

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 60: DESIGNATION OF CRITICAL PESTICIDE CONTROL AREAS**

SUMMARY: These regulations establish criteria which the Board will use in deciding if an area should be designated as a critical pesticide control area. In addition, these regulations specify the procedures parties must follow in requesting such a designation. These regulations also define the locations that have been designated as critical areas by the Board.

1. Procedure

- A. The Board shall receive, consider and act upon petitions for designation of critical pesticide control areas in accordance with 5 M.R.S.A., Ch. 375, subchapter II. Citizen petitions shall be allowed in accordance with 5 M.R.S.A. §8055. A municipality or county may make such petition in accordance with 22 M.R.S.A. §1471-M, sub-§ 4. In addition, the Board's staff may initiate such a petition.
- B. The Board shall provide public notice and opportunity for public comment on any such petition in accordance with 5 M.R.S.A., Ch. 375, subchapter II.
- C. There shall be opportunity for local participation in Board decisions regarding the designation of critical areas, as provided by 22 M.R.S.A. §1471-V.

2. Information required in Petition

Any person or persons petitioning the Board to designate an area as a critical pesticide control area shall submit the following information in support of the petition:

- A. The name, address and telephone number of the petitioner(s) and a statement of the petitioner's interest in the proposed designation.
- B. The name of the pesticides or group of pesticides for which restrictions are sought. Petitioners may seek restrictions on specific formulations which have enhanced toxicity, rather than on all products containing the active ingredient. For purposes of this regulation, pesticides shall include both active and inert ingredients, and carriers used in any pesticide application.
- C. The name(s) and address(es) of the owner(s) of property within the proposed critical area.
- D. A map of the proposed critical area.
- E. A description of the purposes for which the pesticide(s) is or may be applied within the proposed area (if known).

- F. For petitions for designation under criteria of sections 3(A), 3(B) or 3(C), the name(s) of the species for which protection is sought and a summary of the data establishing adverse effects of pesticides upon the species.
- G. For petitions for designation under criteria of section 3(D), a copy of any applicable town ordinances, a summary of: evidence establishing that the pesticides may enter ground or surface water, hydrogeologic data which adequately defines the proposed critical area, and evidence establishing that the pesticide(s) may have an adverse effect upon the health of current or future users of the ground or surface water.
- H. For petitions for designation under criteria of section 3(E), a summary of medical and/or epidemiological evidence that exposure to the pesticide(s) causes serious and/or longstanding health effects to sensitive individuals or groups of individuals.
- I. For petitions for designation under criteria of sections 3(F) or 3(G), a copy of any management plan for the area or species.
- J. A description of the petitioner's proposed restrictions on the use of pesticide(s) within the proposed critical area.

3. **Criteria for designation**

The Board of Pesticides Control will use the following criteria to determine whether to designate a critical pesticide control area. Where the Board is persuaded by the evidence that any of these criteria are met, it may designate a critical pesticide control area and adopt additional pesticide use restrictions, prohibitions or management plans for that area as necessary to protect health, welfare and the environment.

- A. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of the habitat or range of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or
 - (3) is an invertebrate species ranked G1, G2 or S1 under the Natural Heritage Program of The Nature Conservancy and which is, in the Board's judgment, of natural significance.
- B. Areas where use of pesticide(s), without additional restrictions, is likely to negatively affect the mortality rate and/or reproductive capability of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or
 - (3) is an invertebrate species ranked G1, G2 or S1 under the Maine Natural Areas Program in the Department of Conservation and which is, in the Board's judgment, of natural significance.

- C. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of significant wildlife habitat. "Significant wildlife habitat" is as identified under the Natural Resources Protection Act, 38 M.R.S.A., Ch. 3, subchapter 1, Art. 5-A.
- D. Areas where use of pesticide(s), without additional restrictions, is likely to significantly risk the quality of surface or groundwater supplies used for human consumption.
- E. Areas where use of pesticide(s), without additional restrictions, is likely to cause serious and/or longstanding impairment of the health of sensitive individuals or groups of individuals who normally occupy such areas. The Board contemplates that this designation will require verified medical and/or epidemiological documentation of human sensitivity to one or more pesticides.
- F. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural or other resources owned or managed by a government agency, or is contrary to the duly adopted management plan for an area owned or managed by a government agency.
- G. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural resources within an area which is identified as an exemplary natural community or ecosystem of recognized exceptional qualities and has been designated for long-term ecological research and/or conservation purposes.

4. Designated Critical Pesticide Control Area

A. Dennys River Critical Pesticide Control Area

- (1) The above entitled matter having come up for public hearing on 7 March, 1978, at 2:00 p.m. before the Pesticides Control Board in Room 102 of the Science Building at the University of Maine in Machias; and the Board, having considered the evidence and arguments presented, and with a quorum present, has this day voted to declare a critical area under provisions of Title 22, Chapter 258-A, Sections 1471-F and 1471-M (2)(A), within which critical area no aerial application of pesticide is to be made without prior approval of the Board of Pesticides Control.
- (2) The critical area herein established is described as follows: Commencing at the dam at the foot of Meddybemps Lake and extending down the Dennys River to the Gilman Dam, so-called, the critical area shall include all land within one-half mile of either bank of the Dennys River; commencing at the Gilman Dam, so-called, and extending down the Dennys River to its entrance into Dennys Bay, so-called, the critical area shall include all land within one mile of either bank of the Dennys River.

FISCAL IMPACT: This rule will not impose any fiscal impact on counties or municipalities.

STATUTORY AUTHORITY: 5 M.R.S.A., § 8051 *et seq.* and 22 M.R.S.A., §§ 1471-F and M.

EFFECTIVE DATE:

July 6, 1979

AMENDED:

May 8, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998

July 12, 2000

MINOR CORRECTION:

November 23, 2000 - citation in § 4(C)(4)

AMENDED:

December 24, 2000 - repealed §4(C)

December 26, 2011 – filing 2011-475

CORRECTIONS:

February, 2014 – agency names, formatting