

Summary of Comments Received Regarding 130th Legislature, LD 264, Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

Board of Pesticides Control CMR26-01 Chapter 20

#	Name	Summary of Comments	Response
1	<p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association;</p> <p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Sarah Woodbury – Director of Advocacy for Defend Our Health;</p> <p>Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> All work done for Ch. 20 is appreciated. Agrees with the Board definition of PFAS, provides consistency with other state agencies. 	<ul style="list-style-type: none"> The Board of Pesticides Control (BPC) appreciates the support. BPC plans to keep the current definition to remain consistent with other state agencies.
2	<p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Sarah Woodbury – Director of Advocacy for Defend Our Health;</p> <p>Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> Required affidavits submitted by registrants should be publicly available. 	<ul style="list-style-type: none"> All reports and affidavits produced by the BPC are already public documents.
3	<p>Patricia Rubert-Nason – Maine Sierra Club;</p> <p>Sarah Woodbury – Director of Advocacy for Defend Our Health;</p> <p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic 4Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> Concerned about and would like clarification regarding the Confidential Statement of Formula (CSF) and the need to include all inert ingredients, active ingredients, and contaminants in addition to the CSF. 	<ul style="list-style-type: none"> Confidential Statement of Formula (CSF) includes the active and inert ingredients and are protected by federal law FIFRA §10(a) as confidential business information (CBI). Any material not identified as a part of the CSF is considered to be a contaminant. The CSF would not be included in any public documents due to their confidentiality. The Environmental Protection Agency (EPA) considers Perfluoroalkyl and Polyfluoroalkyl Substances

			<p>(PFAS) to be potentially toxicologically significant contaminants and may trigger 159.179(b) in the Code of Federal Regulations (CFR). Under FIFRA Section 6(a)(2), pesticide registrants should report to EPA additional factual information on unreasonable adverse effects, including metabolites, degradates, and impurities (such as PFAS). EPA has identified a master list PFAS that is available on their website. BPC staff have an inquiry into EPA and AAPCO (Association of American Pesticide Control Officials) regarding the process of requiring 6(a)(2) reporting.</p>
4	<p>Sarah Woodbury – Director of Advocacy for Defend Our Health; Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> Recognized that the resolution specifically responded to HDPE containers, but to expand the scope of containers from just HDPE containers to any fluorinated plastic containers. 	<ul style="list-style-type: none"> BPC recognizes that many plastics – not just HDPE containers – are fluorinated. Identifying additional container types to be included in affidavits is beyond the scope of the current ask from LD 264. EPA has noted that there is no evidence that PFAS occur from containers other than HDPE. Additionally, LD 1503 will ultimately prohibit any intentionally fluorinated

			products in the State of Maine by 2030.
5	Patricia Rubert-Nason – Maine Sierra Club; Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association	<ul style="list-style-type: none"> • More should be done to eliminate PFAS in pesticides 	<ul style="list-style-type: none"> • BPC agrees that long-chain PFAS resulting from the fluorination of pesticide product containers should not be allowed to continue to occur. BPC is working toward a greater understanding of the scope of PFAS in pesticides as more information becomes available in this rapidly evolving issue. BPC also acknowledges that any product that contains intentionally added PFAS will be prohibited under LD 1503 by the year 2030.
6	Sharon Treat – Senior Attorney for Institute for Agriculture and Trade Policy	<ul style="list-style-type: none"> • Full extent of legal authority that the Board has should be used against PFAS. • The full panel of PFAS chemicals should be excluded from pesticides. • Affidavits should not be withheld from the public, as the committee that led the implementation of LD 1503 voted to not keep documents and affidavits confidential. • Disclosure of CSF should include contamination. • Clarify that affidavits are public records, under Maine’s Freedom 	<ul style="list-style-type: none"> • The BPC has reviewed its authority and has outlined it in their full report regarding LD 264 to the Maine Legislature. • The current definition proposed by BPC includes all PFAS chemicals identified by the EPA and is consistent with other state agencies. • The BPC recognizes that during the implementation of LD 1503 affidavits were not withheld and intends to make affidavits public records. • Contaminants in pesticides are required to be reported upon

		<p>of Access Act (preferably on the website, not as a document that must be accessed through a formal freedom of access request).</p> <ul style="list-style-type: none"> • It is not necessary to wait for further legislative direction or authority to include adjuvants as a part of the manufacturers' affidavit as to the presence or absence of PFAS. The Board has extensive authority to require information about the formulation and to require other information for registration of a product and should make clear that adjuvants are covered with other inert ingredients. • Board should make a point to prohibit registration of PFAS 	<p>federal registration with FIFRA §6(a)(2) incident reporting and would be available as a part of products' federal registration process. BPC has inquiries into EPA and AAPCO regarding additional requirements for 6(a)(2) reporting.</p> <ul style="list-style-type: none"> • Affidavits will be public records. • If adjuvants are contained within a pesticide formulation, the CSF would disclose that information. Adjuvants that are added to pesticides separately are not considered to be pesticide products and the Board has included the avenues that need to be taken in order to regulate adjuvants or fluorinated adjuvants in the future in their full report regarding LD 264 to the legislature. Since this proposed action would require amendments to state statute, the BPC will wait for further legislative direction to address this issue. • The proposed resolve does not currently prohibit PFAS from pesticide products but does require BPC to identify if PFAS are in registered products. BPC
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			acknowledges this concern and would like to note that all products that contain intentionally added PFAS will be prohibited by 2030 as outlined in LD 1503.
7	Karen Reardon – Vice President of Public Affairs for Responsible Industry for a Sound Environment	<ul style="list-style-type: none"> • Definitions of PFAS should take data assessments into account. • The Board should consider reviewing the container leeching study that will be coming from US EPA in the first quarter of 2022. • The Board should not rush to complete rulemaking before they have a full finding of what is happening with HDPE containers. 	<ul style="list-style-type: none"> • Initially, BPC was interested in referring to policy for a group of PFAS considered to be the “most concerning” by the EPA but ultimately decided to remain consistent with other state agencies in their definition. BPC will continue to review new data assessments as they are published. • The BPC will consider reviewing the container leeching study during its development of rulemaking regarding containers. • BPC staff have already entered into rulemaking guidelines, following A.P.A. procedures, and must meet deadlines for amendments, approval from Board members, and public comment. This process is not typically quickly implemented but must continue to comply with LD 264.
8	Sarah Woodbury – Director of Advocacy for Defend Our Health	<ul style="list-style-type: none"> • Chapter 20, Section 1 affidavit requirements requires clarification; should require 	<ul style="list-style-type: none"> • Complete formulations from the CSF are protected under federal law FIFRA §6(a)(2) and

		<p>complete formulation including active, inert, and contaminants.</p> <ul style="list-style-type: none"> • There is no reasonable claim for the need to prohibit disclosure of the affidavits to protect confidential business information since no one could derive a formula simply based on the presence or absence of thousands of potential ingredients. • Maine should have a single definition of PFAS, and that definition should be the same one already in use in statute, which is now the one proposed in the draft rule as well. • Noted that contaminants should be added to the rule because Maine already has PFAS contamination and the cleanup will cost millions. • The rule should unequivocally state the affidavits are public and accessible records. While this may be the intent of the proposed language, ambiguity should be eliminated by separately listing the three required items or adding a sentence explicitly clarifying the public nature of the affidavits. • Stated that the Board should make a recommendation to the 	<p>cannot be included with affidavits as public records – however the affidavits will describe if a pesticide product contains PFAS.</p> <ul style="list-style-type: none"> • Information in the CSF itself is confidential business information (CBI) under federal law FIFRA §10(a). Affidavits themselves will be public documents and will describe whether a PFAS known to the manufacturer is in the product or if it is stored in an HDPE container. • BPC recognizes the statements made and has incorporated a definition of PFAS that has been used across multiple state agencies. • Contaminants are addressed during federal registration FIFRA §6(a)(2). BPC currently has an inquiry in at EPA and AAPCO regarding 6(a)(2) reporting at the state level. BPC acknowledges that millions will be spent on remedial PFAS activities. • BPC acknowledges the concern regarding transparency of the affidavits. BPC will consider
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		<p>legislature that the Board supports no use of pesticides containing PFAS or of pesticides stored in HDPE containers.</p>	<p>changing the rule to incorporate this sentiment.</p> <ul style="list-style-type: none"> The BPC is working toward understanding the full scope of PFAS in pesticides and is implementing measures to better understand if PFAS are in pesticides registered in Maine through its registration process. The full scope of PFAS in pesticides, the Maine registration process, and all legal authorities that the BPC has to regulate these classes of chemicals is outlined in the full report to the Maine legislature regarding LD 246.
<p>9</p>	<p>Heather Spaulding – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> Stated that new rules will help minimize reliance on pesticides. The original legislation was to stop PFAS contamination from aerial spraying and morphed into LD 264. Described the PFAS problem was being exacerbated by pesticides that contain PFAS and farmers were losing businesses, land, and health. Hoped this rule would help Maine turn off one of the PFAS taps by discovering the extent of PFAS in pesticides. CSF is confidential but affidavits can be made public. 	<ul style="list-style-type: none"> It is the BPC’s policy title 22 M.R.S §1471-X to minimize reliance on pesticides and promote integrated pest management. BPC appreciates the sentiments made to reduce PFAS contamination in Maine’s environment. To BPC’s current understanding, most PFAS contamination in the environment in Maine is attributed to sludge and sludge-derived compost in agriculture rather than pesticides. BPC agrees that the CSF is confidential and that the

		<ul style="list-style-type: none"> The Board should exercise the broad authority it has to gather formula data in consideration of granting product registration. We hope that the system established for compiling the information would be streamlined so that it would not create an undue burden on the BPC staff. Manufacturers know whether PFAS is in their products and they must be responsible for reporting that in an online database that would minimize additional work for the staff. 	<p>affidavits will be public documents.</p> <ul style="list-style-type: none"> BPC has researched and started the implementation of adding affidavits to its existing registration software, Maine Pesticide Registration and Licensing Software (MEPRLS). This would allow registrants to state whether or not they have PFAS in their product as they are conducting the registration process, reducing staff time and burden.
10	Patricia Rubert-Nason – Maine Sierra Club	<ul style="list-style-type: none"> Would like to thank the Board of Pesticides for their work on implementing LD 264. Urges the Board to ensure that all ingredients and known contaminants are included in the affidavits and that those affidavits are shared with the public. 	<ul style="list-style-type: none"> The BPC appreciates the support and plans to use CSF to determine if PFAS are in pesticide formulations, which include active and inert ingredients. Contaminants known to manufacturers are required to be addressed during federal registration FIFRA §6(a)(2). However, BPC has inquired about 6(a)(2) forms to both EPA and AAPCO.
11	Mariana Tupper – Yarmouth, ME	<ul style="list-style-type: none"> Particularly concerned about the use of PFAs. As both our Environmental Protection Agency and the Food & Drug Administration say, such substances are dangerous for 	<ul style="list-style-type: none"> BPC appreciates the support and will continue to work on this issue as it relates to pesticides.

		<p>human beings and other species on which we depend. Please help the State of Maine stay a strong leader in sensible, smart, and safe agriculture. Progress made in 2021 should be underscored, embellished, and celebrated.</p>	
12	<p>Lelania Avila – Northeast Harbor, ME; Penelope Andrews – Hermon, ME, Member of Sierra Club of Maine and Natural Resources Council of Maine; John Olsen – Jefferson, Maine</p>	<ul style="list-style-type: none"> • Urges Maine's Board of Pesticides Control to implement the pesticide laws passed in the last session of the Legislature. The laws will restrict and assess and address the problem of PFAS in pesticides. • Please ensure that any PFAS chemical added to the product as an "inert" ingredient will be included in the reporting. The same goes for PFAS contaminants known to the manufacturer. 	<ul style="list-style-type: none"> • BPC will implement rules regarding PFAS from the Maine legislature. • Active and inert ingredients are included in the required affidavits and CSF. Contaminants that are known to the manufacturer are reported under FIFRA §6(a)(2) reporting during the federal registration process. BPC is reviewing its ability to also require 6(a)(2) reporting.