



PAUL R. LEPAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

November 13, 2015

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

AGENDA

8:30 AM

1. Introductions of Board and Staff
2. Minutes of the August 28, 2015, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

3. Draft Response to the Legislative Committee on Agriculture, Conservation and Forestry Concerning Rules for Public Parks and Playgrounds

On July 16, 2015, the Joint Standing Committee on Agriculture, Conservation and Forestry of the 127th Legislature sent a letter to the Board requesting a review of its rules “in order to determine whether the standards for pesticide application and public notification for public parks and playgrounds should be consistent with the standards that have been established for pesticide application and public notification in school buildings and on school grounds under CMR 01-026, Chapter 27.” The Board discussed the issue at the August 28 meeting and directed the staff to draft a response based on that discussion. The Board will now discuss the draft.

Presentation By: Henry Jennings
Director

Action Needed: Review the draft response to the Joint Standing Committee on Agriculture, Conservation and Forestry and provide guidance to the staff

4. Letters from Various Constituents

Paul Schlein submitted comments and suggestions to the Board as part of the July 10, 2015 meeting packet in reaction to a letter from Justin Nichols recommending changes to the Board’s posting requirements. Schlein later submitted a revised version of his letter and asked that the Board review it. Related letters supporting Schlein’s views were also received from Maine Organic Farmers and Gardeners Association (MOFGA), Friends of Casco Bay, and Natural Resources Council of Maine (NRCM). The Board will now review and discuss the letters.

Presentation By: Henry Jennings
Director

Action Needed: Discuss the letters received from constituents and determine what, if any, action is required

5. Review of BPC Budget

Board Chair Deven Morrill suggested that a review of the Board's annual operating budget might be timely since the Board is reviewing suggestions for additional educational efforts and because questions have arisen about the costs of pesticide continuing education programs.

Presentation By: Henry Jennings
Director

Action Needed: Review the BPC budget

6. Consideration of a Consent Agreement with JBI Helicopters, Inc. of Exeter, New Hampshire

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involves drift from an agricultural pesticide application that impacted a neighboring residential property.

Presentation By: Raymond Connors
Manager of Compliance

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

7. Other Old or New Business

- a. Summary of Obsolete Pesticide Collection
- b. Update on transition plan to three year license/certification cycle
- c. Staff Update
- d. Variance Permit for control of Japanese knotweed in Minot
- e. Variance Permit for control of invasive plants in ROWs in Falmouth
- e. Other

8. Schedule of Future Meetings

December 18, 2015, and January 13, 2016 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

9. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Anne Chamberlain, at the Board's office or anne.chamberlain@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.



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BOARD OF PESTICIDES CONTROL

August 28, 2015

Science Building, Room 102, University of Maine at Machias, Machias, Maine

MINUTES

9:00 AM

Present: Bohlen, Eckert, Flewelling, Granger, Morrill

1. Introductions of Board and Staff

- The Board and Staff introduced themselves
- Staff Present: Chamberlain, Fish, Jennings, Nelson, Patterson, Tomlinson

2. Minutes of the July 10, 2015, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

Bohlen suggested that the 6th bullet on page 5 should be “They are talking about it.” And that in the first bullet on page 9 bisulfate should be bisulfate.

- **Granger/Bohlen: Moved and seconded to adopt as amended.**
- **In Favor: Unanimous**

3. Review of the Hearing Record and Potential Adoption of Amendments to Chapters 31, 34, and 35

(Note: No additional public comments may be accepted at this time.)

On June 17, 2015, a Notice of Agency Rulemaking Proposal was published in Maine’s daily newspapers, opening the comment period on the proposed amendments to Chapters 31, 34, and 35. A public hearing was held on July 10, 2015, at the Deering Building. Three comments were received regarding the amendments. The Board will now review the comments and the responses drafted by the staff; the changes to the proposed amendments; the basis statements; and the statements of impact on small businesses; and determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation by: Henry Jennings
Director

Action Needed: Review the hearing record and provide direction to the staff on further refinements or adopt the amendments

- **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 31 as written.**
- **In Favor: Unanimous**

- **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 34 as written.**
- **In Favor: Unanimous**

- **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 35 as written.**
- **In Favor: Unanimous**

4. Letter from the Legislative Committee on Agriculture, Conservation and Forestry

On July 16, 2015, the Joint Standing Committee on Agriculture, Conservation and Forestry of the 127th Legislature sent a letter to the Board requesting a review of its rules “in order to determine whether the standards for pesticide application and public notification for public parks and playgrounds should be consistent with the standards that have been established for pesticide application and public notification in school buildings and on school grounds under CMR 01-026, Chapter 27.” The Board will now consider that request and identify an appropriate response.

Presentation By: Henry Jennings
Director

Action Needed: Review the request from the Joint Standing Committee on Agriculture, Conservation and Forestry and provide guidance to the staff

- Jennings explained that LD 1098, which was introduced during the last legislative session, attempted to apply the school rule to public parks and playgrounds. It did not pass, but the ACF sent a letter requesting more information (attached). The bill included daycares also, but for some reason that was not included in the letter. From a practical standpoint there’s no way to be consistent. At a school, by and large, you know the population that will be present; there is no way to know at a park. At a school, if there were a high-risk application while school was in session, then notice goes out individually to parents and staff; there’s no way to do that at a park. For low risk applications, signs are required anyway, which are consistent with the signs being used on school grounds. Signs have to be posted ahead of applications and stay up 48 hours after. As far as standards for application, it is a difficult fit. In a school, someone is there all the time that can pay attention, use IPM, maintain a log and apply pesticides when circumstances dictate. With parks and playgrounds, nobody occupies those sites on a daily basis that could log in pest information. It would be difficult to implement a parallel system with parks and playgrounds because there is no parallel institutional infrastructure in place. State law already requires that pesticide applications be conducted by a commercial applicator with the correct category. Does the Board see any part of Chapter 27 that can be applied to parks and playgrounds? The Board could require some of the language designed to make sure applicators are using IPM and lowest effective rate strategies. But such sites generally are not staffed on a regular basis so there is no one there to conduct pest monitoring and keep records.

Some pieces could be assigned to the applicator; many would argue that they're doing these things already. The notification piece does not fit well. Again, the Board could borrow a couple of paragraphs from Section 5 of Chapter 27 about minimizing risk, but who would be responsible for them? There is no downside in emphasizing to applicators that minimizing risk to humans is important. The Board could also address the concern through education (rather than rulemaking). We simply need to respond to the ACF Committee by February 1.

- Flewelling asked whether “public parks” includes state parks. Jennings said that was not defined in the letter, so it would be up to the Board to decide that.
- Eckert noted that some town owned lands, if used regularly by schools, are covered by Chapter 27. Lots of other parks are town owned, state owned or privately owned.
- Bohlen said that the Legislature doesn't understand what's in the school rule. They think something magical is happening, but the IPM requirement is the only thing that can be moved over. Chapter 27 requires an institutional framework. Who would take on the role of an IPM Coordinator for these other properties? A significant outcome of Chapter 27 is that pesticide applications are intentionally timed for when students aren't around. There is no practical way to achieve this with parks and playgrounds. Notification to families can't be done. Posting requirements for these sites are already covered by Chapter 28. The school rule notification requirement pushes schools to do applications when kids aren't around. Bohlen suggested going back to Legislature and explaining that Chapter 27 is built around an institutional infrastructure with a well-documented population. What would the institutional framework be for parks and playgrounds? It would require a completely different approach to regulate pesticide use on parks and playgrounds: it's not a trivial matter.
- Morrill said that we're really not talking about Chapter 27, really talking about Chapter 28, which covers notification provisions. Shows a lack of understanding by the Legislature on where these things fit. Rules were crafted to capture all kinds of applications. There is a notification provision. There is a requirement that applications be done by commercial applicators. Daycares were brought up, not included here. Eckert opined that daycares may have been left off because they are so varied in size and organization; homes and larger institutions. Which ones would have to be covered, probably thousands. Jennings noted that much of the intent of Chapter 27 is already covered in Chapter 26 and the licensing and notification requirements. The only thing not covered is pushing IPM a little harder outdoors.
- Granger noted that Representative Chipman is copied, so presumably he was the one with the issue. Does anyone know what his issue is? Jennings responded that he has spoken to Chipman a number of times. Chipman had a constituent who had children that went into a park and didn't see the sign until they were leaving. He made a pledge to bring the issue forward. He believed that there was a seven-day re-entry interval required by Chapter 27, so he thought it should also apply to parks and playgrounds.
- Bohlen said that it might be possible to create some kind of equivalent to an IPM Coordinator but it wouldn't be trivial. He wasn't sure how to construct language like that without creating a new rule. He suggested responding to the Legislature by indicating that most of Chapter 27 wouldn't apply well because it revolves around an institutional infrastructure. There may be a few things that could be done, but the Board would benefit from a clearer declaration of intent from the Legislature.
- Eckert suggested including what is already covered in other rules. They are not organized in one document. She can understand how you could require IPM as part of the job at a large parks and recreation department, but she's not sure how it would work in a small town.
- Morrill commented that people focus on turf, but if you look back on the hemlock woolly adelgid, the state did spraying in towns. Look ahead 10 years, what's going to happen with the Emerald Ash Borer or the Asian Long-horned Beetle? The idea of IPM is great, but you're going to attack those kinds of pests with the best thing you've got immediately. He's not sure there is a point person similar to an IPM coordinator. Morrill looks at these types of letters as

an opportunity to do some education to and for the Legislature on what's already in place. We don't want to suggest something that's going to be very difficult to implement. Morrill suggests a focus on education. We just addressed an issue with sidewalks, and gave applicators options.

- Bohlen said that he likes the idea of an educational opportunity. Think about Deering Oaks Park, which is a classic example of what we're talking about. It might be worth conducting a case study; here are the things that might be applied at this park and here's what could happen. Posting doesn't always happen correctly, but be clear on what this looks like. The goal is clearly protecting kids. Bohlen is not suggesting there aren't ways to do that. The question is how best to achieve the goal; borrowing from the school rule doesn't appear to be a useful way to advance the goal.
- Katie Green asked if there is a way for the notification registry to include public places; instead of limited to 250 feet from home, include all areas open to the public in the town.
- Granger thought that this might open a Pandora's Box—there will be people who want to be notified of other applications in other areas. It would set a precedent.
- Eckert thought that Bohlen's idea of a case study is a good one. You can't post every access point. Morrill said that they're not doing any spraying in Deering Oaks Park.
- Eckert suggested education for Parks and Recreation employees. Jennings noted that they already have to be licensed commercial applicators. Most municipalities aren't big enough to have a person in charge of this. They already have to use a commercial applicator. The Board could expand the IPM expectations for parks and playgrounds.
- Granger agreed that the education component belongs with applicators, not someone who is asked to become educated because they are given an oversight role.
- Morrill suggested that the response to the Legislature include what is already covered in rule. Beyond that, look back to what the Board did for sidewalks, ROWs; if it doesn't seem like posting is going to cover it, extend the notice to a town list serve or something else.
- Bohlen said we should be cautious about making any suggestions about what a solution to this dilemma would look like. Ideas will be generated anyway. It's probably prudent to simply lay out what already exists. We're not going to come up with something as a Board without a methodical hearing and public input process that we can point to. The Board should be careful conveying too much. Just explain what exists now and the differences between schools and parks.
- Morrill said that the response should be based on what is asked in the letter. What are they asking? Here's the answer and why.
 - **Consensus reached that staff draft a letter based on the discussion, explaining why using Chapter 27 as a guide won't work very well. Include what aspects already apply because of other rules.**
- Tim Hobbs commented that he was present at the hearing and there was a lot of discussion about the feeling that children aren't being protected in parks. Tell them what applies; tell them what rules are in place. Don't leave them with a problem to solve.
- Bohlen replied that there is a problem that needs solving. Clearly there are people who feel that what's in effect isn't sufficient.

5. Other Old or New Business

- a. Variance Permit for control of phragmites on Chebeague Island
- b. Variance Permit for control of poison ivy in Windham
- c. Variance Permit for control of phragmites in roadside ditches along forest roads

d. Variance Permit for control of phragmites in York

e. Other

- Flewelling asked how schools are doing. Heidi Nelson, pesticide inspector for Eastern Maine, replied that she has visited all the schools in her district and met with the IPM Coordinators. They all have IPM Coordinators. They are conscientious and trying to do a good job. They don't have money so they aren't doing much in the way of applications anyway.
- Jennings noted that there is a bit of diversity. Nelson has her corner of the state nailed down. In southern Maine, where most of the people live, and where there are a lot of schools, it's more of a challenge to keep up. Field personnel got the message that we need to press schools to be in compliance. The rule has been effective in getting the message out that schools can't be out there spraying. Work is being done by licensed applicators, they get the emails, go to the seminars; they know what's required, and by and large they are doing a good job of complying with the standards. Maybe the most effective part of Chapter 27 is that the notification system has served to discourage high risk applications; it did a good job of that. It's a good rule; the turnover issue makes it fail sometimes; a lot of times people don't even know it is their job. It's unclear what can be done to fix that.
- Fish stated that the biggest challenge is getting them all trained. The staff has done a lot of training and tried to move around the state because some school employees can't travel. Most of the commercial applicators are doing a good job. Patterson said that the Board's threat to take compliance action against schools has helped, especially with private schools.
- Bohlen commented that identifying non-native phragmites, as noted in the variances, is not trivial. He noted that it is probably not worth including in the variance. It should be in the plan however. He also noted that a relationship with DEP is important because if only the phragmites adjacent to wetlands are treated, the population won't be controlled; land managers also need to control what's in the water.
- Flewelling asked why phragmites is a nuisance. Bohlen responded that it is really good mosquito habitat—it creates pools that hold water which mosquitoes breed in—and it chokes out native species. Ann Gibbs added that this creates a monoculture.
- Tim Hobbs brought to the Board's attention that Bruce and Jerry Flewelling were named as McCain's Foods Champion Grower of the Year for 2015. McCain's is the largest buyer of potatoes, buying approximately half the potato crop, accounting for 25,000 acres of potatoes. Their grower ratings are based on a number of criteria including yield and quality.
- Ann Gibbs raised a question about controlling invasives in ROWs but on private land. She noted that in a discussion with Bob Moosmann from MDOT, he indicated that under his license he can control invasives within a ROW, but not on adjacent town-owned land.
- Morrill noted that his company had several giant hogweed instances in the last month, one employee came into contact with it. It's much more widespread than it was thought to be.
- Gibbs noted that we need to find ways to manage all invasive plants.
- Eckert said that if the Board was going to sponsor another conference, this would be a good topic.
- Gibbs noted that Fish has been working with a DACF group to provide training.
- Morrill said that the ROW issue sounded like more of a legal issue. Gibbs said it's about how licenses apply. There is no use in controlling invasive plants in a ROW if they can't be controlled in adjacent areas.

- Fish said it's a permission thing—It's unlawful to apply pesticides to private property without the consent of the property owner. But in Moosmann's case, they can't do it because they aren't a for-hire firm. He is not sure the rule is clear around that and will talk to Assistant Attorney General Randlett. Jennings noted that it might be a liability issue.

6. Schedule of Future Meetings

October 9, November 13, and December 18, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- **The Board added Wednesday, January 13 (during the Agricultural Trades Show) as a Board Meeting date.**

7. Adjourn

- **Bohlen/Eckert: Moved and seconded to adjourn at 10:15 am**
- **In Favor: Unanimous**



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

WALTER E. WHITCOMB
COMMISSIONER
HENRY JENNINGS
DIRECTOR

January 25, 2015

One Hundred and Twenty-seventh Legislature
Committee on Agriculture, Conservation and Forestry
Sen. Peter E. Edgecomb, Senate Chair
Rep. Craig V. Hickman, House Chair

RE: Pesticide use in public parks and playground facilities

Dear Senator Edgecomb and Representative Hickman:

In its letter dated July 27, 2015, the Joint Standing Committee on Agriculture, Conservation and Forestry formally requested that the Maine Board of Pesticides Control (Board) review its rules to determine whether the standards for pesticide application and public notification for public parks and playgrounds should be consistent with the standards established in school buildings and on school grounds pursuant to CMR 01-026, Chapter 27, Standards for Pesticide Application and Public Notification in Schools .

The Board's staff conducted an initial analysis of the request and then reviewed the July 16 letter together with Chapter 27 with the Board at its August 28, 2015 meeting. The Board offers the following observations based on that review:

1. The Board applauds the Committee for recognizing that providing additional protections for children against exposure to environmental toxins is both sound policy and well supported in science. Chapter 27 of the Board's rules is an acknowledgment that the Board and the Committee are aligned in this understanding.
2. Careful analysis of Chapter 27 reveals that this rule is predicated on three fundamental conditions that universally exist at schools but do not exist for most parks and playgrounds:
 - a. There is a well-established institutional infrastructure in place that is capable of administering the provisions;
 - b. The population likely to be present is both well-known and well documented, thereby facilitating any notice that may become necessary; and
 - c. It is known when the population will not be present and necessary applications can be scheduled accordingly.
3. Due to the institutional infrastructure that is present at schools, but not at public parks and playgrounds, Chapter 27 is not a logical fit for parks and playgrounds.

4. Many elements of state and federal pesticide law provide protections to children using public parks and playgrounds, including:
 - a. Only licensed (and therefore trained) pesticide applicators may legally apply pesticides at public parks and playgrounds.
 - b. Pesticide applications to parks and playgrounds must be posted in advance of an application and the posting must remain in place for 48 hours. Additional information, such as product labels and safety data sheets must be supplied upon request.
 - c. Pesticide applicators must adhere to the instructions on the product labeling which is reviewed and approved by the federal Environmental Protection Agency (EPA). EPA may not approve a product label without first assessing the risks to the public, and additional safety factors are required to protect children.
 - d. Applicators must adhere to state laws aimed at minimizing exposure to humans, reducing pesticide drift, and protecting water quality.

The Board commends the Committee for its insight with the respect to the importance of protecting children from exposure to environmental toxins. However, based on the rationale detailed above, it does not believe there is any reasonable way to extend the requirements contained in CMR 01-026, Chapter 27 to public parks and playgrounds. Moreover, a number of protective measures are already in place for these sites. Finally, the Board has directed the staff to continue emphasizing the importance of exercising additional caution when licensed applicators are treating sites where children are likely to be present.

The Board thanks the Committee for its diligence with respect to protecting children and looks forward to any additional feedback or insight the Committee may have.

Sincerely,

Deven Morrill, Chair
Maine Board of Pesticides Control

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

October 16, 2015

Dear Board Members,

First, I must apologize for not getting my July 7, 2015, letter to you in time for proper inclusion and consideration in the Board meeting packet. I've thought about what I tried to convey to you quite a bit since then, and have a few more thoughts and ideas I would like to share with you. I am therefore resubmitting my original letter of July 7, followed by more specific suggestions.

Thank you for your time and consideration.

Sincerely,
Paul

Paul Schlein
Arrowsic, Maine

----- Forwarded message -----
From: Paul Schlein <pschlein@gmail.com>
Date: Tue, Jul 7, 2015 at 5:04 PM
Subject: Pesticide Lawn Applications
To: Henry Jennings <henry.jennings@maine.gov>

Dear Henry,

In reading through the agenda for this Friday's Board meeting, I found item number 6, the letter from Justin Nichols (http://www.maine.gov/dacf/php/pesticides/documents2/bd_mtgs/jul15/Nichols_letter_to_BPC.pdf), quite disturbing. Quite honestly, it sickened me to read it, and I was left with a strong feeling of anger and frustration. Four herbicides and an insecticide applied at the same time on a single lawn? With all the clear and effective alternatives to pesticide use for lawn care and maintenance, it's unimaginable, and should be unthinkable. Whether the posting was done properly by the applicator doesn't matter in my mind. It's that these applications are occurring at all—and on how many lawns, in how many towns, every day, in Maine?

The fact that the property owner evidently had no idea what was being applied—urea, it was thought—is also very problematic. It seems that many people having their lawns treated often have complete faith that what is being applied is completely “safe,” and so they generally don't feel the need to ask questions. If they better understood the risks and possible outcomes—all the health and environmental effects—of what is being applied, they might make a different choice. I can tell you from personal experience within my own family, that education works when the facts—and alternatives—are presented in a reasonable manner. With understanding, habits can change significantly.

What I would like to suggest is to ramp up the Board's public education component to a much higher level. The successful YardScaping program needs to be broadcast everywhere, by every means available, to everyone. I would think allocating a greater percentage of the fees that are realized from the 12,000 or so pesticide products that are registered in Maine would be more than reasonable, and would be money very well spent. This

increased effort would go a long way in advancing the Board’s statutory mission of reducing reliance on pesticides.

With public concerns about pesticide use increasing daily, and with more and more Maine municipalities passing ordinances restricting pesticide use, I think a more organized and centralized approach might be warranted. There’s no better body or agency in Maine than the Board of Pesticides Control that can address this issue appropriately and in its entirety. Municipalities make their best efforts, but are often lacking in resources and overall knowledge to tackle all the intricacies surrounding pesticides. With all this in mind, having this topic become a top priority for the Board would not only be in the public’s best interest, but could also save municipalities significant amounts of time and money in not having to address this themselves. (I can tell you that my town is considering an ordinance right now, as are many other and larger towns.)

In closing, I believe the Town of Ogunquit had the right idea in passing their ordinance, but it’s only a first step. I think this needs to be taken up at the state level, by the Board and/or Legislature.

Please, if possible, include this for review and consideration under agenda item 6 in Friday’s Board packet.

I will leave you with the quote that most influenced my thinking on this subject:

“I advocate the ‘Freedom Lawn’ approach on my property—allowing a wide diversity of perennial grasses and other herbaceous plants to dominate the lawn. I believe this is better for the overall ecology of the lawn and supportive of a greater overall biodiversity on my land. I will mow at least once every two weeks at 4”, sometimes once a week during very rapid growth periods, and return the clippings back into the lawn using a mulching mower. I never water my lawn and allow nature to take its course during dry periods. I overseed fescues (both fine and turf-type) and white clover into my yard, especially those areas that are thin due to poor tolerance of the existing species to low fertility, water stress, or shade. I only apply fertilizers to newly seeded areas. Once established, they rarely ever see a fertilizer again. Compared to some of my neighbors who choose a higher management approach to their lawn areas, my lawn is very comparable to theirs in quality and aesthetic appeal. I firmly believe that low-input lawns are not necessarily low-quality.”

*Karl Guillard
Professor of Agronomy
University of Connecticut*

Respectfully,
Paul

Paul Schlein
Arrowsic, Maine

10/16/15

Additional suggestions relating to my original July 7 letter:

- Bolster sustainable and low-risk programs and practices.
 - The YardScaping program, created, spearheaded, and coordinated by the BPC, in partnership with the Friends of Casco Bay, is one of the centerpieces of the Board’s public education program that embodies and exemplifies a critical part of the “minimize reliance” mission. However, the program

and the demonstration gardens at the Back Cove in Portland are underfunded, understaffed, and continue on a fraying shoestring of time and money.

YardScaping is gaining in the Maine consciousness, but, to succeed, really needs to be a common noun and verb in Mainer's vocabulary. For this to happen, a significant infusion of both personnel and funding will be needed. Based on more than eight years of involvement in this program on my part, I've identified and listed below what I think are some essential things that must happen to ensure not just the continuation of the YardScaping program, but its expansion and increased awareness on the part of Mainers. Please consider the following:

- A complete review and revamping of the YardScaping website to update and expand content and redesign the site for greater functionality. Except for occasional updates, this has not been done since the site was created more than 12 years ago:
<http://www.maine.gov/dacf/php/pesticides/yardscaping/index.htm>.
 - Printing of the new YardScaping booklet, only available now in digital form:
http://www.maine.gov/dacf/php/pesticides/yardscaping/documents/New_YardScaping_Booklet.pdf.
 - Reprinting of the very popular YardScaping lawn signs. The supply was exhausted several years ago, and there's a list of people waiting to receive them:
<http://www.maine.gov/dacf/php/pesticides/yardscaping/involved.htm>.
 - Creation of an online video to further advance the educational aspects of the YardScaping Gardens at Back Cove.
- The Board's *GotPests?* website (<http://www.maine.gov/dacf/php/gotpests/index.html>), one of the best and most informative sites of its kind, is a key source of information for homeowners and professionals, and focuses on sustainable practices. While the site was entirely redesigned and redone about five years ago, it is in need of updating and regular maintenance.
 - Creation of a full-time or, at a minimum, part-time position that focuses solely on public education and outreach. Responsibilities could include coordination of the YardScaping program, the YardScaping Gardens at Back Cove, and volunteer activities; maintenance of all related websites, including *GotPests?*; conducting regular, related training programs and workshops; attendance and exhibits at shows, workshops, and conferences.
 - Fund and launch a major statewide media campaign to promote sustainable lawncare and landscaping, highlighting the YardScaping program and *GotPests?* website.
 - Enhance existing BPC training and licensing modules, or create new ones, focusing on sustainable lawncare and landscaping practices and alternatives to pesticide use.
 - Convene a meeting with other state agencies and private interest groups to review the current status and implementation of Title 22, Section, 1471-X (<http://www.mainelegislature.org/legis/statutes/22/title22sec1471-X.html>), the state policy to minimize reliance on pesticides. Evaluate present activities and determine the best approaches needed to attain the required goal.



Maine Organic Farmers and Gardeners Association

COMMON GROUND COUNTRY FAIR

October 30, 2015

Maine Board of Pesticides Control
Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, ME 04333

Dear Members of Maine's Board of Pesticides Control,

For more than 40 years, the Maine Organic Farmers and Gardeners Association (MOFGA) has been committed to helping farmers and gardeners grow organic food. We are the largest and oldest state organic organization in the country. Our 12,000 dues-paying members and the nearly 500 organic farmers we certify endorse MOFGA's efforts to reduce reliance on pesticides across this state. MOFGA is one of the few organizations attending every meeting of the Board of Pesticides Control.

MOFGA's Public Policy Committee has reviewed the letter from Paul Schlein (included in two recent board packets) and supports it. We are particularly concerned about the approximately 700 percent increase in pesticides used in and around homes and in public areas in Maine in the past 20 years.

We agree that as a state, we need to do more to:

- reduce dependence on these chemicals;
- significantly ramp up consumer education about pesticides;
- increase visibility of the YardScaping program;
- track and report on pesticide sales in Maine;
- reinforce the Board's statutory responsibility to minimize reliance on pesticides.

In 1997, MOFGA proposed *An Act to Reduce Reliance on Pesticides* in response to scientific developments that underscored the human and environmental risks of pesticides – developments that led, in 1996, to the passage in Congress of the *Food Quality Protection Act*. MOFGA sought to implement a five-year process to measure pesticide sales, convene stakeholders, and implement a plan to reduce pesticides use. Had the Act, as originally drafted, been passed and implemented, Maine could have achieved a 33% reduction in pesticide use by 2002. A compromise version of the proposal, entitled *An Act to Minimize Reliance on Pesticides*, was ultimately passed. The Act, although setting no definite quantitative goals for pesticide reduction, stated for the first time that it was **“the policy of the state to work to find ways to use the**

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mofga@mofga.org • www.mofga.org

minimum amount of pesticides needed to effectively control targeted pests in all areas of application.” (22 MRSA sec. 1471 – M, sub-7) It provided a critical first step in the process of getting control of our state’s pesticide use:

“The board (of Pesticides Control) shall implement a system of record keeping, reporting, data collection and analysis that provides information on the quantity of product and brand names of pesticides sold. The board, in cooperation with the University of Maine Cooperative Extension Service, shall study ways to improve pesticide information databases and to optimize the useful analysis of reported information.”

“No later than October 1, 1998 and each year thereafter, the board shall publish an annual pesticides report containing the quantity of product, sorted by the name and United States Environmental Protection Agency registration number, of all pesticides sold in the prior year, and the data further sorted by sector of use wherever possible.”

As you are well aware, the recordkeeping provisions were never implemented, and were ultimately repealed. We do not know to what extent agricultural pesticide sales have increased in Maine, due to the lack of published data. But, thanks to the work of the Board and Staff, we do know that use on yards has increased dramatically and continues to violate fundamental principles of integrated pest management.

The Board of Pesticides Control is the only government entity in Maine that can address this issue. Your leadership is essential and is in the best interest of Maine’s citizens.

With a guaranteed and steady source of funding for its mandate, the Board is in a unique position to be able to take action. We look forward to your response and actions on these important issues.

Sincerely,

A handwritten signature in black ink that reads "Ted Quaday". The signature is written in a cursive, slightly slanted style.

Ted Quaday
Executive Director

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

October 16, 2015

Dear Board Members,

First, I must apologize for not getting my July 7, 2015, letter to you in time for proper inclusion and consideration in the Board meeting packet. I've thought about what I tried to convey to you quite a bit since then, and have a few more thoughts and ideas I would like to share with you. I am therefore resubmitting my original letter of July 7, followed by more specific suggestions.

Thank you for your time and consideration.

Sincerely,
Paul

Paul Schlein
Arrowsic, Maine

----- Forwarded message -----

From: Paul Schlein <pschlein@gmail.com>
Date: Tue, Jul 7, 2015 at 5:04 PM
Subject: Pesticide Lawn Applications
To: Henry Jennings <henry.jennings@maine.gov>

Dear Henry,

In reading through the agenda for this Friday's Board meeting, I found item number 6, the letter from Justin Nichols (http://www.maine.gov/daef/php/pesticides/documents2/bd_mtgs/jul15/Nichols_letter_to_BPC.pdf), quite disturbing. Quite honestly, it sickened me to read it, and I was left with a strong feeling of anger and frustration. Four herbicides and an insecticide applied at the same time on a single lawn? With all the clear and effective alternatives to pesticide use for lawn care and maintenance, it's unimaginable, and should be unthinkable. Whether the posting was done properly by the applicator doesn't matter in my mind. It's that these applications are occurring at all—and on how many lawns, in how many towns, every day, in Maine?

The fact that the property owner evidently had no idea what was being applied—urea, it was thought—is also very problematic. It seems that many people having their lawns treated often have complete faith that what is being applied is completely "safe," and so they generally don't feel the need to ask questions. If they better understood the risks and possible outcomes—all the health and environmental effects—of what is being applied, they might make a different choice. I can tell you from personal experience within my own family, that education works when the facts—and alternatives—are presented in a reasonable manner. With understanding, habits can change significantly.

What I would like to suggest is to ramp up the Board's public education component to a much higher level. The successful YardScaping program needs to be broadcast everywhere, by every means available, to everyone. I would think allocating a greater percentage of the fees that are realized from the 12,000 or so pesticide products that are registered in Maine would be more than reasonable, and would be money very well spent. This

increased effort would go a long way in advancing the Board's statutory mission of reducing reliance on pesticides.

With public concerns about pesticide use increasing daily, and with more and more Maine municipalities passing ordinances restricting pesticide use, I think a more organized and centralized approach might be warranted. There's no better body or agency in Maine than the Board of Pesticides Control that can address this issue appropriately and in its entirety. Municipalities make their best efforts, but are often lacking in resources and overall knowledge to tackle all the intricacies surrounding pesticides. With all this in mind, having this topic become a top priority for the Board would not only be in the public's best interest, but could also save municipalities significant amounts of time and money in not having to address this themselves. (I can tell you that my town is considering an ordinance right now, as are many other and larger towns.)

In closing, I believe the Town of Ogunquit had the right idea in passing their ordinance, but it's only a first step. I think this needs to be taken up at the state level, by the Board and/or Legislature.

Please, if possible, include this for review and consideration under agenda item 6 in Friday's Board packet.

I will leave you with the quote that most influenced my thinking on this subject:

"I advocate the 'Freedom Lawn' approach on my property—allowing a wide diversity of perennial grasses and other herbaceous plants to dominate the lawn. I believe this is better for the overall ecology of the lawn and supportive of a greater overall biodiversity on my land. I will mow at least once every two weeks at 4", sometimes once a week during very rapid growth periods, and return the clippings back into the lawn using a mulching mower. I never water my lawn and allow nature to take its course during dry periods. I overseed fescues (both fine and turf-type) and white clover into my yard, especially those areas that are thin due to poor tolerance of the existing species to low fertility, water stress, or shade. I only apply fertilizers to newly seeded areas. Once established, they rarely ever see a fertilizer again. Compared to some of my neighbors who choose a higher management approach to their lawn areas, my lawn is very comparable to theirs in quality and aesthetic appeal. I firmly believe that low-input lawns are not necessarily low-quality."

*Karl Guillard
Professor of Agronomy
University of Connecticut*

Respectfully,
Paul

Paul Schlein
Arrowsic, Maine

10/16/15

Additional suggestions relating to my original July 7 letter:

- Bolster sustainable and low-risk programs and practices.
 - The YardScaping program, created, spearheaded, and coordinated by the BPC, in partnership with the Friends of Casco Bay, is one of the centerpieces of the Board's public education program that embodies and exemplifies a critical part of the "minimize reliance" mission. However, the program

and the demonstration gardens at the Back Cove in Portland are underfunded, understaffed, and continue on a fraying shoestring of time and money.

YardScaping is gaining in the Maine consciousness, but, to succeed, really needs to be a common noun and verb in Mainer's vocabulary. For this to happen, a significant infusion of both personnel and funding will be needed. Based on more than eight years of involvement in this program on my part, I've identified and listed below what I think are some essential things that must happen to ensure not just the continuation of the YardScaping program, but its expansion and increased awareness on the part of Mainers. Please consider the following:

- A complete review and revamping of the YardScaping website to update and expand content and redesign the site for greater functionality. Except for occasional updates, this has not been done since the site was created more than 12 years ago:
<http://www.maine.gov/dacf/php/pesticides/yardscaping/index.htm>.
 - Printing of the new YardScaping booklet, only available now in digital form:
http://www.maine.gov/dacf/php/pesticides/yardscaping/documents/New_YardScaping_Booklet.pdf.
 - Reprinting of the very popular YardScaping lawn signs. The supply was exhausted several years ago, and there's a list of people waiting to receive them:
<http://www.maine.gov/dacf/php/pesticides/yardscaping/involved.htm>.
 - Creation of an online video to further advance the educational aspects of the YardScaping Gardens at Back Cove.
- The Board's *GotPests?* website (<http://www.maine.gov/dacf/php/gotpests/index.html>), one of the best and most informative sites of its kind, is a key source of information for homeowners and professionals, and focuses on sustainable practices. While the site was entirely redesigned and redone about five years ago, it is in need of updating and regular maintenance.
- Creation of a full-time or, at a minimum, part-time position that focuses solely on public education and outreach. Responsibilities could include coordination of the YardScaping program, the YardScaping Gardens at Back Cove, and volunteer activities; maintenance of all related websites, including *GotPests?*; conducting regular, related training programs and workshops; attendance and exhibits at shows, workshops, and conferences.
 - Fund and launch a major statewide media campaign to promote sustainable lawncare and landscaping, highlighting the YardScaping program and *GotPests?* website.
 - Enhance existing BPC training and licensing modules, or create new ones, focusing on sustainable lawncare and landscaping practices and alternatives to pesticide use.
 - Convene a meeting with other state agencies and private interest groups to review the current status and implementation of Title 22, Section, 1471-X (<http://www.mainelegislature.org/legis/statutes/22/title22sec1471-X.html>), the state policy to minimize reliance on pesticides. Evaluate present activities and determine the best approaches needed to attain the required goal.

November 3, 2015

Maine Board of Pesticides Control
Department of Agriculture, Conservation, and Forestry
28 State House Station
Augusta, Maine 04333

Dear Members of the Maine Board of Pesticides Control:

For nearly 20 years, Friends of Casco Bay has partnered with the Maine Board of Pesticides Control. Together, we established BayScaping, an educational outreach program that has expanded statewide into Yardscaping. MPBC supported our research to document the presence or absence of pesticides flowing into Casco Bay in stormwater runoff. We have collaborated on numerous efforts to reach out to residents and applicators alike to encourage reducing or eliminating the use of lawn chemicals. Throughout our work together, we have been mindful of the Board's adherence to its statutory responsibility **to minimize reliance on pesticides**.

We encourage the Board to recommit to its mandate to reduce dependence on pesticides, as well as to related weed and feed products, by:

- **Collaborating with municipalities**

As more municipalities consider restricting or banning the use of lawn chemicals, your science-based, balanced advice on pesticide management is critical to these public deliberations.

- **Training pesticides applicators in integrated pest management and in chemical-free lawn care**

Lawn care professionals need more training to respond knowledgeably to the increasing demand for chem-free lawns. We are seeing growing support for this approach from the yard-care industry, including landscaping professionals in the Maine Landscape & Nursery Association and the Maine Arborists Association.

- **Sampling for the presence of pesticides in coastal sediments**

More data is needed to understand the potential impact of lawn chemicals on our coastal economy. Pesticides and fertilizers have been implicated in threats to our most important fisheries, including lobsters, mussels, and clams.

- **Tracking and reporting the sales of pesticides in Maine, especially home use**

These statistics tell the story better than any words can that Maine residents use more pesticides on their lawns for cosmetic purposes than all of farming and forestry combined. The last year these figures were reported was 2011.

- **Increasing your emphasis on consumer education**

As professional landscapers often complain, a lack of understanding by homeowners contributes to unrealistic expectations that "a perfect lawn" can be achieved without environmental and health consequences.

There are many compelling reasons to reduce our use of pesticides and lawn fertilizers. Pesticides threaten the health of children, pets, and wildlife, when they are applied to the landscape. These chemicals harm aquatic life when washed into the Bay by stormwater. **Friends of Casco Bay has detected a variety of pesticides in locations all around the Bay**, as seen in the chart below.

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**Executive Director &
Casco Baykeeper Pro Tem**
Cathy L. Ramsdell, CPA, *Portland*

We are concerned about the **impacts to the Bay from the nitrogen in fertilizers**. Friends of Casco Bay has been sampling nitrogen in Casco Bay for years. Our data clearly show **nitrogen levels are higher closer to shore**, indicating that land-based sources are contributing the excess nitrogen to our waters—the result of human activities.

When it rains, nitrogen-laden fertilizers can be swept into Maine’s nearshore waters. This nitrogen pollution triggers algae blooms that release carbon dioxide when they die and decay. In seawater, carbon dioxide forms an acid. Acidification changes the chemistry of the water, inhibits shell growth in clams, mussels, oysters, and other marine organisms, and is suspected as a cause of reproductive disorders in some fish.

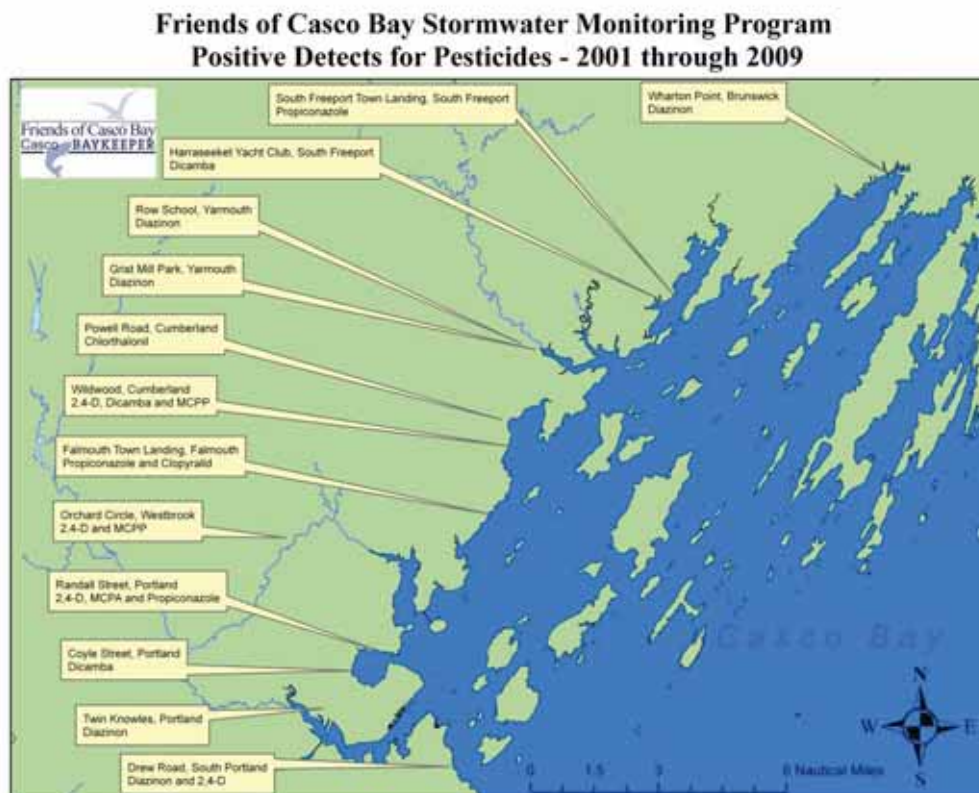
While fertilizers are not the only source of excess nitrogen, limiting or eliminating the use of fertilizers locally will lower the amount of nitrogen coming in to Casco Bay; this can help slow the devastating effects acidification and eutrophication are having on our marine resources.

Thank you for your time and service to the State of Maine.

Respectfully submitted,



Cathy L. Ramsdell
Executive Director &
Casco Baykeeper *Pro Tem*,
Friends of Casco Bay





Natural Resources Council of Maine
3 Wade Street • Augusta, Maine • 04330

November 3, 2015

Members of the Maine Board of Pesticides Control
Department of Agriculture, Conservation and forestry
22 State House Station
August, ME 04333

Dear Members of the Maine Board of Pesticides Control:

Since its inception in 1959, the Natural Resources Council of Maine has been steadfast in its commitment to protecting the nature of Maine by restoring and conserving Maine's environment. Our 16,000 members and supporters recognize, treasure and defend the natural resources and beauty that make Maine such an amazing place to live, work and raise a family. We have a strong interest in minimizing the application of pesticides in our environment, which can affect water quality, wildlife, and human health.

NRCM has reviewed the letter submitted by Mr. Paul Schlein to the Board of Pesticides Control; the materials referenced in Mr. Schlein's letter, including the incidents that propelled him to contact the Board; and the overall policies governing the commercial and residential use and application of pesticides in Maine.

NRCM strongly agrees with Maine's policy, as stated in Maine law, to "work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. The agencies of the State involved in the regulation or use of pesticides shall promote the principles and the implementation of integrated pest management and other science-based technology to minimize reliance on pesticides..."

In light of the significant increase in the use of pesticides in Maine over the past two decades, we concur with Mr. Schlein, a former Public Information Officer for the Board of Pesticides Control, that a comprehensive review of implementation of this policy, as stated in Title 22, Section 1471-X, is needed.

NRCM further agrees with Mr. Schlein's assertion that an increase in the amount and funding for education is not only warranted, but necessary, in light of the well-documented, negative effects pesticides can have on the health of our water, air, soil, vegetation, wildlife and ultimately, the citizens of Maine.

Finally, as Mr. Schlein has highlighted and the Board has seen, the requirements that applicators currently have regarding notification to land owners, neighbors and the general public, as well as the lack of rapid (or any) response in the event of an emergency or accidental exposure to toxic pesticides, are woefully inadequate and must be addressed.

NRCM supports and works with communities around Maine which have the right under Maine's constitution and our long-treasured Home Rule to regulate pesticide use and application in order to protect citizens and the environment. We also believe the Board, as the state's lead agency on pesticides, has an important role to play in ensuring that municipalities and individual citizens are educated about the risks of pesticide use, the benefits and well-documented positive results of alternatives to management with pesticides, and the timely and accurate dissemination of information to communities looking for assistance and information.

The Natural Resources Council of Maine looks forward to working with the Board of Pesticides Control to ensure creation and implementation of policies consistent with the statement of purpose regarding the Board's role in regulating pesticides, "safeguarding the public health, safety and welfare, and for the further purpose of protecting natural resources of the State."

Thank you for your attention to these important issues and Mr. Schlein's concerns. We look forward to your response and to working together to protect Mainers and Maine.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Lakeman".

Sarah Lakeman
Sustainable Maine Project Director
Natural Resources Council of Maine

NOV 09 2015

**Somerset Associates
P. O. Box 336
Newport, Maine 04952**

Members of the Maine Board of Pesticides Control
Department of Agriculture, Conservation and Forestry
22 State House Station
Augusta, Me. 04333

Dear Members;

Having served on the Joint Standing Committee on Agriculture from the 116th Legislature to the 120th and having read the letter from Mr. Schlein and from MOFGA, NRCM, and Friends of Casco Bay I find much to be encouraged about. I don't think anyone would disagree that it is in the best interest of the environment and the citizens of Maine to promote, support, and practice integrated pest management. It has become clear that we need to do a better job of educating commercial applicators and the private consumer. They need to know how to identify the pest and test the soil for nutrients and they need to have the tools to calculate, calibrate and target the treated area with the proper level of application whether they are using organic or synthetic materials, pesticides or fertilizer. The general public needs to know that pesticides approved for organic use are toxic and do kill and in many cases the amount of material used exceeds that of a synthetic material.

I certainly agree with Mr. Quaday's statement: "The Board of Pesticides Control is the only government entity in Maine that can address this issue. Your leadership is essential and is in the best interest of Maine citizens." I also agree with NRCM in that MRSA Title 22 section 1471-X does make it a policy to find ways to use the minimum amount of pesticides necessary to effectively control targeted pests. I do, however, find it interesting that they are espousing "local control" and ignoring the statute that states the purpose of the Board of Pesticides Control and I would suggest that we take a close look at section 1471-A---"it is the declared policy of the State of Maine to regulate the sale and application of chemical insecticides, fungicides, herbicides and other chemical pesticides." Note that the statute does not mention Ogunquit or So. Portland or even Portland.

And finally, I was shocked in seeing that the Department Dicapped the budget by nearly \$250,000. This has not ever been done in past administrations. Together with the \$135K that goes to Cooperative extension IPM programs these dollars would go a long ways toward educating the public and promoting integrated pest management. I would also point out that the Department of Agriculture, Conservation and Forestry is currently way understaffed and programs such as Harness Racing Commission, Animal Welfare, dairy industry support and other policy areas are cannibalizing the Board's resources both human and financial.

Regards
Robert J. Tardy

From: jody spear [<mailto:lacewing41@gmail.com>]
Sent: Tuesday, November 10, 2015 1:42 PM
To: Jennings, Henry
Subject: another response to Justin Nichols complaint of June 1, 2015

Dear Henry,

Nichols describes his experience as "fairly nightmarish," but his assessment of what needs to be done as corrective -- centered on posting requirements -- seems to me to fall far short of what is in order. He is quite right to conclude, nevertheless, that his "nightmare" is "indicative of broader systemic issues," and thus we must be thankful that it has led Paul Schlein to express his outrage, prompting letters from major environmental groups with large constituencies.

There are serious medical consequences beyond nausea and skin irritation to be expected from all five of the pesticides used cosmetically in Falmouth on May 26 (dithiopyr, MCPA, dicamba, 2,4-D, and imidacloprid). You know them all too well. Environmental fate, though not a focus of Nichols's message, is an important consideration too -- one that posting revisions (EPA numbers, telephone numbers) will not address. Contamination of groundwater and toxicity to fish, birds, bees, and domestic animals, as well as to people, makes this an issue that demands attention on several levels

Some questions you posed at the July 10 meeting, transcribed into the minutes, are troubling: "Who is entitled to pesticide-application information? What if a pesticide-opposition group started calling these numbers?" I would say, in response, that we **all** have a right to know what chemicals are applied (especially those sprayed cosmetically) and that it should not be necessary for us to have to find out through back channels what is putting us, the unsuspecting, unconsenting public, in harm's way. I've tried calling those 800 numbers myself, and it's true that they "go to nowhere" in Dr. Eckert's phrasing.



The movement to enact ordinances town by town is the best way we have right now to bring awareness of toxic trespass to the general population, and there are several other large environmental groups we can enlist in the effort. We will bring all those collaborators to Augusta to counteract the proposed legislation from industry supporters -- Jeffrey Timberlake leading the charge at the moment.


But for the matter under discussion on Friday in Agenda Item 4, I urge you to acknowledge that negligence occurred and should result in a steep fine. How else is TruGreen to get the message that spraying pesticides without signs along 200 feet of heavily traveled sidewalk is unacceptable? How else can we be confident that the board will hold violators to account?








Yours respectfully,
Jody Spear

P.S. This should have been sent sooner, but I've only just realized that the deadline was 8 am, not 5 pm. Since you do have it in hand well in advance of Friday's meeting, I hope you'll join it to the other letters in Agenda Item 4.

Maine Revised Statutes

-  [§1471-A PDF](#)
-  [§1471-A MS-WORD](#)

-  [STATUTE SEARCH](#)

-  [CH. 258-A CONTENTS](#)
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§1466

Title 22: HEALTH AND WELFARE

§1471-B

Subtitle 2: HEALTH

Part 3: PUBLIC HEALTH HEADING: PL 1989, C. 487, §11 (RPR)

Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-A. Purpose and policy

For the purpose of assuring to the public the benefits to be derived from the safe, scientific and proper use of chemical pesticides while safeguarding the public health, safety and welfare, and for the further purpose of protecting natural resources of the State, it is declared to be the policy of the State of Maine to regulate the sale and application of chemical insecticides, fungicides, herbicides and other chemical pesticides. [2011, c. 510, §2 (AMD).]

SECTION HISTORY

1975, c. 397, §2 (NEW). 1983, c. 542, §§1,3 (AMD). 2011, c. 510, §2 (AMD).

Data for this page extracted on 01/05/2015 12:10:19.

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Maine Revised Statutes

§1471-W

Title 22: HEALTH AND WELFARE

§1471-Y

Subtitle 2: HEALTH

Part 3: PUBLIC HEALTH HEADING: PL 1989, C. 487, §11 (RPR)

Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-X. State policy; public and private initiatives to minimize reliance on pesticides

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

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

Data for this page extracted on 01/05/2015 12:10:19.

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BOARD OF PESTICIDES CONTROL
HENRY JENNINGS, DIRECTOR

Central Office: AMHI--DEERING BUILDING, AUGUSTA, ME 04333-0028

Mail Address: 28 STATE HOUSE STATION, AUGUSTA, ME 04333-0028 *FAX:* (207) 287-7548

Established: 1965 *Telephone:* (207) 287-2731

Reference: Policy Area: 04 *Umbrella:* 01 *Unit:* 026 *Citation:* T0022 *M.R.S.A., Sect.:* 000001471B

Average Counts-All Positions: 20.680 *Legislative Count:* 16.00

PURPOSE:

The Board of Pesticides Control was established to ensure that the public has access to the benefits of pesticide use while protecting the public and environmental health. The primary responsibilities of the Board are to: (a) register and evaluate all pesticide products to be sold and used in Maine, (b) examine and license all persons involved in the commercial application of pesticides, and certain pesticide distributors and agricultural producers who use pesticides, (c) promulgate appropriate regulations regarding pesticide distribution and use, (d) investigate complaints arising from the use of pest-control chemicals, (e) ensure compliance with state and federal pesticide laws, (f) cooperate with other agencies in environmental monitoring and protection, and (g) promote the principles and the implementation of integrated pest management and other science-based technology to minimize reliance on pesticides.

ORGANIZATION:

The Board of Pesticides Control was established in 1965, funded in 1969, staffed with a supervisor and secretary in 1970, and in 1973 placed within the Department of Agriculture. In 1981, the Legislature transferred to the Board all the authority of the Commissioner of Agriculture to register pesticides. The original Board was composed of the commissioners of eight state agencies, but in 1980, the Legislature reconstituted the Board to comprise seven public members appointed by the Governor for four-year terms.

Qualifications for Board members, as prescribed by statute, are: three persons must be knowledgeable about pesticide use in agriculture, forestry and commercial application; one person must have a medical background; one person must be a University of Maine scientist with expertise in pest management; and the remaining two members must represent the public and come from different geographic areas of the state.

The Board annually elects a chairman from its membership and employs personnel as necessary. Current professional staff includes a Director, Manager of Compliance, Manager of Pesticide Programs, Toxicologist, Pesticides Registrar/Water Quality Specialist, Public Education Specialist, Pesticide Safety Educator and one year-round and four seasonal Pesticide Inspectors. Overall, the Director provides supervision of the staff.

PROGRAM:

Product Registration: All pesticides distributed in the state must be registered with the Board. A label and material safety data sheet are maintained for each product, and health and environmental study data is reviewed as needed. Registration fees fund normal Board operating costs, as well as the State Horticulture Program, the department's Integrated Pest Management (IPM) Program, the State Apiarist, an annual collection of obsolete pesticides, and a grant to the University of Maine Cooperative Extension for development of pesticide applicator training manuals.

Certification and Licensing: The Board administers a certification and licensing program to ensure that those using or distributing pesticides are competent and properly trained. The program, supported by federal grants, pesticide registration revenue, and licensing fees, includes providing training materials and information, administering exams, and working closely with Cooperative Extension to provide continuing education options.

Compliance: The Board, through its inspectors, monitors the sale and application of pesticides, investigates complaints of misuse, and enforces applicable laws as appropriate.

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY(FR AGR)

Public and Environmental Health: These programs are designed to protect citizens' health and safety, in addition to the state's natural and agricultural resources, by ensuring that pesticides are properly used. Programs include administration of the federal Workers Protection Standard, where the Board provides training to agricultural workers and pesticide handlers, and the Obsolete Pesticide Program, where the Board works with the Department of Environmental Protection (DEP) to collect unusable pesticides from farmers and homeowners. The Board also monitors ground and surface water, to provide data about pesticide impacts on the state's water resources. The Board's toxicologist reviews pesticides that pose special concerns in Maine. The Pesticide Container Recycling Program helps to ensure that pesticide containers are recycled or disposed of properly.

Outreach and Education: The Board is committed to educating the general public on the risks of pesticide use, as well as reasons why pesticides are used in various industries, including agriculture and forestry. Central to the Board's outreach is promotion of the state policy to minimize reliance on pesticides. Information is distributed via the Board's extensive websites at www.thinkfirstspraylast.org, plus newsletters, press releases and occasional newspaper ads. The staff also makes presentations at public meetings and trade shows and conducts collaborative outreach programs with other state agencies and non-profit organizations.

LICENSES:

- Agricultural Basic Applicators
- Commercial Pesticide Applicators
- Restricted Use Pesticide Dealers
- General Use Pesticide Dealers
- Private Pesticide Applicators
- Government Pesticide Supervisors
- Monitors/Spotters
- Spray Contracting Firms

CERTIFICATES:

- Certification to Purchase Bt Corn
- Pesticide Handler
- Agricultural Worker

PERMITS:

- Limited Use Pesticide
- Variance from Drift Standards
- Variance from Surface Water Setback

PUBLICATIONS:

Numerous publications, on all matters relating to pesticides, can be found on the Board's website at www.thinkfirstspraylast.org.

FINANCES, FISCAL YEAR 2013: The expenditure information for this unit was generated from the Budget and Financial Management System (BFMS).

BOARD OF PESTICIDES CONTROL	TOTAL	SPECIAL		HIGHWAY	FEDERAL	MISC
	FOR	GENERAL	REVENUE			
EXPENDITURES	ALL	FUND	FUNDS	FUND	FUNDS	FUNDS
SALARIES & WAGES	849,474		742,082		107,392	
HEALTH BENEFITS	283,090		247,834		35,256	
RETIREMENTS	118,966		103,882		15,084	
OTHER FRINGE BENEFITS	15,371		12,921		2,450	
CONTRACTUAL SERVICES	77,253		62,140		15,113	
RENTS	30,335		15,306		15,029	
COMMODITIES	6,624		6,597		27	
GRANTS, SUBSIDIES, PENSIONS	3,500		3,500			
TRANSFER TO OTHER FUNDS	21,152		18,237		2,915	
TOTAL EXPENDITURES	1,405,765		1,212,499		193,266	

Department of Agriculture, Conservation & Forestry
Board of Pesticides Control
Fiscal Year 2016 Budget

REVENUES		Federal	Dedicated BPC	Dedicated Non-BPC	Total
1407	REG INSECT & FUNGICIDES	0	1,830,927	0	1,830,927
1448	SPECIAL LICENSES & LEASES	0	118,850	0	118,850
2226	FED GRANTS FOR OTHER PURP	566,662	0	0	566,662
2631	REGISTRATION FEES	0	380	0	380
2669	SALE MAILING LISTS	0	50	0	50
2978	DICAP TRANSFER	(58,844)	(187,873)	0	(246,717)
2981	LEGISLATIVE TRANSFER OF REVENUE	0	(135,000)	0	(135,000)
Total Revenues		507,818	1,627,334	0	2,135,152
EXPENDITURES		Federal	Dedicated BPC	Dedicated Non-BPC	Total
PERSONAL SERVICES					
31	SALARIES AND WAGES	(2,243)	(8,474)	(4,405)	(15,122)
32	SALARIES AND WAGES	63,353	455,232	272,506	791,091
33	SALARIES AND WAGES	76,814	66,232	0	143,046
36	SALARIES AND WAGES	0	8,201	2,808	11,009
38	SALARIES AND WAGES	3,312	12,072	0	15,384
39	FRINGE BENEFITS	77,502	319,731	155,618	552,851
Total Salaries and Wages		218,738	852,994	426,527	1,498,259
ALL OTHER					
40	PROF. SERVICES, NOT BY STATE	43,822	20,874	0	64,696
41	PROF. SERVICES, BY STATE	31,965	0	0	31,965
42	TRAVEL EXPENSES, IN STATE	8,981	1,836	0	10,817
43	TRAVEL EXPENSES, OUT OF STATE	3,694	0	0	3,694
44	STATE VEHICLE OPERATION	984	0	0	984
45	UTILITY SERVICES	0	105	0	105
46	RENTS	21,503	12,782	0	34,285
47	REPAIRS	799	198	0	997
48	INSURANCE	938	1,047	0	1,985
49	GENERAL OPERATIONS	40,602	17,002	0	57,604
50	EMPLOYEE TRAINING	0	1,072	0	1,072
51	COMMODITIES-FOOD	0	560	0	560
53	TECHNOLOGY	0	90,713	0	90,713
55	EQUIPMENT	0	1,245	0	1,245
56	OFFICE & OTHER SUPPLIES	6,482	3,386	0	9,868
64	GRANTS TO PUB & PRIV ORGNS	28,594	89,916	0	118,510
85	TRANSFERS	23,266	74,281	0	97,547
Total All Other		211,630	315,017	0	526,647
Total Expenses		430,368	1,168,011	426,527	2,024,906

Proposed Administrative Consent Agreement Background Summary

Subject: Ray Newcomb
JBI Helicopters
720 Clough Mill Road
Exeter, NH 03275

Date of Incident(s): August 12, 2014

Background Narrative: Board staff responded to a drift complaint in Exeter alleging that drift occurred to a residential property when a pesticide application was made to a corn field across the road. The commercial applicator of JBI Helicopters, Chris Thresher, applied Quilt Xcel fungicide (azoxystrobin and propiconazole) to the field. Two separate foliage samples collected from turf on the residential lawn were positive for azoxystrobin and propiconazole.

Summary of Violation(s):

CMR 01-026 Chapter 22 section 2(D) which addresses precautions to use when applications are made in the presence of humans and animals states in part that “Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals”.

CMR 01-026 Chapter 22 section 3(C) requires aerial applicators to maintain a site-specific application checklist prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied for each distinct field.

CMR 01-026 Chapter 22 section 4(B)I Standards for Unconsented, Off-Target Drift of Pesticides General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

CMR 01-026 Chapter 22 section 4(B)II Provides that pesticide residues in or on any off-target Sensitive Area Likely to be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.

Rationale for Settlement: The staff took into consideration the levels of residue detected, the precautions the applicator took, and the conditions on site at the time of the application.

Attachments: Proposed Consent Agreement

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

In the Matter of:)
Ray Newcomb) ADMINISTRATIVE CONSENT AGREEMENT
JBI Helicopters) AND
720 Clough Mill Road) FINDINGS OF FACT
Exeter, NH 03275)

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

The parties to this Agreement agree as follows:

1. That the Company is licensed as an aerial spray contracting firm and makes commercial pesticide applications.
2. That on August 12, 2014, the Board received a call from an Exeter resident. The caller said that earlier in the day, a helicopter sprayed a corn field across the road from her house. The wind was from the field towards her house. The caller was concerned about potential residues on her property where her three kids play. She was not aware spraying was going take to place and her kids were outside playing when the application started.
3. That on August 12, 2014, a Board inspector met with the resident described in paragraph two and took two foliage samples from her property. One foliage sample from the lawn close to the front of her house (140812MLP01A) and the other from the lawn near her mail box (140812MLP01B). This same day the Board inspector collected two foliage samples from the corn field across the road. One sample (140812MLP01C) was collected from the first 2 rows of the corn field. Approximately the first 150 feet of corn field in this area was left untreated as a buffer. The other sample was collected one hundred and seventy-five feet into the corn field in the treated area (140812MLP01D).
4. That the caller's property is a Sensitive Area Likely to be Occupied as that term is defined in CMR 01-026 Chapter 10 section 2(CCC)8.
5. That on August 13, 2014, a Board inspector conducted a follow up inspection with Chris Thresher, the Company applicator who made the application described in paragraph two. Thresher said he applied Quilt Xcel fungicide to the Fogler 2 corn block in Exeter on August 12, 2014. The active ingredients in Xcel Quilt are azoxystrobin and propiconazole. Company records indicate the application was made at 10:00 AM and the wind was 3-6 mph out of the south from the treated field towards the caller's property.
6. That all samples collected as described in paragraph three were sent to a lab for analyses. The lab results for the foliage sample collected close to the front of the caller's house was positive for azoxystrobin at 0.73 ppm (28% of target) and propiconazole at 0.73 ppm (28% of target). The foliage sample collected near the caller's mailbox was positive for azoxystrobin at 0.46 ppm (17.7% of target) and propiconazole at 0.40 ppm (15.4% of target). The foliage sample collected from the corn headlands was positive for azoxystrobin at 2.3 ppm (88% of target) propiconazole at 2.2 ppm (85% of target). The sample collected in the treated corn field was positive for azoxystrobin at 2.6 ppm and propiconazole at 2.6 ppm.

7. That CMR 01-026 Chapter 22 section 4(B)I requires applicators to undertake applications in a manner that minimizes pesticide drift to the maximum extent practicable.
8. That CMR 01-026 Chapter 22 section 4(B)II provides that pesticide residues in or on any off-target Sensitive Area Likely to be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.
9. That the circumstances described in paragraphs one through eight establish that sufficient precautions were not taken to minimize drift to the maximum extent practicable.
10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026 Chapter 22 section 4(B)I.
11. CMR 01-026 Chapter 22 section 2(D), which addresses precautions to use when applications are made in the presence of humans and animals states in part that “Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals”.
12. That the Exeter resident described in paragraph two, stated both verbally and in a written statement that her children were outside playing on their own property when the helicopter started the application to the corn fields as described in paragraph five. Their mother called them inside when she saw what was happening.
13. That during the inspection in paragraph five, the inspector informed the applicator children were outdoors playing when he started making the pesticide application described in paragraphs two and five. The applicator was not aware of this fact until the inspector informed him about it at the time of the follow up inspection.
14. That the circumstances described in paragraphs one through six and eleven through thirteen, constitute a violation of CMR 01-026 Chapter 22 section 2(D).
15. That CMR 01-026 Chapter 22 section 3(C) requires aerial applicators to maintain a site-specific application checklist prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied for each distinct field.
16. That during the inspection in paragraph five, the inspector asked the applicator for the site-specific application checklist for the application to the field described in paragraph five.
17. That the applicator did not have and could not provide the site-specific application checklist requested in paragraph sixteen.
18. That the circumstances described in paragraphs one through five and fifteen through eighteen constitute a violation of CMR 01-026 Chapter 22 section 3(C).
19. That the Board has regulatory authority over the activities described herein.
20. That the Owner 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.

21. That this Agreement shall not become effective unless and until the Board accepts it.

22. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs ten, fourteen, and eighteen, the Company agrees to pay to the State of Maine the sum of \$750. (Please make checks payable to Treasurer, State of Maine.)

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

JBI HELICOPTERS

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Henry Jennings, Director

APPROVED:

By: _____ Date: _____
Mark Randlett, Assistant Attorney General



PAUL R. LEPAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

October 7, 2015

Ronald C Lemin, Jr.
RCL Services LLC
291 Lincoln St.
Bangor, ME 04401

RE: Variance Permit for CMR 01-026, Chapters 29 for Japanese Knotweed Control on Pratt Property

Dear Mr. Adams:

The Board adopted a policy in 2013 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, 2017 for the treatment of Japanese Knotweed within 25 feet of the streambed, on the property of Reggie Pratt in Minot, per the forest management plan for the property.

Please bear in mind that your permit is based upon adherence to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control



PAUL R. LEPAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER
HENRY JENNINGS
DIRECTOR

September 17, 2015

Jeffrey M. Taylor
Vegetation Control Service, Inc.
2342 Main Street
Athol, MA 01331

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

Dear Mr. Taylor:

On December 13, 2013, the Board authorized the staff to issue multi-year permits for broadcast pesticide applications within 25 feet of water for control of invasive plants provided the applicator has demonstrated knowledge of best management practices for control of the plant, has a multi-year plan for controlling the invasive plants, and has a re-vegetation plan for the site.

By way of this letter, your request for a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 is hereby granted for the treatment of various invasive plants along public roadside rights-of-way in the Town of Falmouth. We understand that is part of a long-term plan by the town to control various invasive plants including honeysuckle, multiflora rose, buckthorn and purple loosestrife and that all abutting landowners have approved the application. This variance is valid until December 31, 2017. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your variance application; also, the Board does require that you notify them if there is a change in products to be used.

We will alert the Board at its October 9, 2015 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,

Henry Jennings
Director
Maine Board of Pesticides Control