



PAUL R. LEPAGE
GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

September 12, 2014

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 8, 2014 Board Meeting
Presentation By: Henry Jennings
Director
Action Needed: Amend and/or Approve
3. Workshop Session to Review the Rulemaking Record on the Proposed Amendments to Chapters 20, 22, 28, 31, 32, 33 and 41

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

On July 16, 2014, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, 28, 31, 32, 33 and 41. A public hearing was held on August 8, 2014 at the AMHI Complex, Deering Building, in Augusta, and the written comment period closed at 5:00 PM on August 22, 2014. Three people spoke at the public hearing and nine written comments were received by the close of the comment period. The Board will now review the rulemaking comments and determine how it wishes to proceed with the rulemaking proposals.

Presentation by: Henry Jennings
Director

Action Needed: Discussion and determination on how the Board wishes to proceed with the rulemaking proposals

4. Consideration of a Consent Agreement with Maine Organic Therapy of Ellsworth, Maine

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 involved use of an unregistered pesticide and use of pesticides inconsistent with the product labels.

Presentation By: Raymond Connors
Manager of Compliance

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

5. Other Old or New Business

- a. ERAC sampling update—M. Tomlinson
- b. Pollinator Health and Safety Conference update—G. Fish
- c. Other?

6. Schedule of Future Meetings

October 24, and December 5, 2014 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Note: Interest was expressed in having a meeting during the Agricultural Trades Show again next year. The Show is scheduled for January 13-15, 2015.

Action Needed: Adjustments and/or Additional Dates?

7. 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 Bills, at the Board's office or anne.bills@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 8, 2014

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

MINUTES

8:30 AM

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

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Randlett, introduced themselves.
- Staff Present: Chamberlain, Connors, Fish, Hicks, Jennings, Patterson

2. Public Hearing on Proposed Rule Amendments to Chapters 20, 22, 28, 31, 32, 33, and 41

The Board will hear testimony on the proposed amendments to the following seven rules:

- **Chapter 20 Special Provisions**—Add a requirement for applicators making outdoor treatments to residential properties to implement a system to positively identify application sites in a manner approved by the Board. This requirement is currently in policy.
- **Chapter 22 Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition**—Improve the effectiveness of the rule by eliminating the requirement of identifying sensitive areas for commercial applications conducted under categories 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management) and 7E (biting fly & other arthropod vectors [ticks]). Applications conducted under category 6A and to sidewalks and trails under category 6B will require the applicator to implement a drift management plan.
- **Chapter 28 Notification Provisions for Outdoor Pesticide Applications**—Add to the list of categories that require posting: 6B (industrial/commercial/municipal vegetation management) except when making applications to sidewalks and trails, and 7E (biting fly & other arthropod vectors [ticks]). Require advance notice be published in a newspaper for applications conducted under 6A (rights-of-way vegetation management), and to sidewalks and trails under 6B (industrial/commercial/municipal vegetation management). This aligns with the proposed amendments to Chapter 22, eliminating the requirement for mapping sensitive areas, in lieu of posting or public notice.
- **Chapter 31 Certification and Licensing Provisions/Commercial Applicators**—Three amendments are proposed:

1. Clarify that certain applications are exempt from commercial licensing requirements. These are currently in policy:
 - Adults applying repellents to children with the written consent of parents/guardians;
 - Persons installing antimicrobial metal hardware.
2. Exempt aerial applicators certified in other states from passing a written regulation exam and allow for issuance of reciprocal licensing when the staff determines that an urgent pest issue exists and when staff verbally reviews pertinent Maine laws with the applicator.
3. Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.

- **Chapter 32 Certification and Licensing Provisions/Private Applicator**—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.
- **Chapter 33 Certification & Licensing Provisions/Private Applicators of General Use Pesticides (Agricultural Basic License)**—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.
- **Chapter 41 Special Restrictions on Pesticide Use**—Amend Section 3 to eliminate the restrictions on hexazinone relative to pesticide distributors and air-assisted application equipment.
 - **See summary of comments for information on the hearing**

3. Minutes of the June 27, 2014, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- Item 5, bullet 4, change egress to ingress
- Item 5, bullet 6, Herczeg is misspelled
 - **Stevenson/Eckert: Moved and seconded to approve the June minutes as amended.**
 - **In favor: Unanimous**

4. Final Adoption of Amendments to Chapters 20, 22 and 51

The Board held a public hearing on proposed amendments to Chapters 20, 22, and 51 on March 1, 2013. The proposed amendments were intended to allow governmental entities to conduct public-health-related, mosquito-control programs in the event of an elevated mosquito-borne disease threat. The Board reviewed the comments on April 12, 2013, and provisionally adopted revised proposals on May 24, 2013. The Joint Standing Committee on Agriculture, Conservation and Forestry held public hearings and work sessions on the provisionally adopted rules on June 26, 2013, and January 14, 2014, and a work session on January 23, 2014. The Committee voted to recommend authorizing final adoption in a divided report on January 28, 2014, and three resolves became law on February 26, 2014. Since the resolves were not passed as emergency legislation, they did not become effective until August 1, 2014. The Board has 60 days from the effective dates of the resolves to finally adopt the rules.

Presentation By: Henry Jennings
Director

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapters 20, 22, and 51

- **Eckert/Granger: 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 20 as written.**
- **In favor: Unanimous**

- **Eckert/Jemison: 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 22 as written.**
- **In favor: Unanimous**

- **Eckert/Jemison: 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 51 as written.**
- **In favor: Unanimous**

5. Consideration of a Board Policy Interpreting “Food Production” for the Purposes of Determining Applicability of Public Law 2011, Chapter 169

Public Law 2011, Chapter 169, “An Act To Require Certification of Private Applicators of General Use Pesticides,” requires anyone who grows and sells more than \$1,000 worth of edible plants annually to become certified if they use general-use pesticides in “food production.” A number of questions have arisen about what constitutes “food production” for the purposes of the licensing requirement. At the June 27, 2014, meeting, the Board reviewed questions and discussed what it thought the legislative intent was. After reaching consensus, the Board directed the staff to draft an interim enforcement policy for review at a future meeting. The staff has prepared a draft policy for the Board’s consideration.

Presentation By: Henry Jennings
Director

Action Needed: Approve/Revise Draft Policy

- Fish referred to the draft policy in the board packet. He explained that it is important to be clear about who does and doesn’t need to be licensed, especially as the 2015 deadline approaches. The draft is based on the discussion which took place at the last meeting.
- Fish questioned the last sentence in the draft. Jennings explained that it was a revision of a sentence about applications being done in a greenhouse when food crops are present, for instance on petunias in one corner of the greenhouse while tomatoes are in the other corner. The original sentence would have required a license whenever applications were made in the vicinity of a food crop, which Jennings did not think was consistent with the previous Board discussion or the statutory language. He noted that crops grown outside, where food and non-food crops are present, are not in the spirit of the law unless an application was done in a manner that it would leave residue everywhere.

- Morrill questioned whether adding fumigations, etc. in the last bullet muddled the issue. Jemison said that the bullet clarified things, but the last sentence muddled them.
- Morrill stated that in his opinion if something is sprayed and it drifts onto food crops, then it is in effect a foliar application to a food crop.
- Jennings said the last bullet lacks specificity around where the application is happening.
- Bohlen noted that this policy is specifically around licensing. If somebody came to us who was growing tomatoes next to petunias and they sprayed the petunias, we would clearly like them to have a license. If they are growing food crops and applying pesticides nearby, they should be strongly encouraged to be licensed. Jennings noted that something like that should probably be separate from the policy.
- Jennings pointed out that the Legislature used the term “food production” and it is up to the Board to figure out what that means in this context. If the Board wants to encourage growers in the gray area to be licensed, they can, but not in this policy. This policy is trying to clarify the Legislature’s intent.
- Fish noted that if a grower is using pesticides on petunias then 99 percent of the time they’ll also be using them on their food crops and will be licensed.
 - **Morrill/Eckert: Moved and seconded to amend the draft policy by removing the last sentence and adopt as final.**
 - **In favor: Unanimous**

6. Interpretation of CMR 01-01A, Chapter 24, Section 7(D)

Chapter 24, Section 7(D) requires that, “Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements.” When the original rule was adopted, the Board wanted to make sure that pesticides stored at distributors were protected from vandalism and the weather. Some questions have arisen about how this requirement should be applied in certain circumstances.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Provide Guidance to the Compliance Staff

- Connors referred to the staff memo, noting that the staff needs clarification on what it means to be “securely fenced.” Some places, rather than fence the pesticides themselves, have a partial fence around the facility, where there’s a gate so cars can’t get through, but people can walk around. Does that meet the spirit of the rule?
- Granger asked whether the issue is pesticides being stolen or customers not being counseled in how to use the products. Connors said that he thought it was about preventing unauthorized loss of materials or vandalism.
- Eckert said that as she remembers the rule being written they were thinking about outdoor plant areas where stores may have some pesticides and other things located and were trying to make sure they were secure, as in a hurricane, not get blown around.
- Connors noted that this part of the rule is about self-storage areas; customers have access to it as opposed to a storage area that only store employees have access to.
- Morrill asked if there have been issues with pesticides being stored outside getting wet or stolen. Connors replied that it has not been a major problem, but the staff would like some clarity so when an inspector comes across different scenarios he/she can know what is sufficient.
- Eckert noted that problem might be in the word “fence” when there may be other ways to secure the products.

- Connors asked whether a facility that had a gate across the entryway into the facility so a car couldn't drive in, and was set back from the road, but had pesticides on the porch of the building, would be considered securely fenced.
- Bohlen said if the risk is vandalism, thinking about teenagers who have had too much to drink and are out to cause trouble, can they get to it; if they can, then it is not secure enough. A major storm event is a different risk, hopefully the owner would want to protect their products anyway. This is a difficult area for the Board to regulate. Bohlen would argue that a gate across the driveway with no associated fence is not secure enough; it is easy for somebody to walk in and do something stupid.
- Jennings noted that these are mostly bags of solids, weed-and-feed, etc.
- Morrill said if the store is staffed, then that's okay; if someone can just drive in and pick up a pallet, then that's not okay.
- Eckert said (during the initial rulemaking process) they were thinking about major events like fires and hurricanes. The other concern was stores like Mardens that had a self-service display which was not secure and the bags were easily ripped, material being dragged all over the store on people's feet. The Board was trying to protect against those types of things.
- Jennings noted that originally a lot of stores had weed-and-feed products right out in the parking lot, and they were in paper bags, not weather-resistant bags. There was concern about leaching; that's why they put in requirement for a roof.
- Granger said that he is concerned about practicality. Ames Supply on Route 1 in Woolwich has all kinds of stuff out in front of the store, under cover but still out in the open. Customers come in and pick up; he assumes it's all weed-and-feed. There are options; if they want to have the products out there, they are going to have to put up gates or move the material inside every night, or they can make customers order and pick up materials out back, or move the products indoors, which might be more of a risk. Better outside than inside a confined space. If it were an economic problem they would be securing them.
- Morrill noted that the wording is "securely fenced" and is not specific about the type of fence. What about a moveable gate? Something that delineates the area, if the Board is concerned about open access when the store is closed.
- Stevenson said an alternative is to specify the type of fence, but he would hesitate to do that. Requires making an investment, may change the look of the property. The Board would have to weigh costs of implementing requirements against what problem we're trying to solve. If vandalism is a problem, then the store is already going to deal with it.
- Eckert suggested changing the language to "must be secure" as opposed to being fenced. But then the Board would have to define what is secure. She is okay with a gate and fence.
- Connors asked about a partial fence—the front and sides are fenced, but not the back of property.
- Stevenson suggested that the staff make the decision in the field based on the specific circumstances. Look at what is the product—it seems unlikely that someone would take a bag of weed-and-feed—how much harm could they do with it?
- Morrill asked what would be involved with changing the rule. Jennings replied that it would need to go through rule-making, but noted that the Board could provide guidance without doing that. Currently the inspectors have some level of discomfort. If it's a pallet of weed-and-feed they're uncomfortable telling the store that they have to spend \$10,000 on a fence. How strictly does the Board want this enforced?
- Patterson noted that there are other ways the stores are securing the products. To make them move it causes undue hardship and might not solve the problem in a better way. Inspectors could just force the letter of the law, but a store's current solution may work fine, but not follow the letter.
- Eckert suggested that the staff work with the stores.

- Morrill said he liked the idea of “secure.” Look to your gut as to what the intention is; to prevent theft or leaching or unauthorized contact with products.
- Patterson noted that another thing that happens is a store is told they need a fence and they put up something that’s not really adequate, like a snow fence or a barricade of peat moss bales.
- Connors and Patterson agreed that the Board had given them sufficient guidance.
 - **Consensus was reached to add to the list of items for rule-making.**

7. Interpretation of CMR 01-026, Chapter 31, Section 1(E)(IV)

Section 1(E) of Chapter 31 currently lists four “exemptions,” presumably to the requirements for a commercial applicator’s license. The fourth exemption reads, “Certified or Licensed Wastewater or Drinking Water Operators.” A question has arisen about the intended scope of this exemption.

Presentation By: Gary Fish
 Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff

- Fish explained that the intent in Chapter 31 was for wastewater and drinking water operators to be exempt from needing a commercial license when using disinfectants to control microbes in drinking and waste water. York Water District has a pond that they want to treat with copper sulfate. While this is treating water that is going to be drinking water, he does not think it is what the Board originally intended. The exemption is for when they bring water into a treatment plant and treat it right before sending out for distribution; this is more of a wide-area treatment next to where the input is. Clarification is needed.
- Fish said there are also cases where people who work for a water district want to do herbicide treatments adjacent to the water supply, usually to take out invasive plants. We have allowed them to do that without additional licenses. In other situations they are asked to take care of weeds around buildings, fences, etc. Fish had a call the other day about poison ivy on a five-mile fence around the property. He had interpreted that circumstance as needing a license because they don’t get training for that with their wastewater treatment license.
- Jemison agreed that they are trained for use of disinfectants, not wide use of pesticides. Copper sulfate is especially worrisome, it has a “Danger” label, applicators don’t want to make mistakes with it. He feels strongly that someone should have appropriate training to use it.
- Eckert noted that the intent at the time was to identify people that had other training and certification that was essentially equivalent; whatever they’re trained for, we could let them do without a license, but poison ivy control is outside of that.
- Morrill remarked that if they are treating water, they’re probably pretty good at it, but treating fence lines is different and they should not be exempt from licensing. He asked what the training the personnel in York have. Fish replied that they are mostly trained for doing injections. He discussed concerns with Teresa Trott, Department of Health and Human Services, Center for Disease Control, and she felt it was not a good idea for them to be doing this type of application (copper sulfate) without a license, that they did not have that type of training.
- Bohlen noted that is directly related to the water; if they don’t do the application it will affect what happens inside the plant. It is directly related to the disinfecting that needs to happen. The people at the water districts don’t want people drinking copper sulfate so they’re not doing these treatments unless they have to. The Board needs to find out whether they’re receiving training on this. He is concerned that they might do this without proper training.
- Jennings said that once you’re treating surface water you’re getting into the whole NPDES and the permit piece, so if we don’t require licensing, how can we be sure they are aware of all the

requirements? He has concerns about operators moving outdoors and treating ponds based on the certification they have. A big part of it is calculating the amount of water and how to determine how much pesticide to use. He is not sure they're getting that kind of training.

- Bohlen said that the people he has dealt with are in touch with the regulatory agencies; everyone is looking over their shoulders. Not worried about the big districts, they will be aware of the regulations, but there are some providing water for 30-40 houses; what is their training?
 - Fish commented that the drinking water people are tied in with DEP; he's more worried about wastewater people. Bohlen said that the large wastewater plants already have NPDES permits.
 - Stevenson asked whether the training BPC gives would be appropriate for this. Fish replied that it would not be perfect, but would be adequate. It does cover the volumetric calculations to determine how much water you're treating and application rates, especially looking at different depths and water circulations so you're getting the correct concentrations throughout. IF&W has the most experience with this, sometimes even they have problems because of water coming in, not an easy thing to do.
 - Stevenson asked whether there's any question of liability for the Board if they choose not to require a license. Randlett said there is no liability concern; even if there were some negligence or failure, as a state agency the Board would be exempt.
 - Stevenson said even if there is no legal liability, would the Board not hold some responsibility? Are we not being irresponsible by saying they don't need a license if this is clearly a pesticide application?
 - Bohlen noted that the language is pretty clear: The way this rule is written, if you are a certified or licensed wastewater operator, you are exempt from licensing, period. This is something that needs to be fixed. In the near term, you could probably have a conversation with them about it. Concerned about language in rule, doesn't say "in pursuit of duties as a water treatment professional". Stevenson pointed out that this is why they think they can treat fence lines and whatnot without an applicator's license.
 - Morrill said that in the near term the Board should provide guidance to staff and suggested that licensed wastewater or drinking water operators should be exempt from pesticide licensing when they are doing applications as part of their duties, actually treating the water in the plant, disinfecting, etc. Once they step outside and do applications to a pond that's publically accessible, or to fence lines, etc., they should be licensed.
- **Consensus was reached consistent with Morrill's suggestion and it was agreed to put on the list for future rulemaking.**

8. Other Old or New Business

a. ERAC sampling update—Mary Tomlinson

- (Note: Tomlinson was not present) Jennings explained that Tomlinson had been spending a lot of time identifying sites along the coast. The lab in Montana couldn't do some of the analyses. After considerable research, Mary found a lab in San Antonio, Southwest Research Institute (SWRI) that will test for pyrethroids, methoprene and fipronil. The team is planning on sampling 20 sites; water and sediment samples to both labs, the staff is also trying to get the state lab to do some testing. The staff will also send samples to Orono for analyses of grain size. The team is also looking for soluble pesticides in water that may potentially impact marine organisms. The Montana lab can test for 96 analytes in one sample. SWRI will test for methoprene, fipronil, pyrethrin, and pyrethroids that other labs don't do. It's difficult because it's a mix. Testing is time-sensitive because the staff is trying to capture storm water.

- Bohlen noted that he has been working with Tomlinson on researching sampling sites. They did a scan of the Maine coast for areas with tidal flats that were accessible. In southern Maine, they are looking at urban or suburban landscapes. They are deliberately biasing samples toward where we're most likely to find something. In eastern Maine they are looking more at agricultural fields.
 - Morrill asked whether there would be any samples in deeper water. Bohlen said perhaps next year they'll look at deeper water; this year they are focusing on where we're most likely to find something, trying to determine risk pathways. They are biasing samples to get higher properties of risk; shallow water is where the chemicals are most likely to be, and we're not expecting to find most of these substances. If we don't find anything where there is the highest risk, that's a good indication that there is nothing to find.
 - Donna Herczeg asked if there are any sites in Portland. Bohlen said there are only 20 statewide, but at least half a dozen sites are in the greater Portland area: Portland, South Portland, Falmouth, Freeport. Herczeg remarked that she had read recently that 61% of storm drains in Portland drain into Casco Bay. She frequently sees pesticides applied prior to rain, washed right into the storm drain. Bohlen noted that that is what this testing is designed to look for.
- b. Variance permit to Urban Tree Service for control of poison ivy in York, Maine—H. Jennings
 - c. Variance permit to The Lawn Dawg for control of invasive plants in South Portland, Maine—H. Jennings
 - Jennings explained that both variances had been granted based on policies. This is just keeping the Board informed; it's important for the Board to know about them.
 - d. Other—DACF and UMaine Cooperative Extension are co-sponsoring a Pollinator Conference in November. Would really like the Board to participate. Will send details.

9. Schedule of Future Meetings

September 12, October 24, and December 5, 2014, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

- Interest was expressed in having a meeting during the Agricultural Trades Show again next year. The Show is scheduled for January 13-15, 2015.

10. Adjourn

- **Morrill/Granger: Moved and seconded to adjourn at 10:25.**
- **In favor: Unanimous**



PAUL R. LEPAGE
GOVERNOR

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WALTER E. WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

To: Board Members
From: Henry Jennings, Director
Subject: Staff Observations on Rulemaking Comments
Date: September 12, 2014

The staff has discerned a few apparent themes in the rulemaking comment record that we believe merit careful Board consideration. They are as follows:

1. We identified (as did many commenters) an unintended consequence of the proposal to trade identification of sensitive areas for posting and/or public notification. Chapter 22—which contains the sensitive area identification requirement—only applies to powered equipment. Chapter 28—which contains the posting/notification requirements—applies to all outdoor application of pesticides. So in proposing the trade, we inadvertently created a new notification requirement for many non-powered applications conducted under category 6A (right-of-way) that did not exist before. This was not contemplated by the staff at the time the proposal was drafted.
2. Currently, applicators treating public rights-of-way with powered equipment apply for variances from Chapter 22. The Board's longstanding policy has been to grant variances, conditioned upon the requirement that applicants publish newspaper notification and implement a drift management plan. The Board delegated authority to the staff to renew variances that remain the same from year to year. Commenters, and the staff, are now questioning the efficacy of newspaper notices. So we'll be asking the Board whether a more flexible notification standard may make more sense.
3. Darin Hammond observes that the proposal suggests that implementation of a drift management plan will be a requirement for applications made under categories 6A and for certain applications under category 6B. The Board does not currently define drift management plans in rule. The Board has been requiring Chapter 22 variance applicants to list measures that will minimize pesticide drift as part of the variance permit applications. If the Chapter 22 amendments are adopted, the variance will no longer be required. Therefore, the Board needs to consider what its expectations will be relative drift management plans.

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Ted Quaday Maine Organic Farmers and Gardeners Association	Ch. 20 – Supports the proposal to require positive identification of the application site. Questions what the Board policy will require. Supports use of at least two means of identification. Suggests periodic review and updating of the policy. Ch. 28 – Supports public notification of pesticide use. Questions the efficacy of newspaper notices. Suggests revisiting the automated web-based notification system discussed previously by the Board.	Written	
Darin Hammond Jasper Wyman & Son	Ch. 22 – The Board is asking companies to implement drift management plans when spraying under categories 6A and some aspects of 6B. Chapter 22 no longer references a drift management plan. Believes Ch. 22 adequately addresses drift management as it is.	Oral and written	
Nicolas Hahn, Gerry Mirabile Central Maine Power Company	Ch. 22 – Support exempting category 6B from the requirement to identify sensitive areas. Ch. 28 – Believe posting of substations is unnecessary and excessive for substations since access is restricted anyway. Propose exempting restricted-access substations. Oppose publication of advance notice of category 6A applications since they are targeted applications made by non-powered equipment. Propose exempting utility ROWs.	Oral and written comments	

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Chris Everest Commercial Applicator	Ch. 22 – Observes there are a lot of sensitive areas to identify for mosquito applications. Ch. 28 – Appreciates that the Board is willing to make changes that alleviate administrative burdens.	Written	
Brian Chateauvert Railroad Weed Control	Ch. 28 – Posting of category 6B areas could be very difficult on the railroad sidings. These are large open areas where the public is normally not allowed.	Oral	Brian Chateauvert Railroad Weed Control
Chuck Cotton Lucas Tree Experts	Ch. 20, 22, 31, 32, 33 and 41 – Supports changes as proposed. Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Opposes the new requirement mainly because they do a lot of applications on small industrial or residential sites for which newspaper advertising would serve no purpose, might discourage some clients and would therefor damage their business.	Written	

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Mark Lamberton Emera Maine	Ch. 28 – Observes that the proposed amendments to Ch. 28 include a new newspaper notification requirement for applications made under categories 6A and some aspects of 6B. [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).] Questions the efficacy of newspaper notices. Notes that utility lines are linear and therefor cross through many towns and are often remote, making them difficult to describe in a way that is meaningful to the public. Additional newspaper and posting requirements would be a financial burden. Proposes exempting category 6A from the newspaper notification and suggests that utility companies include vegetation management information on the company website.	Written	
Glenn Nadeau Emera Maine	Notes discrepancies in the category names as described in various Board rules. Ch. 28 – Clarifies that the proposal will now require newspaper notices for applications made under category 6A [The Board has been requiring newspaper notification for variances from Ch. 22, but not for applications that do not require a variance (e.g. non-powered equipment).].	Written	Glenn Nadeau Emera Maine

SUMMARY OF COMMENTS—CHAPTERS 20, 22, 28, 31, 32, 33 AND 41—AUGUST 2014

PUBLIC HEARING, AUGUST 8, 2014

END OF COMMENT PERIOD, AUGUST 22, 2014

TESTIMONY AND WRITTEN COMMENTS RECEIVED			
Person/Affiliation	Summary of Testimony	Type of Comment	Board Response
Christian Bulleman III Commercial Applicator	Ch. 31 – Questions the exemption for antimicrobial hardware. Unclear whether it applies to UV and IR mechanical systems as written, and believes that it should not.	Written	
Dennis Shellabarger	Ch. 41 – Opposes deregulation of hexazinone as proposed which would no longer prohibit application by air assisted equipment.	Written	Dennis Shellabarger

Chamberlain, Anne

From: DenS <dens@myfairpoint.net>
Sent: Friday, July 18, 2014 6:24 PM
To: Bills, Anne
Subject: Re: Proposed Amendments to Board of Pesticides Control Regulations

Dear Sir,

Ref: Proposed amendment to Chapter 41 Special Restrictions on pesticide use:

I am strongly opposed to any application of hexazinone by air assisted application equipment, of any kind! I am very surprised your organization is proposing this amendment.

Dennis Shellabarger

From: Bills, Anne
Sent: Thursday, July 17, 2014 11:35 AM
To: Fish, Gary
Subject: Proposed Amendments to Board of Pesticides Control Regulations

The Maine Board of Pesticides Control is proposing amendments to regulations

If you have suggestions or comments on any of the proposed amendments, we urge you to attend the Public Hearing or to submit written comments. Either way, your comments are appreciated and will be considered equally.

Thank you for your help.

PUBLIC HEARING: Friday, August 8, 2014 at 8:30 AM at 90 Blossom Lane, Deering Building, Room 319, Augusta.

WRITTEN COMMENTS: Accepted until **5:00 PM August 22, 2014**. They should be sent to Henry Jennings, 28 State House Station, Augusta, ME 04330 or emailed to henry.jennings@maine.gov

Download regulations with proposed changes at <http://www.maine.gov/dacf/php/pesticides/rulemaking.html>

Description of proposed amendments:

Chapter 20 Special Provisions—Add a requirement for applicators making outdoor treatments to residential properties to implement a system to positively identify application sites in a manner approved by the Board. This requirement is currently in policy.



P.O. Box 958, Portland, Maine 04104 (207) 797-7294

August 7, 2014

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

Dear Pesticide Board Members:

The Lucas Tree Expert Company appreciates the opportunity to comment on the proposed changes to the current regulations. We are in favor of the changes to Chapters 20, 22, 31, 32, 33 and 41 as described but have concerns with the proposed changes to Chapter 28.

The portion of the Chapter 28 changes requiring posting for 7E seem reasonable. However, we oppose the portion of Chapter 28 requiring newspaper notification for 6A and 6B for the following reasons.

- The way the regulation is written currently, as long as all sensitive areas are identified, the application may take place. There are no notification provisions. If notification provisions are not necessary now, we do not feel they are necessary after the changes. Identifying sensitive areas does not equate to notification.
- In the proposed changes, it now appears to be including all 6A and 6B applications in notification, powered and non-powered. The current rule of identifying sensitive areas only includes applications with motorized equipment. This is a drastic change of inclusion, which we feel is unwarranted and inappropriate.
- 6B is listed in both the posting and newspaper notification requirements. Into which is it included? There needs to be greater definition in this area.
- Operationally, the newspaper notification is unrealistic. We offer many services to homeowners, commercial customers and utilities. Many of these services include applications to small industrial or residential sites falling into categories 6A and 6B that would be negatively impacted if the newspaper notification were required. Newspaper notifications for property owners or industrial sites to contract driveway or bare ground weed control is completely unrealistic and unnecessary and a hindrance to our business.
- Lastly, we try to attend as many meetings as possible and monitor the minutes to those we can't attend. We do not recall any discussion about the newspaper notification at any of the meetings or in the minutes. Perhaps we missed it. However, it may be appropriate that some of the background for regulation changes be posted on the website to know the reasoning for some of the changes.

Thank you again for the opportunity to comment and offer suggestions on the proposed regulations changes. We hope that we have been able to effectively communicate some of the issues we have found with the proposed changes. If there are any questions regarding the information offered above or you require further information, please don't hesitate to contact us.

Respectfully Submitted,

Chuck Cotton
Fleet & Logistics Director

"Growing Naturally...Since 1926"

*Utility Line Clearance • Distribution Pole Line Construction • Utility Underground Service • Crane Service
Chemical Brush Control • Right of Way Clearing • Residential Tree & Spray Service
Christmas Decor • Landscape Installation • Lawn Care • Vegetation Management*

Chamberlain, Anne

From: Jennings, Henry
Sent: Monday, August 11, 2014 9:22 AM
To: Chamberlain, Anne
Subject: FW: EMERA MAINE COMMENTS ON PROPOSED CHANGES TO CHAPTER 28

Follow Up Flag: Follow up
Flag Status: Completed

From: LAMBERTON, MARK [<mailto:mark.lamberton@emeramaine.com>]
Sent: Friday, August 08, 2014 8:51 AM
To: Jennings, Henry
Cc: Fish, Gary
Subject: EMERA MAINE COMMENTS ON PROPOSED CHANGES TO CHAPTER 28

Chapter 28 Notification Provisions for Outdoor Pesticide Applications—Add to the list of categories that require posting: 6B (industrial/commercial/municipal vegetation management) except when making applications to sidewalks and trails, and 7E (biting fly & other arthropod vectors [ticks]). **Require advance notice be published in a newspaper for applications conducted under 6A (rights-of-way vegetation management)**, and to sidewalks and trails under 6B (industrial/commercial/municipal vegetation management). This aligns with the proposed amendments to Chapter 22, eliminating the requirement for mapping sensitive areas, in lieu of posting or public notice.

Henry, we at Emera Maine do not have any issues with any proposed changes to the other Chapters. We also do not have an issue with posting our sub-station sites where we perform motorized bare ground treatment under a drift management plan. After some discussion Glen and I agree that this would be a prudent thing to perform for our own employees. We do have concerns with the requirements for “advanced public notice in newspapers conducted under 6A (rights-of-way vegetation management)”.

- 1) Newspaper readership is now down to 22% of the population and of that 22% only a small percentage of that reads the public legal notices and advertisements, hence the notification would ultimately be viewed by very small percentage of the general population.
- 2) Transmission lines are linear in nature, cross through many towns and are often remote. We question how we would describe a line that was scheduled to be treated so that it would have any meaning to the general public, ex. “Emera Maine plans on performing a herbicide application to control woody brush and trees on Transmission Rights-of-way corridor line 73 that runs from the town of East Corinth to the town of Bangor Maine”. Even this description would be meaningless to the majority of the general public.
- 3) We question what the end goal or what is the desired benefit that is going be accomplished after the rule is enacted?
- 4) Even though cost shouldn’t be a factor, it is. Posting advertisements and legal notices in paper publications are expensive and this cost would ultimately be passed on to our rate payers.
- 5) It is unclear to us if this would affect our roadside low volume foliar treatment and/or our stump treating.

We would suggest the following.

- 1) 6A (rights-of-way vegetation management) should not be included in the proposed rule change for Chapter 28.
- 2) All utilities should have a section of their company web page which describes IVM and the general vegetation management philosophy.

Mark Lamberton

Supervisor of Vegetation Management

Emera Maine

T: 207-973-2582 | C: 207-949-4918 | F: 207-973-2745

E: mark.lamberton@emeramaine.com

www.emeramaine.com



Chamberlain, Anne

From: Jennings, Henry
Sent: Wednesday, July 23, 2014 4:32 PM
To: NADEAU, GLENN
Cc: Bills, Anne
Subject: RE: Proposed rule changes.

Follow Up Flag: Follow up
Flag Status: Flagged

The discrepancy you note relates to the fact that we combined categories 6A, 6B, and 6C in Chapter 31 into what's now referred to category 6A, so we might as well clean that up while we have Chapter 28 open. A comment to that affect would facilitate that process. Anne is great at organizing all this.

From: NADEAU, GLENN [<mailto:glenn.nadeau@emeramaine.com>]
Sent: Wednesday, July 23, 2014 4:26 PM
To: Jennings, Henry
Subject: RE: Proposed rule changes.

That is why I am asking these questions so I can get clarification before preparing written comments. Can I ask you for another clarification? In Chp. 28 Section 2. E. Exemptions, 2 c. it states category 6B (roadside vegetation management) but your notice of proposed changes states 6B as (industrial/commercial/municipal vegetation management)? I don't think these are the same are they?

From: Jennings, Henry [<mailto:Henry.Jennings@maine.gov>]
Sent: Wednesday, July 23, 2014 4:20 PM
To: NADEAU, GLENN
Cc: Bills, Anne
Subject: RE: Proposed rule changes.

The way the current proposal is written, I would say that non-powered applications are exempt from any requirement in Chapter 22 but not so with Chapter 28, which applies to all outdoor applications, depending on the section. Therefore, as currently written, you would need to publish a notice for a 6A applications. You may wish to submit a comment suggesting that that non-powered applications be exempted from publishing the notice when the comment period opens.

Henry

From: NADEAU, GLENN [<mailto:glenn.nadeau@emeramaine.com>]
Sent: Wednesday, July 23, 2014 4:12 PM
To: Jennings, Henry
Subject: RE: Proposed rule changes.

So the question on Chp. 28 is, are we exempt from the newspaper notice? The proposal states newspaper notification for Category 6A will be required, yet the rule states 6A is exempt. Also if we are exempt from the amendments to Chp. 22 does this mean we are exempt from Chp. 28 since the two are linked together?

From: Jennings, Henry [<mailto:Henry.Jennings@maine.gov>]
Sent: Wednesday, July 23, 2014 3:53 PM
To: NADEAU, GLENN

Cc: Bills, Anne

Subject: RE: Proposed rule changes.

Hi Glenn:

See responses below in red. Let me know if you require additional explanation.

Henry

From: NADEAU, GLENN [<mailto:glenn.nadeau@emeramaine.com>]

Sent: Wednesday, July 23, 2014 3:38 PM

To: Jennings, Henry

Subject: Proposed rule changes.

Henry I tried to send these questions to Anne but I got an out-of-office reply. Maybe you can offer some guidance.

Anne, am I right in assuming that the chapters which you provide a link to, have these proposed changes in them? I see some strike out and underscore editing which leads to my questions. Yes – the strike out and underline portions represent the proposed changes.

The next question I have is Chp. 22, Section 1 Exemptions states “The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

B. Applications of pesticides by non-powered equipment;

So if I am performing applications using non-powered equipment in Category 6A, I am not affected by these proposed rule changes? I will not have to implement a drift management plan? Correct – Chapter 22 does not apply to pesticide application made by non-powered equipment.

The other question I have deals with Chp. 28. In your announcement you state “Require advance notice be published in a newspaper for applications conducted under 6A (rights-of-way vegetation management),” but the Chapter 28 Section 2. E. Exemptions states “The following types of pesticide applications do not require notification under this section:

c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing categories ~~VI(A)~~— 6A (utility rights-of-way), this part should have read “rights-of-way vegetation management” also, so there was a mistake in the draft rule that put up on the web site, but that will be corrected before the public hearing.

but then section 3. B. Public Notice states “Advance notice must be published in a newspaper of general circulation in the affected area at least three but no more than 30 days prior to applications conducted under category 6A (rights-of-way vegetation management)”.

Sorry that I am confused by these proposals. I look forward to your clarification and explanations to my questions. Thank you for your time and effort.

Glenn P. Nadeau

Vegetation Management Specialist

Emera Maine

T: 207-760-2557 | C: 207-592-8719 | F: 207-760-2311

E: glenn.nadeau@emeramaine.com

www.emeramaine.com





RECOMMENDED BY FUTURE GENERATIONS.

August 8, 2014

Mr. Henry Jennings
Director:
Maine Board of Pesticide Control

Darin Hammond
Senior Manager of Farm Operations
Jasper Wyman and Son

RE: Written Comment for Chapter 22 Proposed amendments 8/8/2014

To Whom It May Concern:

The current proposed rule change to Chapter 22 concerning categories 6A, and 6B includes a new requirement for the applicator to implement a drift management plan. In the past there was a section in Chapter 22 (section 4) which dealt with Drift Management Plans. The entire section concerning drift management plans was repealed effective January 1, 2010.

I cannot see how the Board can require the implementation of a drift management plan without having some guidance in the rule concerning their implementation. In the past I believe drift management plans were reviewed by the BPC Staff.

Chapter 22 already outlines the minimum standards for outdoor Application of Powered Equipment in Order to Minimize Off-Target Deposition and should be adequate to protect the public, and the environment. We feel that the applicators will still identify these sensitive areas, and protect them but the recording of the areas is the burden on the applicator.

It is our feeling that this rule change makes great sense, but making applicators file a drift management plan does not. We urge the board to adopt this rule change with the deletion of the drift management plan requirement.

If you have any questions regarding this request please feel free to call me at any time.

Sincerely,

A handwritten signature in black ink that reads "Darin Hammond".

Darin Hammond
Senior Manager of Farm Operations
Jasper Wyman and Son



Jasper Wyman & Son

601 Route 193, Deblois, ME 04622 Ph: 207.638.2201 Fax: 207.638.2145

www.wymans.com

Chamberlain, Anne

From: bullemaniii@aol.com
Sent: Monday, July 21, 2014 6:30 AM
To: Bills, Anne
Subject: Re: Proposed Amendments to Board of Pesticides Control Regulations

Anne,

In regards to Chapter 31?. (persons installing microbial hardware) There are major precautions that need to be taken into consideration.

Assuming that the hardware is of mechanical function which serves as permanent fixtures in structures to control microbial issues. All individuals should have full knowledge of the benefits and adverse affects the devices have.

Many people that sell these products " door to door ", have no full knowledge of the product. I compare these individuals as " Hoover " salesman.

Here are some examples

1. make up air systems - One must know how the building structure performs on its own without the installation of this type equipment. If these individuals that are selling the equipment do not know how the given structure operates prior to the install, disaster may and will occur.

2. UV and IR mechanical systems- These devices " do not cure " microbial issues. These systems kill living spores and bacterial pathogens leaving the " dead skeletons " behind. Dead microbial cells floating through an air system are just as bad as active ones, especially in high compounded concentrations.

Prior to the installation of any of these systems, evaluations should take place by certified IAQ engineers such as myself and others.

Christian Bulleman III
IAQ / structural repairs
CMI#79505
CMRC#79522
CMA#45907/7C3

-----Original Message-----

From: Bills, Anne <Anne.Bills@maine.gov>
To: Fish, Gary <Gary.Fish@maine.gov>
Sent: Thu, Jul 17, 2014 10:35 am
Subject: Proposed Amendments to Board of Pesticides Control Regulations

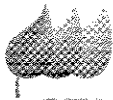
The Maine Board of Pesticides Control is proposing amendments to regulations. If you have suggestions or comments on any of the proposed amendments, we urge you to attend the Public Hearing or to submit written comments. Either way, your comments are appreciated and will be considered equally. Thank you for your help. PUBLIC HEARING: Friday, August 8, 2014 at 8:30 AM at 90 Blossom Lane, Deering Building, Room 319, Augusta. WRITTEN COMMENTS: Accepted until 5:00 PM August 22, 2014.

They should be sent to Henry Jennings, 28 State House Station, Augusta, ME 04330 or emailed to henry.jennings@maine.gov Download regulations with proposed changes at <http://www.maine.gov/dacf/php/pesticides/rulemaking.html> Description of proposed amendments: Chapter 20 Special Provisions—Add a requirement for applicators making outdoor treatments to residential properties to implement a system to positively identify application sites in a manner approved by the Board. This requirement is currently in policy. Chapter 22 Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition—Improve the effectiveness of the rule by eliminating the requirement of identifying sensitive areas for commercial applications conducted under categories 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management) and 7E (biting fly & other arthropod vectors [ticks]). Applications conducted under category 6A and to sidewalks and trails under category 6B will require the applicator to implement a drift management plan. Chapter 28 Notification Provisions for Outdoor Pesticide Applications—Add to the list of categories that require posting: 6B (industrial/commercial/municipal vegetation management) except when making applications to sidewalks and trails, and 7E (biting fly & other arthropod vectors [ticks]). Require advance notice be published in a newspaper for applications conducted under 6A (rights-of-way vegetation management), and to sidewalks and trails under 6B (industrial/commercial/municipal vegetation management). This aligns with the proposed amendments to Chapter 22, eliminating the requirement for mapping sensitive areas, in lieu of posting or public notice. Chapter 31 Certification and Licensing Provisions/Commercial Applicators—Three amendments are proposed: Clarify that certain applications are exempt from commercial licensing requirements. These are currently in policy: Adults applying repellents to children with the written consent of parents/guardians; Persons installing antimicrobial metal hardware.

Exempt aerial applicators certified in other states from passing a written regulation exam and allow for issuance of reciprocal licensing when the staff determines that an urgent pest issue exists and when staff verbally reviews pertinent Maine laws with the applicator.

Shorten the time period a person must wait before re-taking an exam they have failed to 6 days.

Chapter 32 Certification and Licensing Provisions/Private Applicator—Shorten the time period a person must wait before re-taking an exam they have failed to 6 days. Chapter 33 Certification & Licensing Provisions/Private Applicators of General Use Pesticides (Agricultural Basic License) —Shorten the time period a person must wait before re-taking an exam they have failed to 6 days. Chapter 41 Special Restrictions on Pesticide Use—Amend Section 3 to eliminate the restrictions on hexazinone relative to pesticide distributors and air-assisted application equipment. Anne Anne Bills Pesticide Safety Educator Maine Board of Pesticides Control anne.bills@maine.gov thinkfirstspraylast.org



**CENTRAL MAINE
POWER**

August 21, 2014

Mr. Henry Jennings, Director
Maine Board of Pesticides Control
28 State House Station
Augusta, ME 04333-0028

RE: Central Maine Power Company Comments on Proposed Amendments to
Board of Pesticides Control Regulations Chapters 22 & 28

Dear Director Jennings:

Central Maine Power Company (CMP) appreciates the opportunity to review and comment on the Maine Board of Pesticides Control (BPC) proposed amendments to the Board's regulation Chapters 22 and 28. CMP respectfully offers the following comments; these comments supersede and replace CMP's written and verbal testimony provided to the BPC at the August 8th public hearing:

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

CMP supports BPC's proposed amendments to this regulation. Specifically, CMP supports exempting commercial application category 6B (industrial/commercial/municipal vegetation management, which includes CMP substation herbicide treatment) from the requirement to identify and record all sensitive areas within 500 feet. While CMP has developed and updated sensitive area records and maps for 200+ substations since 2010, herbicide application utilizing powered equipment is limited only to those areas within substation fences. Also, because maintenance herbicide application is done annually and so is directed downward at any new/short growth, the likelihood of lateral herbicide drift beyond the substation perimeter fence is minimal.

**Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE
APPLICATIONS**

1. Section 3. of Chapter 28 would require, for the first time, posting prior to pesticide application for Category 6B (industrial/commercial/municipal

83 Edison Drive, Augusta, ME 04336
Telephone 207.623.3521



vegetation management, which includes substation herbicide treatment, as previously noted). CMP believes that this posting requirement is unnecessary and excessive for electrical substation herbicide treatments.

CMP electrical substations are secure facilities. Every CMP substation is surrounded by chain-link perimeter fencing and locked chain-link gate(s), all topped with 3-strand barbed wire, and signage along all sides of the fencing reads: "Danger High Voltage." Also, signage along each substation main and secondary gate panel reads: "Caution Energized Lines Overhead." Many substations also have locked gates where the substation access driveway intersects with a public road. As a result of the secure and restricted-access nature of substation facilities, only CMP substation personnel are present within and in the immediate vicinity of substations, in the area where herbicides are applied. Because CMP voluntarily posts signage on substation gates during herbicide application, CMP substation workers are made aware of this activity. This voluntary posting is made for a limited audience, both in terms of access and frequency (substation visits average once or twice monthly).

In contrast, Chapter 22 posting requirements are prescriptive and more appropriate for the general public, including signage of specific dimensions, material, color, verbiage, contact name and number of the pesticide application company, date and time of application, and date and/or time to remove the sign. This detailed information is not necessary for substation workers at these facilities.

Based on the above, CMP requests that Section 3.A.1. Categories Requiring Posting, be revised to read (proposed language ***bolded/italicized***):

c. B (industrial/commercial/municipal vegetation management), except applications to sidewalks and trails, and applications within restricted-access electrical substations.

2. Section 3.B of Chapter 28 would require, for the first time, that advance notice be published in a newspaper of general circulation in the affected area at least three but no more than 30 days prior to applications conducted under category 6A (rights-of-way vegetation management).

CMP believes that this requirement is excessive and unnecessary considering the hand-pressurized, selective (i.e., individual specimen-specific) herbicide application that it practices as part of its right of way vegetation management program. As well, CMP contractor crews voluntarily avoid herbicide applications when wind speeds exceed 15 mph. As a result, off-target deposition of herbicides (i.e., drift) is very unlikely and negligible on CMP rights of way.

Where transmission line corridors being treated with herbicides cross public roads, on a voluntary basis CMP vegetation management contractors post a notice of herbicide use, including application date and products used, on the utility poles closest to these public roads. These postings alert those who cross or utilize CMP transmission line corridors so that these individuals may take any precautions they deem prudent.

The requirement to publish newspaper notices of upcoming herbicide treatment would create an unnecessary expense for CMP, which would ultimately be borne by ratepayers. Newspaper public notices cost hundreds of dollars each, and it would be difficult for CMP to accurately represent which transmission line segments were to be sprayed or otherwise treated (e.g., cut surface treatment), and specifically when.

Newspaper notices of herbicide application may also cause unwarranted concern among abutters and members of the public who would not be impacted by these operations. Whereas aerial pesticide application is prone to drift and therefore may merit public notice so that proactive steps may be taken to mitigate its effects, hand-pressurized, targeted herbicide application on transmission line rights of way, as noted above, is very unlikely to result in drift or any other adverse offsite impacts. As a result, the purpose and benefits of the proposed broad public notice requirement are doubtful. Currently CMP voluntarily notifies municipalities each January of herbicide applications that are scheduled to occur during the following calendar year.

For the above reasons, CMP requests that Section 3.B. Public Notice, be revised to read:

“...under category 6A (rights-of-way vegetation management, *except utility rights of way*) and...”

Thank you for your consideration of these comments. We are happy to discuss these in more detail at your convenience. You can contact me at #626-9557 or gerry.mirabile@cmpco.com.

Sincerely,



Gerry J. Mirabile
Manager, Programs/Projects
Environmental Compliance

cc: Wes Davis (Manager, Vegetation Management)
Roy Koster (Manager, Environmental Compliance)



CENTRAL MAINE POWER

August 8, 2014

Director Jennings and members of the Board of Pesticides Control, my name is Nicholas Hahn and I am Lead Analyst – Transmission, in Central Maine Power Company's Vegetation Management Department. Central Maine Power Company appreciates the opportunity to review and comment on the Maine Board of Pesticides Control (BPC) proposed amendments to the Board's regulations. I am here today to respectfully offer Central Maine Power Company's comments on proposed amendments to Board regulations Chapters 22 and 28.

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

CMP supports BPC's proposed amendments to this regulation. Specifically, CMP supports exempting commercial application category 6B (industrial/commercial/municipal vegetation management, which includes CMP substation herbicide treatment) from the requirement to identify and record all sensitive areas within 500 feet. While CMP has developed and updated sensitive area records and maps for 200+ substations since 2010, herbicide application utilizing powered equipment is limited only to those areas within substation fences. Also, because maintenance herbicide application is done annually and so is directed downward at any new/short growth, the likelihood of lateral herbicide drift beyond the substation perimeter fence is minimal.

Regarding Chapter 28 [NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS]

CMP has two concerns:

First, Section 3. of Chapter 28 would require, for the first time, posting prior to pesticide application for Category 6B (industrial/commercial/municipal vegetation management, which includes substation herbicide treatment, as previously noted). CMP believes that this posting requirement is unnecessary for electrical substation herbicide treatments.

CMP electrical substations are secure facilities. Every CMP substation is surrounded by chain-link perimeter fencing and locked chain-link gate(s), all topped with 3-strand barbed wire, and signage along all sides of the fencing reads: "Danger High Voltage." Many substations also have locked gates where the substation access driveway intersects with a public road. As a result of the secure



and restricted-access nature of substation facilities, only CMP substation personnel are present within and in the immediate vicinity of substations, in the area where herbicides are applied. CMP personnel are aware of CMP's herbicide application program, because CMP voluntarily posts signage on substation gates during herbicide application to alert substation workers of this activity. Mandating signage notifying these workers of annual herbicide application is unnecessary.

Based on the above, CMP requests that Section 3.A.1. Categories Requiring Posting, be revised to read (proposed language ***bolded/italicized***):

c. B (industrial/commercial/municipal vegetation management), except applications to sidewalks and trails, ***and applications within electrical substations.***

Second, Section 3.B of Chapter 28 would require, for the first time, that advance notice be published in a newspaper of general circulation in the affected area at least three but no more than 30 days prior to applications conducted under category 6A (rights-of-way vegetation management).

CMP believes that this requirement is excessive and unnecessary considering the hand-pressurized, selective (i.e., individual specimen-specific) herbicide application that it practices as part of its right of way vegetation management program. As well, CMP contractor crews voluntarily avoid herbicide applications when wind speeds exceed 15 mph. As a result, off-target deposition of herbicides (i.e., drift) is very unlikely and negligible on CMP rights of way.

Where transmission line corridors being treated with herbicides cross public roads, on a voluntary basis CMP vegetation management contractors post a notice of herbicide use, including application date and products used, on the utility poles closest to these public roads. These postings alert those who cross or utilize CMP transmission line corridors so that these individuals may take any precautions they deem prudent.

The requirement to publish newspaper notices of upcoming herbicide treatment would create an unnecessary expense for CMP, which would ultimately be borne by ratepayers. Newspaper public notices cost hundreds of dollars each, and it would be difficult for CMP to accurately represent which transmission line segments were to be sprayed or otherwise treated (e.g., cut surface treatment), and specifically when.

Newspaper notices of herbicide application may also cause unwarranted concern among abutters and members of the public who would not be impacted by these operations. Whereas aerial pesticide application is prone to drift and therefore may merit public notice so that proactive steps may be taken to mitigate its effects, hand-pressurized, targeted herbicide application on transmission line rights of way, as noted above, is very unlikely to result in drift or any other adverse offsite impacts. As a result, the purpose and benefits of the proposed broad public notice requirement are doubtful. Currently CMP voluntarily notifies municipalities each January of herbicide applications that are scheduled for that calendar year.

For the above reasons, CMP requests that Chapter 28, Section 3.B. Public Notice, omit the following language:

“...under category 6A (rights-of-way vegetation management) and...”

Thank you for your consideration of these comments. We are happy to answer any questions or discuss these comments in more detail.

~~Christy~~

Nicholas Hahn

also present: Jerry Mirabile

Chamberlain, Anne

From: Chris Everest <ceverest1@gmail.com>
Sent: Sunday, July 20, 2014 10:24 AM
To: Bills, Anne
Subject: Re: Proposed Amendments to Board of Pesticides Control Regulations

Thanks for the info, we already put out pesticide flags for our mosquito apps at every entrance to the property so that change we will already be in compliance with. Its nice to see some changes that help us out, because you are right about how many sensitive areas there are in our work sites.

On Jul 18, 2014, at 7:50, "Bills, Anne" <Anne.Bills@maine.gov> wrote:

If the proposed amendment to Chapter 22 is adopted, applications for mosquitoes and ticks would not require identifying and mapping sensitive areas. *However*, if the proposed amendments to Chapter 28 are adopted, those applications would require posting "...in a manner and at locations designed to reasonably assure that persons entering such area will see the notice." Chapter 28 gives further details on the posting requirements. This change was requested because *everything* tends to be a "sensitive area" in a residential area, so mapping serves little purpose; it is hoped that signage will be more useful.

I hope this answers your question, please feel free to contact me again if you have further questions.

Anne

Anne Bills
Pesticide Safety Educator
Maine Board of Pesticides Control
anne.bills@maine.gov
thinkfirstspraylast.org

From: Chris Everest [<mailto:ceverest1@gmail.com>]
Sent: Thursday, July 17, 2014 3:52 PM
To: Bills, Anne
Subject: Re: Proposed Amendments to Board of Pesticides Control Regulations

Quick question, I'm reading the proposed changes, I spray for mosquitoes and ticks and currently am required to identify sensitive areas, am I reading correctly that they want to eliminate that and then I will no longer be required to identify and list sensitive areas?

On Jul 17, 2014, at 11:35, "Bills, Anne" <Anne.Bills@maine.gov> wrote:

The Maine Board of Pesticides Control is proposing amendments to regulations

If you have suggestions or comments on any of the proposed amendments, we urge you to attend the Public Hearing or to submit written comments. Either way, your comments are appreciated and will be considered equally.

Thank you for your help.



*Maine Organic Farmers
and Gardeners Association
Common Ground Country Fair*

August 22, 2014

Henry Jennings, Director
Maine Board of Pesticides Control
State House Station 28
Augusta, ME 04333

Dear Mr. Jennings and Members of the Board,

Thank you for the opportunity to provide comments regarding the rulemaking you have undertaken to address recommended changes in several chapters of BPC rules. We appreciate the efforts that have been made to satisfy the needs of several constituent groups and are generally supportive of the proposed language.

For over 40 years MOFGA has been committed to helping farmers and gardeners grow organic products. We represent members in over 7,000 households around the state. Our members have said many times that they would like free, timely and pertinent information when it comes to pesticide use around areas in which they live, work and recreate. As such, MOFGA is supportive of the spirit of the changes to Chapter 28 Section 3B. Public notice of certain pesticide applications is a good starting point in the conversation regarding notification of spraying, however we do not feel the proposed language goes far enough.

Unfortunately, requiring notification via local newspapers alone will not reach a large enough portion of the population. For a variety of reasons, newspaper readership is declining and trends suggest this decline is likely to continue in coming years. Fewer and fewer people are relying on local and regional newspapers for news and legal notices. Thus requiring only newspaper notice will limit the effectiveness of the distribution plan. Also, many local newspapers are regional in nature. Concerned citizens may need to subscribe to multiple newspapers to learn about planned pesticide applications near their homes in addition to where they work or recreate.

A possible solution in keeping with the spirit of notifying the widest possible number of potentially affected individuals would be to reconsider and revive the automated notification options that have been discussed by the Maine Board of Pesticides Control in the past. Alternative notification options could allow citizens to receive the information in a *no-cost* method of their choosing. We recommend the Board consider alternative outlets for dissemination of the information described in section 3B. These outlets have the potential to reach a wider audience and provide more variety of media than the current language allows.

We also appreciate the spirit of the proposed changes to Chapter 20 Section 7 requiring positive identification of the proper treatment site. The proposed changes

294 Crosby Brook Road, P. O. Box 170, Unity, Maine 04988 • **Phone:** (207) 568-4142
Fax: (207) 568-4141 • **Email:** mofga@mofga.org • **Web:** www.mofga.org

appear to be a positive step toward addressing the problem of pesticide applications mistakenly taking place at the wrong property. However, it is difficult to express support for these proposed changes without having a clearer picture about the policy the Board intends to adopt. We would support a policy that required applicators to have two or more identification criteria, thus reducing the potential for error. We would also support periodic review of the policy and application methods employed. This review could be used to ensure that only the most robust and protective methods are included among those in the policy and that others can be swiftly removed from policy if they are proven to be less effective or potentially problematic.

Thank you for your time and consideration of these important issues.

Regards,

A handwritten signature in cursive script that reads "Ted Quaday".

Ted Quaday
Executive Director

Proposed Administrative Consent Agreement Background Summary

Subject: Scott Reed
Maine Organic Therapy
9 Carriage Road
Ellsworth, Maine 04605

Date of Incident(s): Multiple occasions in 2012 and 2013

Background Narrative: On March 5, 2013, a Board inspector completed a marketplace inspection at a pesticide retailer in southwestern Maine. Through the inspection, and purchase records supplied by the retailer at a later date, it was determined that Maine Organic Therapy, a licensed medical marijuana growing facility, purchased five different pesticides during the above time frame, four of them on multiple occasions. These were:

- Pyganic Crop Protection EC 1.4 insecticide (EPA reg. # 1021-1771) one quart in October of 2012 and one quart in February of 2013.
- Pyrethrum TR insecticide (EPA reg. # 499-479) twelve 2 oz. cans in April of 2012, twelve 2 oz. cans in May of 2012 and twelve 2 oz. cans in October of 2012.
- Eagle 20EW fungicide (EPA reg. # 62719-463), one pint in February of 2012.
- KleenGrow algicide, fungicide, bactericide, disinfectant and virucide (EPA reg. # 81820-2), one gallon on May 8, 2013, and five gallons on May 23, 2013.
- BotaniGard ES (EPA reg. # 82074-1) one quart in October of 2012 and 2 quarts in February of 2013

On April 3, 2013, a Board inspector conducted a joint inspection with Dept. of Health and Human Resources personnel at the company's Biddeford cultivation site.

During the April 3rd inspection, the Board inspector found a partially full aerosol can of Pyrethrum TR insecticide, one of the pesticides known to have been purchased. The inspector also documented that the company had elemental sulfur on site that was used by the company for sanitation purposes in empty grow rooms.

When interviewed, company personnel denied using any of the pesticides purchased on the medical marijuana and said it was taken home by employees for use on their home gardens. The Board staff found this explanation implausible.

The Board staff and Mark Randlett negotiated a consent agreement with the company.

Summary of Alleged Violation(s):

CMR 01-026 Chapter 20 Section 1(B), 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F). The use of a pesticide inconsistent with its label and prohibits the use of registered pesticides for other than registered uses.

CMR 01-026 Chapter 20, Section (1) Prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §601.

7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F) Wearing the label-required personal protective equipment is necessary.

Federal Worker Protection Standard, 40 CFR, Part 170 (WPS) Workers at this facility did not receive WPS training and there was no central information display informing employees which areas were treated.

22 M.R.S. § 1471-D (8)(C) The use of pesticides in the production of medical marijuana was potentially harmful to the public health.

Rationale for Settlement: The staff considered the number and duration of pesticide applications. None of the pesticides were registered for use on medical marijuana and one of the pesticides was not registered in Maine. The pesticide applications were potentially harmful to patients using the medical marijuana.

Attachments: Proposed Consent Agreement

AUG 12 2014

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

Scott Reed)
Maine Organic Therapy) ADMINISTRATIVE CONSENT AGREEMENT
9 Carriage Road) AND
Ellsworth, Maine 04605) FINDINGS OF FACT

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

The parties to this Agreement agree as follows:

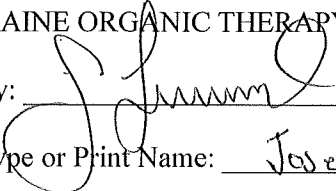
1. That the Company operates a medical marijuana cultivation site in Biddeford, Maine.
2. That on June 5, 2013, a Board inspector contacted a pesticide retailer in southwestern Maine to check pesticide sales made.
3. That from the inspection described in paragraph two, it was determined that on multiple occasions, the company purchased five different pesticides in 2012 and 2013.
 - Pyganic Crop Protection EC 1.4 insecticide (EPA reg. # 1021-1771) one quart in October of 2012 and one quart in February of 2013.
 - Pyrethrum TR insecticide (EPA reg. # 499-479) twelve 2 oz. cans in April of 2012, twelve 2 oz. cans in May of 2012 and twelve 2 oz. cans in October of 2012.
 - Eagle 20EW fungicide (EPA reg. # 62719-463), one pint in February of 2012.
 - KleenGrow algicide, fungicide, bactericide, disinfectant and virucide (EPA reg. # 81820-2), one gallon on May 8, 2013, and five gallons on May 23, 2013.
 - BotaniGard ES (EPA reg. # 82074-1) one quart in October of 2012 and 2 quarts in February of 2013
4. That on April 3, 2013, a Board inspector conducted an inspection in conjunction with DHHS personnel at the Company's Biddeford cultivation site. During this inspection, the inspector asked Company personnel about the pesticides the Company purchased in 2012 and 2013 as described in paragraph three.
5. That in response to a question asked by the Board inspector on April 3, 2013, Company personnel denied using the pesticides at the Company's cultivation site and stated that the pesticides were taken home by employees for use on their home gardens.
6. That during the inspection described in paragraph four, the inspector noticed a half empty aerosol can of Pyrethrum TR insecticide that had fallen down and rolled under a set of shelves. When the inspector asked about its use at the facility he was told by the head grower and applicator, Derek Brock and the assistant grower, Hughes Pope that the insecticide was applied to a 300 square foot opened and screened area of an exterior wall to kill insects during the installation of a ventilation louver. The inspector documented that 1 oz. of Pyrethrum TR insecticide (EPA reg. # 499-479), was applied in June of 2012, on that job.
7. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
8. That Pyrethrum TR insecticide (EPA reg. # 499-479) is not registered for use as a spot treatment of insects on the buildings as summarized in paragraph seven.
9. That the circumstances in paragraphs one through eight constitute violations of CMR 01-026 Chapter 20 Section 1(B), 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).

10. That during the inspection described in paragraph four, the inspector found an Elemental Sulfur Prill product on site and took photos of the label to document that product (sample # 130403EPM02A). The inspector also documented that a Nivola Sulfur Evaporator was used to apply the sulfur as a smoke application to empty grow rooms at the Company including 10 grams applied on March 29, 2013, to sanitize an 18 ft. x 24 ft. (432 square feet) room.
11. That CMR 01-026 Chapter 20, Section (1) A prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §601.
12. That the Elemental Sulfur Prill used for sanitation purposes as described in paragraph ten was not registered in Maine at the time of its use.
13. That the circumstances described in paragraphs four, ten, eleven, and twelve constitute a violation of CMR 01-026 Chapter 20, Section (1)
14. That CMR 01-026 Chapter 20 Section 1(B) prohibits the use of registered pesticides for other than registered uses and 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
15. That none of the pesticides summarized in paragraphs three were registered for use on marijuana.
16. That the Board finds, based on the evidence obtained from the sales records summarized in paragraphs two and three, and the inspector's interviews in paragraph four, that Company employee explanations given in paragraph five for how the pesticides were used to be implausible. The pesticides described in paragraph three all have greenhouses listed on their labels and have utility for controlling insect, disease and sanitation problems encountered when plants are grown in a greenhouse environment. In addition, the Pyrethrum TR insecticide label specifies it is for commercial use only and the KleenGrow label prohibits its use outdoors, both precluding their use in Company employee's home gardens. From this evidence it is the Board's position that the five pesticides summarized in paragraph three, were applied to the medical marijuana at the Company's Biddeford cultivation site. Two unrelated medical marijuana growing facilities acknowledged using similar products to grow medical marijuana when previous inspections were done.
17. That the circumstances in paragraphs one through four, eight, fourteen, fifteen and sixteen, constitute multiple violations of CMR 01-026 Chapter 20 Section 1(B), 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
18. That wearing the label-required personal protective equipment is specified in 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471 D (8)(F).
19. That Pyrethrum TR insecticide requires chemical resistant gloves when applying it.
20. Chemical resistant gloves were not worn when applying the Pyrethrum TR.
21. That the circumstances described in paragraphs six, and eighteen through twenty constitute a violation of CMR 01-026 Chapter 20 Section 1(A) and (B) and 22 M.R.S.A § 1471-D(8)(F).
22. That the Company raises a commercial agricultural crop at a greenhouse business that utilized pesticides bearing language requiring conformance with the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).
23. That the Company employs one or more workers and handlers as defined under 40 CFR, Part 170.3 to assist in the production of the crops described in paragraph one.
24. That from the inspection done in paragraph four, it was determined that the workers did not receive WPS training, there was no central information display informing employees which areas were treated.
25. That the circumstances described in paragraphs twenty-two, twenty-three and twenty-four, constitute multiple violations of the federal Worker Protection Standard, 40 CFR, Part 170 (WPS).

26. The Board finds that the probable use of pesticides in the production of medical marijuana was potentially harmful to the public health, in violation of 22 M.R.S. § 1471-D (8)(C).
27. While the Company does not admit the violations, and while the Company believes there are factual disputes involving the violations alleged by the Board, the Company does agree to enter into this Consent Agreement for the purpose of resolving the alleged violations.
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 assessing a penalty in this circumstance, the Board recognized that the Company was producing a medicinal product intended for use by patients with serious and/or chronic illnesses.
32. 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 nine, thirteen, seventeen, twenty-one, twenty-five, and twenty-six, the Company agrees to pay to the State of Maine the sum of \$5,500 (Please make checks payable to Treasurer, State of Maine.)

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

MAINE ORGANIC THERAPY

By:  Date: 8/5/14
 Type or Print Name: Joseph Lescage

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Henry Jennings, Director

APPROVED

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