



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

**BOARD OF PESTICIDES CONTROL**

**April 16, 2021**

**9:00 AM Board Meeting**

Video conference hosted in MS Teams

**MINUTES**

Present: Adams, Bohlen, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves
- Staff: Brown, Bryer, Connors, Couture, Nelson, Patterson, Peacock, Pietroski, Saucier, Tomlinson

2. Minutes of the March 5, 2021 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Granger: Moved and seconded to accept meeting minutes**
- **In Favor: Unanimous**

3. Report on Annual Funding to Maine CDC for Mosquito Monitoring

The Maine Center for Disease Control and Prevention (Maine CDC) coordinates state activities around preventing vector-borne diseases. As part of its responsibilities, the CDC coordinates mosquito and disease monitoring in Maine. The presence of mosquito-borne diseases and the species of vector mosquitoes present in Maine have been on the rise in recent years. Maine CDC and BPC entered into a Memorandum of Understanding in 2013 to establish cooperation to conduct surveillance for mosquito-borne diseases to protect public health. At the July 24, 2020 meeting Sara Robinson of the Maine CDC provided an overview of the trends and the state's monitoring program. At the July 24, 2020 meeting, the Board

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voted to approve funding in the amount of \$50,000 for Maine CDC's mosquito monitoring efforts. The Board will now review a report on work accomplished in the previous year and work projected for the current year.

Presentation By: Sara Robinson, Infectious Disease Epidemiology Program Director

Action Needed: Review work accomplished and determine if the Board wishes to fund this request

- Sara Robinson updated the Board on mosquito monitoring conducted last year and plans for the upcoming year. She explained that the BPC was the only reason they were able to monitor last year because their federal funding was cut by \$200,000. Robinson stated that Maine CDC collected and tested 527 pools, and all were negative. She added that the lab had to decrease to biweekly testing due to lab constraints during the pandemic but hoped to return to pre-pandemic testing this year.
- Morrill commented that last year the Board increased funding because they knew federal funding was unsteady and he was glad it helped keep the program going. Morrill asked Robinson what amount of funding they were looking for this year.
- Robinson responded that they were hoping for similar funding as last year but would happily accept whatever the Board could offer.
- There was discussion about whether funds were available this year to grant the same amount as last year. Patterson replied that there were sufficient funds.
  - **Adams/Jemison: Moved and seconded to fund request at \$50,000**
  - **In Favor: Unanimous**

#### 4. Updated Reporting on Pesticide Poisonings in Maine

Staff have compiled data on the patterns of pesticide poisonings in Maine. Call data were collected from both the Northern New England Poison Control (NNEPC) and the National Pesticide Information (NPIC). NNEPC and NPIC submitted two years' worth of data from Maine callers with pesticide. Staff will now discuss summaries of those data.

Presentation By: Pam Bryer, Toxicologist

Action Needed: Information only

- Bryer reviewed the summary document of pesticide poisonings she collected for the Board.
- Bryer stated that call volumes peaked in the height of summer and mostly involved children under five and took place at peoples' homes. Insecticides were the primary class of pesticides that caused calls. There were no pesticide deaths in the two years of call data, however two people were classified as having a major effect, meaning it was a life-threatening exposure. Bryer noted that intentional misuses and suicide attempts fell to 14 in 2020 from 20 in 2019. Bryer told the Board that as expected 2020 had an increase in the spring in disinfectant calls and the largest burdens of those exposures were in

children. She added that overall insecticides, repellants, and disinfectants were the classes of most concern. Bryer stated that the National Pesticide Information Center's list of questions asked was a good snapshot of questions commonly asked by homeowners.

- Bohlen commented that it was worth remembering that most exposures were from over the counter products and that he really appreciated seeing this information in a way they had not before.
- Morrill stated that this was the most informative data they had seen regarding exposures and gave the Board a glimpse into how to make a real impact with the information the BPC provides to the public.
- Bryer stated that the next step would be to reach out to the Maine Department of Labor to get worker's compensation classifications to try and get some useful information on exposures in the workplace.

## 5. Discussion of Pesticide Applications to Saturated Soils

Staff have recently received inquiries from the public concerning lawn care applications made to saturated soils and in close proximity to standing water. This is a continuation of a discussion staff began in 2005 regarding soggy lawns. At that time a committee was formed to address the issue and guidance document was developed on best management practices for pesticide applications on turf. Staff will now discuss their proposed plan of action.

Presentation By: Megan Patterson, Director

Action Needed: Determine next steps

- Patterson discussed the reasoning for the formation of the Soggy Lawns Committee in 2005 and the turf best management practices document developed with the input from multiple entities. She added that staff were still experiencing the same issues with early applications. Patterson stated that staff had received calls from the public and other applicators concerned about seeing applications being made in early March to wet lawns and frozen soils. One staff member saw where spreader tires had run very close to standing water. She asked the Board if they would like Staff to proceed with additional efforts to look into this issue.
- Jemison stated he thought they developed a very good product in 2005 and they could reformat it, change its appearance, and then send out to people. He added that it would only take a couple meetings with the same group of people to get suggestions on changes, repackaging and reformatting and then next spring or winter conduct outreach again. Jemison said he did not think they could get it together soon enough to make a difference this year because it was already mid-April and applications were being made.
- Bohlen suggested moving what he thought of as bottom-line recommendations on the back page in small print to the front page. He also suggested thinking about the kinds of treatments that were happening now that were not occurring in 2005, like tick and mosquito treatments.

- Morrill suggested changing it from a pamphlet to a more digital media friendly format. He stated that he remembered when this document was created, and staff went through and audited records and issued some enforcement actions.
- Patterson responded that that was certainly something staff could do if it was of interest to the Board.
- Morrill stated he thought the Board would certainly approve of that and added that perhaps Board staff could work to reformat the pamphlet and put it into new digital format and then bring it back to the Board and reconvene a group of stakeholders. He suggested bringing in someone who could create a message which resonated a little better.

6. Review of Board Member Terms and Appointments

At the March 5, 2021 meeting of the Board, members elected officers. Board member term limits and reappointments were discussed. The Board requested a review of term limits and plans for reappointment and new appointment at the next meeting.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson stated that terms for Granger and Flewelling expired in 2019 and they had been serving at will since that time. Terms for Bohlen and Morrill expired in 2020 and 2021 is when the term for Adams will end. Jemison and Waterman's terms will expire in 2022. She added that all those who had expired had not been reconfirmed. Patterson said if any expired members would like to continue serving on the Board she encouraged them to submit their application to the Governor's Office of Boards and Commissions. Necessary forms are available on the Office of Boards and Commissions webpage under confirmable boards and commissions. She added that the Governor needed to make all Board recommendations, the ACF committee approves those recommendations, and the full senate confirms the appointments.

7. Continuation of the BPC Budget Review with a Focus on the Cost of MePERLS Support, Maintenance, Hosting, and Licensing

At the January 20, 2021 meeting, the Board was provided information about the projected cost of MePERLS. This information was presented by State of Maine Office of Information Technology at the request of the Board. The State of Maine Office of Information Technology serves an essential role in negotiating contracts with both PegaSystems and Stratosphere and can provide a comprehensive overview of the technology and the relative costs. The Board indicated that would like to continue the discussion about the ongoing costs of MePERLS.

Presentation By: Megan Patterson, Director

Action Needed: Determine next steps

- Patterson stated the Board currently has a significant cash balance and the additional cost for MePERLS would begin in October 2022. She asked the Board if it would be helpful for the Department's Business Operations Manager to attend the next Board meeting to provide information about the software hosting, licensing, support, and maintenance fees in the context of the budget.
- Morrill asked if this level of spending would be sustainable once the state stopped supplementing some of this cost.
- Patterson replied that Carlton could speak to that and that Carlton had been thoughtful about program software solutions with high ongoing costs. She added that Carlton was outside the program and could provide the Board with information from a different perspective.

#### 8. Other Old and New Business

- a. LD 125—An Act to Prohibit the Aerial Spraying of Glyphosate and Other Synthetic Herbicides for the Purpose of Silviculture—possible work session week of April 26, 2021
  - b. LD 155—Resolve, Directing the Board of Pesticides Control to Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use—divided report March 9, 2021
  - c. LD 264—An Act to Prohibit Aerial Application of Perfluoroalkyl and Polyfluoroalkyl Substances—work session not scheduled
  - d. LD 316—An Act to Prohibit the Use of Chlorpyrifos—work session April 20, 2021
- Patterson stated that the public hearing was scheduled for next Tuesday and asked the Board what a timeline would look like for prohibiting use that people could comply with without ending up with waste product and issues regarding alternative solutions. She summarized phase out timelines and banned uses from a few other states. Patterson noted that in New York the regulators indicated that the short timeline of one year following implementation of prohibition had been difficult to comply with because growers did not feel like they had received timely information and found themselves scrambling to find solutions.
  - Granger stated that chlorpyrifos was used by Christmas tree and apple growers. He said it was a broad-spectrum pesticide that took care of many pests, usually only needing one application on Christmas trees around bud break and there was enough residual effect that an additional spray was not required. He added that imidacloprid would work on a lot of the same pests as chlorpyrifos, but it would be applied at a time that would be more likely to affect pollinators. Granger noted that chlorpyrifos was one of the few products that would control balsam wooly adelgid, which had become well established. He stated that he did not see it listed on the poison control center calls reported for the last two years and that it was a very useful product. Granger stated that many of its uses had been

terminated and it was not used much anymore, but it would be a shame if growers did not have time to use what they have in stock.

- Waterman commented on cited medical issues related to chlorpyrifos regarding lower IQs, hormone issues and its effect on the development of fetal brains and normal genital development. He added that a couple of years ago the Academy of Pediatrics suggested that this product should be completely banned. Waterman stated that it had been banned in Europe since 2008, and there was a long and interesting discussion about why it had not yet been banned in the United States. He concluded that he would suggest a shorter phase-out time rather than a longer one.
- Granger commented that balsam wooly adelgid was definitely on the rise and there were likely relatively few people using the product but those who did really found it valuable. He added that some cranberry and blueberry growers likely used it as well.
- Patterson stated the proposed bill stipulated a one-year phaseout with the requirement that product to be used in 2022 must be purchased by January 31, 2022 and used, only with a variance, by December 31, 2022.
- Bohlen commented that people may have already purchased product for this year but was concerned there would be leftover product if it was phased out that quickly. He added that he completely agreed it needed to be banned.
- Jemison inquired about the container size and formulation the product was commonly sold in. He agreed that the product needed to be phased out.
- Granger responded that it was a liquid generally purchased in two and a half gallon jugs. He added that it was used at about one quart per acre and the product lasted a long time, so growers tended to stock up on it. Granger concluded that growers would likely have several years' worth in storage.
- Morrill stated that he agreed with Granger that a one-year phase out may not be enough time and it would force applications on farmers that they would not have made, or it would be disposed of elsewhere.
- Jemison offered to follow up with colleagues about who was using it, what the current usage rates were, and how many acres would be affected.
- Patterson stated that that information would be useful because staff will need to reach out to folks who need alternatives.

e. LD 519—An Act to Protect Children from Exposure to Toxic Chemicals—voted out of committee April 8, 2021—divided report

- Patterson stated the committee majority report included a Medical Advisory Committee (MAC) so it may be relevant to Waterman. She said that the MAC had a standing membership.
- Waterman stated that the Board established the MAC in 2008, and that it had been dormant recently. The purpose of the MAC was to provide medical and toxicology

information and review the science for specific questions pertaining to pesticides. The standing members were supposed to be Waterman as Chair, and the Director of the Northern New England Poison Control Center, Dr. Mark Nevin from Portland who are both happy to assume their role in the MAC. The third member was supposed to be the State Toxicologist, Andrew Smith. Smith responded that he and his staff cannot currently commit to service on the MAC due to demands of COVID-19 and PFAS issues. Waterman stated that Dr. Smith mentioned a couple names of people that are physicians in the toxicology field who may be able to serve on the MAC in his place. He added that he had not contacted them yet.

- Morrill thanked Waterman and said we have not had a MAC for some time, and he was very glad to have Waterman as a Board member and spearheading this process.
- f. LD 524—An Act to Require Schools to Submit Pest Management Activity Logs to the Board of Pesticides Control and the Posting of Inspection Results for the Purpose of Providing Information to the Public—tabled April 8, 2021 to be scheduled with the hearing for LR 1896—An Act To Provide Maine People with Access to Information Regarding the Use of Pesticides in Maine
- g. LD 808—An Act To Clarify the Funding for the University of Maine Cooperative Extension Diagnostic and Research Laboratory—hearing not scheduled
- h. LD 1158—An Act Regarding the Application of Certain Pesticides for Nonagricultural Use—hearing scheduled April 13, 2021
- i. LD 1159—An Act To Amend the Membership Requirements of the Board of Pesticides Control—hearing scheduled April 13, 2021
- j. Spruce budworm in Maine
- k. Policy Regarding Interpretation of CMR 01-01A, Chapter 26, Section 3(B) Notification and Posting in the Context of Powered Application of General Use Antimicrobial Pesticides for Routine Cleaning
- l. Update on EPA investigation of container fluorination, pesticides, and PFAS
- Patterson told the Board that EPA clarified their initial comment that there were no PFAS in pesticides. They stated that they were referring to long chain PFAS. Patterson said EPA stated they were now looking at the full range of PFAS to determine which ones were of toxicological concern.
  - Granger asked if there were any products with PFAS in them or was it all from containers.
  - Patterson stated the EPA was working through lists of active and inert ingredients and some have been identified as PFAS, but it is unclear if they are currently in use in pesticides. She told the Board that there were a diversity of opinion on what PFAS were of toxicological significance and staff could provide some literature on this.
  - Bryer stated that the scope of this issue is likely far broader than just pesticides.

- Bohlen commented that PFAS were turning up in huge quantities in wastewater flows and were finding their ways into marine environments very quickly. He added he thought this was an example of a much larger issue.

m. Proposed municipal ordinance—Westmanland

n. Seresto collars

- Bryer stated this was added as informational after an investigative report on about 1,700 pet deaths caused by Seresto collars and that EPA had not issued a warning. She got information from what is called the 6(a)(2) report, which is a permanent record for each registration added to every time someone calls the 800 number on a label. Bryer added that EPA pesticide registration review occurred every 15 years and they go through these calls, categorize them, and decide whether there was a correlation between the product and the complaint. Bryer noted that EPA did have the ability to issue reviews at any time. She stated that from the 6(a)(2) reports it is clear that pet products will cause adverse reactions in pets, not just Seresto, ranging from redness and irritation to seizures and death. Bryer told the Board that there was no information on any adverse reactions occurring in Maine.

o. EPA proposed cancellation of pentachlorophenol

- Patterson told the Board this product was used primarily to treat telephone poles and discussion of cancellations had been going on for years. She added that there were alternatives that could be used but was unsure about the relative efficacy of the alternatives.

9. Schedule of Future Meetings

July 16, August 27, and October 8, 2021 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

10. Adjourn

- **Waterman/Jemison: Moved and seconded to adjourn at 11:02 AM**
- **In Favor: Unanimous**



## STATE OF MAINE

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IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

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H.P. 111 - L.D. 155

**Resolve, Directing the Board of Pesticides Control To Prohibit the Use of  
Certain Neonicotinoids for Outdoor Residential Use**

**Sec. 1. Prohibit the use of certain neonicotinoids for outdoor use.**  
**Resolved:** That, pursuant to the Maine Revised Statutes, Title 7, section 610, the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall prohibit the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam used for application in outdoor residential landscapes such as on lawn, turf or ornamental vegetation. Products used for preserving wood, controlling or treating indoor pests, controlling or treating insects outside around structural foundations and other parts of structures and treating pets, as defined under Title 7, section 712, subsection 16, are specifically exempt from the prohibition under this section. The board shall allow the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam by certified applicators as defined under Title 22, section 1471-C, subsection 4 on ornamental vegetation to manage emerging invasive insect pests, including but not limited to the Asian long-horned beetle, emerald ash borer and hemlock wooly adelgid in order to safeguard the public health, safety and welfare of the State and to protect the natural resources of the State. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## STATE OF MAINE

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H.P. 185 - L.D. 264

**Resolve, Directing the Board of Pesticides Control To Gather Information  
Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State**

**Sec. 1. Board of Pesticides Control to amend rules relating to registered pesticides. Resolved:** That the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall amend its rules governing the registration of pesticides in the State to require manufacturers and distributors to provide affidavits stating whether the registered pesticide has ever been stored, distributed or packaged in a fluorinated high-density polyethylene container and to require manufacturers to provide an affidavit stating whether a perfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide.

**Sec. 2. Board of Pesticides Control to gather information relating to perfluoroalkyl and polyfluoroalkyl substances. Resolved:** The Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall conduct a study to determine if fluorinated adjuvants are being used or sold in the State. The board shall explore what is needed to regulate fluorinated adjuvants in the State and shall explore what is necessary to impose a prohibition on the distribution or application of pesticides or adjuvants containing perfluoroalkyl or polyfluoroalkyl substances in the State. The board shall develop a feasible definition of perfluoroalkyl or polyfluoroalkyl adulteration in a pesticide. The board shall submit a report based on the study with findings and recommendations to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 15, 2022. The joint standing committee may submit a bill to the 130th Legislature relating to the subject matter of the report.

## STATE OF MAINE

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H.P. 220 - L.D. 316

**An Act To Prohibit the Use of Chlorpyrifos**

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

**Sec. 1. 7 MRSA §606, sub-§1, ¶E**, as amended by PL 2005, c. 620, §5, is further amended to read:

E. A pesticide that is adulterated or misbranded or any device that is misbranded; or

**Sec. 2. 7 MRSA §606, sub-§1, ¶F**, as amended by PL 2005, c. 620, §5, is further amended to read:

F. A pesticide in containers that are unsafe due to damage; or

**Sec. 3. 7 MRSA §606, sub-§1, ¶G** is enacted to read:

G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient.

**Sec. 4. Temporary permit for use of pesticide containing chlorpyrifos.** Notwithstanding the Maine Revised Statutes, Title 7, section 606, subsection 1, paragraph G, from January 1, 2022 to December 31, 2022 the Board of Pesticides Control may grant a temporary permit authorizing a pesticides applicator licensed by the State to use or apply a pesticide containing chlorpyrifos as an active ingredient, as long as that licensed pesticides applicator possessed the pesticide in the State before January 1, 2022. The Board of Pesticides Control shall post on its publicly accessible website information on the temporary permits issued under this section.

## STATE OF MAINE

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H.P. 382 - L.D. 519

**An Act To Protect Children from Exposure to Toxic Chemicals**

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

**Sec. 1. 7 MRSA §606, sub-§3** is enacted to read:

**3. Unlawful use.** A person may not apply glyphosate or dicamba within 75 feet of school grounds. This subsection does not apply to residential property or land used for commercial farming.

For purposes of this subsection, unless the context otherwise indicates, the following terms have the following meanings:

A. "Commercial farming" has the same meaning as in section 52, subsection 3;

B. "Residential property" means real property located in this State that is used for residential dwelling purposes;

C. "School" means any public, private or tribally funded elementary school as defined in Title 20-A, section 1, subsection 10, secondary school as defined in Title 20-A, section 1, subsection 32 or a nursery school that is part of an elementary or secondary school; and

D. "School grounds" means:

(1) Land associated with a school building including playgrounds and athletic fields used by students or staff of a school. "School grounds" does not include land used for a school farm; and

(2) Any other outdoor area used by students or staff including property owned by a municipality or a private entity that is regularly used for school activities by students and staff but not including land used primarily for nonschool activities, such as golf courses, farms and museums.

**Sec. 2. Medical advisory committee; herbicides applied on school grounds.**

The Department of Agriculture, Conservation and Forestry, Board of Pesticides Control, within existing resources from Other Special Revenue Funds accounts, shall establish a medical advisory committee to evaluate the potential impact of herbicides used on school grounds on human health. The board shall submit a report no later than February 1, 2022,

with findings and recommendations, including suggested legislation, to the Joint Standing Committee on Agriculture, Conservation and Forestry. Following receipt and review of the report, the Joint Standing Committee on Agriculture, Conservation and Forestry may submit a bill concerning the subject matter of the report to the Second Regular Session of the 130th Legislature.

## STATE OF MAINE

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S.P. 209 - L.D. 524

**Resolve, Directing the Board of Pesticides Control To Research Workable Methods To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public**

**Sec. 1. Department of Agriculture, Conservation and Forestry, Board of Pesticides Control to research workable methods to collect pesticide sales and use records. Resolved:** That the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall research workable methods to collect pesticide sales and use records for the purpose of providing information to the public. The board shall explore the best methods for collecting pesticide use information from schools as defined in the board's rule Chapter 27: Standards for Pesticide Applications and Public Notification in Schools; private applicators as defined in the Maine Revised Statutes, Title 22, section 1471-C, subsection 22; and commercial applicators as defined in Title 22, section 1471-C, subsection 5. The board shall explore the best methods for collecting information on pesticide sales in the State. The board shall submit a report with findings and recommendations to the Joint Standing Committee on Agriculture, Conservation and Forestry no later than January 1, 2022. The joint standing committee may submit a bill to the 130th Legislature relating to the subject matter of the report.



Janet T. Mills  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
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June 25, 2021

The 130th Legislature of the State of Maine  
State House  
Augusta, Maine

Dear Honorable Members of the 130th Legislature:

By the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing L.D. 125, *An Act To Prohibit the Aerial Spraying of Glyphosate and Other Synthetic Herbicides for the Purpose of Silviculture*.

L.D. 125 would ban the aerial application of glyphosate and other synthetic herbicides for the purpose of silviculture, including reforestation, regeneration or vegetation control after any timber harvest. This bill does not ban herbicides, such as glyphosate; rather it focuses only on one method of application.

There are widespread concerns about the chemical glyphosate and whether the aerial application of herbicides is performed safely and responsibly. Responding to these concerns, the Agriculture, Conservation and Forestry Committee's majority report on L.D. 125 (which passed 9-4) focused on expanding buffers and setbacks to further protect waterbodies, wetlands, wildlife habitat, and other natural resources. It also proposed additional setbacks around residential property. I support this approach and will be issuing an Executive Order directing the Maine Forest Service and the Board of Pesticide Control to institute additional specific safeguards to further limit aerial application of herbicides, consistent with best practices and state policy.

I cannot, however, support L.D. 125's blanket prohibition. I note that at the request of the 129th Legislature, the Board of Pesticide Control authorized an independent assessment of Maine's pesticide use regulations concerning aerial application by industrial forest management companies. The independent auditor, SCS Global Services, reported: "no evidence was gathered during the course of the verification audit to contradict the following overall conclusion: The State of Maine regulatory framework, within which aerial application of herbicides in forest operations takes place, is functioning as designed."

The aerial application of herbicides in forest management is extremely limited. In 2018, the acreage treated amounted to less than five percent of the total annual forest acres harvested statewide. And, in the last 30 years, Maine has seen an 82 percent reduction in acres treated.

Forest landowners strive to maximize growth and yield of their forest at a time when consumers are hungry for wood products. They work under tight margins, are susceptible to erratic weather patterns, and are constantly looking at ways to improve yields and maintain a healthy and



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sustainable product for generations to come. For Maine's large forest landowners seeking to improve the growth of desirable tree species and control competition of undesirable species, such as disease-prone beech, limited spraying of herbicides is an integral tool. Moreover, researchers at the University of Maine have identified increasing the density of spruce plantations as one of the most effective and efficient ways to sequester carbon. These plantations cannot be established unless weeds and other competition are controlled, which is impossible without targeted herbicide treatments.

Spraying for site preparation is conducted once or twice over the course of a 40- to 60-year rotation of a forest stand. It is applied with careful thought, planning, and consideration. It is applied under strict adherence to practices that account for weather conditions, wind direction and speed, rate of application, and the location of streams, brooks, and other water bodies.

Banning aerial application, however, would force landowners to conduct ground application, which is manually intensive, has a potential for greater site disturbance and soil compaction, and may require multiple applications with higher and more dangerous concentrations levels to achieve the same level of effectiveness.

The environmental concerns associated with aerial application need to be balanced with the goal of decarbonization and the legitimate needs of silviculture enterprises. This bill, the minority report of the Committee, fails to achieve that balance.

For these reasons, I return LD 125 unsigned and vetoed, and I urge the Legislature to sustain this veto.

Sincerely,



Janet T. Mills  
Governor



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Office of  
The Governor

No. 41 FY 20/21  
DATE June 30, 2021

**AN ORDER ESTABLISHING THE GOVERNOR'S  
REVIEW OF THE AERIAL APPLICATION OF HERBICIDES FOR  
FOREST MANAGEMENT**

**WHEREAS**, Maine forests cover 89 percent of the state and support an important forest industry that is central to our natural resource-based economy, soil health, wildlife habitat, and quality of life, and its sustainable management is a top priority for the Administration;

**WHEREAS**, It is the policy of the State to promote the principles of integrated pest management and other science-based technology to minimize reliance on pesticides and herbicides while recognizing that outbreaks of disease, insects, and other pests will necessitate fluctuations in their use;

**WHEREAS**, State agencies, in cooperation with private interest groups, must work to educate pesticide users and the general public on the proper use of these chemicals and to determine other actions needed to accomplish the state policy and minimize the harm from the application of any harmful chemicals;

**WHEREAS**, The aerial application of herbicides in forest management is extremely limited, such that in 2019, the acreage treated amounted to less than five percent of the total acres harvested statewide and, in the last 30 years, Maine has seen an 82 percent reduction in acres treated;

**WHEREAS**, There are widespread concerns about the chemical glyphosate and whether the aerial application of herbicides is currently being performed safely and responsibly;

**WHEREAS**, It is State policy to allow the full growth of our forests to decarbonize our environment and achieve goals related to the disastrous effects of climate change, and eliminating undergrowth that limits the growth of these forests is done by limited application of synthetic pesticides and herbicides for which there is no known organic substitute;

**WHEREAS**, The Board of Pesticides Control authorized an independent assessment of Maine's pesticide use regulations concerning aerial application by industrial forest management companies

in 2020, and the independent auditor, SCS Global Services, concluded, “The State of Maine regulatory framework, within which aerial application of herbicides in forest operations takes place, is functioning as designed.”

**NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to *Me. Const. Art V, Pt 1, §1 and §12*, do hereby Order as follows:**

**I. ESTABLISHMENT AND PURPOSE**

The Board of Pesticides Control shall, in consultation with the Maine Forest Service and other stakeholders and interested parties, review and amend rules related to the aerial application of glyphosate and other synthetic herbicides for the purpose of silviculture, including reforestation, forest regeneration, or vegetation control in forestry operations.

The process shall include:

**A. A review of the existing BMPs for aerial application of herbicides including:**

- a. A review of the findings and recommendations of the independent assessment on aerial applications conducted in 2020.
- b. A review of the current international scientific literature regarding the aerial application of herbicides for forestry purposes, taking into account the species addressed in other states and countries.
- c. A review of Integrated Pest Management guidelines as they apply to aerial application of herbicides for forestry purposes to assess the relative effectiveness and costs of other treatment methods.

**B. Development of a surface water quality monitoring effort to focus on aerial application of herbicides in forestry to be conducted in 2022.**

**C. A review undertaken by the Department of Inland Fisheries and Wildlife to assess wildlife habitat impacts related to sites treated by aerial application of herbicides.**

**D. A review of the existing regulatory framework for aerial application of herbicides in forest operations, to include:**

- a. A proposal to amend rules to expand the buffers and setbacks to further protect rivers, lakes, streams, ponds, brooks, wetlands, wildlife and human habitats and other natural resources.
- b. A proposal to amend rules to expand the buffers for areas next to Sensitive Areas Likely to be Occupied (SALO) and other sensitive areas to include farming operations.

**E. A series of public meetings to share and obtain public input on the results of the review before finalizing.**

## **II. PROCEEDINGS**

The Board of Pesticides Control and the Maine Forest Service shall solicit feedback from, and consult with, the University of Maine School of Forest Resources, Department of Inland Fisheries and Wildlife, forest landowners, foresters, licensed applicators, conservation groups, and others as necessary to complete their tasks.

The effort shall be led jointly by the Board of Pesticides Control and the Maine Forest Service and co-chaired by the respective directors. The meetings shall be held in locations determined by the chairs or will be held virtually but the proceedings of the group are not otherwise “public proceedings” within the meaning of 1 M.R.S. section 402.

## **III. RECOMMENDATIONS**

The Board of Pesticides Control and the Maine Forest Service shall submit a summary of the review process and findings and any corresponding recommendations to the Governor on or before January 2, 2022, after which the authority of this Executive Order will dissolve.

## **IV. EFFECTIVE DATE**

The effective date of this Order is June 30, 2021.

  
\_\_\_\_\_  
Janet T. Mills, Governor

**From:** [Governor Janet Mills](#)  
**To:** [Couture, Amanda](#)  
**Subject:** Governor Mills Directs Maine Forest Service & Board of Pesticides Control to Review & Recommend Changes to Aerial Application of Herbicides for Forest Management  
**Date:** Wednesday, June 30, 2021 1:05:09 PM

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## **[Governor Mills Directs Maine Forest Service & Board of Pesticides Control to Review & Recommend Changes to Aerial Application of Herbicides for Forest Management](#)**

Governor Mills Directs Maine Forest Service & Board of Pesticides Control to Review & Recommend Changes to Aerial Application of Herbicides for Forest Management  
June 30, 2021

*Executive Order, which seeks to balance environmental concerns with forest management needs, follows veto of LD 125*

Governor Janet Mills today signed an Executive Order directing the Maine Forest Service and the Board of Pesticides Control to review rules related to the aerial application of synthetic herbicides and to recommend changes to further protect rivers, lakes, streams, ponds, brooks, wetlands, wildlife and human habitat and other natural resources.

The Governor's Executive Order follows her [veto of LD 125 \(PDF\)](#), which she objected to because of its "blanket prohibition" over aerial application of glyphosate for the purposes of silviculture, the science and practices underpinning the sustainability of Maine's forests.

In [a Bangor Daily News op-ed](#) yesterday, Bob Seymour of Orono, a Professor Emeritus of Silviculture at the University of Maine and forestry expert, called the bill "flagrantly anti-environmental and discriminatory", noting that it would imperil the ability to manage Maine's forests and jeopardize the state's efforts to combat climate change and "stifle" long-term investments in forest stewardship to build climate resilience and support rural economies.

In her veto message, the Governor noted that "banning aerial application...would

force landowners to conduct ground application, which is manually intensive, has a potential for greater site disturbance and soil compaction, and may require multiple applications with higher and more dangerous concentration levels to achieve the same level of effectiveness.” However, she recognized concern over the aerial application of glyphosate and pledged to issue today’s Executive Order.

“I recognize the legitimate perspectives on all sides of this debate and believe this approach strikes the appropriate balance between environmental concerns and the legitimate needs of silviculture enterprises while also ensuring that we can harness the carbon-cutting power of our forests to combat climate change,” **said Governor Mills**. “I look forward to the recommendations that result from this review.”

The Executive Order directs the Maine Forest Service to consult with the Board of Pesticides Control to review and amend rules related to the aerial application of glyphosate and other synthetic herbicides for the purpose of silviculture, including reforestation, forest regeneration, or vegetation control in forestry operations. The process will include:

1. A review of the existing BMPs for aerial application of herbicides including: a review of the findings and recommendations of the independent assessment on aerial applications conducted in 2020, a review of the international scientific literature regarding the aerial application of herbicides for forestry purposes, taking into account the species addresses in other states and countries, and a review of Integrated Pest Management guidelines as they apply to aerial application of herbicides for forestry purposes to assess the relative effectiveness and costs of other treatment methods
2. Development of a surface water quality monitoring effort to focus on aerial application of herbicides in forestry to be conducted in 2022.
3. A review undertaken by the Department of Inland Fisheries and Wildlife to assess wildlife habitat impacts related to sites treated by aerial application of herbicides.
4. A review of the existing regulatory framework for aerial application of herbicides in forest operations, to include: a proposal to amend rules to expand the buffers and setbacks to further protect rivers, lakes, streams, ponds, brooks, wetlands, wildlife and human habitats and other natural resources; a proposal to amend rules to expand the buffers for areas next to Sensitive Areas Likely to be Occupied (SALO) and other sensitive areas to include farming operations.
5. A series of public meetings to share and obtain public input on the results of the review before finalizing.

The Executive Order requires the Board of Pesticides Control and the Maine Forest Service to submit a summary of the review process and findings and any corresponding recommendations to the Governor on or before January 2, 2022.

[Read the Executive Order \(PDF\).](#)



Questions for Governor Mills? [Contact Us](#)



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**AGRICULTURE, CONSERVATION AND FORESTRY**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**130TH LEGISLATURE**

**FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 58, L.D. 125, “An Act To Prohibit the Aerial Spraying of Glyphosate and Other Synthetic Herbicides for the Purpose of Silviculture”

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

**'Sec. 1. 7 MRSA §606, sub-§3** is enacted to read:

**3. Aerial spraying of glyphosate and other synthetic herbicides.** A person may not conduct an aerial application of glyphosate or other synthetic herbicides for the purpose of silviculture, including reforestation, regeneration or vegetation control after any timber harvest, including but not limited to a timber harvesting activity conducted in accordance with Title 12, chapter 805, subchapter 3-A.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment is the minority report of the committee. It clarifies that the prohibition on aerial application of glyphosate or other synthetic herbicides for the purpose of silviculture also applies to a timber harvesting activity conducted in accordance with the laws governing forest practices.



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

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JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

To: Board Members  
From: Staff  
Re: Legislative Directives  
Date: June 28, 2021

Several new laws and resolves relevant to pesticides were signed by the Governor and should now be considered for response which may include policy development, rulemaking, study, committee review, and/or reporting back. Possible actionable items proposed by these laws and resolves are outlined below and all require Board discussion. All items are organized by the law, resolve or executive order in which they are referenced and are otherwise organized as follows:

The second column proposes possible Board actions.

The third column details the actionable item.

The fourth column identifies the deadline detailed in law for a specific action item.

The fifth column designates type of possible rulemaking (see Title 7 Section 610(6)):

RT Routine Technical

Complete list of possible rulemaking chapters: 10, 20, 40, 41

MEGAN PATTERNSON, DIRECTOR  
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LD 155—Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use				
1	Possible rulemaking (Chapter 10)	New section—Define “emerging invasive insect pests”.	No deadline	RT
2	Possible rulemaking (Chapters 40 and 41)	<p>New section—Prohibit the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid, or thiamethoxam used for application in outdoor residential landscapes such as on lawn, turf or ornamental vegetation.</p> <p>Provide exemptions for products used for preserving wood, controlling, or treating indoor pests, controlling, or treating insects outside around structural foundations and other parts of structures and treating pets.</p> <p>Provide an exemption for licensed commercial applicators using any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam on ornamental vegetation to manage emerging invasive insect pests, including but not limited to the Asian long-horned beetle, emerald ash borer and hemlock wooly adelgid.</p>	No deadline	RT
LD 264—Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State				
3	Possible rulemaking (Chapter 10)	New section—Define perfluoroalkyl or polyfluoroalkyl substances		RT
4	Possible rulemaking (Chapters 10 and 20)	New section—Develop a feasible definition of perfluoroalkyl or polyfluoroalkyl adulteration in a pesticide.		RT
5	Possible rulemaking (Chapter 20)	New section—Require manufacturers and distributors to provide affidavits stating whether the registered pesticide	No deadline	RT

		has ever been stored, distributed, or packaged in a fluorinated high-density polyethylene container		
6	Possible rulemaking (Chapter 20)	New section—Require manufacturers to provide an affidavit stating whether a perfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide.	No deadline	RT
7	Direct staff to study and report back for Board review and submission to the legislature	Conduct a study to determine if fluorinated adjuvants are being used or sold in the State. The board shall explore what is needed to regulate fluorinated adjuvants in the State and shall explore what is necessary to impose a prohibition on the distribution or application of pesticides or adjuvants containing perfluoroalkyl or polyfluoroalkyl substances.	Report submission deadline January 15, 2022	
LD 316—An Act To Prohibit the Use of Chlorpyrifos				
8	Short term adoption of policy and possible rulemaking (Chapters 40 and 41)	New section—Describe the process by which the Board will grant a temporary permit authorizing a licensed pesticide applicator to use or apply a pesticide containing chlorpyrifos as an active ingredient, as long as that licensed pesticide applicator possessed the pesticide in the State before January 1, 2022. Issued permits shall be posted on the Board’s website. Issuance of permits is limited to the period between January 1, 2022 and December 31, 2022.	Deadline January 1, 2022	RT
9	Possible rulemaking (Chapters 40 and 41)	New section—After December 31, 2021, prohibit the purchase and use of pesticides containing	Deadline January 1, 2022	RT

		chlorpyrifos by anyone other than a Maine licensed pesticide applicator holding a Board issued permit.		
LD 519—An Act To Protect Children from Exposure to Toxic Chemicals				
10	Direct the MAC to study the issue and staff prepare and provide report back for Board review and submission to the legislative committee	Medical Advisory Committee evaluation of the potential impact of herbicides used on school grounds on human health.	Report submission deadline February 1, 2022	
Executive Order 41 FY2021—An Order Establishing the Governor’s Review of the Aerial Application of Herbicides for Forest Management				
11	Direct staff to review or contract for a review, prepare and provide a report back for Board review and submission to the Governor	Review existing BMPs for aerial application of herbicides.	Deadline for final report submission January 2, 2022	
12	Direct staff to develop a monitoring effort, prepare and provide a report back for Board review and submission to the Governor	Develop a surface water quality monitoring effort to focus on aerial application of herbicides in forestry to be conducted in 2022.		
13	Direct staff to review existing regulations, prepare and provide a report back for Board review and submission to the Governor	Review the existing regulatory framework for aerial application of herbicides in forest operations.		
14		Conduct a series of public meetings to share and obtain public input on the results of the review before		

		finalizing.		
LD 524—Resolve, Directing the Board of Pesticides Control To Research Workable Methods To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public				
15	Direct staff to study and report back for Board review and submission to the legislature	Research workable methods to collect pesticide sales and use records for the purpose of providing information to the public. Explore the best methods for collecting pesticide use information from schools, private applicators, and commercial applicators. Explore the best methods for collecting information on pesticide sales in Maine.	Report submission deadline January 1, 2022	

**DEPARTMENT OF ATTORNEY GENERAL  
CONTINUING LEGAL EDUCATION COMMITTEE**

***THE ADMINISTRATIVE PROCEDURE ACT:  
AGENCY RULEMAKING***

**January 26, 2001  
University of Maine at Augusta  
Augusta, Maine**

**Presenters:**

**Janet M. McClintock,**  
*Assistant Attorney General  
Natural Resources Division*

**Jeff Pidot,**  
*Assistant Attorney General  
Chief, Natural Resources Division*

**I. DEVELOPMENT OF DRAFT RULE BY THE AGENCY**

**A. "Rule" v. "Policy" or "Guideline" §§ 8002(9), 8057(1)**

general applicability  
intended to be judicially enforceable (same legal force as a statute), and  
implements or interprets a law or describes the agency's procedures or  
practices

An agency is not required to use the formal rulemaking procedures every time it makes a decision interpreting an existing rule. Fryeburg Health Care Center v. DHS, 734 A.2d 1141, 1144 (Me. 1999); Mitchell v. Maine Harness Racing Comm'n, 662 A.2d 924, 927 (Me. 1995).

Courts have found agency policies or methodologies to be invalid because they constituted rules that were not adopted pursuant to the MAPA. Fulkerson v. Comm'r, Dept. of Human Services, 628 A.2d 661 (Me. 1993) (DHS copayment provisions constitute "rules" subject to MAPA); New England Whitewater Center, Inc. v. Department of Inland Fisheries and Wildlife, 550 A.2d 56 (Me. 1988) (changes in process for allocating minimum daily number of passengers to whitewater rafting outfitters constituted rulemaking, thus allocations were invalid for failure of IFW to comply with MAPA).

**B. Consensus-based Rule Development Process §§ 8002(3-C), 8051-B, 8060(1)(A)**

This is a collaborative process where the draft rule is developed by the agency and a representative group of participants with an interest in the subject of the rulemaking. § 8002(3-C) Under this process, a draft rule is developed jointly by the agency and a group of interested persons. The agency retains sole discretion:

- over whether to submit the rule as a proposed rule, and
- as to the final language of the proposed rule. § 8051-B

The procedures for establishing the representative group of participants and keeping records of their meetings and decisions are found at §§ 8051-B(2) & (3).

An agency action to engage in or terminate a consensus-based rule development process is not subject to judicial review. § 8051-B(4)

## C. Factors to Consider During Rule Development

### 1. Statutory Authority

Statutory Authority to Adopt Rule: Identify the state law that gives the agency specific rulemaking authority. § 8057-A(1)

The MAPA provisions do not relieve any agency of the responsibility to comply with any statute requiring that its rules be filed with or approved by any designated persons before they become effective. § 8057(3)

### Consistency With Underlying State or Federal Law or Regulations § 8052(8)

If there is an inconsistency between a rule and the enabling law under which it was adopted, the law controls. *Therault v. Brennan*, 488 F. Supp. 286 (D.Me. 1980)

Most rules function to implement and interpret the statute administered by the agency. If a dispute were to arise in court over the agency's interpretation of the statute it administers or its regulations, the agency's interpretation will be given great deference. *National Industrial Constructors, Inc. v. Superintendent of Insurance*, 655A.2d 342, 345 (Me. 1995); *Abbott v. Comm'r in Inland Fisheries and Wildlife*, 623 A.2d 1273, 1275 (Me. 1993). However, the plain meaning of the statute always controls over an inconsistent administrative interpretation. *National Industrial Constructors, Inc.* at 345.

### Delegation Doctrine Me. Const. Art. III, § 2 & Art. I § 6-A

A Legislative delegation of rulemaking authority must be accompanied by adequate standards and safeguards to assure that the delegation is not abused.

Adequate standards exist where "the legislation clearly reveals the purpose to be served by the regulations, explicitly defines what can be regulated for that purpose, and suggests the appropriate degree of regulation." *Lewis v. State Department of Human Services*, 433 A.2d 743, 748 (Me. 1981)

### 2. Agency Regulatory Agenda §§ 8053-A(2) & (3), 8060, 8064

Except for emergency rules, an agency may not adopt any rule unless the agency has listed the rule on its regulatory agenda. §§ 8060(6), 8064

When an agency proposed a rule not in its current regulatory agenda, the agency must file an amendment to its agenda with the Legislature and Secretary of State under section 8053-A at the time of rule proposal.  
§ 8064

Contents: rules agency expects to propose prior to the next regulatory agenda due date (including amended, repealed, suspended rules - 8002(9)), whether the agency anticipates engaging in any consensus-based rule development process, and list of all emergency rules adopted since the previous regulatory agenda due date. § 8060(1)

3. Specific MAPA Rulemaking Requirements Regarding Fiscal Impact, Etc.

Goals and Objectives of the Rule §§ 8057-A(1)

All Relevant Information Regarding Economic, Environmental, Fiscal and Social Impact of the Rule §§ 8052(4), 8057-A

Economic Burden on Small Businesses §§ 8052(5-A), 8057-A(1)(D)

The agency must seek to reduce any economic burdens through flexible or simplified reporting requirements.

Fiscal Impact on Municipalities and Counties § 8063

The agency must estimate the cost to municipalities and counties for implementing or complying with the proposed rule, if any. A fiscal note describing this fiscal impact must be attached to the proposed rule before formal rulemaking is initiated.

Fiscal note requirement not applicable to emergency rules.  
Unfunded mandate?

Plain English § 8061

Performance Standards § 8062

4. Incorporation of Other Standards by Reference § 8056(1)(B)

The reference in the rules must fully identify the incorporated rules by exact title, edition or version and the date of publication. § 8056(B)(2)



Cannot incorporate standards as they may be updated by the outside agency or organization in the future. An agency may only adopt the outside material as it exists at the time of adoption. If the agency wants to be able to enforce the incorporated standard when IT is updated, then it must initiate rulemaking at that time to amend its own rule to refer to updated standard.

If an agency refers to or requires compliance with another of its own rules in the proposed rule, the agency need not incorporate that other agency rule by reference

A rule may incorporate by reference a fact or event that has independent significance, such as: (these 2 cases deal with statutory provisions)

Commission of Pharmacy's requirement that pharmacists have a degree from a pharmacy school accredited by the American Council on Pharmaceutical Education even though list of accredited schools subject to change. Lucas v. Maine Commission of Pharmacy, 472 A.2d 904, 909 (Me. 1984)

Use by State Tax Assessor of the national Consumer Price Index published by the U.S. Department of Labor in assessing state tax even through CPI to be determined in the future. Opinion of the Justices, 460 A.2d 1341, 1348 (Me. 1982)

#### 5. Effective Date §§ 8002(3-A), 8052(6), 8072(8)

Routine technical rules: Unless the agency otherwise specifies, the effective date is 5 days after the adopted rule is filed with the Secretary of State. Emergency rules are effective on the date the rule is filed with the Secretary of State. §§ 8002(3-A), 8052(6)

Major substantive rules are effective 30 days after the agency has finally adopted the rule, after the Legislative has reviewed the rule and given its approval for the agency to proceed with final adoption. § 8072(8)

"Sunset" Date: Usually rules go into effect and stay in effect until they are repealed in a separate rulemaking process. However, a rule can be adopted with a "sunset" provision, i.e. the rule will be automatically repealed on a specific date.

Both effective and "sunset" dates can be dependent upon the occurrence or nonoccurrence of an event. In the latter case, notice must be provided to the Secretary of State that the triggering event has occurred.

6. Unfunded State Mandates Me. Const. Art.19, §21, 30-A M.R.S.A. § 5658

Article 19, Section 21 of the Maine Constitution prevents the State from imposing any new mandate on municipalities, counties and other local units of government unless the Legislature provides 90% of the funds required on an annual basis or unless the Legislature approves such action by 2/3 vote. The legislation implementing the constitutional amendment is found at 30-A M.R.S.A. § 5658.

That statute defines “mandate” as “any law, rule or executive order of this State enacted, adopted or issued after November 23, 1992 that requires a local unit of government to expand or modify that unit’s activity so as to necessitate additional expenditures from that units local revenues.”  
30-A M.R.S.A. § 5658(1)(C)

7. Takings Me. Const. Art. I, § 21, § 8056(6)

The MAPA specifically states that “[t]he Attorney General may not approve a rule if it is reasonably expected to result in an taking of private property under the Constitution of Maine unless such a result is directly by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking.” § 8056(6)

A regulatory taking occurs when property is regulated to such an extent that it deprives the landowner of all economic use of the property, taking into account the reasonable expectations of the property owner and preexisting principles of nuisance and real estate law prior to the onset of the regulations.

Lucas v. South Carolina Coastal Council, 113 S.Ct. 2264 (1993); Hall v. Board of Environmental Protection, 528 A.2d 453 (Me. 1987).

8. Enforceability/Unconstitutionally Vague Provisions

The rule must be written clearly enough that it gives regulated entities and individuals specific advance notice of the criteria they must meet and gives agencies sufficient guidance to assure that essential determinations are not left to personal whim or arbitrary discretion.

For a good discussion of caselaw, see Kosalka v. Town of Georgetown, 752 A.2d 183 (Me. 2000) (shoreland zoning ordinance requirement that all development must “conserve natural beauty” is unconstitutionally vague).

9. Nonregulatory Material in the Rule

Summary statements, “notes” added to rule text, and the basis statement/response to comments not part of the rule and need not be formally adopted. Nor are they enforceable.

10. Proper Format § 8056(1)(B)

The MAPA provides that all adopted rules must be filed with the Secretary of State in a specific format prescribed by the Secretary of State. See the Guide to Rulemaking.

**D. Agency Recordkeeping During Rule Development §§ 8052(5)(B), 8057-A**

Maintain a file of all information relevant to the rule that is being considered by the agency in developing the rule. § 8052(5)(B)

If consensus-based rule development process was used, keep records of all meetings and information shared in accordance with § 8051-B.

Gather information required to prepare the Fact Sheet to be provided to the Legislature at the time formal rulemaking is initiated (or, for emergency rules, within 10 days following adoption). §§ 8053-A, 8057-A

**II. FORMAL RULEMAKING – PROPOSED AGENCY RULE**

**A. Definition of “Proposed Rule” §§ 8002(8-A), 8053(5), 8056**

Means a rule that an agency has formally proposed for adoption by filing it with the Secretary of State. 8002(8-A) Once a draft rule has been filed with the SOS as a proposed rule, it becomes a “proposed agency rule” subject to all of the procedural requirements of the MAPA concerning public input.

**B. Strict Adherence to Formal Rulemaking Process § 8052(1)**

1. “Ex Parte” Contacts

Agency decisionmakers: While the ex parte provisions of MAPA § 9055 do not strictly apply to rulemaking proceedings, the MAPA process for receiving public input during rulemaking may not be ignored. All comments must be presented to the agency in the manner outlined in the MAPA.

Agency staff: Because agency staff are not decisionmakers, there is no bar on outside discussion of the proposed rule between staff and interested persons. But if the comments relayed to staff are to be considered by the agency decisionmaker(s) with authority to adopt the rule, they must be timely submitted in writing to be included in the rulemaking record.

2. "Meeting" v. "Hearing" § 8052(1)

"A public meeting or other public forum held by an agency for any purpose that includes receiving public comments on a proposed agency rule is a public hearing and is subject to all the provisions of this subchapter regarding public hearings." § 8052(1)

**C. Notice of Proposed Rulemaking to Secretary of State, Public and Legislature §§ 8053, 8053-A(1) & (3)**

See Secretary of State's Guide to Rulemaking

The Secretary of State's weekly consolidated rulemaking ad published in newspapers around the state each Wednesday § 8053(3)

Providing notice of a proposed rule is the one of three times the MAPA requires the agency to submit a notice for publication in the Secretary of State's consolidated rulemaking ad:

- Notice of proposed rule
- Notice of an extension of the written comment period for a proposed rule
- Notice of an adopted rule

Date of publication is important because the written comment period and the date of any hearing held on the proposed rule is based on this date.

At the time of rule proposal, the agency must file with the Legislature a fact sheet and, if the rule is not in the agency's current regulatory agenda, an amendment to the agency's regulatory agenda. §§ 8053-A(1) & (3), 8064

**D. Public Proceedings – How Comments Received**

1. Rulemaking With Hearing §§ 8052(1) & (2)

The MAPA itself does not require a hearing. A hearing will be held on a proposed rule whenever the agency chooses to schedule a hearing, a statute requires a hearing, or 5 or more people request a hearing after a proposed rule has been filed with a written comment period only. The MAPA requirements for hearings in adjudicatory proceedings do not apply to rulemaking hearings. § 8052(2)

The MAPA does require that, where a board or commission has rulemaking authority, at least 1/3 of the board or commission members be present at the rulemaking hearing. The MAPA also specifies who may conduct the hearing. § 8052(2)

The Guide to Rulemaking also contains specific suggestions for the conduct of rulemaking hearings..

#### Notice and Written Comment Period §§ 8053(1), (2) & (5)

Continuing or postponing a hearing – more notice required

The MAPA requires that the written comment period following a hearing be a minimum of 10 days. § 8052(3) It may be advisable to make this a longer period, perhaps as much as 30 days, if the agency thinks it may want to reopen the record for further written comments.

#### 2. Rulemaking Without Hearing § 8053(1)

Notice and Written Comment Period §§ 8053(1), 8053(5)(A)

### **E. Reviewing Public Testimony and Comments**

#### 1. Agency Recordkeeping

The MAPA imposes strict recordkeeping requirements on the agency at this juncture -- the rulemaking file must contain all testimony and comments, the names of persons who commented and the organizations they represent. § 8052(5)(B)

#### 2. Response to Comments

The agency must evaluate each comment and decide whether to make changes to the proposed rule based on the specific concerns expressed. § 8052(5) In its Response to Comments, the agency must address the specific comments and concerns expressed about any proposed rule and state its rationale for:

adopting any changes from the proposed rule,  
failing to adopt the suggested changes, or  
drawing findings and recommendations that differ from those  
expressed about the proposed rule.

The MAPA § 8052(5)(B) provides that a rule may not be adopted unless the adopted rule is consistent with the terms of the proposed rule, except to the extent that

the agency determines that it is necessary to address concerns raised in comments about the proposed rule, or specific findings are made supporting changes to the proposed rule.

Deliberations By Multi-member Agencies: Be careful this does not turn into a public hearing.

**F. Reopening Record for Further Written Comments if Rule to be Adopted “Substantially Different” from Proposed Rule §§ 8052(5)(B) & (7)**

The MAPA requires that the agency reopen the rulemaking record and allow further written comment concerning the changes from the proposed rule if the agency determines that the rule to be adopted is “substantially different” from the proposed rule. § 8052(5)(B)

“Substantially different”: Would the affected public understand the change to be one within the broad scope of the original rulemaking proposal, or would it feel that it had not had an opportunity to comment on a significant change to its detriment?

Notice that written comment period extended (or reopened) for a period of 30 days § 8052(5)(B)

The notice must be published within 14 days after the most recently published written comment deadline. § 8052(7) Given the 8 day lead time required by the Secretary of State for the consolidated rulemaking ad, which occurs only on Wednesdays, this does not give the agency much time to review all the testimony and comments, conclude that substantial changes are needed, and reopen the record. Therefore, in a matter where the agency wants to reserve as much flexibility as possible, it is advisable to have a written comment period lasting more than the 10 day statutory minimum following a hearing. With a longer comment period following a hearing, say 30 days, the agency has more time to review the comments as they come in and to make a determination regarding the changes to the proposed rule that may be needed.

## **G. Preparation of Basis Statement and Response to Comments**

### **1. Basis Statement § 8052(5)**

Explain the factual and policy basis for the rule. § 8052(5)

Identify the underlying federal or state law or regulation which serves as the basis of the rule. § 8052(8)

Describe the information developed by the agency during the comment period concerning the purpose and operation of the rule, its fiscal impact, etc. §§ 8057-A(3) & (4)

### **2. Response to Comments § 8052(5)**

List names of persons whose comments were received, including through testimony at hearings, the organizations they represent and summaries of their comments.

If the same or similar comments or concerns about a specific issue were expressed by different persons or organizations, the agency may synthesize these comments and concerns to be addressed by the agency, listing the names of the persons who commented and the organizations they represent.

The agency shall address the specific comments and concerns expressed about any proposed rule and state its rationale for adopting any changes from the proposed rule, failing to adopt the suggested changes or drawing findings and recommendations that differ from those expressed about the proposed rule.

## **III. ADOPTION AND AG APPROVAL OF ROUTINE TECHNICAL RULE**

### **A. Deadlines for Adoption and AG approval §§ 8052(7)(A) & (B)**

Adoption within 120 days of the last written comment deadline  
AG approval within 150 days of the last written comment deadline

The 120 and 150 day deadlines start again when the agency reopens the rulemaking record for further written comments.

For a major substantive rule, the 120 day and 150 day deadlines apply to the provisional adoption of the rule, not final adoption. § 8072

**B. Adoption by Agency Decisionmakers §§ 8002(1-A) & (3-B)**

Final adoption of a routine technical rule occurs when the rule is signed by an agency head or voted on by a board or commission at a public meeting. 8002(1-A) & (3-B)

Record of vote: The agency must keep and make available for inspection a record of the vote of each member of the agency taken in the rulemaking proceedings. 8056(5)

**C. Approval by AAG as to Form and Legality 8052(7)(B), 8056(1)(A), 8056(6)**

AG review and approval of an adopted rule may not be performed by any person involved in the formulation or drafting of the proposed rule. 8056(6) Ask a colleague to review the rule.

**D. Notice of Adopted Rule to Secretary of State, Public and Legislature**

The agency submits to the Secretary of State a package consisting of the adopted rule, basis statement, response to comments, checklist, a copy of the fact sheet and a copy of any matter incorporated by reference 8053(5), 8053-A(4), 8056(1)(B), 8056-A, 8057-A(4)

This is the package that is sent to the AAG for review as to form and legality. If this is the first time the AAG has seen the rule, it is important for the AAG to consider each of the factors discussed earlier and all of the procedural requirements of the MAPA.

Minor errors may be corrected at this point if the 120 day deadline for adoption has not yet passed. The agency can re-adopt the rule as corrected and the AG can approve.

**E. Post-adoption**

Secretary of State correction of minor errors (nonsubstantive typographical, errors in numbering) 8056(10)

Electronic filing with Secretary of State 8056(7) & (8); 29 CMR 800

Publication of rules: Adopted rules must be published and made available to the public by the agency and the Secretary of State. 8056(1)(C), (2), (3), (7) & (9)

Note: agency must also publish forms, instructions and guidelines 8056(4)



**IV. EMERGENCY RULEMAKING FOR ROUTINE TECHNICAL RULES**  
§§ 8002(3-A), 8053-A, 8054, 8060(1)(F) & (6), 8064

This is a fast track procedure for rulemaking that is limited to situations where the agency determines that adherence to the time-consuming notice and comment requirements might result in dangerous delay, preventing rules from having the necessary effect. § 8054

Agency may vary from the normal rulemaking procedures to the minimum extent necessary. § 8054

Effective date: date the adopted emergency rule is filed with the Secretary of State. § 8002(3-A)

Fact Sheet to be provided to the Legislature within 10 days following adoption of emergency rules. § 8053-A

Need not list in regulatory agenda §§ 8060(6), 8064; but regulatory agenda must list all emergency rules adopted since the previous regulatory agenda due date. § 8060(1)(F)

Limited period of effectiveness: An emergency rule is in effect only for 90 days, after which the rule must be adopted through the regular rulemaking process. § 8054(3)

Existence of an emergency: The emergency rule shall include, with specificity, agency findings with respect to:

the existence of an emergency (immediate threat to public health, safety or general welfare)

no emergency when the primary cause of the emergency is delay caused by the agency involved

the extent to which the MAPA provisions governing notice and the acceptance of public comment must be modified in order to mitigate or alleviate the threat found

The agency's findings are subject to judicial review. § 8054(2)

**V. RULEMAKING INITIATED BY CITIZEN PETITION § 8055**

Any person may petition an agency for the adoption or modification of any rule, on a form designated by the agency for this purpose. §§ 8055(1) & (2)

The Secretary of State has a form agencies can use.

Within 60 days of receiving a citizen rulemaking petition, the agency must either deny the petition in writing, stating the reasons for the denial, or initiate rulemaking proceedings. § 8056(3)

The agency is required to initiate rulemaking proceedings within 60 days if:

Petition is submitted by 150 or more registered voters of the state; petition must be verified and certified by the Secretary of State prior to its presentation to the agency. § 8056(3)

A citizen rulemaking petition is defective unless it is accompanied by an actual rule text. The Secretary of State's form for citizen rulemaking petitions requires that the rule text be attached. This requirement is necessary in order to prevent citizens from asking agencies to initiate rulemaking on some broad subject which would then require the agency to begin the sometimes lengthy process of drafting a rule.

**VI. REQUIREMENT THAT AGENCIES ADOPT RULES OF PRACTICE**  
§ 8051

The MAPA requires each agency to adopt rules of practice governing:

Conduct of adjudicatory proceedings  
Licensing proceedings  
Rendering of advisory rulings – see § 9001 for required elements of rules regarding advisory rulings

... unless these types of rules are already provided by law. § 8051

If a rule of practice imposes a time limit or deadline for the filing of any papers on the agency or a party, the MAPA sets out standard provisions governing when the filing is complete. § 8051(1) & (2)

ADR: The first time after October 1, 1995 that an agency proposes to adopt or amend existing rules of practice, it shall also propose any rules reasonably necessary to promote the use of alternative dispute resolution techniques. § 8051

If the agency determines that it is unnecessary or inappropriate to propose ADR techniques into its rules of practice, it must state so in the notice of proposed rulemaking provided to the public and the Secretary of State, and again in the basis statement filed with the adopted rule. § 8051

## VII. JUDICIAL REVIEW OF RULES

### A. Collateral Attack in 80C appeals § 11007

Most court challenges to rules occur in the context of an 80C appeal of final agency action, in which an aggrieved party argues that the agency rule applied to him/her in an adjudicatory action is void or inapplicable.

“Rules” are generally open to collateral attack in an 80C appeal of final agency action. Gross v. Secretary of State, 562 A.2d 667 (Me. 1989); Fisher v. Dame, 433A.2d 366, 372 & n.8 (Me. 1981)

### B. Direct Challenge to Rule § 8058

Under section 8058 a plaintiff may bring a declaratory judgment action to seek review of an agency rule per se, absent a specific adjudicatory action. This is a direct challenge to the validity of the rule.

Under section 8058(1), an adopted rule may be declared invalid when:

1. The rule exceeds rulemaking authority of agency.
2. Agency has failed to comply with certain procedural requirements involving public participation (notice, hearing, comment requirements) § 8057(1) or (2)

Failure to adhere to the provisions of sections 8052(1),(2),(3),(4) & (7), 8053 and 8054 renders the rule void, except that insubstantial deviations from the requirements of section 8053 (involving notice) shall not invalidate the rule. § 8057(1)

Rules not approved by the AG and filed with the Secretary of State as required by sections 8056(1)(A) & (B) are void. § 8057(2)

3. Agency has failed to comply with any other procedural error if the error rises to the level that, if the error had not occurred, the rule would have likely been significantly different.
4. The rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

Remember the court’s deference to agency interpretation of both law it administers and own rules.

Under section 8058, a person may also bring a declaratory judgment action to seek review of the agency's refusal or failure to adopt a rule where the adoption of a rule is required by law. If the court finds that an agency has failed to adopt a rule as required by law, the court may issue such orders as are necessary and appropriate to remedy such failure. § 8058(1)

No exhaustion of administrative remedies required: Need not bring an action under 8058 in order to bring an 80C appeal of final agency action under section 11007. The failure to seek judicial review under section 8058 does not preclude judicial review of rules in any other civil or criminal proceedings. § 8058(2)

**VIII. MAJOR SUBSTANTIVE RULEMAKING §§ 8052(5)(C), 8071-8074**

**Maine Revised Statutes**  
**Title 7: AGRICULTURE AND ANIMALS**  
**Chapter 103: PRODUCTS CONTROLLED**

**§610. DETERMINATIONS; RULES; RESTRICTED USE PESTICIDES;  
UNIFORMITY**

**1. Determinations.** The board may by rule:

A. Declare as a pest any form of plant or animal life, except viruses, bacteria or other microorganisms on or in living human beings or other living animals, that is injurious to health or the environment; [2005, c. 2, §8 (COR).]

B. Determine whether pesticides registered under the authority of FIFRA, Section 24(c) are highly toxic to human beings. [2005, c. 620, §10 (AMD).]

C. Determine whether pesticides or quantities of substances contained in pesticides are injurious to the environment. The board must be guided by EPA regulations in this determination; and [2005, c. 620, §10 (AMD).]

D. Require any pesticide to be colored or discolored if it determines that such a requirement is feasible and is necessary for the protection of health and the environment. [2005, c. 620, §10 (AMD).]

[2005, c. 2, §8 (COR).]

**2. Rule-making powers.** The board may adopt other rules that it determines necessary to carry out the provisions of this subchapter. The board's rule-making authority includes, but is not limited to, rules:

A. Providing for the collection, examination and reporting of samples of pesticides or devices; [2005, c. 620, §10 (AMD).]

B. Providing for the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers; [2005, c. 620, §10 (AMD).]

C. Establishing requirements of all pesticides required to be registered under provisions of this subchapter, provided that such rules do not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA; [2005, c. 620, §10 (AMD).]

D. Specifying classes of devices that are subject to the provisions of section 605, subsection 1; [2005, c. 620, §10 (AMD).]

E. Governing pesticide application, including, but not limited to, rules:

(1) Designed to minimize pesticide drift to the maximum extent practicable under currently available technology;

(2) Prescribing procedures to be used for the application of pesticides, including the time, place, manner and method of that application;

(3) Restricting or prohibiting the use of pesticides in designated areas or during specified periods of time; and

(4) Prescribing tolerance levels for pesticide residues in off-target areas; [2005, c. 620, §10 (NEW).]

F. Prescribing the submission of information necessary for the board to undertake its responsibilities under this subchapter; [2005, c. 620, §10 (NEW).]

G. Prescribing requirements as necessary to carry out the provisions of section 607; [ 2005 , c . 620 , §10 (NEW) . ]

H. Governing the registration and the cancellation and suspension of registration of pesticides pursuant to section 609; and [ 2005 , c . 620 , §10 (NEW) . ]

I. For the purpose of achieving uniformity of requirements between the states and the Federal Government, provided the rules are in conformity with the primary pesticide standards, particularly as to labeling, registration requirements and criteria for classifying pesticides for restricted use, as established by EPA or other federal or state agencies. [ 2005 , c . 620 , §10 (NEW) . ]

[ 2005 , c . 620 , §10 (AMD) . ]

### **3. Uniformity of requirements; restricted uses.**

[ 2005 , c . 620 , §10 (RP) . ]

**4. Designation of rules.** Rules adopted under this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A unless otherwise specified or designated in accordance with subsection 5.

[ 2005 , c . 620 , §10 (NEW) . ]

**5. Review of regulatory agenda; designation as major substantive rules.** Notwithstanding Title 5, section 8060, subsection 2, the due date for the submission of a regulatory agenda by the board under section 8060 is January 15th. The board shall annually submit a regulatory agenda complying with Title 5, section 8060, subsection 1 to the joint standing committee of the Legislature having jurisdiction over pesticides regulation. The legislative committee of jurisdiction shall complete its review of the board's regulatory agenda no later than February 15th of each year. The committee may report out legislation no later than February 20th to designate any rule on the board's regulatory agenda as a major substantive rule subject to legislative review under Title 5, chapter 375, subchapter 2-A.

[ 2005 , c . 620 , §10 (NEW) . ]

**6. Major substantive rules.** Rules proposed for adoption by the board after July 1, 2007 that pertain to topics specified in paragraphs A to E are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules in effect on July 1, 2007 that pertain to topics specified in paragraphs A to E continue in effect, except that proposed amendments to those rules are major substantive rules and must be reviewed and approved prior to final adoption in accordance with Title 5, section 8072. Rules proposed for adoption by the board after March 1, 2008 that pertain to topics specified in paragraphs F and G are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules in effect on March 1, 2008 that pertain to topics specified in paragraph G continue in effect, except that proposed amendments to those rules are major substantive rules and must be reviewed and approved prior to final adoption in accordance with Title 5, section 8072. Topics governed by this subsection are:

A. Drift from outside spraying; [ 2007 , c . 145 , §1 (NEW) . ]

B. Notification requirements for outside spraying; [ 2007 , c . 145 , §1 (NEW) . ]

C. Pesticides applications in occupied buildings; [ 2007 , c . 145 , §1 (NEW) . ]

D. A notification registry for indoor applications of pesticides; [ 2007 , c . 484 , §2 (AMD) . ]

E. Buffers from shorelines for broadcast applications of pesticides; [ 2007 , c . 484 , §2 (AMD) . ]

F. Use of organophosphate pesticides adjacent to occupied areas; and [ 2007 , c . 484 , §2 (NEW) . ]

G. Distribution and use of plant-incorporated protectants. [2007, c. 484, §2 (NEW).]

[ 2007, c. 484, §2 (AMD) .]

SECTION HISTORY

1975, c. 382, §3 (NEW). 1977, c. 694, §§62,63 (AMD). 1989, c. 878, §E9 (AMD). RR 2005, c. 2, §8 (COR). 2005, c. 620, §10 (AMD). 2007, c. 145, §1 (AMD). 2007, c. 484, §2 (AMD).

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--



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III  
COMMISSIONER

HENRY JENNINGS  
DIRECTOR

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## MAINE BOARD OF PESTICIDES CONTROL POLICY RELATING TO THE MEDICAL ADVISORY COMMITTEE

Adopted August 1, 2008

### Background

The Maine Board of Pesticides Control recognizes the potential impact of some pesticides on human health, as well as the importance of protecting the beneficial uses of most pesticides when used carefully by responsible applicators. In order to separate potentially harmful chemicals from the essentially safe ones, the Board needs expert advisors, knowledgeable in the field of human health research or clinical practice, who can add their assessments to the economic and benefit recommendations of others prior to the Board initiating and ruling on pesticide restrictions.

These persons will be established as a volunteer Medical Advisory Committee to the Board of Pesticides Control.

### Membership

The MAC will be composed of three standing members and *ad hoc* members. One standing member will be the Board member appointed with medical expertise. This member will also chair the committee. The other two standing members will be the State Toxicologist or their designee, from the Environmental Toxicology Program at the Maine Centers for Disease Control and the Medical Director of the Northern New England Poison Center or their designee. In addition, up to six members may be chosen *ad hoc* with expertise specific to the issue at hand. The Board will solicit and review resumes for positions on the MAC.

The Board should appoint as members persons whose disciplines in aggregate are suitable for identifying and evaluating health hazards or risks. Members are not required to be physicians, but should be qualified professionals in a related health care or medical research discipline.

### Term

*Ad hoc* MAC members will be appointed by the Board for the duration of specific reviews.

### Meetings

The Committee will meet on an as needed basis at the invitation of the MAC chairman.

### Compensation

The MAC is voluntary and no compensation for services is available. However, all reasonable travel expenses will be reimbursed, subject the approval of the staff director, in a manner consistent with State Travel Policy.



# Proposed Administrative Consent Agreement

## Background Summary

11

**Subject:** Orkin Exterminating Company Inc.  
960 Riverside Street  
Portland, Maine 04103

**Date of Incident(s):** March 2021, and November 15, 2019.

**Background Narrative:** Orkin is a commercial spray contracting firm offering pest control services. Their Maine headquarters is in Portland. Company employees make commercial pesticide application throughout the state. Through following up on complaints and one self-reported incident, it was determined that the company was in violation of both Board regulations and state pesticide statutes.

Based on a review of Orkin's pesticide application records that an inspector collected on April 23, 2021 it was determined an unlicensed and unsupervised Orkin applicator made two commercial pesticide applications in March of 2021. The inspector returned to Orkin's Portland office on May 11, 2021 and collected additional pesticide application records for December 1, 2020 through March 31, 2021. A review of these records determined the same unlicensed and unsupervised Orkin applicator made three additional unlicensed and unsupervised commercial pesticide applications in March of 2021. The rate of application record for two rodenticide applications in March of 2021 was insufficient.

An Orkin service manager self-reported an incident involving a company applicator. The applicator was tasked with servicing an existing commercial account that consisted of checking and maintaining four exterior rodent bait stations around a building. The customer's dog consumed rodenticide from an unlocked, open bait station and had to have emergency veterinary care. A review of the application records for this November 15, 2019 application determined that the applicator falsified his application records for this account. Additionally, the bait stations were not checked and maintained. This application was inconsistent with the label directions and made in careless, negligent, and faulty manner.

### Summary of Violation(s):

- 22 M.R.S. 1471-D (1) (A)- No commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the Board, provided that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. CMR 01-026 Chapter 31 Section 1(A) III- Supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator
- CMR 01-026 Chapter 50, Section I(A).

I. Commercial agricultural producers and commercial applicators shall maintain pesticide application records consistent with paragraph II. below for a period of two years from the date of application. 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, and customer address (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 licensed applicator's name and certification number, the name of any noncertified applicator that made the application (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.

- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the Board (rate of application and site of application).
- U.S.C. § j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
- M.R.S. § 1471-D (8)(C), that it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment.

Rationale for Settlement: The major violations in this case, poisoning of the dog and sending out an uncertified/unlicensed/unsupervised applicator were foreseeable and preventable violations.

Attachments: Proposed Consent Agreement

JUN 21 2021

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

Ck# 12050415

Orkin Exterminating Company Inc. )  
960 Riverside Street )  
Portland, Maine 04103 )

ADMINISTRATIVE CONSENT AGREEMENT  
AND  
FINDINGS OF FACT

Amt \$2500 -  
Date: 6-17-21

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

The parties to this Agreement agree as follows:

1. That the Company is a commercial pest control company offering services in Maine with their Maine headquarters in Portland.
2. That on March 23, 2021, Board staff received a phone call alleging that the Company sent out unlicensed and unsupervised employees to make commercial pesticide applications in Maine during 2020 and 2021.
3. That in response to the call described in paragraph two, a Board inspector conducted a follow up inspection with Orkin's Regional Manager, John Tessier at the Company's Portland office on April 23, 2021.
4. That during the inspection described in paragraph three, the inspector collected some Company applicators' records for pesticide applications made in March of 2021.
5. That in reviewing the applicator records described in paragraph four, the Board inspector identified two residential pesticide applications made by the same unlicensed and unsupervised Company employee. One application was of Resolv Soft Bait rodenticide, and the other application was of Delta Dust Insecticide. Both applications were in the Town of Woolwich.
6. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
7. That a custom application as defined in 22 M.R.S. § 1471-C(5-A) includes any application of any pesticide under contract or for which compensation is received, or any application of a pesticide to a property open to use by the public.
8. That the two pesticide applications described in paragraph five constitute custom applications of pesticides in accordance with 22 M.R.S. § 1471-C (5-A).
9. That the circumstances described in paragraphs one through eight constitute two violations of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
10. That on May 11, 2021 a Board inspector returned to Orkin's Portland office and met with Beth Falkner, the branch manager in training to conduct a follow up inspection to collect additional applicator records from December 1, 2020 through March 31, 2021 to determine if additional unlicensed applications were made. The focus was on three Company employees who had recently tested and in some cases failed their exams to become certified during this time.

11. That from a review of the applicator records collected in paragraph ten, it was determined three additional unlicensed and unsupervised pesticide applications were made by the same Company employee who made the unlicensed applications described in paragraph five. Resolv Soft Bait rodenticide was applied at one location, and Delta Dust Insecticide at the other three locations.
12. That the circumstances described in paragraphs six, seven, ten and eleven constitute three additional violations of 22 M.R.S. 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
13. That commercial applicators making pesticide applications, must keep pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
14. That the Company's pesticide application records kept for two rodenticide applications described in paragraphs four, five, ten, and eleven were incomplete. The rate of application was not recorded sufficiently.
15. That the circumstances described in paragraphs four, five, ten, eleven, thirteen, and fourteen, constitute violations of CMR 01-026 Chapter 50, Section I(A).
16. That on November 18, 2019 the Company service manager self-reported an incident that involved one of their licensed commercial pesticide applicators. The service manager reported that applicator Kevin McCarron serviced four exterior rodent bait stations at a commercial account located at 8 Spiller Drive in Westbrook on November 15, 2019 and the family dog of the customer at this site consumed rodenticide from a bait station.
17. That in response to Orkin's incident report to the Board described in paragraph sixteen, a Board inspector conducted a follow up inspection with Orkin's service manager Kyle Kent on November 20, 2019.
18. That from the inspection described in paragraph seventeen, the inspector determined the service described in paragraph sixteen was supposed to include opening the locked bait stations and replenishing the bait stations with new Contrac with Lumitrack Bait Blox, making service notes inside the bait station, cleaning and removing deteriorated bait and locking the rebaited stations.
19. That based on evidence at the customer's treatment site documented by Orkin's service manager, and a review of the applicator's application log, the applicator falsified his application records. The applicator's application record indicated that he applied eight bait blocks to four bait stations on November 15, 2019, when in fact he did not apply any new bait to the bait stations, and old unconsumed bait was not removed and disposed of.
20. That commercial applicators making pesticide applications, must keep pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
21. That the circumstances described in paragraphs sixteen through nineteen, constitute a violation of CMR 01-026 Chapter 50, Section I(A).
22. That 7 U.S.C. § j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
23. That 22 M.R.S. § 1471-D (8)(C) states that it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment
24. That the Contrac with Lumitrack Bait Blox (EPA Reg. No 12455-133) label contains the following statements: "Do not expose children, pets, or nontarget animals to rodenticides". "These stations must be resistant to destruction by dogs and by children under six years of age, and must be used in a manner that prevents such children from

reaching into the bait compartments and reaching the bait". "It is a violation of Federal law to use this product in a manner inconsistent with its labeling".

25. That from the inspection described in paragraph seventeen, the inspector determined that the customer's pet dachshund was seen eating rodenticide from an open bait station. The dog was rushed to an emergency animal hospital and survived.
26. That the circumstances described in paragraphs twenty-two, twenty-four, and twenty-five constitute a violation of 7 U.S.C. § j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) require that pesticide applications be made in a manner consistent with product labels.
27. That the circumstance described in paragraphs twenty-three through twenty-five constitute a violation of 22 M.R.S. § 1471-D (8)(C), that it is unlawful to use or supervise the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment
28. That the Board has regulatory authority over the activities described herein.
29. That the Company expressly waives:
  - a. Notice of or opportunity for hearing;
  - b. Any and all further procedural steps before the Board; and
  - c. The making of any further findings of fact before the Board.
30. That this Agreement shall not become effective unless and until the Board accepts it.
31. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations -six referred to in paragraphs nine, twelve, fifteen, twenty-one, twenty -six and twenty-seven, the Company agrees to pay to the State of Maine the sum of \$2,500 (Please make checks payable to Treasurer, State of Maine).

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

ORKIN EXTERMINATING COMPANY INC.

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

Type or Print Name: John Tessier

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Megan Patterson, Director

APPROVED

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General

**From:** [Fish, Gary](#)  
**To:** [asher p](#)  
**Cc:** [Yurlina, Mary](#); [Patterson, Megan L](#); [Tomlinson, Mary E](#)  
**Subject:** RE: zoom meeting this week?  
**Date:** Tuesday, May 04, 2021 7:35:17 AM

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Hi Asher,

I suggest you work with Megan Patterson the BPC director and Mary Tomlinson, the Pesticide Registrar. I have cc'd both of them on this reply.

\*\*\*\*\*

Gary Fish  
State Horticulturist  
Maine Department of Agriculture, Conservation and Forestry  
28 State House Station  
Augusta, ME 04333-0028  
[gary.fish@maine.gov](mailto:gary.fish@maine.gov)  
207-287-7545  
<http://www.maine.gov/dacf/php/index.shtml>  
[www.yardscaping.org](http://www.yardscaping.org)  
[www.gotpests.org](http://www.gotpests.org)

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**From:** asher p <[asherputterman@googlemail.com](mailto:asherputterman@googlemail.com)>  
**Sent:** Monday, May 03, 2021 6:01 PM  
**To:** Fish, Gary <[Gary.Fish@maine.gov](mailto:Gary.Fish@maine.gov)>  
**Cc:** Yurlina, Mary <[Mary.Yurlina@maine.gov](mailto:Mary.Yurlina@maine.gov)>  
**Subject:** Re: zoom meeting this week?

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Gary,

I apologise, I may have been unclear in my email, this is in regard to the MMP program, although it seems there should be some unity with hemp too. My understanding was that there were some sort of lists within the hemp and adult use programs for allowable pesticides.

I knew you were with the board of pesticide control and now your cannabis experience, made me think of you. Is there someone youd recommend speaking to at the pesticide board? We'd definitely like professional input and recommendations. We are including folks from Mofga as the adult use standards seem to be pulling from there and wed love to steer this towards organics. Mostly just looking for some direction in pulling together facts from professionals in these fields. Just trying to push people towards some safe standard practices. Thank you for your time.

Asher

On Mon, May 3, 2021, 12:12 PM Fish, Gary <[Gary.Fish@maine.gov](mailto:Gary.Fish@maine.gov)> wrote:

Hi Asher,

On Tuesday the ACF Committee is holding a work session on LD 33. I will not be available that day because there is no way of knowing when they will take it up. We are very interested in helping growers make sound IPM decisions. Seems like you should also include someone from the Board of Pesticides Control. Unfortunately there will be no easy answers to this dilemma for some time. Until the research can be done, pesticides will not be labeled for use on hemp. Since hemp is not a major crop the pesticide manufacturers will not pursue the research needed to provide EPA with the registration data. They will rely on the IR-4 Program at our Universities to do the research.

\*\*\*\*\*

Gary Fish  
State Horticulturist  
Maine Department of Agriculture, Conservation and Forestry  
28 State House Station  
Augusta, ME 04333-0028  
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[www.gotpests.org](http://www.gotpests.org)

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**From:** asher p <[asherputterman@googlemail.com](mailto:asherputterman@googlemail.com)>  
**Sent:** Sunday, May 02, 2021 9:48 PM  
**To:** Fish, Gary <[Gary.Fish@maine.gov](mailto:Gary.Fish@maine.gov)>  
**Subject:** zoom meeting this week?

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Hi Gary,

My name is Asher Putterman, I'm a farmer in Warren. My wife and I have a cut flower farm, we also grow some Cannabis and were participants in the hemp program a couple years ago. I'm involved in helping develop cannabis policy at the state level and have been working with other caregivers and farmers in the state as well as several advocacy groups for several years. Currently we're trying to craft general ag practices, allowed pesticide lists, etc.. Your name came up the other day as we were discussing some options to get growers on a similar page of best practices. I personally appreciate all you did to advocate for hemp farmers in the early years of the hemp program. I was wondering if you could join myself, John Jemison, maybe Chris Grigsby and Arleigh Kraus on a quick zoom this week, maybe tues or thurs. to chat briefly about what directions we could go with some ideas we have. We would love to hear your thoughts and insights in the arena of developing an approved pesticides list as well as general ag practices.



We'd love to steer this emerging industry in the direction of adopting organic standards and were thinking of building our list from that side of regulation.

Sorry for the short notice, these issues have moved very quickly through the legislature. There's a work group on Monday and we hope to try to get some ideas clarified by the end of the week.

Thank you,

Asher Putterman

[asherputterman@gmail.com](mailto:asherputterman@gmail.com)



May 17, 2021

**By email**

Commissioner Amanda Beal  
Maine Department of Agriculture, Conservation and Forestry  
22 State House Station  
Augusta, ME 04333

Commissioner Melanie Loyzim  
Maine Department of Environmental Protection  
17 State House Station  
Augusta, Maine 04333

Director Megan Patterson  
Maine Board of Pesticides Control  
28 State House Station  
Augusta, ME 04333

**Re: Agency action needed to address PFAS contamination in pesticides**

Dear Commissioner Beal, Commissioner Loyzim, and Director Patterson,

We write to raise the urgent issue of pesticides contaminated with per- and polyfluoroalkyl substances (“PFAS”), toxic “forever chemicals.” Recent tests conducted by the U.S. Environmental Protection Agency (“EPA”) and Public Employees for Environmental Responsibility (“PEER”) have shown alarmingly high concentrations of PFAS in pesticide products registered and used in Maine. This will only further complicate the issue of PFAS contamination of water supplies and soils that have already impacted communities and public health across the state, as you well know. We ask that your agencies take the following steps to protect Maine’s residents and environment from exposure to PFAS in pesticides:

- (1) Prohibit or suspend distribution and use of pesticides shown to contain PFAS;
- (2) Develop and implement a plan to test all pesticide products registered in Maine for PFAS contamination, prioritizing the most commonly used pesticides in the state;
- (3) Develop and implement a comprehensive environmental testing program to test for PFAS in areas where PFAS-contaminated pesticides have been applied, with a focus on

comparing PFAS levels in such areas with PFAS levels in areas where contaminated pesticides have not been applied;

- (4) Coordinate with the Department of Health and Human Services and other state agencies to develop a comprehensive plan for investigating the issue of PFAS contamination in pesticides including identifying and addressing environmental contamination and potential health impacts; and
- (5) Schedule a meeting with the undersigned staff from CLF and PEER to discuss the issue further.

## **Overview of PFAS & Health Effects**

Per- and polyfluoroalkyl substances, known as PFAS, are human-made chemicals used in hundreds of products and industrial processes. PFAS are known as “forever chemicals” because they never fully break down in the environment. They are also highly mobile in water and bioaccumulative.

PFAS are toxic to humans in concentrations as small as parts per trillion (“ppt”).<sup>1</sup> These chemicals are associated with cancer and have been linked to growth, learning, and behavioral problems in infants and children; fertility and pregnancy problems, including pre-eclampsia; interference with natural human hormones; increased cholesterol; immune system problems; and, interference with liver, thyroid, and pancreatic function.<sup>2</sup> PFAS have been linked to increases in testicular and kidney cancer in human adults.<sup>3</sup>

Alarmingly, PFAS toxicity targets the immune system. Epidemiological studies have found decreased antibody response to vaccines,<sup>4</sup> and associations between blood serum PFAS levels and both immune system hypersensitivity and autoimmune disorders like asthma and ulcerative colitis.<sup>5</sup> The negative immune system effects of PFAS are extremely concerning given the ongoing COVID-19 pandemic. Recently, the Centers for Disease Control and Prevention released a “Statement on Potential Intersection between PFAS Exposure and COVID-19,” which recognized the “evidence from human and animal studies that PFAS exposure may reduce antibody responses to vaccines . . . and may reduce infectious disease resistance.”<sup>6</sup>

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<sup>1</sup> U.S. Department of Health & Human Services, Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls* (June 2018), at 5–6, <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 6; Vaughn Barry et al., *Perfluorooctanoic Acid (PFOA) Exposures and Incident Cancers among Adults Living Near a Chemical Plant*, 121 ENVIRONMENTAL HEALTH PERSPECTIVES 1313, 1313 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3855514/pdf/ehp.1306615.pdf>.

<sup>4</sup> Elsie M. Sunderland et. al., *A Review of the Pathways of Human Exposure to Poly- and Perfluoroalkyl Substances (PFASs) and Present Understanding of Health Effects*, 29 JOURNAL OF EXPOSURE SCIENCE AND ENVIRONMENTAL EPIDEMIOLOGY, no. 2, (2018), <https://pubmed.ncbi.nlm.nih.gov/30470793/>.

<sup>5</sup> See U.S. Environmental Protection Agency, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)*, 39 (May 2016), [https://www.epa.gov/sites/production/files/2016-05/documents/pfoa\\_health\\_advisory\\_final\\_508.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/pfoa_health_advisory_final_508.pdf).

<sup>6</sup> Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry, *Statement on Potential Intersection between PFAS Exposure and COVID-19*, <https://www.atsdr.cdc.gov/pfas/health-effects/index.html> (last visited Mar. 29, 2021).

## **PFAS Contamination in Pesticides**

In fall 2020, Public Employees for Environmental Responsibility (“PEER”) tested the insecticide Anvil 10 + 10 (“Anvil”) and discovered that it contains PFAS. Specifically, PEER’s tests found 250 ppt of perfluorooctanoic acid (“PFOA”), and 260 – 500 ppt of hexafluoropropylene oxide dimer acid (“HFPO-DA”), a “GenX” replacement for PFOA.<sup>7</sup> PFOA was phased out of production starting in 2006 because of serious concerns over its harmful effects on human health and the environment.<sup>8</sup> PEER notified the Massachusetts Department of Environmental Protection (“DEP”) and the U.S. Environmental Protection Agency (“EPA”). In December 2020, the *Boston Globe* reported on PEER’s findings, confirming that DEP had tested Anvil and found levels of multiple PFAS compounds that substantially exceed the state’s new limits on PFAS in drinking water.<sup>9</sup>

Anvil, manufactured by Clarke, is used widely for mosquito control. At least twenty-six states – including Maine – have used or purchased Anvil for mosquito control in recent years.<sup>10</sup> Clarke stores and ships Anvil and some of its other pesticides in a type of plastic container called high density polyethylene (“HDPE”). Clarke’s HDPE containers are fluorinated in order to make them less permeable and reactive.<sup>11</sup> EPA testing revealed that the fluorinated containers used to store Anvil contain eight different PFAS compounds – including one type of PFAS, PFOA, for which EPA has issued a health advisory<sup>12</sup> – at levels ranging from 20,000-50,000 parts per trillion.<sup>13</sup>

EPA’s theory is that the PFAS are likely leaching from the fluorinated containers into the pesticide stored inside.<sup>14</sup> If the fluorinated containers are the source of the PFAS in Anvil, this problem likely extends well beyond pesticides produced by Clarke. This could be a problem for

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<sup>7</sup> Public Employees for Environmental Responsibility, *Press Release: Aerially Sprayed Pesticide Contains PFAS* (December 1, 2020), <https://www.peer.org/aerially-sprayed-pesticide-contains-pfas/>.

<sup>8</sup> See U.S. Environmental Protection Agency, *Assessing and Managing Chemicals under TSCA, Fact Sheet: 2010/2015 PFOA Stewardship Program*, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/fact-sheet-20102015-pfoa-stewardship-program#what> (last visited Mar. 29, 2021).

<sup>9</sup> David Abel, *Toxic “Forever Chemicals” Found in Pesticide Used on Millions of Mass. Acres When Spraying for Mosquitoes*, BOSTON GLOBE, December 1, 2020, <https://www.bostonglobe.com/2020/12/01/metro/toxic-forever-chemicals-found-pesticide-used-millions-mass-acres-when-spraying-mosquitos/>.

<sup>10</sup> See U.S. Environmental Protection Agency, *EPA Takes Action to Investigate PFAS Contamination* (January 14, 2021) [https://www1.maine.gov/dacf/php/pesticides/documents2/bd\\_mtgs/mar21/6o-EPA-PFAS-files-combined.pdf](https://www1.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/mar21/6o-EPA-PFAS-files-combined.pdf) (listing states, including Maine, that purchased Anvil from Clarke between 2018 and 2020).

<sup>11</sup> U.S. Environmental Protection Agency, *Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide Packaging*, <https://www.epa.gov/pesticides/pfas-packaging> (last visited Mar. 29, 2021).

<sup>12</sup> See U.S. Environmental Protection Agency, *Per- and Polyfluoroalkyl Substances (PFAS) in Pesticide Packaging*, <https://www.epa.gov/pesticides/pfas-packaging> (last visited Mar. 29, 2021) (listing PFAS found in Anvil packaging); U.S. Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last visited May 4, 2021) (explaining lifetime health advisory for PFOA and PFOS at 70 ppt).

<sup>13</sup> U.S. Environmental Protection Agency, *Memorandum, EPA’s Analytical Chemistry Branch PFAS Testing: Rinses from Selected Fluorinated and Non-Fluorinated HDPE Containers*, 3 (March 4, 2021), [https://www.epa.gov/sites/production/files/2021-03/documents/results-of-rinsates-samples\\_03042021.pdf](https://www.epa.gov/sites/production/files/2021-03/documents/results-of-rinsates-samples_03042021.pdf).

<sup>14</sup> U.S. Environmental Protection Agency, *News Release: EPA Takes Action to Investigate PFAS Contamination*, (January 14, 2021), <https://www.epa.gov/newsreleases/epa-takes-action-investigate-pfas-contamination>.

hundreds or even thousands of pesticide products, as fluorination is a common treatment for pesticide packaging.<sup>15</sup>

Additional testing conducted by PEER has revealed PFAS contamination in the mosquito and tick control pesticide Mavrik Perimeter (“Mavrik”), manufactured by Zoecon, and the mosquito control pesticide Permanone 30–30 (“Permanone”), manufactured by Bayer Environmental Science.<sup>16</sup> Both Mavrik and Permanone are registered for use in Maine. PEER’s testing found PFAS present in Mavrik at a total concentration of 280 ppt.<sup>17</sup> In Permanone, PEER found 3,500 ppt of PFOA and 630 ppt of HFPO-DA.<sup>18</sup> For reference, EPA’s health advisory level for PFOA is only 70 ppt.<sup>19</sup> EPA has not yet taken action on the discovery of PFAS in Mavrik, Permanone, and other pesticides. Clearly, these results strongly suggest that PFAS contamination of pesticides is a widespread issue, affecting an unknown number of pesticide products. In addition to Anvil, Mavrik, and Permanone, PEER has discovered PFAS contamination in at least three other pesticides, which PEER will identify once it has completed final tests to confirm the PFAS contamination levels in those pesticides.

PEER’s recent findings also suggest that leaching from fluorinated containers is not the only source of PFAS contamination in pesticides. First, the Permanone PEER tested is sold in metal barrels, not the fluorinated HDPE barrels that Anvil is stored in.<sup>20</sup> Second, both the high levels of PFAS found in PEER’s most recent tests and the fact that the tests found different PFAS in many of the pesticides suggest that there is at least one other source of contamination in addition to fluorination of pesticide packaging. Possible sources include PFAS applied to the equipment used to manufacture or package the pesticides or PFAS that are intentionally added as “inert” ingredients to the pesticide products.

PFAS may be added to pesticides as inert ingredients without the public’s knowledge. Most pesticide manufacturers do not disclose the inert ingredients in their pesticide products. Inert

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<sup>15</sup> See, e.g., Office of the Indiana State Chemist and Seed Commissioner, Press Release, January 20, 2021, [https://www.oisc.purdue.edu/pesticide/pdf/pfas\\_in\\_pesticide\\_statement\\_012021.pdf](https://www.oisc.purdue.edu/pesticide/pdf/pfas_in_pesticide_statement_012021.pdf) (“According [to] the EPA, ‘it is estimated that roughly 20-30% of all rigid agriculture chemical packaging in North America sold into the crop protection market are packaged in fluorinated HDPE containers.’”); Jeremy C. Fox, *EPA Finds Toxic Compounds in Mosquito Spray Used in Mass.; Maker Will Change Packaging*, BOSTON GLOBE, January 14, 2021, <https://www.bostonglobe.com/2021/01/15/metro/epa-finds-toxic-compounds-mosquito-spray-used-mass-maker-will-change-packaging/> (“‘Fluorinated packaging is widely used by the agricultural industry for finished goods, including pesticides,’ [Clarke] said. ‘The potential for PFAS chemistry from the fluorinated packaging to leach into finished goods was unknown to Clarke.’”).

<sup>16</sup> E.A. Crunden and Ariel Wittenberg, *PFAS in Pesticides: “A Problem of Epic Proportions”*, E&E NEWS, March 5, 2021, <https://www.eenews.net/stories/1063726787>; E.A. Crunden and Ariel Wittenberg, *Common Mosquito Pesticide Packed with PFAS*, E&E NEWS, March 26, 2021, <https://www.eenews.net/stories/1063728605>.

<sup>17</sup> E.A. Crunden and Ariel Wittenberg, *PFAS in Pesticides: “A Problem of Epic Proportions”*, E&E NEWS, March 5, 2021, <https://www.eenews.net/stories/1063726787>.

<sup>18</sup> E.A. Crunden and Ariel Wittenberg, *Common Mosquito Pesticide Packed with PFAS*.

<sup>19</sup> U.S. Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last visited May 4, 2021).

<sup>20</sup> E.A. Crunden and Ariel Wittenberg, *Common Mosquito Pesticide Packed with PFAS*. It is possible that Permanone is stored in HDPE barrels at some point in the manufacturing or distribution process, but the fact that PFAS exists in the Permanone delivered in metal barrels raises doubts that leaching from HDPE barrels fully explains the PFAS contamination PEER discovered.

ingredients must be approved by EPA, but they are not publicly disclosed if manufacturers claim them as trade secrets under federal pesticide law.<sup>21</sup> EPA has approved a number of PFAS as permissible inert ingredients,<sup>22</sup> but generally only EPA and the manufacturers know which pesticides contain PFAS.

### **The Department of Environmental Protection’s Authority to Regulate PFAS in the Environment**

The Maine Department of Environmental Protection (“DEP”) has legal authority to protect residents and the environment from PFAS-contaminated pesticides. DEP has the broad authority to “prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State.”<sup>23</sup> DEP already tests for the presence of PFAS in certain public water systems; certain groundwater, surface water, and private water supplies; and fish tissue.<sup>24</sup> Testing for PFAS in areas where contaminated pesticides have been applied would be in line with DEP’s ongoing investigations of PFAS contamination in Maine’s environment.

Governor Mills has prioritized a “coordinated response” by state agencies, including DEP, to “study PFAS distribution, assess the potential environmental and health impacts of PFAS, and recommend effective strategies to reduce or eliminate . . . those impacts.”<sup>25</sup> As part of that coordinated effort, DEP participated in the Maine PFAS Task Force. In its final report, the Task Force recommended “[i]dentifying and reducing uses of PFAS,” “[i]dentifying and investigating PFAS contaminants in the environment,” and “[p]roviding safe drinking water.”<sup>26</sup> Specifically, the Task Force recommend accelerating “ongoing efforts to identify prioritized locations and to sample groundwater, surface water and soil for PFAS, analyze sampling results for patterns, and refine models of PFAS fate and transport.”<sup>27</sup>

Consistent with those recommendations, state lawmakers have introduced three bills addressing PFAS contamination in the environment. LD 129, as amended, directs the Commissioner of Health and Human Services to adopt rules setting a maximum contaminant level of 20 parts per trillion for six types of PFAS in Maine’s drinking water.<sup>28</sup> Recently, the Committee on Health and Human Services voted unanimously to advance LD 129 out of committee with amendments. A second bill, LD 1600 directs DEP to test certain areas of soil and groundwater for PFAS contamination.<sup>29</sup> And a third bill, LD 1503, would establish a comprehensive program

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<sup>21</sup> See 7. U.S.C. § 136h (permitting applicants for federal pesticide registration to declare certain information about the pesticide, including the identity of inert ingredients, as non-disclosable trade secrets).

<sup>22</sup> See Public Employees for Environmental Responsibility, *Press Release: Aerially Sprayed Pesticide Contains PFAS* (December 1, 2020), <https://www.peer.org/aerially-sprayed-pesticide-contains-pfas/>.

<sup>23</sup> Me. Rev. Stat. tit. 38, § 341-A; see also Exec. Order No. 5 FY 19/20 (March 6, 2019) (recognizing that Maine law charges state agencies, including DEP, with “protecting public health and the environment from the risks of human exposure to these substances”).

<sup>24</sup> See Maine PFAS Task Force, *Managing PFAS in Maine* (January 2020), 7, <https://www.maine.gov/pfastaskforce/materials/report/PFAS-Task-Force-Report-FINAL-Jan2020.pdf>.

<sup>25</sup> Exec. Order No. 5 FY 19/20 (March 6, 2019).

<sup>26</sup> Maine PFAS Task Force, *supra* note 24 at 2.

<sup>27</sup> *Id.*, 22.

<sup>28</sup> LD 129, 130th Me. Leg., 1st Reg. Sess. (2021).

<sup>29</sup> LD 1600, 130th Me. Leg., 1st Spec. Sess. (2021).

administered by DEP for identifying and prohibiting the sale of most products, including pesticides, that contain intentionally added PFAS.<sup>30</sup> Given the legislature’s concern over PFAS contamination in Maine’s water, soil, and products, DEP should act now to investigate the extent to which PFAS-contaminated pesticides are exacerbating this issue of pressing public health concern.

The high levels of PFAS found in the pesticides sampled emphasize the need for immediate action. EPA has established a health advisory at 70 ppt for two PFAS: PFOA and PFOS.<sup>31</sup> PEER’s tests of Anvil and Permanone discovered PFOA at concentrations of 250 and 3,500 ppt, respectively. These concentrations far exceed EPA’s health advisory level and underline the need for action to protect Maine’s waters and safeguard public health.

### **The Authority of the Board of Pesticides Control and the Department of Agriculture, Conservation and Forestry to Regulate PFAS in Pesticides**

Maine law grants the Board of Pesticides Control (“the Board”), in cooperation with the Department of Agriculture, Conservation and Forestry (“DACF”), broad authority to regulate pesticide distribution, use, and application within the state.<sup>32</sup> Under that authority, there are a range of actions that the Board and DACF could take to protect the environment and residents from exposure to PFAS-contaminated pesticides. Most significantly, the Board has the authority to cancel or suspend the state registration for any pesticide that “might cause unreasonable adverse effects on the environment,” or which poses “an imminent hazard.”<sup>33</sup>

In addition, the Board has the authority to adopt rules “that it determines necessary to carry out the provisions of [the Maine Pesticide Control Act],” including “[p]roviding for the collection, examination and reporting of samples of pesticides or devices” and “[p]roviding for the safe handling, transportation, storage, display, distribution and disposal of pesticides and their containers.”<sup>34</sup> The Board could exercise that authority to coordinate a program to test pesticides for PFAS contamination and to address the issue of PFAS leaching from fluorinated containers. The Board also has the authority to issue “stop sale, use or removal” orders to enforce Maine’s pesticide laws and protect Maine’s residents and environment.<sup>35</sup>

The Board and DACF would not be alone in exercising their authority over pesticides to protect people and the environment. For example, the New York Department of Environmental Conservation acted quickly after learning of the presence of PFAS in Anvil by “quarantine[ing]

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<sup>30</sup> LD 1503, 130th Me. Leg., 1st Spec. Sess. (2021).

<sup>31</sup> U.S. Environmental Protection Agency, *Drinking Water Health Advisories for PFOA and PFOS*, <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last visited May 4, 2021).

<sup>32</sup> *See, e.g.*, Me. Rev. Stat. tit. 22, § 1471-O (“The powers established under the Maine Pesticide Control Act of 1975 . . . shall be exercised by the Board of Pesticides Control.”); Me. Rev. Stat. tit. 22, § 1471-B (“The Commissioner of Agriculture, Conservation and Forestry shall provide the board with administrative services of the department, including assistance in the preparation of the board's budget.”).

<sup>33</sup> Me. Rev. Stat. tit. 7, § 609.

<sup>34</sup> Me. Rev. Stat. tit. 7, § 610.

<sup>35</sup> Me. Rev. Stat. tit. 7, § 612.

Anvil 10 + 10 products statewide” and “launching a comprehensive investigation into the universe and use of products stored in [fluorinated HDPE] containers.”<sup>36</sup>

It is critical that the Board and DACF act swiftly to protect residents and the environment. Waiting for EPA to address the issue puts residents and the environment at unnecessary risk. EPA has so far relied primarily on voluntary action by Clarke to recall Anvil shipped in fluorinated containers. According to EPA, Clarke has “voluntarily stopped shipment of any products in fluorinated HDPE containers and is conducting its own testing to confirm EPA results and product stability in un-fluorinated containers.”<sup>37</sup> EPA has “asked states with existing stock of [Anvil] distributed in fluorinated HDPE containers to discontinue use and hold until its final disposition is determined.”<sup>38</sup> EPA’s requests for voluntary action are insufficient to address the serious dangers posed by PFAS-contaminated pesticides. EPA’s actions do not apply to Mavrik, Permanone, or any other contaminated pesticide and do not apply to consumers, certified applicators, or others who may possess or apply PFAS-contaminated pesticides. The Board and DACF must act to protect residents and the environment.

### **CLF and PEER’s Requests**

Given the dangers PFAS pose to Maine’s residents and environment and the growing evidence of widespread PFAS contamination in pesticides, CLF and PEER reiterate our request that your agencies take the following actions:

- (1) Prohibit or suspend distribution and use of Anvil, Mavrik, Permanone, and any other pesticides shown to contain PFAS;
- (2) Develop and implement a plan to test all pesticide products registered in Maine for PFAS contamination, prioritizing the most commonly used pesticides in the state;
- (3) Develop and implement a comprehensive environmental testing program to test for PFAS in areas where PFAS-contaminated pesticides have been applied, with a focus on comparing PFAS levels in such areas with PFAS levels in areas where contaminated pesticides have not been applied;
- (4) Coordinate with the Department of Health and Human Services and other state agencies to develop a comprehensive plan for investigating the issue of PFAS contamination in pesticides, including identifying and addressing environmental contamination and potential health impacts; and
- (5) Schedule a meeting with the undersigned staff from CLF and PEER to discuss the issue further.

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<sup>36</sup> New York Department of Environmental Conservation, *Statement from New York State Department of Environmental Conservation Commissioner Basil Seggos on New Investigation of Potential PFAS Contamination* (January 15, 2021), <https://www.dec.ny.gov/press/122184.html>.

<sup>37</sup> U.S. Environmental Protection Agency, *News Release: EPA Takes Action to Investigate PFAS Contamination* (January 14, 2021), <https://www.epa.gov/newsreleases/epa-takes-action-investigate-pfas-contamination>.

<sup>38</sup> *Id.*



We appreciate your prompt attention to this urgent issue of public and environmental health and await your response.

Sincerely,



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MAY 21 2021

12c

May 18, 2021

Mr. Cam Lay

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

Dear Mr. Lay:

The purpose of this letter is to inform the Board of Pesticides Control that Versant Power plans to hydraulically spray fifty-three (53) electric substations and switching stations located in our Southern Operation Region (SOR), formally known as, Bangor Hydro Electric Company and forty-three (43) electric substations and switching stations located in our Northern Operation Region (NOR), formally known as, Maine Public Service Company.

The motorized hydraulic spraying will be conducted under a drift management plan that will be on file in Versant Power's place of business. This plan and associated spray operation will work under stringent parameters to minimize the possibility of any off-sight pesticide drift. Our intent is to spray these ninety-six (96) sites hydraulically this year and all our other locations will be sprayed with non-motorized low volume backpack sprayers. New sites may be added next year for potential hydraulic spraying.

The board will be notified every year with a new count of sites that will be hydraulically sprayed. As always, Versant Power will treat its transmission right of way (ROW) corridors using non-motorized low volume backpack sprayers.

If you have any questions please feel free to contact me at (207) 973-2862 or at [Jessica.Webb@VersantPower.com](mailto:Jessica.Webb@VersantPower.com).

Thank you,

Jessica Taylor Webb  
Supervisor, Vegetation Management

cc. Mark Chandler, Lucas Tree Ex. Co.  
cc. Neil Lyons, Versant Power

Bangor Hydro District — PO Box 932, Bangor, ME 04402-0932  
Maine Public District — PO Box 1209, Presque Isle, ME 04769-1209



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

12d

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

April 14, 2021

Gustave S. Nothstein  
Maine Department of Transportation, Bureau of Maintenance & Operations  
16 State House Station  
Augusta, Maine 04333-0016

**RE: Variance permit for CMR 01-026 Chapter 29, Maine Dept. of Transportation**

Dear Mr. Nothstein,

The Board of Pesticides Control considered your application for variance from Chapter 29. The variance is approved, with the condition that Streamline (EPA Reg. No. 352-848) not be applied within 25 feet of water. While the Board recognizes the importance of keeping vegetation out of the right of way areas, they are concerned about this particular pesticide and its relative toxicity to aquatic organisms.

Further, please note that Escort (EPA Reg. No. 352-439) is not currently registered in Maine. However, Escort XP (EPA Reg. No. 432-1549) is registered in Maine.

The Board authorizes the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2022, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
THINKFIRSTSPRAYLAST.ORG



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

12e

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

April 14, 2021

Brian Chateauvert  
RWC, Inc  
P.O. Box 876  
248 Lockhouse Rd.  
Westfield, MA 01086-0876

**RE: Variance permit for CMR 01-026 Chapter 29, RWC, Inc**

Dear Mr. Chateauvert,

The Board of Pesticides Control considered your application for variance from Chapter 29. The variance is approved, with the condition that Method 240SL (with active ingredient aminocyclopyrachlor) not be applied within 25 feet of water. While the Board recognizes the importance of keeping vegetation out of the right of way areas, they are concerned about this particular pesticide and its relative toxicity to aquatic organisms.

The Board authorizes the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2022, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
THINKFIRSTSPRAYLAST.ORG



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

12f

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

April 30, 2021

Don Weimann  
Asplundh Tree Expert Co.- Railroad Division  
740 County Rd 400  
Ironton, OH 45638

**RE: Variance permit for CMR 01-026 Chapter 29**

Dear Mr. Weimann:

This letter will serve as your variance permit for Section 6 of Chapter 29 for vegetation control along the St. Lawrence and Atlantic Railroad right of ways.

The Board has authorized the issuance of two-year permits for Chapter 29, therefore this permit is valid until December 31, 2022, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of significant changes, particularly if you plan to use a different product from those listed.

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

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



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



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

12g

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

April 14, 2021

Jesse Wheeler  
Acadia National Park  
PO Box 177  
Bar Harbor, Maine 04609

RE: Variance permit for CMR 01-026 Chapter 29, Acadia National Park

Dear Mr. Wheeler:

In 2013 the board adopted a policy allowing for the issuance of multi-year variances for the control of invasive species. In determining this policy, the Board emphasized the need for a long-term plan for re-vegetation of the site, and demonstration of knowledge of efficacy and appropriate practices—the goal being to ensure that the site is reverted to native species, and not made available for another invasive species.

This letter will serve as your Chapter 29 variance permit until December 31, 2023 for the treatment of invasive Japanese barberry, glossy buckthorn, bush honeysuckle, Asiatic bittersweet, and purple loosestrife at several locations within the boundary of Acadia National Park lands.

Please bear in mind that your permit is based upon adherence to the precautions listed in Section X of your variance application. Also, if it is determined that different products than those listed in Section V are needed, you must contact the Board first and get a new variance.

I will alert the Board at its June 4, 2021 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



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

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

—  
H.P. 161 - L.D. 226

**An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change**

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

Sec. 1. 38 MRSA §1612 is enacted to read:

**§1612. Hydrofluorocarbon use restrictions**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Aerosol propellant" means a liquefied or compressed gas, including, but not limited to, a cosolvent that is used in whole or in part to expel a liquid or other material from a self-pressurized container containing that liquid or other material or from a separate container.

B. "Air conditioning equipment" means chillers used exclusively for the comfort cooling of occupied spaces.

C. "Built-in household refrigerator or freezer" means a refrigerator, refrigerator-freezer or freezer designed for residential use that:

(1) Has 7.75 cubic feet, or 220 liters, or greater total refrigerated volume and 24 inches or less depth not including doors, handles and custom front panels;

(2) Has sides that are not finished and are not designed to be visible after installation;

(3) Is designed, intended and marketed exclusively to be installed completely encased by cabinetry or panels that are attached during installation and securely fastened to adjacent cabinetry, walls or flooring; and

(4) Is equipped with an integral factory-finished face or that accepts a custom front panel.

D. "Capital cost" means an expense incurred in the production of goods or in the rendering of services, including, but not limited to, the cost of engineering; the cost of the purchase and installation of components or systems and instrumentation; and contractor and construction fees.

E. "Centrifugal chiller" means air conditioning equipment that uses a centrifugal compressor in a vapor-compression refrigeration cycle and is designed for comfort cooling. "Centrifugal chiller" does not include air conditioning equipment used for industrial process cooling and refrigeration.

F. "Cold storage warehouse" means a cooled facility designed to store meat, produce, dairy products and other products prior to the delivery of those products to other locations for sale to the ultimate consumer.

G. "Compact household refrigerator or freezer" means a refrigerator, refrigerator-freezer or freezer designed for residential use that has a total refrigerated volume of less than 7.75 cubic feet or 220 liters.

H. "Component" means a part of a refrigeration system, including, but not limited to, a condensing unit, compressor, condenser, evaporator or receiver and all of the refrigeration system's connections and subassemblies without which the refrigeration system would not properly function or would be subject to failure.

I. "End use" means a process or class of specific applications within an industry sector.

J. "Flexible polyurethane" means a nonrigid synthetic foam containing polymers of urethane radicals, including, but not limited to, foam used in furniture, bedding, chair cushions and shoe soles.

K. "Foam" means a product with a cellular structure, or a substance used to produce a product with a cellular structure formed via a foaming process, including materials that undergo hardening via chemical reaction or phase transition.

L. "Heat pump" means a device designed for the comfort heating or cooling of residential or commercial spaces, whether air sourced, water sourced or ground sourced, including, but not limited to, a mini-split heat pump. "Heat pump" does not include air conditioning equipment.

M. "Household refrigerator or freezer" means a refrigerator, refrigerator-freezer, freezer or miscellaneous residential refrigeration appliance that is designed for residential use. "Household refrigerator or freezer" does not include a compact household refrigerator or freezer or a built-in household refrigerator or freezer.

N. "Integral skin polyurethane" means a self-skinning polyurethane foam, including, but not limited to, foam used in automobile steering wheels and dashboards.

O. "Light duty vehicle" has the same meaning as "car" or "light duty truck" as defined in Title 5, section 1812-E.

P. "Metered dose inhaler" means a device that delivers a measured amount of medication as a mist that an individual can inhale and that consists of a pressurized canister of medication in a case with a mouthpiece.

Q. "Miscellaneous residential refrigeration appliance" means a residential refrigeration appliance that is smaller than a refrigerator, refrigerator-freezer or freezer and that is designed for residential use, including, but not limited to, a cooler, a cooler compartment and a combination cooler-refrigeration or cooler-freezer product.

R. "New" means, with regard to a product or equipment:



(1) A product or equipment that is manufactured after the date of an applicable prohibition under subsection 2; or

(2) Equipment that is substantially expanded or modified after the date of an applicable prohibition under subsection 2 such that the capital cost of the expansion or modification exceeds 50% of the cost of replacing the entire system of which that equipment is a part.

S. "Phenolic insulation board" means phenolic insulation, including, but not limited to, insulation used for roofing and walls.

T. "Phenolic insulation bunstock" means phenolic insulation that is a large solid box-like structure that can be cut into specific custom lengths and shapes.

U. "Polyolefin" means foam sheets and tubes made of polyolefin.

V. "Polystyrene extruded boardstock and billet" means a foam formed from styrene polymers that is produced on extruding machines in the form of continuous foam slabs that can be cut and shaped into panels to be used for insulation of roofing, walls, flooring and pipes.

W. "Polystyrene extruded sheet" means polystyrene foam including foam used for packaging and buoyancy or flotation, including, but not limited to, foam made into food-service items, such as hinged polystyrene containers, food trays, plates, bowls and retail egg containers.

X. "Positive displacement chiller" means a vapor compression cycle chiller that uses a positive displacement compressor and is typically used for commercial comfort air conditioning. "Positive displacement chiller" does not include a chiller used for industrial process cooling and refrigeration.

Y. "Refrigerant gas" or "refrigerant" means a substance, including blends and mixtures of substances, that is used for heat transfer purposes.

Z. "Refrigerated food processing and dispensing equipment" means retail food refrigeration equipment that is designed to process and dispense food and beverages that are intended for immediate or near-immediate consumption, including, but not limited to, chilled and frozen beverages, ice cream and whipped cream. "Refrigerated food processing and dispensing equipment" does not include water coolers or units designed to exclusively cool and dispense water.

AA. "Refrigeration equipment" means a stationary device that is designed to contain and use refrigerant gas to establish or maintain colder than ambient temperatures in a confined space, including, but not limited to, retail food refrigeration equipment, a household refrigerator or freezer and a cold storage warehouse.

BB. "Remote condensing unit" means retail food refrigeration equipment that has a central condensing portion and may consist of one or more compressors, condensers or receivers assembled into a single unit, which may be located outside a retail sales area, including, but not limited to, such units that are commonly installed in convenience stores, specialty shops such as bakeries or butcher shops, supermarkets, restaurants and other locations where food is stored, served or sold.

CC. "Residential use" means use by an individual of a substance, or a product containing a substance, in or around a permanent or temporary household, during

recreation or for any personal use or enjoyment. "Residential use" does not include use within a household for commercial or medical applications or use in automobiles, watercraft or aircraft.

DD. "Retail food refrigeration equipment" means equipment designed to store and display chilled or frozen goods for commercial sale, including, but not limited to, stand-alone units, refrigerated food processing and dispensing equipment, remote condensing units, supermarket systems and vending machines.

EE. "Retrofit" means to replace the refrigerant contained in refrigeration equipment with a different refrigerant, including, but not limited to, any related modifications to the refrigeration equipment required to maintain its operation and reliability following refrigerant replacement.

FF. "Rigid polyurethane and polyisocyanurate laminated boardstock" means laminated board insulation made with polyurethane or polyisocyanurate foam, including, but not limited to, insulation for roofing and walls.

GG. "Rigid polyurethane appliance foam" means polyurethane insulation foam used in domestic appliances.

HH. "Rigid polyurethane high-pressure 2-component spray foam" means a liquid polyurethane foam system sold as 2 parts, such as an A side and a B side, in nonpressurized containers and that is field-applied or factory-applied in situ using high-pressure proportioning pumps, to 800 to 1,600 pounds per square inch, and an application gun to mix and dispense the chemical components.

II. "Rigid polyurethane in commercial refrigeration" means polyurethane insulation for pipes, walls and metal doors in retail food refrigeration equipment.

JJ. "Rigid polyurethane low-pressure 2-component spray foam" means a liquid polyurethane foam system sold as 2 parts, such as an A side and a B side, in containers that are pressurized to less than 250 pounds per square inch during manufacture for application without pumps and that is typically applied in situ relying upon a liquid blowing agent or gaseous blowing agent that also serves as a propellant.

KK. "Rigid polyurethane marine flotation foam" means buoyancy or flotation foam used in boat and ship manufacturing for both structural and flotation purposes.

LL. "Rigid polyurethane one-component foam sealant" means a polyurethane foam typically packaged in aerosol cans that is applied in situ using a gaseous blowing agent that also serves as a propellant for the aerosol formulation.

MM. "Rigid polyurethane sandwich panels" means a polyurethane foam sandwiched between outer structural layers and used to provide insulation in walls and doors, including for insulation in commercial refrigeration equipment and garage doors.

NN. "Rigid polyurethane slabstock" means a rigid closed-cell polyurethane foam formed into slabstock insulation for panels and pipes.

OO. "Stand-alone low-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures at or below 32 degrees Fahrenheit.

PP. "Stand-alone medium-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures above 32 degrees Fahrenheit.

QQ. "Stand-alone unit" means a retail refrigerator, freezer or reach-in cooler, whether open or with doors, that has fully integrated refrigeration components and a refrigeration circuit that may be completely brazed or welded and that is fully charged with refrigerant during manufacture and typically requires only an electricity supply to begin operation.

RR. "Substance" means any chemical or blend of chemicals intended for an end use listed in subsection 2 or regulated by the department by rule adopted pursuant to subsection 6.

SS. "Supermarket system" means a multiplex or centralized retail food refrigeration equipment system that is designed to cool or refrigerate and that operates using racks of compressors installed in a machinery room, including both a direct and an indirect system.

TT. "Use," with regard to a substance, includes, but is not limited to, consumption, incorporation or inclusion in a manufacturing process or product in the State; consumption for an end use in the State; and consumption, incorporation or inclusion in an intermediate application in the State, such as formulation or packaging for other subsequent applications. "Use" does not include residential use but does include manufacturing for the purpose of residential use.

UU. "Vending machine" means self-contained retail food refrigeration equipment that dispenses goods that must be kept cold or frozen.

**2. Prohibitions.** Except as provided in subsection 3 and in accordance with rules adopted by the department pursuant to this section, a person may not sell, lease, rent, install or enter into commerce in the State any product or equipment that uses or will use the following specified substances that are hydrofluorocarbons with high global warming potential for the following specified air conditioning, refrigeration, foam or aerosol propellant end uses.

A. Beginning January 1, 2022:

(1) For aerosol propellants in new products, the following substances are prohibited: HFC-125, HFC-134a, HFC-227ea and blends of HFC-227ea and HFC-134a;

(2) For new compact household refrigerators or freezers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03;

(3) For retrofitted supermarket systems, the following substances are prohibited: R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;

(4) For new supermarket systems, the following substances are prohibited: HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;

(5) For retrofitted remote condensing units, the following substances are prohibited: R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;

(6) For new remote condensing units, the following substances are prohibited: HFC-227ea, R-404A, R-407B, R-421B, R-422A, R-422C, R-422D, R-428A, R-434A and R-507A;

(7) For retrofitted stand-alone units, the following substances are prohibited: R-404A and R-507A;

(8) For new stand-alone medium-temperature units, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03;

(9) For new stand-alone low-temperature units, the following substances are prohibited: HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-428A, R-434A, R-437A, R-438A, R-507A and RS-44 (2003 formulation);

(10) For new refrigerated food processing and dispensing equipment, the following substances are prohibited: HFC-227ea, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-428A, R-434A, R-437A, R-438A, R-507A and RS-44 (2003 formulation);

(11) For retrofitted vending machines, the following substances are prohibited: R-404A and R-507A;

(12) For new rigid polyurethane and polyisocyanurate laminated boardstock, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances;

(13) For new flexible polyurethane, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances;

(14) For new integral skin polyurethane, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(15) For new polystyrene extruded sheet, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(16) For new phenolic insulation board and new phenolic insulation bunstock, the following substances are prohibited: HFC-143a, HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances;

(17) For new rigid polyurethane slabstock and other new rigid polyurethane, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(18) For new rigid polyurethane appliance foam, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(19) For new rigid polyurethane in commercial refrigeration and new rigid polyurethane sandwich panels, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(20) For new polyolefin, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(21) For new rigid polyurethane one-component foam sealants, the following substances are prohibited: HFC-134a, HFC-245fa and any blends of those substances; blends of HFC-365mfc with 4% or more HFC-245fa; commercial blends of HFC-365mfc with 7% to 13% HFC-227ea and the remainder HFC-365mfc; and Formacel TI;

(22) For new household refrigerators or freezers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03;

(23) For new vending machines, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-426A, R-437A, R-438A, R-507A, RS-24 (2002 formulation) and SP34E;

(24) For new rigid polyurethane marine flotation foam, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; and Formacel Z-6;

(25) For new polystyrene extruded boardstock and billet, the following substances are prohibited: HFC-134a, HFC-245fa, HFC-365mfc and any blends of those substances; Formacel TI; Formacel B; and Formacel Z-6;

(26) For new rigid polyurethane high-pressure 2-component spray foam, the following substances are prohibited: HFC-134a, HFC-245fa and any blends of those substances; blends of HFC-365mfc with 4% or more HFC-245fa; commercial blends of HFC-365mfc with 7% to 13% HFC-227ea and the remainder HFC-365mfc; and Formacel TI; and

(27) For new rigid polyurethane low-pressure 2-component spray foam, the following substances are prohibited: HFC-134a, HFC-245fa and any blends of those substances; blends of HFC-365mfc with 4% or more HFC-245fa; commercial blends of HFC-365mfc with 7% to 13% HFC-227ea and the remainder HFC-365mfc; and Formacel TI.

B. Beginning January 1, 2023:

(1) For new cold storage warehouses, the following substances are prohibited: HFC-227ea, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407A, R-407B, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-423A, R-424A, R-428A, R-434A, R-438A, R-507A and RS-44 (2003 composition); and

(2) For new built-in household refrigerators or freezers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, KDD6, R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-407F, R-410A, R-410B, R-417A, R-421A, R-421B, R-422A, R-422B, R-422C, R-422D, R-424A, R-426A, R-428A, R-434A, R-437A, R-438A, R-507A, RS-24 (2002 formulation), RS-44 (2003 formulation), SP34E and THR-03.

C. Beginning January 1, 2024:

(1) For new centrifugal chillers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, HFC-227ea, HFC-236fa, HFC-245fa, R-125/134a/600a (28.1/70/1.9), R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-423A, R-424A, R-434A, R-438A, R-507A, RS-44 (2003 composition) and THR-03; and

(2) For new positive displacement chillers, the following substances are prohibited: FOR12A, FOR12B, HFC-134a, HFC-227ea, KDD6, R-125/134a/600a (28.1/70/1.9), R-125/290/134a/600a (55.0/1.0/42.5/1.5), R-404A, R-407C, R-410A, R-410B, R-417A, R-421A, R-422B, R-422C, R-422D, R-424A, R-434A, R-437A, R-438A, R-507A, RS-44 (2003 composition), SP34E and THR-03.

**3. Exemptions.** In accordance with rules adopted by the department pursuant to this section, the following exemptions apply to the prohibitions in subsection 2.

A. Except in the case of retrofitted products or equipment regulated under this section, the prohibitions in this section do not apply to the use of a product or equipment regulated under this section that is acquired by a person prior to the date of an applicable prohibition under subsection 2 on the selling, leasing, renting, installing or entering into commerce in the State of that product or equipment.

B. A product or equipment regulated under this section that is manufactured prior to the date of an applicable prohibition under subsection 2 on the selling, leasing, renting, installing or entering into commerce in the State of that product or equipment may be sold in, imported into, exported from, distributed in, installed in and used in the State after that date.

C. The department may approve a waiver request submitted by a person to allow that person to sell, lease, rent, install or enter into commerce in the State for a period of not more than 2 years a product or equipment that is otherwise prohibited from sale, lease, rental, installation or entry into commerce pursuant to this section and the rules adopted pursuant to this section. The department shall adopt rules establishing the process by which a person may submit such a waiver request and the criteria to be used by the department in assessing and approving or denying such waiver requests. The department shall require a person submitting such a waiver request to pay to the department a reasonable fee to cover the department's costs in assessing and approving or denying such waiver requests.

D. Heat pumps are not subject to the prohibitions in this section.

E. The following end uses of the substance HFC-134a are not subject to the prohibitions in this section:

- (1) As an aerosol propellant in new cleaning products designed to remove grease, flux and other soils from electrical equipment;
- (2) For new refrigerant flushes;
- (3) In a new product for sensitivity testing of smoke detectors;
- (4) As a new lubricant or freeze spray for electrical equipment or electronics;
- (5) As a new spray for aircraft maintenance purposes;
- (6) As a new spray containing corrosion preventive compounds that is used in the maintenance of aircraft, electrical equipment, electronics or military equipment;
- (7) As a new pesticide for use near electrical wires, in aircraft, in total release insecticide foggers or in certified organic use pesticides for which the federal Environmental Protection Agency has specifically disallowed all other lower global warming potential propellants;
- (8) As a new mold release agent or mold cleaner;
- (9) As a new lubricant or cleaner for spinnerets for synthetic fabrics;
- (10) As a new duster spray specifically used for the removal of dust from photographic negatives, semiconductor chips, specimens under electron microscopes and energized electrical equipment;
- (11) As a new adhesive or sealant in canisters for commercial use;
- (12) As a new document preservation spray;
- (13) As a new wound care spray, new topical cooling spray for pain relief or new product for removing bandage adhesives from skin; and
- (14) As a new air conditioning refrigerant for military marine vessels when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.

F. The substances HFC-134a and HFC-227ea and blends of HFC-227ea and HFC-134a are not subject to the prohibitions in this section when used as an aerosol propellant for new metered dose inhalers approved by the United States Department of Health and Human Services, Food and Drug Administration for medical purposes.

G. The substances HFC-134a and R-404A are not subject to the prohibitions in this section when used as a new air conditioning refrigerant in spacecraft intended for human occupancy and related support equipment when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.

H. Until January 1, 2025, the prohibitions in this section do not apply to:

- (1) New foams, excluding rigid polyurethane one-component foam sealants, when used in space-related and aeronautics-related applications when the department has

determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements; and

(2) New rigid polyurethane high-pressure 2-component spray foams and new rigid polyurethane low-pressure 2-component spray foams, when used in military or space-related and aeronautics-related applications when the department has determined that reasonable efforts have been made to ascertain that other alternatives are not technically feasible due to performance or safety requirements.

I. Any product or equipment the end use of which is regulated under this section is exempt from the prohibitions in this section and the rules adopted pursuant to this section if such state regulation of the product or equipment is preempted by federal statute or regulation, so long as that federal preemption remains in effect.

**4. Record keeping.** In accordance with rules adopted by the department pursuant to this section, a person that manufactures for sale or entry into commerce in the State a product or equipment regulated under this section shall maintain for 5 years, and shall make available to the department upon request, records sufficient to demonstrate that the product or equipment does not contain any substances prohibited for an applicable end use regulated under this section or that the product or equipment is exempt from the prohibitions in this section pursuant to subsection 3.

**5. Venting prohibition.** In accordance with rules adopted by the department, a person may not intentionally or knowingly vent or otherwise release into the environment any prohibited substance identified pursuant to subsection 2 when maintaining, servicing, repairing or disposing of a product or equipment regulated under this section that was sold, leased, rented, installed or entered into commerce in the State prior to the date of an applicable prohibition under subsection 2 for that product or equipment. The prohibition under this subsection does not apply to a person who causes such a release if that release is de minimis and the person caused the release while engaged in a good faith attempt to recycle or recover the prohibited substance in a product or equipment regulated under this section.

**6. Rulemaking.** The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. In its initial adoption of rules to implement this section, the department may not regulate a substance or end use not specifically identified in this section. Subsequent to that initial adoption of rules, the department may amend its adopted rules to regulate or exempt, consistent with this section, substances that are hydrofluorocarbons with high global warming potential and air conditioning, refrigeration, foam or aerosol propellant end uses that are not specifically identified in this section or for other purposes consistent with this section.

B. Prior to adopting or amending rules to implement this section, the department shall consult with the Department of Public Safety, Office of the State Fire Marshal regarding the effects of any proposed rules on safety-related requirements and restrictions in state or local building codes and in other related state laws and rules.



C. The department may not adopt by rule a prohibition pursuant to this section that is applicable to new light duty vehicles unless a substantially similar prohibition has been adopted in another state and is in effect in that other state.

D. If, pursuant to the federal Clean Air Act, 42 United States Code, Section 7671k, the United States Environmental Protection Agency approves a hydrofluorocarbon blend with a global warming potential of 750 or less for foam blowing of polystyrene extruded boardstock and billet or rigid polyurethane low-pressure 2-component spray foam, the department may initiate rulemaking to amend its rules adopted pursuant to this section to address that federal action.

## STATE OF MAINE

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IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

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H.P. 576 - L.D. 771

**An Act To Amend the Laws Governing Wastewater Treatment Plant  
Operator Certification**

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

**Sec. 1. 5 MRSA §10051, sub-§1**, as amended by PL 2005, c. 65, Pt. C, §3, is further amended to read:

**1. Jurisdiction.** Except as provided in section 10004; Title 8, section 279-B; Title 10, section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; ~~and~~ Title 32, chapters 2-B, 62, 114 and 135; ~~and~~ Title 38, section 342, the District Court has exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency and has original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

**Sec. 2. 32 MRSA c. 62, headnote** is amended to read:

**CHAPTER 62**

**SEWAGE TREATMENT WASTEWATER TREATMENT PLANT OPERATORS**

**Sec. 3. 32 MRSA §4171**, as amended by PL 2017, c. 137, Pt. A, §1, is further amended to read:

**§4171. Definitions**

As used in this chapter, unless the context otherwise indicates, the following words ~~shall~~ have the following meanings.

**1. Board.** "Board" ~~shall mean~~ means the Board of Environmental Protection.

**2. Certificate.** "Certificate" ~~shall mean~~ means a certificate of competency issued by the ~~board~~ department stating that ~~the~~ an applicant has met the requirements for the specified operator classification.

~~2-A. Commissioner.~~ "Commissioner" means the Commissioner of Environmental Protection.

~~2-B. Department.~~ "Department" means the Department of Environmental Protection.

~~3. Operator.~~ "Operator" ~~shall mean the~~ means a person who has direct responsibility for the operation of any wastewater treatment plant serving a public purpose. The person who shall be certified shall be the person who has management responsibility over the plant. Shift operators or other is certified by the department as being competent to supervise, manage or operate a wastewater treatment plant and to ensure that a wastewater treatment plant is operated in accordance with state law, rules and licenses. Other employees under the supervision or management of the manager an operator in responsible charge may but need not be certified.

~~3-A. Operator in responsible charge.~~ "Operator in responsible charge" means an operator certified by the department, with a certificate in good standing, at or above the classification for the wastewater treatment plant in which the operator is designated by the wastewater treatment plant owner to be the operator responsible for supervising, managing or operating the wastewater treatment plant and ensuring that the wastewater treatment plant is operated in accordance with state law, rules and licenses.

~~4. Wastewater treatment plant.~~ "Wastewater treatment plant" ~~shall mean~~ means the facility or group of units provided for the treatment of wastewater, either or both sewage and industrial wastes, and for the reduction and handling of sewage removed from such wastes to meet the requirements of a state pollutant discharge elimination system permit or a waste discharge license under Title 38, section 413.

**Sec. 4. 32 MRS §4172, first ¶**, as amended by PL 1989, c. 890, Pt. A, §4 and affected by §40, is further amended to read:

The ~~commissioner~~ department shall ~~classify~~ establish the classifications for all wastewater treatment plants ~~actually used or intended for use by the public~~ with due regard to the size, type, character of wastewater to be treated and other physical conditions affecting those treatment plants and shall specify whether each classification requires the employment of an operator and the qualifications the operator in responsible charge must have to successfully manage and supervise successfully the operation of those facilities so as to protect the public health or prevent nuisance conditions or unlawful pollution conditions. A wastewater treatment plant required by its classification to employ an operator may employ more than one operator but must designate one operator as the operator in responsible charge for the facility.

**Sec. 5. 32 MRS §4173**, as amended by PL 1989, c. 890, Pt. A, §4 and affected by §40, is further amended to read:

**§4173. Certification**

The ~~commissioner~~ department shall certify persons as to their competency to successfully manage and supervise successfully the operation of wastewater treatment plants of each classification established pursuant to section 4172. All operators and operators in responsible charge must be certified, except that a certification is not required of for an operator or operator in responsible charge who is a registered licensed professional engineer in good standing.

**Sec. 6. 32 MRSA §4173-A**, as amended by PL 1987, c. 510, is further amended by amending the section headnote to read:

**§4173-A. ~~Continuing education~~ Educational program**

**Sec. 7. 32 MRSA §4173-A, sub-§1**, as enacted by PL 1983, c. 832, §1, is amended to read:

**1. Training.** The ~~Department of Environmental Protection~~ department shall administer ~~a continuing~~ an educational program for people engaged in water pollution control activities. This program shall ~~must~~ provide ~~advanced training in the technical and legal aspects of water pollution control, and coordinate and distribute information about all water pollution control training programs available in the State~~ training in the supervision, management and operation of sewage collection and wastewater treatment systems.

**Sec. 8. 32 MRSA §4173-A, sub-§3**, as amended by PL 1987, c. 510, is further amended to read:

**3. Self supporting.** This program shall ~~shall~~ must be self-supporting from fees, grants or other sources of revenue.

**Sec. 9. 32 MRSA §4174**, as amended by PL 2019, c. 315, §1, is further amended to read:

**§4174. Examination; criteria; standards**

The ~~commissioner~~ department shall ~~hold~~ provide for at least one examination each year for the purpose of examining candidates for certification pursuant to section 4173 at a time and place designated by the ~~commissioner~~ department.

The ~~Department of Environmental Protection~~ department shall establish the criteria and conditions for the classification of wastewater treatment plants ~~or systems, using as a basis the standards established by the New England Water Pollution Control Association.~~

The ~~Department of Environmental Protection~~ department shall establish ~~by rule~~ the qualifications, conditions and licensing standards and procedures for the certification of individuals to act as operators or operators in responsible charge.

The ~~Department of Environmental Protection~~ may allow an operator to review with department staff an operator certification test that the operator has completed in order to identify subject areas for which questions were answered incorrectly and further study is advisable.

**Sec. 10. 32 MRSA §4175**, as amended by PL 1999, c. 547, Pt. B, §§69 and 78 and affected by §80, is further amended to read:

**§4175. Certificates**

The ~~commissioner~~ department shall issue certificates attesting to the competency of individuals to act as operators or operators in responsible charge. The certificate shall ~~shall~~ must indicate the classification level of the ~~systems or~~ wastewater treatment plants for the operation of which the individual is qualified to act as an operator or an operator in responsible charge.

~~Certificates shall continue in effect unless revoked by the District Court expire after a term established by the department. The department shall establish the qualifications, conditions and licensing standards and procedures for renewal of certificates.~~

~~The District Court may revoke the certificate of an operator, in accordance with Title 4, chapter 5, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or that the operator is incompetent or unable properly to perform the operator's duties.~~

~~Operators whose certificates are invalidated under this section may be issued new certificates of a like classification provided appropriate proof of competency is presented to the commissioner.~~

~~This chapter shall may not be construed to affect or prevent the practice of any other legally recognized profession.~~

**Sec. 11. 32 MRS §4175-A** is enacted to read:

**§4175-A. Compliance and enforcement**

Notwithstanding Title 5, section 10051, after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the department may revoke or suspend the certificate of an operator or operator in responsible charge when it finds that the person has:

- 1. Practiced fraud or deception.** Practiced fraud or deception;
- 2. Failed to use reasonable care or judgment or properly apply knowledge.** Failed to use reasonable care or judgment or to apply the requisite knowledge, ability or ethical standards in the performance of the person's required duties;
- 3. Failed to operate in compliance.** Failed to manage or supervise a wastewater treatment plant in a manner that ensures that the wastewater treatment plant is operated in compliance with state law, rules and licenses;
- 4. Violated law, rules, licenses or standards.** Violated state law, rules or licenses or ethical standards as set forth in department rules;
- 5. Lost or did not possess competency.** Lost the competency required for certification or did not possess the competency required at the time of certification; or
- 6. Unable to properly perform.** Demonstrated that the person is unable to properly perform the person's required duties.

An operator or operator in responsible charge whose certificate is revoked under this section may apply for reinstatement of a certification of a like classification if appropriate proof of competency is presented to the department. The department may establish a more stringent proof of competency and procedures for the reinstatement of certification for an operator or operator in responsible charge whose certificate has been revoked.

**Sec. 12. 32 MRS §4175-B** is enacted to read:

**§4175-B. Department contracting**

The department may contract for or otherwise employ or retain services to fulfill the department's duties under this chapter, including for the administration of an educational

program pursuant to section 4173-A, the provision of examinations pursuant to section 4174 and the issuance of certificates pursuant to section 4175.

**Sec. 13. 32 MRSA §4176, first ¶**, as amended by PL 1989, c. 890, Pt. A, §6 and affected by §40, is further amended to read:

The ~~commissioner~~ department, upon application therefor, may issue a certificate, without examination, in a comparable classification, to any person who holds a certificate in any state, territory or possession of the United States or any country, ~~providing if~~ the requirements for certification of operators under which the person's certificate was issued do not conflict with this chapter and are of a standard not lower than that specified by rules adopted under this chapter. The issuance of a certificate without examination does not exempt a person from any other requirement of an operator or an operator in responsible charge aside from the examination requirement. A person so certified is subject to disciplinary action under section 4175-A.

**Sec. 14. 32 MRSA §4177**, as amended by PL 1973, c. 625, §223, is repealed.

**Sec. 15. 32 MRSA §4178, first ¶**, as enacted by PL 1969, c. 237, is amended to read:

This chapter ~~shall apply only to conventional wastewater treatment plants which are separate and apart from other facilities~~ applies to all operators and operators in responsible charge and any wastewater treatment plant that is used to meet the requirements of a state pollutant discharge elimination system permit or waste discharge license under Title 38, section 413.

**Sec. 16. 32 MRSA §4179, first ¶**, as amended by PL 2019, c. 315, §2, is further amended to read:

The ~~Department of Environmental Protection~~ department shall adopt rules to administer this chapter that include, but are not limited to, provisions establishing the basis for classification of wastewater treatment plants in accordance with section 4172 and provisions establishing requirements for examinations, qualifications and ethical standards required of candidates to obtain certification and procedures for examination of candidates. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 17. 32 MRSA §4181, first ¶**, as amended by PL 1989, c. 890, Pt. A, §8 and affected by §40, is further amended to read:

It is unlawful for any person, firm or corporation, ~~both either municipal and or private,~~ to operate a wastewater treatment plant unless the competency of the operator or operator in responsible charge is certified to by the ~~commissioner~~ department under this chapter. It is unlawful for any person to perform the duties of an operator, ~~as defined,~~ or operator in responsible charge without being duly certified under this chapter. The ~~commissioner~~ department may further grant a waiver for a period not exceeding one year for the operation of a wastewater treatment plant serving not more than 500 services in the event the wastewater treatment plant can demonstrate, to the department's satisfaction, that the certification requirements cannot be met.

**Sec. 18. 32 MRSA §4182, first ¶**, as enacted by PL 1969, c. 237, is amended to read:

Any person, firm or corporation, ~~both either~~ either municipal ~~and or~~ or private, violating any provision of this chapter or the rules ~~and regulations~~ adopted ~~thereunder~~ pursuant to this chapter is guilty of a ~~misdemeanor~~ Class E crime and may also be subject to civil enforcement actions under Title 38, section 347-A and civil monetary penalties as established under Title 38, section 349. Each day of operation in violation of this chapter or any rules ~~and regulations~~ adopted ~~thereunder shall constitute~~ pursuant to this chapter constitutes a separate offense.

## STATE OF MAINE

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IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

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H.P. 837 - L.D. 1159

**An Act To Amend the Membership Requirements of the Board of Pesticides Control**

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

**Sec. 1. 22 MRSA §1471-B, sub-§1**, as amended by PL 2019, c. 192, §1, is further amended to read:

**1. Board established.** The Board of Pesticides Control is established by Title 5, section 12004-D, subsection 3, within the Department of Agriculture, Conservation and Forestry. Except as provided in this chapter, the board must be composed of 7 members, appointed by the Governor, subject to approval by the joint standing committee of the Legislature having jurisdiction over agricultural matters and confirmation by the Senate. To provide the knowledge and experience necessary for carrying out the duties of the board, the board must consist of the following members: one person with practical experience and knowledge regarding the agricultural use of chemicals; one person who has practical experience and knowledge regarding the use of chemicals in forest management; one person from the medical community; a scientist from the University of Maine System specializing in agronomy, entomology or plant pathology having practical experience and expertise in integrated pest management; one commercial applicator; and 2 persons appointed to represent the public. ~~One of the~~ The 2 members appointed to represent the public must have ~~practical experience and knowledge of methods of sustainable management of indoor or outdoor pests~~ a demonstrated interest in environmental protection. A member appointed to represent the public may not have a financial interest in activities regulated by the board and may not be an individual who has been or is licensed, certified or given a permit in this State or any other state for activities regulated by the board. The term must be for 4 years, except that of the initial appointees, 2 serve 4-year terms, 2 serve 3-year terms, 2 serve 2-year terms and one serves a one-year term. Any vacancy must be filled by an appointment for the remainder of the unexpired term.

**Sec. 2. Transition.** The Governor shall appoint members of the board representing the public who meet the criteria of this Act within 60 days of the effective date of this Act. Notwithstanding the term limits of members of the board in section 1, a member of the board representing the public who does not meet the criteria for a member representing the



public under section 1 serving on the effective date of this Act serves until the member's replacement has been confirmed by the Senate.