Residents.**

1. At least 24 hours and no more than seven days in advance of a pesticide application not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice (see Appendix A) to the resident or residents of an apartment unit, condominium unit or other rented residential unit to be treated, where the residents of that unit did not request the impending pesticide application. The notice may be mailed or provided directly to the residents and shall explain that pesticides may be used in their residential unit and that they have the right to ask for and receive more specific information described in Section 3(D) of this regulation. If the resident asks for further information specified in Section 3(D), the applicator must provide it.
2. If an application not exempted by Section 2 will be made to common areas of these rental residential buildings, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) at least 24 hours in advance and no more than seven days in advance of the planned application informing the residents of that building that pesticides will be used in the common areas and that they have the right to ask for and receive more specific information as described in Section 3(D).
3. The applicator may fulfill the requirements of subsections 3(A)(1) and 3(A)(2) by providing the Board approved notice and instructing the landlord or building manager to distribute the notice to the residents as described in subsection 3(A)(1) or to post the notice as described in subsection 3(A)(2) as appropriate. The applicator must confirm with the landlord or building manager that the requirements of subsections 3(A)(1) and 3(A)(2) have been met before making any application not exempt under Section 2 of this Chapter.

B. Notice to Employees of Agencies, Businesses and Institutions

At least 24 hours and no more than seven days in advance of a pesticide application in a building housing an agency, business or institution that is not exempted under Section 2, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) in a conspicuous place or places where notices to employees are customarily posted. The notice must inform employees of the planned application and about their right to ask for and receive more specific information, as described in Section 3(D). If an employee asks for further information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(B) by providing the Board approved notice and instructing the building manager, the person requesting the application or another responsible individual to post the notice as described in this subsection. The applicator must confirm with the building manager, the person requesting the application or another responsible individual that the requirements of this section have been met before making any application not exempt under Section 2 of this Chapter.

C. Notice to Parents and Guardians of Children in Licensed Childcare Facilities or Nursery Schools

At least 24 hours and no more than seven days in advance of a pesticide application in a licensed child care facility or nursery school that is not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice of the planned application (see Appendix A) to parents or guardians of currently enrolled children. The notice must inform parents or guardians that pesticides will be used in the building and that they have the right to ask for and receive more specific information, as described in Section 3D. If a parent or guardian asks for information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(C) by providing the Board approved notice and instructing the manager of the daycare or nursery or another responsible individual to distribute the notice to parents or guardians as described in this subsection. The applicator must confirm with the manager or responsible individual of the daycare or nursery that the requirements of this subsection have been met before making any application not exempt under Section 2 of this Chapter.

- D. If residents, employees, parents or guardians ask for information about a pesticide application, the applicator shall provide the information requested, including as applicable: (a) the trade name and EPA Registration number of the pesticide(s) intended to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the re-entry interval listed on the product label; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. If requested, the applicator shall also provide a copy of the pesticide product label and Material Safety Data Sheet, and shall make reasonable efforts to fulfill any other requests for pesticide information. However, such requests for additional information will not delay nor prohibit the applicator from performing the pesticide application as scheduled.

Section 4. Integrated Pest Management Techniques

- A. Applicators must undertake pest management activities using appropriate elements of integrated pest management. In all cases, any application shall be conducted in a manner to minimize exposure and human risk to the maximum extent practicable using currently available technology.
- B. Applicators must identify conditions conducive to the development of pest problems. Commercial applicators must provide to the client a written evaluation of pest conducive conditions and must provide specific recommendations for practical non-pesticide control measures.
- C. Prior to any pesticide application, applicators must identify the pest specifically and evaluate the infestation severity and any associated damage except as provided in Section 4(C)(1) and (2) below.
1. Where there is a history of pest infestation and conditions are conducive to pest infestations, baits, gels, pastes or granular materials placed in areas not readily accessible to residents, employees, patients, or children and crack and crevice treatments designed to control commonly occurring pests in these areas may be used without specific evidence that a significant population is currently present.

2. For specific public health pests designated by Board policy, baits, gels, pastes, granular materials or crack and crevice treatments placed in areas not readily accessible to residents, employees or customers may be used without specific evidence of an infestation.

Section 5 Risk Minimization

- A. Prior to pesticide application, applicators must take into account the toxicity of recommended product(s) and choose low risk product(s) based on efficacy, volatility, the potential for exposure, the signal word on the pesticide label, the material safety data sheet and any label language imposing a ventilation requirement.
- B. Unless prohibited by the label, only baits, gels, pastes or granular materials and crack and crevice treatments may be used when residents, patients, children, customers and unconsenting employees are in the same room.
- C. Prior to making an application, applicators must also consider the following:
 1. The principal uses for the room to be treated including if it is primarily occupied by sensitive individuals such as children, older adults or persons with chronic illnesses.
 2. The type of treatment being made and the likelihood that people or pets will come into contact with the treated area following the application.
 3. The volatility of the product being applied and the practical need to ventilate the treated room(s) prior to re-entry. In all cases, label statements relative to ventilation or re-entry shall be minimum requirements.
 4. The type of ventilation system, if present, including whether it serves only the treated room(s) or the entire building, and whether it can and should be shut off while the treatment is performed.

6 Tenant's Consent

Except in cases where a public health or code enforcement official with jurisdiction has determined a need for immediate pest management, application to a tenant's residential unit is prohibited if the tenant is opposed to such treatment. A pesticide application may not be made until such time as alternative control measures have been tried and documented as to their failure to control a pest problem, which poses health risks, threatens significant property damage or threatens to infest other parts of the building.

7. Other Requirements

These regulations do not affect pesticide label instructions, which may be more restrictive in certain cases. Under federal and state law, wherever particular label instructions impose standards that are more restrictive than these regulations, such label instructions must be followed. Similarly, these regulations do not affect more restrictive regulations or guidelines

applicable to particular types of pesticide applications.

Section 8. Transition

This regulation will become effective on January 1, 2007.

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

Date Posted or Provided:

Person Providing Notice:

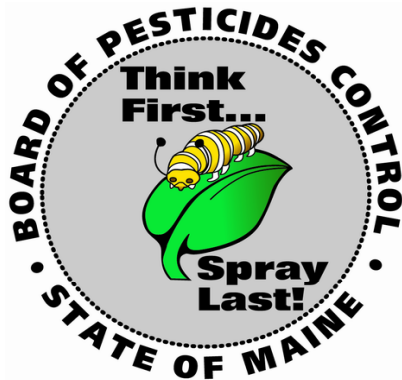
Notice of Pesticide Application

**Pesticides May Be Applied in this Building as Part of an
Integrated Pest Management Program
on (date) _____**

You may request further information about the use of pesticides in this building by contacting the pesticide applicator:

Company Name:

Phone:



For information on pesticides and regulations contact the
Maine Board of Pesticides Control at 287-2731
or visit www.thinkfirstspraylast.org

Chapter 27 Standards for Pesticide Application and Public Notification in Schools

01 DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

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

SUMMARY: These regulations establish procedures and standards for applying pesticides in school buildings and on school grounds. This chapter 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 regulation, 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 regulation, 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.

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- C. **School Building.** For the purposes of this regulation, School Building means any structure used or occupied by students or staff of any school.
- D. **School Grounds.** For the purposes of this regulation, 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.
- 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.

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 chapter are met. In addition, the IPM Coordinator shall maintain and make available to parents, guardians and staff upon request:
- (1) the school's IPM Policy,
 - (2) a copy of this rule (CMR 01-026 Chapter 27),
 - (3) records of all pesticide applications as required under CMR 01-026 Chapter 50 – Record Keeping and Reporting Requirements,
 - (4) copies of labels and material data safety sheets for all products applied, and
 - (5) when pesticides not exempt under Section 3 are applied, records of the IPM steps taken as described in Section 5.B. of this chapter.
- C. Each school shall provide an annual notice to parents or guardians and school employees. This notice must be provided within two weeks of the start of the school year regardless of whether there are plans to have pesticides applied in the coming year.

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Section 4 and 5 of this Chapter:
- (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 Chapter:
- (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 4 and 5 (B). Applicators should post the treated area as soon as practical, in a manner consistent with Section 4 C (3)(a).

Section 4. Notification

- A. Within two weeks of the start of every school year, notice shall be given by all schools to all school staff and parents or guardians of students advising them 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 Sections 4(B-D) hereof. This notice shall also state that records of prior pesticide applications and labels and material safety data sheets for the pesticides used and a copy of the Standards for Pesticide Applications and Public Notification in Schools regulation (CMR 01-026 Chapter 27) are available for review.
- B. Notices given as required by Section 4C shall state, as 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 to school staff and parents or guardians of students at least five days prior to the planned application.

- C. During the school year when classes are regularly scheduled, schools shall provide notice of pesticide applications in accordance with either Section 4C(1) or 4C(2) and with Section 4C(3). When classes are not regularly scheduled, notice shall be accomplished by posting of signs as described in Section 4C(3) of this rule.
- (1) Notice may be given to school staff and parents or guardians of students using a school whenever pesticide applications not exempted by Section 3 are performed inside a school building or on the school grounds, or
 - (2) The school may establish a notification registry whereby persons wishing notification of each application performed inside a school building or on school grounds may make a written request to be put on the registry list to receive notice whenever pesticide applications not exempted by Section 3 are performed.
 - (3) 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 Chapter satisfies the posting requirements of Chapter 28 of the Board's regulations.
 - a. The signs shall be:
 - i. at least 8.5 inches wide by 11 inches tall for indoor applications,
 - ii. at least 5 inches wide by 4 inches tall for outdoor applications,
 - iii. made of rigid, weather resistant material that will last at least ninety-six (96) hours when placed outdoors, and
 - iv. light colored (white, beige, yellow or pink) with dark, bold letters (black, blue, red or green).
 - b. The signs for indoor applications must bear:
 - i. the word CAUTION in 72 point type,
 - ii. the words PESTICIDE APPLICATION NOTICE in 30 point type or larger,
 - iii. any reentry precautions from the pesticide labeling in at least 12 point type,
 - iv. the trade name and EPA Registration number(s) of the pesticide(s) to be applied in at least 12 point type,
 - v. the approximate date and time of the application in at least 12 point type,

- vi. the location of the application in at least 12 point type,
 - vii. the reason(s) for the application in at least 12 point type, and
 - viii. the name and phone number in at least 12 point type of the person to whom further inquiry may be made regarding the application.
- c. The signs for outdoor applications must bear:
- i. the word CAUTION in 72 point type,
 - ii. the words PESTICIDE APPLICATION in 30 point type or larger,
 - iii. the Board designated symbol (see appendix A),
 - iv. any reentry precautions from the pesticide labeling in at least 12 point type,
 - v. the trade name and EPA Registration number(s) of the pesticide(s) to be applied in at least 12 point type,
 - vi. the approximate date and time of the application in at least 12 point type,
 - vii. the location of the application in at least 12 point type,
 - viii. the reason(s) for the application in at least 12 point type, and
 - ix. the name and phone number of the person to whom further inquiry regarding the application may be made in at least 12 point type.

Section 5. Integrated Pest Management Techniques

- A. 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. In all cases, the application should be conducted in a manner to minimize human risk to the maximum extent practicable using currently available technology.
- B. 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

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4. utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.
- C. When a pesticide application is deemed necessary, the applicator must comply with all the requirements of 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.
- D. 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.
- E. 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.
- F. 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 regulations designed for minimizing pesticide drift and posting of treated sites. Spot treatments should be considered in lieu of broadcast applications.
- G. The Integrated Pest Management Coordinator must maintain records of pest monitoring as well as the same pesticide application information required in Section 1.A. of Chapter 50–Record Keeping & Reporting Requirements for a period of two years following all pesticide applications performed along with the labels and material safety data sheets for all products used in or on school property.
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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.

AMENDMENT EFFECTIVE:

July 5, 2005 – filing 2005-266

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds



Chapter 28 Notification Provisions for Outdoor Pesticide Applications

01 DEPARTMENT OF AGRICULTURE

026 BOARD OF PESTICIDES CONTROL

Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS

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

Section 1. Requesting Notification About Outdoor Pesticide Applications

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

A. Requests for Notification; How Made.

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

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

B. Procedure of Notification

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

1. General notification of intent to apply pesticides out-of-doors shall be given to the person making the request for notification. Such general notification may be given in any

fashion, provided that it is effective in informing the person receiving the notice of the following:

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

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

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

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

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

A. Individuals To Be Included on the Registry

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

- b. Mailing address;
 - c. Listed registry residence, including street or road address and city;
 - d. Daytime and evening telephone number(s), one of which is designated as the primary contact number; and
 - e. The names and addresses of all landowners or lessees within 250 feet of the boundary of the listed registry residence.
2. Individuals may register more than one residence by completing additional forms and paying all appropriate fees.
 3. The effective period of the registry will be from March 1 to February 28 of the following year. Individuals must submit their request for inclusion on the next effective registry by December 31. All submissions received after that date will be included on the following registry. Individuals may notify the Board at any time of changes in their listed registry residence, however, changes will not take effect until the following registry. An individual will not be considered officially included on the Maine Pesticide Notification Registry unless their name appears on the current effective registry.
 4. The Board shall mail renewal notices to individuals listed on the Maine Pesticide Notification Registry on or before November 1 of each year. An individual must re-apply and pay all appropriate fees annually to remain on the registry for the next twelve month period.
- B. Alerting Neighbors to the Presence of an Individual on the Registry
1. All individuals on the Maine Pesticide Notification Registry shall annually provide a letter to all landowners and lessees within 250 feet of their property boundary from whom they want to receive notification.
 2. This letter, approved and supplied by the Board, must inform neighbors of the existence of the Maine Pesticide Notification Registry, the individual's request to be notified in the event of an outdoor pesticide application, the distance from the property boundary which shall cause notification to be given for non-agricultural pesticide applications, and the notification requirements of this chapter.
 3. The individual on the registry requesting notification bears the burden of proof for demonstrating that this provision has been met.
 4. Failure to distribute the letter will not prohibit an individual from being added to or remaining on the registry.
- C. Registry Provided to Commercial Applicators

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

D. Notification to Individuals on the Maine Pesticide Notification Registry

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

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- ii. the information is given to a member of the household or workplace contacted by dialing the primary contact telephone number.
 - b. If notification cannot be made after at least two telephone contact attempts and personal contact is not feasible, notification may be made by securely affixing the notification information in written form on the principal entry of the listed registry location.
 7. The person or company performing the pesticide application bears the burden of proof for demonstrating that they have complied with this section.
- E. Exceptions.
1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
 2. The following types of pesticide applications do not require notification under this section:
 - a. The application of pesticides indoors;
 - b. Agricultural pesticide applications;
 - c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing categories VI(A) - Utility Rights-of-Way, VI(B) - Roadside Vegetation Management, and VI(C) - Railroad Vegetation Management;
 - d. The outdoor commercial application of pesticides in certification and licensing category VII(a) - Structural General within five (5) feet of a human dwelling, office building, institution such as a school or hospital, store, restaurant or other occupied industrial, commercial or residential structure which is the intended target site;
 - e. The application of general use pesticides by hand or with non-powered equipment to control stinging insects;
 - f. The placement of pesticidal baits;
 - g. The injection of pesticides into trees or utility poles;
 - h. The placement of pesticide-impregnated devices on animals, such as ear tags and flea collars;
 - i. The application of pesticidal pet supplies, such as shampoos and dusts;

- j. The application of disinfectants, germicides, bactericides and virucides, such as bleach. The use of disinfectants in the pressure-washing of the exterior of buildings is not exempt under this section;
 - k. The application of insect repellents to the human body;
 - l. The application of swimming pool products;
 - m. The application of general use paints, stains, and wood preservatives and sealants applied with non-powered equipment or by hand or within an enclosure which effectively prevents the escape of spray droplets of the product being applied; and
 - n. The injection of pesticides into wall voids.
- F. Exemption from this section. If an individual on the current effective registry and a person or company performing pesticide applications subject to this rule can reach an agreement on notification provisions acceptable to both parties other than those described herein, then the requirements as described in this section may be waived. For such an exemption to be in effect, the details of the notification agreement must be placed in writing and signed by both parties. Either party may terminate the notification agreement with a 14-day, written notice.
- G. Fee. The annual application fee for an individual requesting to be on the registry will be \$20.00. The Board may waive the fee for individuals who demonstrate an inability to pay, or where other extenuating circumstances exist which justify granting a waiver. Evidence of an individual's inability to pay shall include, but not be limited to, the individuals participation in any of the following programs:
1. Food Stamps
 2. Temporary Assistance for Needy Families (TANF)
 3. Supplemental Security Income (SSI)
 4. Social Security Disability (SSD)
 5. Maine Care (Medicaid)

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

Section 3. Posting Requirements for Pesticide Applications in Certain Commercial Licensing Categories

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

- A. The sign must be at least five (5) inches wide and four (4) inches high;

- B. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- C. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- D. The sign must bear:
 - 1. the word CAUTION in 72 point type;
 - 2. the words PESTICIDE APPLICATION in 30 point type or larger;
 - 3. the Board designated symbol;
 - 4. any reentry precautions from the pesticide labeling;
 - 5. the name of the company making the pesticide application and its telephone number;
 - 6. the date and time of the application; and
 - 7. a date and/or time to remove the sign.
- E. Exemption from this section.
 - 1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 - 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.

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

EFFECTIVE DATE:
September 22, 1998

AMENDED:
April 27, 1999

June 26, 2000

Chapter 29 Standards for Water Quality Protection

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

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 set back from surface water for mixing and loading of pesticides and sets forth requirements for securing containers on sprayers and cleaning up spills occurring within the setback zone.

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 38M.R.S.A. Section 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.
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STATUTORY AUTHORITY: 7 M.R.S.A. §§601-625 and 22 M.R.S.A. §§1471-A-X.

EFFECTIVE DATE:
April 14, 1999

Chapter 31 Certification and Licensing Provisions/Commercial Applicators

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 31 CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

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

1. Individual Certification and Company/Agency Licensing Requirements.
 - A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
 - B. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
 - C. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
 - D. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6)

hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

E. Exemptions.

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

2. Categories of Commercial Applicators

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

I. Agricultural Animal and Plant Pest Control

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

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

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

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

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

II. Forest Pest Control

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

III. Ornamental and Turf Pest Control

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

IV. Seed Treatment

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

V. Aquatic Pest Control

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

VI. Right-Of-Way Vegetation Management

- a. Rights-of-Way Vegetation Management - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside and railroad rights-of-way.
- b. Industrial/Commercial/Municipal Vegetation Management - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on industrial, commercial, municipal or publicly owned

areas including, but not limited to, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots and sidewalks.

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

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

VIII. Public Health Pest Control

- a. Biting Fly Pests - This subcategory includes governmental officials using pesticides in management and control of potential disease vectors or other pests having medical and public health importance including, but not limited to, mosquitoes, black flies, midges, and members of the horsefly family.

- b. Other Pests - This subcategory includes governmental officials using pesticides in programs for controlling other pests of concern to public health including, but not limited to, ticks and birds and mammal vectors of human disease.

IX. Regulatory Pest Control

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

X. Demonstration and Research Pest Control

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

XI. Aerial Pest Control

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

3. Competency Standards for Certification of Commercial Applicators

- A. Applicants seeking commercial certification must establish competency in the general principles of safe pest control by demonstrating knowledge of basic subjects including, but not limited to, pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques and applicable laws and regulations. (Core Exam).
- B. Applicants seeking commercial certification must demonstrate competency in each applicable category or subcategory. (Category Exam). Competency in the applicable category or subcategory shall be established as follows:
 - I. Agricultural Animal and Plant Pest Control
 - a. Agricultural Animals. Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.
 - b. Agricultural Plant. Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I - IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall

include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

II. Forest Pest Control

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

III. Ornamental and Turf Pest Control

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

IV. Seed Treatment

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

V. Aquatic Pest Control

- a. General Aquatic - Applicants seeking certification in the subcategory of General Aquatic as described in Section 2(A)(V)(a) must demonstrate practical knowledge of proper methods of aquatic pesticide application, application to limited area, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include basic factors contributing to the development of nuisance aquatic plant growth such as algal blooms, understanding of various water use situations and potential downstream effects from pesticide use, and potential effects of various aquatic pesticides on plants, fish, birds, insects and other organisms associated with the aquatic environment. Also required shall be an understanding of the Department of Environmental Protection laws and regulations pertaining to aquatic discharges and aquatic weed control and a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. Sewer Root Control - Applicants seeking certification in the subcategory of Sewer Root Control as described in Section 2(A)(V)(b) must demonstrate practical knowledge of proper methods of sewer root control pesticide application, application to pipes, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include potential effects on water treatment plants, movement of pesticides into off target pipes or buildings and the hazards of sewer gases.

VI. Right-of-Way Vegetation Management

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

the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

VII. Industrial, Institutional, Structural and Health Related Pest

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

- f. Termite Pests. Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

VIII. Public Health Pest Control

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

IX. Regulatory Pest Control

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

X. Demonstration and Research Pest Control

Applicants seeking certification in the category of Demonstration and Research Pest Control as described in Section 2(A)(X) must demonstrate practical knowledge in the broad spectrum of activities involved in advising other applicators and the public as to the safe and effective use of pesticides. Persons involved specifically in demonstration activities will be required to demonstrate knowledge of pesticide-organism interactions, the importance of integrating chemical and non-chemical control methods, and a grasp of the pests, life cycles and problems appropriate to the particular demonstration situation. Field researchers will be required to demonstrate general knowledge of pesticides and pesticide safety, as well as a familiarity with the specific standards of this Section which apply to their particular areas of experimentation. All individuals certified in this category must also be certified in one or more of the previous categories or subcategories which represent at least 80% of their practice. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

XI. Aerial Pest Control

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

4. Competency Standards for Certification of Commercial Applicator/Master

- A. Regulations Exam. An applicant seeking certification as a commercial applicator/master must successfully complete a closed book exam on the appropriate chapters of the Board's regulations. The passing grade shall be 80%. An applicant must successfully complete the regulations exam before being allowed to proceed to the master exam.
- B. Master Exam. An applicant seeking certification as a commercial applicator/master must also demonstrate practical knowledge in ecological and environmental concerns, pesticide container and rinsate disposal, spill and accident mitigation, pesticide storage and on site security, employee safety and training, potential chronic effects of exposure to pesticides, pesticide registration and special review, the potential for groundwater contamination, principles of pesticide drift and measures to reduce drift, protection of public health, minimizing public exposure and use of non pesticide control methods. In addition, applicant must demonstrate the ability to interact with a concerned public.

5. Certification Procedures for Commercial Applicators

A. Initial Certification

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

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

II. Appointment for Exams.

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

III. Exams.

- a. Applicants in all areas except category I(b)IV, Post Harvest Treatment shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.

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- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification in all areas except category I(b)IV, Post Harvest Treatment must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.
 - c. Applicants in subcategory I(b)IV Post Harvest Treatment shall take one closed book exam which combines the core exam and the category exam.
- IV. Examination Procedures. All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
- a. Applicants should be present and ready to take the exams at the appointed time.
 - b. Applicants shall not talk during the examination period.
 - c. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
 - d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
- V. Qualification Requirements. An applicant must achieve a passing score of 80 percent on each exam.
- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to 14 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 30 more days before retaking again.
 - b. An applicant who fails a category exam must re-apply and pay all required fees and may not retake that examination prior to 14 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 30 more days before retaking again.
 - c. An applicant who passes the core and one category exam shall be considered eligible for operator level licensing in that particular category so long as that person will be working under the supervision of a Master applicator. If at a later date the applicant wishes to add another category, only the appropriate category exam shall be required.
 - d. An applicant who fails a master exam must re-apply and pay all required fees and may not retake the examination prior to 14 days after the date of such failed examination.

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- e. Any applicant must pass both the core and at least one category exam within 12 months before qualifying for certification.
 - f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.
- VI. Expiration. Certification under this Section will expire on December 31st of the sixth year after the date of successful completion of the exams and on December 31st of every sixth year thereafter unless a special restricted certification period is assigned by the Board or Board staff.
- VII. An applicant's original certification period shall not be extended due to the applicant qualifying for another category or upgrading to the master level.
- B. Recertification of Applicators
- I. Persons with current valid certification may renew that certification by either providing documentation from a substantially equivalent professional certification program approved by the board or by accumulating recertification credits during the certification period described in Section 5(A)VI according to the following schedule:
- a. Master level - 18 credit hours, including at least 3 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.
 - b. Operator level - 12 credit hours, including at least 3 in a category or subcategory they are licensed for and 1 credit hour in environmental science, ecology or toxicology.
- II. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
- a. Board staff will review program agendas and monitor programs as time permits.
- III. Credit will be allowed for topics including, but not limited to:
- a. Applicable laws and regulations.
 - b. Environmental hazards.
 - c. Calibration and new application techniques.
 - d. Label review.
 - e. Applicator safety.
 - f. Storage and disposal.
 - g. Pest identification and control.

h. Integrated pest management.

- IV. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting with details of the agenda. Board staff will review program agendas and assign credit values.
- a. One credit will be assigned for each 1 hour of presentation on appropriate topics.
- b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
- c. An individual who organizes a meeting shall be required to maintain a sign up sheet and supervise the signing of the sheet by all applicators attending the program. That individual shall submit the signup sheet to the Board at the same time the verification attendance forms are collected and submitted to the Board.
- V. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
- VI. A person who fails to accumulate the necessary credits during their first six year certification period will have to retake and pass all exam(s) required for initial certification. If a person fails to accumulate the necessary credits again that person must retake and pass all exam(s) required for initial certification and within one year thereafter, obtain the balance of the recertification credits which that person failed to accumulate during the previous certification period. If that person does not obtain the balance of credits needed, the Board will not renew their license until the make- up credits are accrued.
- VII. Attendance verification forms must verify attendance by the applicator of the entire approved program(s) for which recertification credit is sought, and must be completed, signed and submitted to the program organizer or Board representative by the applicator seeking recertification credit(s). No other person may complete or sign the form on the applicator's behalf. Any form that is completed or signed by a person other than the applicator will be deemed a fraudulent report and will not be approved by the Board for recertification credit(s). Any credit(s) approved by the Board pursuant to an attendance verification form which is subsequently determined by the Board to have been completed or signed by a person other than the applicator shall be void and may not be counted towards the applicator's recertification requirements; and any recertification issued on the basis of such credits shall be void.

6. Licensing

- A. All Commercial Applicators required to be certified under this chapter and state pesticide law shall be licensed before using or supervising the use of pesticides as described in Section 1(A).

- B. Application. Application for a commercial applicator license shall be on forms provided by the Board.
- I. The completed application must include the name of the company or agency employing the applicant.
 - II. Unless the applicant is the owner of a company, the completed application must be signed by both the applicant and that person's supervisor to verify the applicant is an employee of the company/agency.
- C. Fee. At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - \$70.00 per person.
 - II. For replacement, upgrade to master or to add categories \$5.00.
- D. Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, Certification & Licensing Provisions/Spray Contracting Firms which requires an additional Spray Contracting Firm License.
- E. Insurance. Commercial applicators who spray for hire (custom applicators) shall be required to have liability insurance in force at any time they make a pesticide application.
- I. Applicators shall submit a completed and signed form provided by the Board at the time they apply for their license which attests that they will have the required amounts of insurance coverage in effect when they make pesticide treatments. The information submitted on the form must be true and correct.
 - II. Insurance coverage must meet or exceed the following minimum levels of liability:
 - a. Ground applicators:

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

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

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- G. Expiration.
- I. All licenses will expire at the end of the second calendar year after issuance or when an individual licensee terminates employment with the company/agency with which the individual's license is affiliated.
 - II. The licensee or a company/agency representative shall notify the Board in writing within 10 days after a licensee is terminated from employment.
 - III. Also, all licenses within a company/agency are suspended if the licensed Master is terminated from employment or dies.
- H. Decision. Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. Section 11001 et seq.

7. Grandfathering and Transitions

- A. The amendments to Section 1 shall not affect the licensing status of municipal applicators or residential lawn herbicide applicators. Those licensees with restricted operator licenses shall be allowed to operate without a master level license until January 1, 1997. At that time they must successfully complete the master regulation and oral exams and upgrade to the master level to be eligible for license renewal.
 - B. Applicators licensed prior to January 1, 1996 in category VII(a), General Pest Control shall be automatically licensed in category VII (g) Termite Pest control.
 - C. The three category or subcategory specific recertification credits and one credit in environmental science, ecology or toxicology required by Section 5(B)(I)(a)and(b) must be accumulated by any applicator recertifying after December 31, 1998.
 - D. The 1999 amendments to this chapter which extend license and certification periods shall be phased in over two years. Phase one shall include licensees renewing licenses after December 31, 2000 whose last name begins with the letters A through J. Phase two shall include licensees renewing licenses after December 31, 2001 whose last name begins with the letters K through Z. All new licenses issued after December 31, 2000 shall be issued according to these amendments.
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STATUTORY AUTHORITY: 22 M.R.S.A., Section 1471-D**EFFECTIVE DATE:**

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

AMENDED:

December 29, 1982

January 1, 1984

January 1, 1984 - Section 7

May 20, 1984 - Section 6

May 13, 1985 - Section 5

Emergency amendment effective April 18, 1986 - Section 6

August 3, 1986 - Section 6

November 30, 1986 - Section 3

May 23, 1987 - Section 1

April 27, 1988

April 29, 1990

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

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

Chapter 32 Certification and Licensing Provisions/Private Applicators

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 32: CERTIFICATION & LICENSING PROVISIONS/PRIVATE APPLICATORS

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

1. Competency Standards for Certification - Private Applicator

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

2. Certification Procedures for Private Applicators

A. Initial Certification

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

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- d. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.
4. Qualification Requirements. An applicant must achieve a passing score of 80 percent on each exam.
 - a. An applicant who fails the core exam may not retake that examination prior to 14 days after the date of such failed examination. If an applicant fails again the applicant must wait 30 more days before retaking the exam again.
 - b. An applicant who fails the exam in the area of his primary commodity may not retake the that examination prior to 14 days after the date of such failed examination. If an applicant fails again the applicant must wait 30 more days before retaking the exam again.
 - c. Any applicant must pass both the core and at least one commodity exam within 12 months before qualifying for certification.
 - d. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
 5. At its discretion, the Board may, in special circumstances, offer the option of an oral core and commodity exam to a person with recognized difficulty in reading.
 - a. The person requesting this option must identify another qualified individual from whom he can seek advice and guidance necessary for the safe and proper use of pesticides related to his certification.
 - b. The person identified as reader and advisor to applicant must be present at time of oral exam and acknowledge his willingness to assist the private applicator.
 6. Certification under this section will expire on October 31st of the third year after the date of successful completion of the exams and on October 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.
- B. Recertification
1. Any person with current valid certification may renew that certification by accumulating 6 recertification credits during the certification period described in Section 2(A)6.
 2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
 3. Credit will be allowed for topics including, but not limited to:
 - a. Applicable laws and regulations.
 - b. Environmental hazards.
 - c. Calibration and new application techniques.

- d. Label review.
 - e. Applicator safety.
 - f. Storage and disposal.
 - g. Pest identification and control.
 - h. Integrated pest management.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
 - a. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
 - b. An individual conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
 5. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
 6. A person who fails to accumulate the necessary credits will have to re-apply to take the exams required for initial certification.

3. Licensing

- A. Application. Application for a private applicator license, shall be on forms provided by the Board. Information shall include name; Social Security number; mailing address; farm name, location and telephone number; and major crop(s).
- B. Fee. At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a private applicator license - \$15.00 per person.
 2. For replacement or alteration - \$5.00.
- C. Expiration. Private applicator licenses are issued on a three-year period and will expire on October 31st of the third year. Any person who has accumulated the required number of recertification credits must apply for license renewal within one year of the expiration date of the license or the recertification credits are forfeited and that person must retake and pass both the core and commodity exams to again be eligible for licensing.

- D. Decision. Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. § 11001 *et seq.*
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STATUTORY AUTHORITY: 22 M.R.S.A. § 1471-D

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

December 6, 1987

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

August 25, 1997 – fees

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

Chapter 34 Certification and Licensing Provisions/dealers

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 34: CERTIFICATION AND LICENSING PROVISIONS/PESTICIDE DEALERS

SUMMARY: These regulations describe the requirements for certification and licensing of pesticide dealers.

Section 1. Competency Standards for Certification

No person shall be certified as a pesticide dealer unless he has demonstrated knowledge of pesticide classifications, formulations, labeling, safety, storage and applicable laws and regulations. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

Section 2. Certification Procedures for Pesticide Dealers

A. Initial Certification

1. Application for Exam. All persons desiring to take the exam must request an application from the Board's office and submit all required information and fees.
 - a. Information shall include name, home address, Social Security number, name and telephone number of company and company address.
 - b. A fee of \$10.00 for the exam shall accompany the application.
2. Appointment for Exam.
 - a. Upon receipt of an application the staff shall schedule an exam date and notify the applicant. If the scheduled date is not convenient for the applicant, it shall be the responsibility of the applicant to contact the Board's office to arrange a more convenient time to take the exams.
 - b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exam on the scheduled date at least 24 hours in advance of the scheduled exam. Re-application shall require an additional \$15.00 fee.
 - c. Exams will be available year-round on an appointment basis at the Board's office in Augusta.
 - d. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.
3. Study materials for the dealer exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.

4. Examinations. All applicants shall complete the closed book dealer exam covering subjects specified in Section 1.
5. Examination Procedure. All applicants shall comply with these rules or forfeit their opportunity to complete the exam at a specified appointment.
 - a. Applicants should be present and ready to take the exam at the appointed time.
 - b. Applicants shall not talk during the examination period.
 - c. Applicants shall not be allowed to bring any books or papers into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
 - d. Applicants shall not make notes of the exam and shall not leave the table during an exam unless authorized by the staff.
6. Qualification. An applicant desiring to qualify for dealer certification must achieve a passing score of 80 percent.
 - a. An applicant who fails the exam may not re-apply to take the examination prior to 14 days after the date of such examination. If an applicant fails again the applicant must wait 30 days before retesting.
 - b. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.
7. Expiration. Certification under this section will expire on December 31st of the fifth year after the date of successful completion of the exam and on December 31st of every fifth year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. Recertification

1. Any person with current valid certification may renew that certification by accumulating 15 recertification credits during the certification period described in Section 2(A)7.
2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
3. Credit will be allowed for topics including but not limited to:
 - a. Applicable laws and regulations,
 - b. Label review,
 - c. Pesticide formulations,
 - d. Applicator safety,
 - e. Storage and disposal,
 - f. Pest identification control,
 - g. Integrated pest management.

4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.
5. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
6. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
7. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
8. A person who fails to accumulate the necessary credits will have to re-apply to take the exam required for initial certification.

Section 4. Licensing

- A. Application. Application for a pesticide dealer license shall be on forms provided by the Board.
- B. Fee. At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a pesticide dealer license - \$20.00 per person.
 2. For replacement or alteration - \$5.00.
- C. Reports. All required reports described in Chapter 50 must have been submitted in proper form before a license will be processed.
- D. Expiration. All licenses will expire at the end of each calendar year.

Section 5. Special Dealer Requirements

- A. Each dealer shall be responsible for the acts of those people in his/her employ and the dealer's license shall be subject to denial, suspension or revocation for any violation of the statute or regulations, whether committed by the dealer, his/her office, agent, employee, or other person acting in concert or participation with him/her.
- B. A licensed dealer must be present in the outlet at the time of sale of a restricted use pesticide so that she/he may supervise the transaction.
- C. Restricted-use and limited-use pesticides shall be stored separately in an area not accessible for self service.
- D. No dealer shall sell any restricted-use pesticides to any person who does not have in his/her possession a valid license.
- E. No dealer shall sell any limited-use pesticides to any person who does not have in his/her possession a valid license and limited-use permit.

- F. Dealers shall either maintain a record of restricted sales pursuant to Chapter 50, "Record Keeping and Reporting Requirements".
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STATUTORY AUTHORITY: 22 M.R.S.A. § 1471-D

EFFECTIVE DATE:

January 1, 1983.

AMENDMENT EFFECTIVE:

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

Chapter 35 Certification and Licensing Provisions/Spray Contracting Firms

01 DEPARTMENT OF AGRICULTURE

026 BOARD OF PESTICIDES CONTROL

Chapter 35: CERTIFICATION AND LICENSING PROVISIONS/SPRAY CONTRACTING FIRMS

SUMMARY: These regulations describe the requirements for certification and licensing of spray contracting firms.

1. Competency Standards for Certification

No person shall be certified as a spray contracting firm unless it demonstrates that the firm will have in its employment a sufficient number of licensed Master and Operator applicators to actively supervise and conduct the program in accordance with all applicable laws and regulations, and that such firm will otherwise be competent to responsibly make a pesticide application. Where a major forest insect aerial spray program is undertaken, the firm must also demonstrate that there will be an adequate number of licensed spotters to accompany each spray team. A responsible official of the contracting firm will sign a statement attesting that he/she is familiar with and that the contracting firm will comply with all statutes, rules, and guidelines of the Board.

2. Certification Procedures

All applicants must complete and submit an application provided by the Board which details the organizational structure of the spray contracting firm.

- A. Information shall include the firm name, chief officer, telephone number and location of the company headquarters, and business mailing address.
- B. Information shall also include a listing of all Master applicators who shall have responsibility for spray programs conducted in Maine along with their business locations and telephone numbers.
- C. Information shall also be included, as required on the application form, which demonstrates whether the firm has the necessary competence to responsibly apply pesticides in Maine.

3. Licensing

- A. Application. Application for a spray contracting firm license shall be on the same form provided by the Board for certification information.
- B. Fee. At the time of application, the applicant must submit a fee of \$200.00.
 - 1. For replacement or alteration - \$5.00.

- C. Insurance. An applicant must submit a completed and signed form, provided by the Board, which attests that the spray contracting firm will have the required amounts of insurance specified in Chapter 31 in effect when any employee or agent makes a pesticide application.
- D. Reports. Annual Summary Reports described in Chapter 50, Section 2(A) must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license is temporarily suspended until the proper report is received or until a decision is rendered at a formal hearing as described in 22 M.R.S.A. ' 1471-D (7).
- E. Decision. Within 15 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. § 11001 et seq.
- F. Refusal to Renew. The Board may refuse to renew a license if it is not in accordance with any of the requirements hereof or if the Board makes, as to the licensee, any of the findings set forth in 22 M.R.S.A. § 1471-D (8), which describe the bases for a decision by the Administrative Court to suspend or revoke a license. If the Board determines that there is evidence sufficient to refuse to renew a license, it shall give notice and an opportunity for a hearing before the Board prior to making that determination final.
- G. Expiration. All spray contracting firm licenses will expire at the end of the second calendar year after issuance.

4. Special Spray Contracting Firm Requirements

- A. No spray contracting firm may use or supervise the use of any pesticide within the State without prior certification from the Board.
- B. Each spray contracting firm shall be responsible for the acts of those people in its employ and its license shall be subject to denial, refusal to renew, suspension, or revocation, and such firm shall otherwise be punishable under the law, for any violation of the statutes or regulations, whether committed by the owner, chief officer, agent, employee or other person acting in concert or participation with it.
- C. No spray contracting firm shall make a forest insect aerial spray application until it ascertains that legally required notification has been given to the public and the Board, and there has been compliance with all other requirements for such an application, including any required licensing of its employees, agents and independent contractors and their employees.
- D. No spray contracting firm shall make a major forest insect aerial spray application unless licensed applicators, spotters and monitors are in place to direct or monitor each spray aircraft or each team of spray aircraft during actual applications.
- E. A spray contracting firm shall cause its licensed spotters and other employees and agents to prepare reports pursuant to Chapter 50, "Record Keeping and Reporting".

5. Grandfathering and Transitions

The 1999 amendments to this chapter which extend the license period shall affect licenses renewed after December 31, 2000.

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

EFFECTIVE DATE:

February 6, 1985

AMENDED:

January 12, 1986

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999; also converted to MS Word.

Chapter 36 Certification and Licensing Provisions/Monitors and Spotters

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 36: CERTIFICATION AND LICENSING PROVISIONS/MONITORS AND SPOTTERS FOR MAJOR FOREST INSECT AERIAL SPRAY PROGRAMS

SUMMARY: These regulations describe the requirements for certification and licensing of monitors and spotters for major forest insect aerial spray programs.

Section 1. Competency Standards for Certification - Monitor and Spotter

- A. No person shall be certified as a monitor or spotter unless he/she has demonstrated, by written exam, knowledge of pertinent subjects including pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques, Board regulations, guidelines, map reading, radio procedures, aerial navigation and orientation, meteorological conditions affecting spray deposition, and aerial spray patterns. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas and the potential adverse effect of pesticides on plants, animals or humans.
- B. No person shall be certified as a monitor or spotter unless he/she has 20/20 corrected vision.

Section 2. Certification Procedures for Monitors and Spotters

- A. Initial Certification
 - 1. Any person seeking to be certified as a monitor or spotter must pass a written monitor/spotter exam. The exam shall be closed book.
 - 2. Application for Exam. All persons desiring to take the exam must request an application from the Board's office and submit all required information and fees.
 - a. Information shall include name, home address, Social Security number, company address and name and telephone number of supervisor.
 - b. A fee of \$10.00 shall accompany the application unless prior arrangements for payment are made with the Board.
 - 3. Appointment for Exams.
 - a. Exams will be available year-round on an appointment basis at the Board's office in Augusta. Appointments should be arranged at least 24 hours in advance of the desired date.
 - b. Exams will also be offered at the completion of organized training programs. The sponsors of such courses should contact the Board at least 15 days in advance of the desired date so that staff will be able to offer the exams.

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- c. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.
 4. Study materials for the monitor and spotter exam are available from the Board's office in Augusta.
 5. Examinations. All applicants shall complete the closed book monitor and spotter exam covering subjects specified in Section 1.
 6. Examination Procedure. All applicants shall comply with these rules or forfeit their opportunity to complete the exam at a specified appointment.
 - a. Applicants should be present and ready to take the exam at the appointed time.
 - b. Applicants shall not talk during the examination period.
 - c. Applicants shall not be allowed to bring any books or papers into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
 - d. Applicants shall not make notes of the exam and shall not leave the table during an exam unless authorized by the staff.
 7. Qualification. An applicant desiring to qualify for monitor and spotter certification must achieve a passing score of 80 percent on the exam.
 - a. An applicant who fails an exam must wait at least 48 hours before retaking that exam. If an applicant fails the exam a second time, he/she must wait seven days before retaking the exam.
 - b. An applicant who violates any of the rules pertaining to examinations shall wait a minimum of 14 days before retesting.
 8. Expiration. Certification under this section will expire on December 31st of the fifth year after the date of successful completion of the exam and on December 31st of every fifth year thereafter unless a special restricted certification period is assigned by the Board or Board staff.
- B. Recertification
1. All certified monitors and spotters must earn 15 recertification credits during the certification period described in Section 2(A)7 in order to renew certification without having to be re-examined.
 2. Recertification credits will be available through Board approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
 3. Credit will be allowed for topics including but not limited to:
 - a. Applicable laws, regulations and guidelines.
 - b. Environmental hazards.
 - c. Pesticide labeling.

- d. Map reading.
 - e. Aerial navigation.
 - f. Radio procedures.
 - g. Meteorologic conditions affecting aerial spray.
 - h. Meteorological data gathering procedures.
 - i. Aerial application techniques.
4. Persons organizing courses for which they want credits awarded must contact the Board in writing at least 15 days in advance of the course and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review course agendas and assign credit values. Board staff will monitor courses as time permits.
 5. A minimum credit of one hour shall be assigned for each one hour of presentations on appropriate topics.
 6. An individual conducting courses for which the Board does assign recertification credits will be eligible for two credits for each hour of presentation on appropriate topics.
 7. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance, a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
 8. A person who fails to accumulate the necessary credits will have to re-apply to take the exam required for initial certification.

Section 3. Licensing

- A. Application. Application for a monitor's or spotter's license shall be on forms provided by the Board.
- B. Fee. A fee of \$20.00 shall accompany each application.
- C. Decision. Within 1 day of receipt of application by the Board unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. § 11001 et seq.
- D. Refusal to Renew. The Board may refuse to renew a license if it is not in accordance with any of the requirements hereof or if the Board makes, as to the licensee, any of the findings set forth in 22 M.R.S.A. § 1471-D(8), which describe the bases for a decision by the Administrative Court to suspend or revoke a license. If the Board determines that there is evidence sufficient to refuse to renew a license, it shall give notice and an opportunity for a hearing before the Board prior to making that determination final.
- E. Expiration. All monitor and spotter licenses will expire at the end of each calendar year.

Section 4. Special Monitor and Spotter Requirements

- A. No person shall act as a monitor or spotter without prior certification and issuance of a currently valid license from the Board for that purpose.

- B. Monitors and spotters shall prepare written spray period reports for each and every spray period according to procedures outlined in Chapter 50.
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STATUTORY AUTHORITY:
22 M.R.S.A. § 1471-D

EFFECTIVE DATE:
February 6, 1985

AMENDED:
August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

CONVERTED TO MS WORD:
March 11, 2003

Chapter 40 Maine Restricted and Limited Use Pesticides

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDE CONTROL

Chapter 40: MAINE RESTRICTED AND LIMITED USE PESTICIDES

SUMMARY: These regulations list the pesticides classified by the Board as restricted use or limited use and describe procedures governing their sale and use:

Section 1. RESTRICTED USE PESTICIDES

The products described under Section A and B below shall be classified as restricted use pesticides for the purposes of this chapter.

- A. All products classified for restricted use by the U.S. Environmental Protection Agency shall automatically be restricted use pesticides under this chapter.
- B. In addition, all products containing the following active ingredients and meeting the listed criteria shall be classified as restricted use pesticides in Maine:

arsenic compounds (above 2%)	fenthion (Baytex)
azinphos-methyl (Guthion)	fonophos (Dyfonate, above 15%)
chlorfenvinphos (4072)	formetanate hydrochloride (Carzol)
daminozide	mercury compounds
dichlorvos (Vapona, DDVP, above 25%)	methomyl (Lannate-all uses except
**disulfoton (Disyston, above 1%)	bait fomulations less than 2%
DNOC (Sinox, above 2%)	methomyl)
***EBDC fungicides (Maneb, Mancozeb	nicotine alkaloid
Dithane, Polyram, Metiram, etc)	nicotine salts (above 40% expressed
except dry flowable and liquid	as alkaloid)
formulations	oxamyl (Vydate)
endosulfan (Thiodan, above 10%)	paraquat (above 0.2%)
endothall	phosphorus (white and yellow)
ethion (above 40%)	strychnine
	trichlorfon

**Granular formulations of 10% and above are restricted.

***All dusts and wettable powder formulations restricted, regardless of concentration.

- C. Restricted use pesticides may be sold only by restricted use pesticide dealers licensed by the Board as provided in Chapter 34.
- D. Restricted use pesticides may be purchased and used only by applicators licensed by the Board as provided in Chapters 31 and 32.

Section 2. PROHIBITED AND LIMITED USE PESTICIDES

- A. All products containing the following active ingredients shall be classified as limited use pesticides in Maine:
- | | |
|------------|---|
| Aldrin | Methyl Parathion (Microencapsulated forms only) |
| Chlordane | |
| Heptachlor | Sodium monofluoroacetate (Compound 1080) |
| Lindane | Toxaphene |
- B. Limited use pesticides may be sold only by restricted use pesticide dealers licensed by the Board as provided in Chapter 34.
- C. Limited use pesticides may be purchased and used only by applicators licensed by the Board as provided in Chapters 31 and 32 and holding a permit from the Board as provided in subsections E and F below.
- D. An application to use any limited use pesticides shall be made to the Board in writing on such forms as may be provided by the Board. Applications shall include, at a minimum, the chemical to be used, the pest or pests which are the target of such chemical application, the vegetation to which it will be applied, the location and detailed description of the application site, and the amount of land to be covered by such application. When, in the opinion of the Board, any bona fide emergency prevents a written application to the Board, such application may be made orally to any member or employee of the Board. Failure of any applicator to exercise due diligence or to reasonably anticipate any situation which would create the need for the use of any limited use pesticide shall not be considered an emergency within the scope of this section.
- E. The Board may grant such applicant permission to use or apply any limited use pesticide if the Board determines that (1) the pesticide applicator is appropriately licensed, (2) an unusually heavy infestation of insects or other pests creates the prospect of a significant economic loss to the applicant or any other person or creates a public health hazard, (3) no suitable chemical, biological or other method is available to prevent or reduce the impact of such infestation to an acceptable level, (4) the use of such limited use pesticide will not create an undue risk to human life nor cause significant detrimental effects upon the environment, and (5) such use is in compliance with FIFRA and the rules and regulations promulgated thereunder. Permission to use such limited use pesticide may be granted upon such reasonable terms and conditions as the Board deems necessary to protect the health, safety and general welfare of the environment and the people of the State of Maine and to achieve the purpose of the statute. Permission to use any limited use pesticide during any bona fide emergency situation may be granted upon the oral consent of a majority of the Board given to the director or chairman of the Board or such other member of the Board who received the oral application. Such oral consent shall thereafter be confirmed in writing by such members to the director within ten (10) days.
- F. The outdoor use or application of benzene hexachloride (including lindane) for the purpose of controlling mosquitoes and other biting flies is hereby prohibited in the State of Maine on or after September 1, 1970.

STATUTORY AUTHORITY: Title 22 M.R.S.A., Chapter 258-A and 7 M.R.S.A., Chapter 103

EFFECTIVE DATE:

July 6, 1979

AMENDED:

December 8, 1985

June 22, 1986

May 8, 1988
June 14, 1989
June 20, 1989
December 24, 1991
March 28, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

Chapter 41 Special Restrictions on Pesticide Use

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE

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

Section 1. ALDICARB (TEMIK[®])

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

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

Section 2. TRICHLORFON (DYLOX, PROXOL)

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

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

Section 3. HEXAZINONE (VELPAR, PRONONE)

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

A. Prohibition of Certain Air-Carrier Application Equipment

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

B. Licenses Required

- I. No person shall purchase, use or supervise the use of any pesticide containing the active ingredient hexazinone unless they have obtained a private or commercial pesticide applicators license from the Board.
- II. No person shall:
 - a. Distribute any pesticide containing the active ingredient hexazinone without a restricted use pesticide dealer's license from the Board; or
 - b. Distribute any pesticide containing the active ingredient hexazinone to any person who is not licensed as a private or commercial pesticide applicator by the Board.

C. Records and Reporting

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

Section 4. AQUATIC HERBICIDES

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

A. Board Publication of List

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

B. Licenses Required

- I. Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. No person shall:
 - a. Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or
 - b. Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.
- III. Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are

exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

C. Disclosure

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

D. Records and Reporting

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

E. Use of Best Management Practices

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

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

EFFECTIVE DATE: March 8, 1981 (Captan)

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

EFFECTIVE DATE (ELECTRONIC CONVERSION): March 1, 1997

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

CONVERTED TO MS WORD: March 11, 2003

AMENDED: May 12, 2003 - Section 4 added

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

AMENDED: February 2, 2004 - Section 4, 1st paragraph and sub-section A, filing 2004-31

AMENDED: 2007

Chapter 50 Record Keeping & Reporting Requirements

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 50: RECORD KEEPING & REPORTING REQUIREMENTS

SUMMARY: These regulations describe the types of records and reports which commercial applicators, commercial agricultural producers, limited/restricted use pesticide dealers, spray contracting firms and monitors must maintain and submit to the Board.

Section 1. Records

A. Pesticide Application Records.

- I. Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.
- II. Pesticide application records shall include, at a minimum:
 - a. Site information including town and location, crop or site treated, target organism, customer (where applicable); and
 - i. for broadcast applications, size of treated area (when completed);
 - ii. for volumetric applications as described on the label, the volume treated;
 - iii. for non-broadcast applications (such as spot treatments, crack and crevice or stump treatments) a practical description of the scope or extent of the application (such as number of trees, stumps or rooms treated).
 - b. Application information. For each distinct site, records must include date and time of application(s), brand name of pesticide(s) applied, EPA registration number(s), active ingredient(s), restricted entry interval(s) and/or ventilation period(s) (where applicable), method of application (type of equipment), dilution agent(s) (other than water), the applicator's name and certification number (where applicable) and spray contracting firm (where applicable).
 - c. Rate information. For each distinct site, application rate information must be maintained as follows:
 - i. Restricted Use Pesticides. For restricted use pesticides, applicators shall record the total amount of pesticide applied (undiluted).
 - ii. General Use Pesticides. For general use pesticides, applicators shall record:
 - (1) rate information as described in (i.) above; or

-
- (2) the mix ratio and the total mix applied; or
 - (3) the mix ratio and the mix per unit area applied.
- d. For outdoor applications, except those listed below, weather conditions including wind speed and direction, air temperature and sky conditions recorded such as sunny, partly cloudy, overcast, foggy or rainy. No weather condition records need be kept for outdoor applications involving:
 - i. pesticides placed in bait stations;
 - ii. pesticide-impregnated devices placed on animals, such as ear tags; or
 - iii. pesticides injected into trees or utility poles.
 - e. For TBT applications to marine vessels, applicators must also record the vessel identification and size, and the disposition of TBT wastes including chips/dust removed prior to application and empty containers.
- B. Limited Use/Restricted Use Pesticide Sales Records.
- I. Licensed pesticide dealers shall maintain records of each sale of a restricted/limited use pesticide on their sales slips and the customer's certification number should be recorded on every invoice or electronic record involving that individual. Licensed pesticide dealers must also maintain records to verify that sales of restricted/limited use pesticides to unlicensed purchasers are only made where a licensed applicator is employed to supervise the use of the restricted/limited use products. These records are to be available for inspection by representatives of the Board at reasonable times, upon request, and are to be maintained for two calendar years from the date of sale.
 - II. Pesticide dealer records shall also include the signature of purchaser or his/her agent, the chemical purchased, the EPA registration number, the quantity and size of containers purchased and the date of purchase. For restricted/limited use containers subject to Chapter 21 of the Board's rules, the dealer shall also record the serial number of each sticker affixed to the containers and the amount of deposit paid or posted to credit.
 - III. Any pesticide dealer who discontinues the sales of restricted/limited use pesticides shall notify the Board in writing and shall provide the Board, upon request, with all required records including a final sales report up to the date of discontinuance.
- C. Spray Period Records for Major Forest Insect Aerial Spray Programs
- I. Each monitor employed on a major public or private forest insect aerial spray application program shall prepare written spray period records describing each spray period.
 - II. The spray period records shall include the following information: Date and time of the spray period; Area actually sprayed; Pesticide used; Weather conditions before, during and immediately after spraying; Spray behavior, including visible drift to nontarget areas; and Notation of any reason why a spray period was terminated prior to completion of area. The records shall also include a map showing any nontarget areas that were sprayed.
 - III. The spray period records shall be made available for inspection by representatives of the Board as soon as practicable following the close of each spray period and, in any event, before the next spray period and before the end of the day. The spray records shall be maintained on file and available for inspection by representatives of the Board for a period of at least two years.

Section 2. Reports

- A. **Annual Summary Reports by Commercial Applicators.** Annual summary reports must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license may be temporarily suspended until the proper report is received or until a decision is tendered at a formal hearing as described in 22 M.R.S.A. § 1471-D(7). The report filed with the Board by or on behalf of commercial applicators shall contain the following information for each site or crop treated: quantity of each pesticide used, EPA registration number and total area treated (where applicable) for each pesticide.
- B. **Annual Pesticide Sales Reports.** Pesticide dealers licensed to sell limited and restricted use pesticides must provide the Board with a calendar year-end report of total sales of all limited, restricted and general use pesticides before their pesticide dealer license can be renewed. The Board will furnish report forms.
- C. **Spray Incident Reports**
- I. Commercial agricultural producers, commercial applicators, spray contracting firms and licensed pesticide dealers shall be responsible for telephoning a spray incident report to the Board as soon as practicable after emergency health care has been obtained for injured parties and efforts have been initiated to contain any spills.
- II. A reportable spray incident is any significant misapplication or accidental discharge of a pesticide. Such incidents shall include: fires involving pesticides; vehicle and aircraft accidents resulting in a spill or human contamination; failure to turn off spray booms or other spray equipment resulting in application to sensitive areas (such as water bodies, accidentally applying pesticides to the wrong site or places of human habitation) when such application is a violation of label instructions or other law; overfilling of spray equipment resulting in risk of contamination of water; and any other equipment breakage or malfunction or pesticide handling activity which causes a pesticide release which may result in a threat to human health or the environment.
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STATUTORY AUTHORITY: Title 22 M.R.S.A., Chapter 258-A §1471-G, M and R

EFFECTIVE DATE:

July 6, 1979 - as "Reporting Requirements," filing 79-338

AMENDED:

August 12, 1985 - filing 85-275

REPEALED AND REPLACED:

April 5, 1995 - as "Record Keeping and Reporting Requirements," filing 95-149

AMENDED:

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

November 11, 2001 - filing 2001-483

March 5, 2003 - filing 2003-61

January 4, 2005 – filing 2004-606 affecting Section 1.A.I.

Chapter 51 Notice of Aerial Pesticide Applications

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS

SUMMARY: These regulations describe the notification requirements for persons contracting aerial pesticide applications to control forest, ornamental plant, right-of-way, biting fly and public health pests.

- I. Content of All Newspaper Articles/Advertisements, Written Notices to Property Owners and Posters
 - A. All newspaper articles/advertisements and written notices to property owners required by this chapter shall contain the following:
 1. Description of the target area sufficient to inform people who may be in the vicinity.
 2. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
 3. Intended purpose of the pesticide application.
 4. Pesticide(s) to be used.
 5. Date or reasonable range of dates on which application(s) are proposed to take place.
 6. Telephone number of the Maine Board of Pesticides Control
 7. Telephone number of the Maine Poison Control Center.
 8. Public precautions which appear on the pesticide label.
 - B. All newspaper articles/advertisements must be printed in a minimum of 10 point types and at least 2 inches wide.
 - C. All posters required by this chapter shall contain the following:
 1. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.

2. Intended purpose of the pesticide application.
3. Pesticide(s) to be used.
4. Telephone number of the Maine Board of Pesticides Control
5. Telephone number of the Maine Poison Control Center.
6. Public precautions which appear on the pesticide label.

II. Forest Insect Applications

A. Responsible Parties

1. In the event of a forest insect spray program administered pursuant to Title 12, Chapter 801, the Maine Department of Conservation, Bureau of Forestry, is responsible for notices.
2. In the case of any other forest insect aerial spray activity, responsibility for notices lies with the landowner, her/his representative or the lessee if the land is leased.

B. Newspaper Articles/Advertisements and Written Notices to Property Owners

1. An article about/advertisement of a major forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 14 days but not more than 30 days prior to commencement of planned spray activity.
2. An article about/advertisement of a minor forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 4 days but not more than 10 days prior to commencement of planned spray activity.
3. An addition of spray areas not specified in the original newspaper article/advertisement and any change from the insecticides specified in the original article/advertisement shall be published in the same newspaper at least 24 hours before the change is effected.
4. A written notice of all forest insect aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Posting of Areas Subject to Major and Minor Forest Insect Aerial Spray Applications

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads; known boat launching sites on rivers leading through spray areas and within the boundaries of the land owned by the person authorizing the spray activity; and marked points of access to foot trails known to be used by the public.
2. Posters shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. They shall contain the information required in Section I(C). The information shall be printed in both English and French.

D. Written Notice to the Board and the Maine Poison Control Center.

1. A written notice shall be given to the Board and to the Maine Poison Control Center according to the following schedule:
 - a. Written notice of major forest insect aerial spray applications shall be given to the Board and the Maine Poison Control Center at least 15 days but not more than 30 days prior to the commencement of planned spray activity.
 - b. Written notice of minor forest insect spray application shall be given to the Board and the Maine Poison Control Center at least 5 days prior to the commencement of planned spray activity.
 - c. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's office.
2. Notice to the Board. These notices shall be prepared on forms provided by the Board and shall consist of:
 - a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
 - b. The date or dates on which spraying is proposed to take place.
 - c. The name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.

- d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice and the poster to be used.
 - f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.
3. Notice to the Maine Poison Control Center. These notices shall be prepared on forms provided by the Board and shall consist of:
- a. A description of the general area the proposed application activity will take place.
 - b. The date or dates on which spraying is proposed to take place.
 - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.

III. Ornamental Plant Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section III(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements and Written Notices to Property Owners

- 1. An article about/advertisement of ornamental plant aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in section I(A) and (B) and shall not be limited to a legal notice.

2. A written notice of ornamental plant aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Written Notice to the Board and the Maine Poison Control Center.

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

IV. Rights-Of-Way, Forest Vegetation Management and Other Forest Pest Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section IV(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements or Written Notices to Property Owners

1. An article about/advertisement of rights-of-way, forest vegetation management or other forest pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice or;
2. In areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Posting Requirements for Rights-of-Way, Forest Vegetation Management and Other Forest Pest Aerial Applications

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. The poster shall contain the information required in Section I(C). Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads and any place a maintained public trail enters the application site.
2. Poster shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. The information shall be printed in both English and French.

D. Written Notice to the Board and the Maine Poison Control Center.

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

V. Biting Fly and Public Health Pest Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section V(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements and Written Notice to Property Owners

1. An article about/advertisement of biting fly and public health pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice.
2. A written notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Written Notice to the Board and the Maine Poison Control Center.

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

VI. Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications

- A. A written notice shall be given to the Board and the Maine Poison Control Center at least 7 days but not more than 30 days prior to the commencement of planned spray activity.
- B. These notices shall be prepared on forms provided by the Board and shall consist of:
1. Written notice to the Board
 - a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
 - b. The date or dates on which spraying is proposed to take place.
 - c. A description of the delivery mechanism which shall include the name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
 - d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice or the notice given to person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site.
 - f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.
 2. Written notice to the Maine Poison Control Center.
 - a. A description of the general area the proposed application activity will take place.
 - b. The date or dates on which spraying is proposed to take place.

- c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.
- C. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's staff.

VII. Variances From Notice Requirements

- A. (Repealed by sunset provision, April 19, 1996.)
- B. Emergencies

The Board's staff may grant an emergency variance from the notice requirements set forth in Sections III, IV, V and VI of this chapter if the notice requirements prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists.

- 1. An emergency situation:
 - a. Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or
 - b. Will present significant risks to human health; or
 - c. Will present significant risks to threatened or endangered species, beneficial organisms, unique ecosystems or the environment; or
 - d. Will cause significant economic loss due to:
 - i. an outbreak or an expected outbreak of a pest; or
 - ii. a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).
- 2. Any emergency variance granted by the staff under this section shall include provisions demonstrating the applicant will furnish substantially equivalent notification as provided by this chapter and shall include:

- a. Documented notification of person(s) owning property or using commercial or institutional buildings within 500 feet of the intended target site prior to the pesticide application and where appropriate;
 - b. Radio or television announcements or,
 - c. Prominently positioned poster.
3. No variance may be granted if the emergency situation is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
 4. If the staff does not grant the variance, the applicator or the person requesting the pesticide application may petition the Board for exemption following the requirements set forth in 22 MRSA §1471-T, "Exemption".

STATUTORY AUTHORITY: 22 M.R.S.A. §1471-G, M, R and T

EFFECTIVE DATE: August 12, 1985

AMENDED: May 19, 1991
April 8, 1992
April 19, 1994
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION): March 1, 1997

AMENDED: April 14, 1998 -inserted "residential rental," in II(B)(4), III(B)(2), IV(B)(2), V(B)(2), VI(B)(1)(e); conversion to MS Word 2.0.

March 5, 2003 - to increase the minimum time from three to seven days for companies to provide notices to the Board and Maine Poison Center of plans to conduct non-agricultural aerial pesticide applications.

Chapter 60 Designation of Critical Pesticide Control Areas

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

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. Deblois Fish Hatchery Critical Pesticide Control Area

(1) Facts and policies

- (a) A fish cultural facility owned by the Maine Department of Inland Fisheries and Wildlife and operated by Connors Aquaculture exists in the Town of Deblois, Washington County, Maine.
- (b) The purpose of the above facility is to hatch and propagate salmonid fishes for commercial use.
- (c) The above hatchery and rearing pools are surrounded by extensive areas of land devoted to the commercial culture of lowbush blueberries.
- (d) The above blueberry land has historically been sprayed with insecticides on a regular basis, for the purpose of controlling maggots of the blueberry fruit fly.
- (e) Aerial application of pesticides for the above purpose has on at least one occasion resulted in the mortality of large numbers of fish when it was a State fish-cultural facility.

- (f) Connors Aquaculture's plan and the critical habitat necessary for continued operation are threatened by improper selection or use of pesticide products or application equipment in the surrounding area.

(2) Location

The Deblois Critical Area shall encompass the area within one thousand feet of the fish-cultural facilities owned by the Department of Inland Fisheries and Wildlife in Deblois, and of the tributary water supplies to said facilities. The above fish-cultural facilities are sited on two parcels of land in the eastern portion of the Town of Deblois, Washington County, Maine, as follows:

- (a) The hatchery parcel, so-called, located on Hatchery Brook, so-called, an officially un-named tributary to Bog Stream, at 45°45'0" Latitude and 67°56'10" Longitude.
- (b) The rearing pool parcel, so-called, located on Bog Stream at 44°44'30" Latitude and 67°56'0" Longitude.

(3) Conditions

Within the Deblois Critical Area, the following restrictions are to be in effect:

- (a) No one shall carry out pesticide applications on property of the Maine Department of Inland Fisheries and Wildlife, except for employees of the Department or Connors Aquaculture engaged in normal fish cultural and household activities.
- (b) No one shall make pesticide applications within the Deblois Critical Pesticide Control Area as designated under Section 4.A.(2) Location unless it is performed in accordance with a Pest Management Plan approved by the Board.
- (c) The Pest Management Plan referred to in (b) above shall be developed by the University of Maine Cooperative Extension with input from the Maine Department of Agriculture, Food and Rural Resources and the Maine Department of Inland Fisheries and Wildlife. This plan shall be reviewed and updated on a periodic basis as new pesticides and application technology are introduced.
- (d) Prior to each insecticide application referred to in (b) above, the blueberry grower making or contracting for the application shall notify personnel of the Deblois fish-cultural facility.

B. 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)

Chapter 70 Adjudicatory Hearings

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 70: ADJUDICATORY PROCEEDINGS

SUMMARY: These regulations describe procedures the Board must follow in conducting hearings concerned with pesticide certification, licenses and permits.

Section 1. Purpose

These rules are in conformance with the Administrative Procedure Act as promulgated pursuant to 5 M.R.S.A. § 8051 and the Pesticides Control Board Law 22 M.R.S.A. § 1471-A *et seq.*

Section 2. Applicability

- A. These rules apply to proceedings when the Board considers the following:
1. The application of pesticides in a critical area described pursuant to 22 M.R.S.A. § 1471-M(2)(A), when a rule establishing the critical area so provides;
 2. The application of pesticides to a water body pursuant to 22 M.R.S.A. § 1471-E;
 3. The renewal of a previously issued certification, license or permit provided for in 22 M.R.S.A. §§ 1471-D, 1471-N, unless the certification, license or permit is renewed by other action of the Board;
 4. The amendment or modification of a certification, license or permit provided for in 22 M.R.S.A. §§ 1471-D, 1471-N;
 5. The continuation of a temporary suspension of a license, certification or permit pursuant to 22 M.R.S.A. § 1471-D(7)(C).

Section 3. Application to Apply Pesticides to a Critical Area or Water Body

- A. A written application for permission to apply a pesticide under 22 M.R.S.A. §§ 1471-M(2)(A) or 1471-E shall be addressed to the Director, Pesticides Control Board, Department of Agriculture, Augusta, Maine, 04333.
- B. Such application shall contain such information as is requested by the Board.

Section 4. Notice of Right to Hearing

- A. Upon receipt of an application or otherwise when the Board's action is covered by these rules, the Board shall give notice to:

1. The person or persons whose legal rights, duties or privileges are at issue, by regular mail, sufficiently in advance of the anticipated time of the decision to afford an adequate opportunity to prepare and submit evidence and argument, and to request a hearing if so desired; and
 2. The general public, in any proceeding deemed by the Board to involve the determination of issues of substantial public interest, such notice to be given sufficiently in advance of the anticipated time of the decision to afford interested persons an adequate opportunity to prepare and submit evidence and argument, and to request a hearing if so desired.
- B. This section is complied with if notice is given as provided in 6 of these regulations.

Section 5. Hearings

- A. **Upon request.** A hearing shall be held upon receipt of a request by a person whose legal rights, duties or privileges are at issue under these rules. Failure by such person to request a hearing within 15 days of receipt of notice as provided in 4 shall be deemed a waiver of the right to a hearing.
- B. **Board's discretion.** A hearing may be held, at the Board's discretion, in any proceedings deemed by the Board to involve issues of substantial public interest.

Section 6. Notice of Public Hearing

- A. When a hearing is to be held, notice shall be given as follows:
1. To the person or persons whose legal rights, duties or privileges are at issue, by regular mail, sufficiently in advance of the hearing date to afford an adequate opportunity to prepare and submit evidence and argument; and
 2. In any proceeding deemed by the agency to involve the determination of issues of substantial public interest, to the public sufficiently in advance of the hearing date to afford interested persons an adequate opportunity to prepare and submit evidence and argument and to petition to intervene.

Section 7. Notice to the Public of a Hearing

- A. **Notice to the public.** Notice to the public shall be given:
1. By publication, at least twice in a newspaper of general circulation in the area of the state affected;
 2. By publication in any other trade, industry, professional or interest group publication which the agency deems effective in reaching persons who would be entitled to intervene as of right under section 12 of these regulations.
 3. In any other manner deemed appropriate by the Board.

Section 8. Notice

Notice shall consist of:

1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
2. A reference to the particular substantive statutory and rule provisions involved;
3. A short and plain statement of the nature and purpose of the proceeding and of the matters asserted;
4. A statement of the time and place of the hearing, or the time within which a hearing may be requested;
5. A statement of the manner and time within which evidence and argument may be submitted to the Board for consideration, whether or not a hearing has been set; and
6. When a hearing has been set, a statement of the manner and time within which applications for intervention may be filed.

Section 9. Presiding Officer

- A. **Presiding officer.** The Board may authorize any agency member, employee or agent to act as presiding officer in any hearing.
- B. **Substitute officer.** Whenever a presiding officer is disqualified or it becomes impracticable for him to continue the hearing, another presiding officer may be assigned to continue with the hearing; provided that, if it is shown that substantial prejudice to any party will thereby result, the substitute officer shall commence the hearing anew.
- C. **Presiding officer; duties.** Presiding officers may:
 1. Administer oaths and affirmations;
 2. Rule on the admissibility of evidence;
 3. Regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing of evidence, briefs and other written submissions; and
 4. Take other action authorized by statute or agency rule consistent with 5 M.R.S.A., Chapter 375, subchapter IV.
- D. **Report.** In the event that the presiding officer prepares any report or proposed findings for the Board, the report or findings shall be in writing. A copy of the report or findings shall be provided to each party and an opportunity shall be provided for response or exceptions to be filed by each party.

Section 10. Bias of Presiding Officer or Board Member

- A. **Hearings; impartial.** Hearings shall be conducted in an impartial manner. Upon the filing in good faith by a party of a timely charge of bias or of personal or financial interest, direct or indirect, of a presiding officer or Board member in the proceeding requesting that that person disqualify himself, that person shall determine the matter as a part of the record.

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- B. **Counsel.** Notwithstanding 1, the person involved may consult with private counsel concerning the charge.

Section 11. Disposition without Full Hearing

- A. **Stipulation, settlement, consent order.** The Board may make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement or consent order.
- B. **Default.** The Board may make informal disposition of any adjudicatory proceeding by default, provided that notice has been given that failure to take required action may result in default, and further provided that any such default may be set aside by the Board for good cause shown.
- C. **Issues limited.** The Board may limit the issues to be heard or vary any procedure prescribed by these rules or 5 M.R.S.A. Chapter 375, subchapter IV if the parties and the Board agree to such limitation or variation, or if no prejudice to any party will result.

Section 12. Intervention As of Right

- A. Any person showing that he is or may be a member of a class which is or may be substantially and directly affected by the proceedings, or any other agency of federal, state or local government which is or may be substantially and directly affected, shall be allowed to intervene as a party to the proceedings.
- B. **Intervention; interested person.** The Board may, by order, allow any other interested person to intervene and participate as a full or limited party to the proceeding. This subsection shall not be construed to limit public participation in the proceeding in any other capacity.
- C. **Application.** Application for intervention shall be received by the Director no later than five days before the commencement of the hearing, except for good cause shown. The application shall state the interest of the person or class and the reason it wishes to intervene. A copy of the application shall be sent by regular mail to the person or persons whose legal rights, duties or privileges are at issue.
- D. **Decision.** The Board shall either grant or deny the application at the time of the hearing, unless all parties agree to an earlier decision.
- E. **Participation limited or denied.** When participation of any person is limited or denied, the Board shall include in the record an entry to that effect and the reasons therefor.
- F. **Consolidation of presentations.** Where appropriate, the Board may require consolidation of presentations of evidence and argument by members of a class entitled to intervene under subsection (A) of these regulations, or by persons allowed to intervene under subsection (B).
- G. **Participation.** The Board shall allow any of its staff to appear and participate in any adjudicatory proceeding.

Section 13. Ex Parte Communications; Separation of Functions

- A. **Communication prohibited.** In any adjudicatory proceeding, no Board members authorized to take final action or presiding officers designated by the Board to make findings of fact and conclusions of law shall communicate, directly or indirectly, in connection with any issue of fact, law or procedure, with any person, except upon notice and opportunity for all parties to participate.

- B. **Communication permitted.** This section shall not prohibit any Board member or other presiding officer described in subsection (A) from:
1. Communicating in any respect with other members of the Board or other presiding officers; or
 2. Having the aid or advice of those members of his own Board staff, counsel or consultants retained by the Board who have not participated and will not participate in the Board proceeding in an advocate capacity.

Section 14. Opportunity to be Heard

- A. **Opportunity for hearing.** The opportunity for hearing in an adjudicatory proceeding shall be afforded without undue delay.
- B. **Rights.** Unless limited by stipulation under 11(C) or by Board order pursuant to 12(B) or 12(F) or unless otherwise limited by the Board to prevent repetition or unreasonable delay in proceedings, every party shall have the right to present evidence and arguments on all issues, and at any hearing to call and examine witnesses and to make oral cross-examination of any person present and testifying.

Section 15. Evidence

- A. **Rules of privilege.** The Board need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law.
- B. **Evidence.** Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Board may exclude irrelevant or unduly repetitious evidence.
- C. **Witnesses.** All witnesses shall be sworn.
- D. **Prefiling testimony.** Subject to these requirements, the Board may, for the purposes of expediting adjudicatory proceedings, require procedures for the prefiling of all or part of the testimony of any witness in written form. Every such witness shall be subject to oral cross-examination.
- E. **Written evidence; exception.** No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.

Section 16. Official Notice

- A. **Official notice.** The Board may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and nonconfidential agency records. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.
- B. **Facts.** Facts officially noticed shall be included and indicated as such in the record.
- C. **Evaluation of evidence.** Notwithstanding the foregoing, the Board may utilize their experience, technical competence and specialized knowledge in the evaluation of the evidence presented to them.

Section 17. Record

- A. **Record.** In an adjudicatory proceeding, the Board shall make a record consisting of:
1. All applications, pleadings, motions, preliminary and interlocutory rulings and orders;
 2. Evidence received or considered;
 3. A statement of facts officially noticed;
 4. Offers of proof, objections and rulings thereon;
 5. Proposed findings and exceptions, if any;
 6. The recommended decision, opinion or report, if any, by the presiding officer;
 7. The decision of the Board; and
 8. All staff memoranda submitted to the members of the Board or other presiding officers by Board staff in connection with their consideration of the case, except memoranda of counsel to the Board.
- B. **Hearings recorded.** The Board shall record all hearings in a form susceptible to transcription. Portions of the record as required and specified in subsection A may be included in the recording. The Board shall transcribe the recording when necessary for the prosecution of an appeal.
- C. **Record; copies.** The Board shall make a copy of the record, including recordings made pursuant to subsection B available at its principal place of operation, for inspection by any person during normal business hours; and shall make copies of the record, copies of recordings or transcriptions of recordings available to any person at actual cost. Notwithstanding the provisions of this subsection, the Board shall withhold, obliterate or otherwise prevent the dissemination of any portions of the record which are made confidential by state or federal statute, but shall do so in the least restrictive manner feasible.
- D. **Decision on the record.** All material, including records, reports and documents in the possession of the Board, of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record and no other factual information or evidence shall be considered in rendering a decision.
- E. **Documentary evidence.** Documentary evidence may be incorporated in the record by reference when the materials so incorporated are made available for examination by the parties before being received in evidence.

Section 18. Subpoena and discovery

- A. Any party may request the issuance of a subpoena by the Board, and the Board may issue the same if it first obtains the approval of the Attorney General or of any deputy attorney general. Such approval shall be given when the testimony or evidence sought is relevant to any issue of fact in the proceeding.
- B. When properly authorized, subpoenas may be issued by the Board or by any person designated by the Board for that purpose, in accordance with the following provisions:

1. The form shall be similar to that used in civil cases before the courts. Witnesses shall be subpoenaed only within the territorial limits and in the same manner as witnesses in civil cases before the courts, unless another territory or manner is provided by law. Witnesses subpoenaed shall be paid the same fees for attendance and travel as in civil cases before the courts. Such fees shall be paid by the party requesting the subpoena.
2. Any subpoena issued shall show on its face the name and address of the party at whose request it was issued.
3. Any witness subpoenaed may petition the Board to vacate or modify a subpoena issued in its name. The Board shall give prompt notice to the party who requested issuance of the subpoena. After such investigation as the Board considers appropriate, it may grant the petition in whole or in part upon a finding that the testimony or the evidence whose production is required does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive or has not been issued a reasonable period in advance of the time when evidence is requested.
4. Failure to comply with a subpoena lawfully issued in the name of the Board and not revoked or modified by the Board as provided in this section shall be punishable by a fine of not less than \$500 and not more than \$5,000, or by imprisonment not to exceed 30 days, or both.

19. Decisions: Appeal

- A. Every Board decision made at the conclusion of an adjudicatory proceeding shall be in writing or stated in the record, and shall include findings of fact sufficient to apprise the parties and any interested member of the public of the basis for the decision. The Board shall maintain a record of the vote of each member of the Board with respect to the Board's decision. A copy of the decision shall be delivered or promptly mailed to each party to the proceeding or his representative of record.
- B. The Board shall inform the parties at the time the decision is delivered or mailed that they have the right to have the Superior Court review the decision and that a petition for review of the decision must be filed in the Superior Court within 30 days after receipt of notice of the decision pursuant to 5 M.R.S.A. § 11002.

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

EFFECTIVE DATE:

July 6, 1979 - filing 79-338

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March 1, 1997

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Chapter 80 Advisory Rulings

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 80: ADVISORY RULINGS

SUMMARY: These regulations describe the procedures any interested person must follow in requesting an advisory ruling to determine if the Board's Statute and rules apply to his situation.

Section 1. Request for Ruling

- A. **Written request.** Upon written request of any interested person, the Board of Pesticides Control may make an advisory ruling with respect to the applicability of any statute or rule administered by the Board of Pesticides Control to him or his property or actual state of facts.
- B. **Address to Director.** All advisory ruling requests shall be addressed to the Director, Board of Pesticides Control, Maine Department of Agriculture, Augusta, Maine 04333.
- C. **Request for more information.** The request shall contain sufficient facts for the Board of Pesticides Control to make a ruling. The Board of Pesticides Control may request information from the party requesting the ruling. Failure to provide such information shall be cause for the Board of Pesticides Control to refuse to issue a ruling.

Section 2. Board Response

- A. **Refusal to issue ruling.** The Board of Pesticides Control may refuse to issue an advisory ruling if it may harm its interest in any litigation wherein it is or may become a party.
 - B. **Ruling in writing within 60 days.** An advisory ruling shall be in writing and issued no more than 60 days from the date when all information necessary for the ruling has been received by the Board of Pesticides Control.
 - C. **Advisory ruling not binding.** An advisory ruling shall not be binding upon the Board of Pesticides Control, provided that in any subsequent enforcement action initiated by the Board of Pesticides Control, any person's justifiable reliance upon the ruling shall be considered in mitigation of any penalty sought to be assessed.
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STATUTORY AUTHORITY: 22 M.R.S.A., Chapter 258-A

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Chapter 90 Complaints

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 90: COMPLAINTS

SUMMARY: These regulations describe the procedure a person must follow in bringing a complaint to the Board and outline the steps the Board may take in response.

Section 1. Purpose

The purpose of this section is to provide a formal procedure which assures that the Board of Pesticides Control will consider all complaints regarding uses of pesticides.

Section 2. Complaint

Any person, individual, corporation, unincorporated association, group of individuals or government agency may submit a complaint regarding any person, known or unknown, relative to the use of pesticides.

Section 3. Address to Director

All complaints shall be sent to the Director, Board of Pesticides Control, Department of Agriculture, 28 State House Station, Augusta, Maine 04333-0028. Anyone who cannot submit a complaint in writing to the Director may make arrangements with the Director or staff to record the content of the complaint in a manner and time frame convenient to the Director, staff and complainant. The Director may, at his/her discretion, investigate the complaint prior to Board action.

Section 4. Placed on Board's Agenda

The complaint shall be placed on the Board's agenda, the Board shall give reasonable notice to the complainant, the person who is the subject of the complaint, if known, and any other party the Director believes is interested in the complaint.

Section 5. Considered

The Board shall consider the complaint along with any information which the Director may have available, and take whatever action it deems necessary to protect the public's interest. Action could include taking no action, requesting the Board's staff to investigate the complaint, scheduling an informal hearing between the affected parties or instituting formal adjudicatory proceedings. Any such consideration shall not constitute an adjudicatory proceeding within the meaning of chapter 70 of the Board's regulations.

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

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