



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

**BOARD OF PESTICIDES CONTROL**

**August 5, 2022**

**9:00 a.m. Board Meeting**

Video conference hosted in MS Teams, to join the meeting:

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 207-209-4724](#) United States, Portland

Phone Conference ID: 828 502 102#

**AGENDA**

1. Introductions of Board and Staff

2. Minutes of the June 17, 2022 Board Meeting

Presentation By: Henry Jennings

Action Needed: Amend and/or approve

3. Continuing Discussion on Annual Funding to Maine CDC for Mosquito Monitoring

At its June 17, 2022 meeting, the Board entertained a report from the Maine CDC relative to its use of mosquito monitoring funds for 2021 and its plans for the use of funds in 2022. Board members had questions about the status of the insectary and efforts to monitor for insect resistance to insecticides. The Maine CDC agreed to research the Board's questions and report back at the next meeting.

Presentation By: Sara Robinson, Infectious Disease Epidemiology Program Director

Action Needed: Report Back Relative to Board questions; Determine Grant Funding for 2022

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



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

4. LD 2019—An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances

At its June 17, 2022 meeting, the Board reviewed/discussed LD 2019. It requested that the staff provide information on existing regulations relative to pesticide containers and to research options relative to defining what “contamination” means in the context of the bill.

Presentations By: Andrew Smith, State Toxicologist, Department of Health and Human Services

Action Needed: Review/Discuss Provided Information, Determine Next Steps

5. Adoption of Proposed Rule Amendments to Chapter 41

On June 17, 2022, the Board held a public hearing to solicit comments relative to proposed amendments to Chapter 41 of its rules. No comments were received on the proposal. The Board will consider whether to adopt the proposed amendments, together with the basis statement, response to comments, and the statement of impact on small business.

Presentation By: Karla Boyd

Action Needed: Determine Whether to Adopt Amendments to Chapter 41

6. Consideration of a Consent Agreement with Nervous Ticks, Edgecomb, 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 an unlicensed company making commercial applications of a FIFRA Section 25B exempt pesticide to residential properties.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Review and/or Approve

7. Board Discussion/Review of Penalties and Assessment Rationale

At its June 17, 2022 meeting, Board members voiced questions relative to how fines are calculated and whether some fines should be higher. The Board requested that the matter be placed on a future agenda for discussion and review.

Presentation By: Raymond Connors/Henry Jennings

Action Needed: Provide Guidance to the Staff

8. Consideration/Adoption of Board Policies Relative to Invasive Invertebrate Pests and Emergency Uses of Neonicotinoids

Recent amendments to the Board's statutes required the Board to conduct rulemaking to place limitations on the use of certain neonicotinoid active ingredients on residential landscapes. Once the Board finally adopts those rule amendments, it will need to adopt two policies relative to the operation of the rule, including: 1) a list of invasive invertebrate pests; and 2) a policy on the issuance of emergency use permits. The staff has developed two policies and a draft permit application form for the Board's consideration.

Presentation By: Karla Boyd

Action Needed: Amend and/or approve

9. Other Old and New Business

a. Variance Permit Issued to Basswood Environmental, LLC.

b. Variance Permit Issued to Midcoast Conservancy

c. Variance Permit Issued to Dubois Contracting

d. Other items?

10. Schedule of Future Meetings

September 9, 2022 and October 21, 2022 are the next tentative Board meeting dates. The Board will decide whether to change and/or add dates.

The Board will also decide if there is a continuing need to meet remotely.

Adjustments and/or Additional Dates?

11. 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](http://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 Board's office or [pesticides@maine.gov](mailto:pesticides@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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COMMISSIONER

BOARD OF PESTICIDES CONTROL

June 17, 2022

9:00 AM Board Meeting

MINUTES

1. Introductions of Board and Staff

- Adams, Carlton, Ianni, Jemison
- Boyd, Brown, Bryer, Connors, Couture, Nelson, Pietroski, Tomlinson

2. Minutes of the May 6, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Carlton: Moved and seconded to approve the minutes as amended**
- **In Favor: Unanimous**

3. Public Hearing on Proposed Rule Amendments to Chapter 41

The Board will hear testimony on the proposed amendments:

**Chapter 41**—Two amendments are proposed:

1. Add a new section pertaining to neonicotinoids (dinotefuran, clothianidin, imidacloprid or thiamethoxam) to restrict registration and prohibit use in outdoor residential landscapes for the purposes of managing pests in turf and ornamental vegetation and emergency permitting process.
  2. Add a new section prohibiting the use of chlorpyrifos, except for licensed applicators who obtain a use permit from the Board to apply chlorpyrifos products purchased prior to December 31, 2022.
- The public hearing was opened and closed with no public comment.

#### 4. Report on Annual Funding to Maine CDC for Mosquito Monitoring

The Maine Center for Disease Control and Prevention (Maine CDC) coordinates state activities around preventing vector-borne diseases. As part of its responsibilities, the CDC coordinates mosquito and disease monitoring in Maine. The presence of mosquito-borne diseases and the species of vector mosquitoes present in Maine have been on the rise in recent years. Maine CDC and BPC entered into a Memorandum of Understanding in 2013 to establish cooperation to conduct surveillance for mosquito-borne diseases to protect public health. At the April 16, 2021 meeting Sara Robinson of the Maine CDC provided an overview of the trends and the state's monitoring program. At the April 16, 2021 meeting, the Board voted to approve funding in the amount of \$50,000 for Maine CDC's mosquito monitoring efforts. The Board will now review a report on work accomplished in the previous year and work projected for the current year.

Presentation By: Sara Robinson, Infectious Disease Epidemiology Program Director

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

- Sohail Haris, Vector-borne and Zoonotic Epidemiologist for the Maine CDC, presented on behalf of Sara Robinson.
- Patterson stated that the Board had a memorandum of understanding with the CDC that, at a minimum, if funds were available, the BPC would allocate at least \$25,000 annually to mosquito monitoring. She added that in recent years the Board had chosen to support this initiative in the amount of \$50,000. Patterson noted that it was the Board's choice to allocate anywhere from \$25-50,000 but cautioned that they might be facing a budget shortfall in the upcoming two years.
- Haris stated that COVID impacted 2021 mosquito monitoring and it was mainly due to funding obtained from BPC that allowed them to continue monitoring in 2021. Maine Medical Center Research Institute did most of the trapping, and they also subcontracted to Swamp, Inc. Haris stated that 1,025 mosquito pools were tested at the Maine Health and Environment Testing Laboratory, and zero were positive for West Nile virus, WNV, or Eastern Equine Encephalitis, EEE. He added that 27 humans were tested for arboviral diseases, one was positive for WNV on a blood donation, and one tested positive for Jamestown Canyon virus, JCV.
- Haris told the Board that federal funding was sporadic, and BPC funding allowed them to have consistency in trapping sites from year to year. He mentioned that another service they would like to offer was mosquito pesticide resistance monitoring.
- Jemison asked for more information about JCV.
- Haris stated that JCV originated in the 1950s in the Jamestown area of Colorado and sporadically spread around the country. He added that in 2017 and 2018, there were three cases in Maine, and one was fatal. There were no cases in 2019 and 2020. Haris said New Hampshire had an active season last year with seven or eight mosquito pools that tested positive and a couple of human cases. He added that they would like to be able to test mosquitoes for JCV to bring further awareness to it. Haris stated that there were usually low numbers in Maine, but they partner with BPC because if there were an outbreak, they would need to be involved if spraying was warranted.

- Adams asked what the resistance management study looked like and if the CDC was the place to initiate that study.
- Haris stated that the CDC received the funds in 2019 to begin an insectary to house colonies of mosquitoes at the University of Southern Maine, USM. However, USM closed due to COVID, which took out the capacity to conduct pesticide resistance monitoring. The plan was to do monthly testing on mosquitoes, but they could not restart the program since the insectary had been closed. Cornell University offers pesticide resistance monitoring, and they planned to send mosquitoes to them, but they had not developed a plan yet, mainly because of not knowing where funding would be coming from.
- Adams commented that if the insectary was a strong tool for resistance management that should be something the Board should consider funding. He added that a lot of product was being put into the environment to control mosquitoes, and if certain products were becoming ineffective, they should be aware of that.
- Patterson asked if Haris had an idea about the level of funding needed to open the insectary and if the infrastructure was still available.
- Haris said he was not sure what would be needed and that he only knew that they had received \$50,000 to open the insectary. He added that he had no reason to suspect they got rid of the equipment but would need to follow up on that.
- There was discussion amongst the Board to defer this agenda item until the next meeting to get more detail about the amount of funding needed.
- Sarah Robinson joined the meeting and said they were fine to get started next month because the current contract went through the end of July. She added that pesticide resistance was an interesting topic but they had not done much with it due to the pandemic and USM closing. Robinson told the Board that previously they were using wild-caught mosquitoes and a CDC bio bottle assay coated with an active ingredient and would check how many mosquitoes were still alive every 15 minutes. She stated that they now planned to partner with Cornell for resistance testing, but they had not yet seen a cost estimate. Robinson explained that they would like to bring the testing back to Maine when possible but USM was not able to host them this year.
- Adams stated that he would like to hear more next meeting about specific needs related to mosquito resistance monitoring.
- Robinson responded that she would be happy to bring that information back to the Board.

5. LD 2019—An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances

On April 28, 2022, LD 2019 became law without the Governor’s signature. This law permits the Board, beginning August 8, 2022, to begin regulating adjuvants in the same manner as pesticides. It also prohibits, beginning August 8, 2022, the distribution of pesticides contaminated by PFAS. It further prohibits, beginning January 1, 2030, distribution of pesticides containing intentionally added PFAS in accordance with Title 38, section 1614, subsection 1, paragraph D. Finally, it directs the Board to adopt rules regulating pesticide containers no later than January 1, 2023.

Presentation By: Megan Patterson, Director

Action Needed: Discussion of next steps

- Patterson explained to the Board that due to the new law a pesticide contaminated by PFAS was unlawful to distribute, and the Board needed to discuss and settle on a definition for ‘contaminated’. She added that they did have reference to the term ‘adulterated’ in rule and it was also a term used often at the federal level. To enforce the new law, staff needed a definition for ‘contaminate’. She added that the second part of LD 2019 was that rules needed to be adopted regulating pesticide containers that made it unlawful to use any pesticide container that did not match with rules created by the Board. Patterson stated that there were fairly extensive federal regulations regarding pesticide containers and staff could bring back more information on that for the Board. Ultimately, it was up to the Board on how to take on these two rulemaking items and what information they needed to make a decision.
- Randlett stated that he thought it was important for staff to gather up federal regulations on pesticide containers because there was potential to have rules adopted by the Board that were preempted by federal law. He added that there might be some areas where the Board would be prevented from rulemaking.
- Adams said that it would first be good to see what came out of the federal residue study.
- Patterson noted that part of the delay on the study might be coming from the need to develop methodologies for extracting PFAS that were being introduced by fluorinated containers. Massachusetts and Vermont assessed the level of PFAS being produced and it may be good to look at their assessments on this.
- Ianni asked about defining the term contaminate.
- Patterson stated that it was in statute, but the legislature did not define it.
- Ianni stated that it seemed like it should include any chemical or compound that was not intended to be in the product, no matter how it got there. Regarding the issue of regulating containers, she did not know if they had the luxury of waiting until they received the EPA’s info.
- Patterson stated that there were already significant sections of FIFRA that pertained to containers that the state had regulatory authority over, and she thought this was going to be a complicated issue.
- Adams stated that drafting a rule that would specifically identify something in a container that we do not have a way to test for seemed like a difficult task.
- Randlett stated that the deadline of January 2023 for final adoption did not leave a lot of time. He added that if the Board did not meet the deadline there was no consequence written in LD 2019, but they could risk angering the legislature. Randlett said that as long as the Board acted in good faith and kept the legislature informed about what they were doing, he thought that would be sufficient.
- Patterson asked if it would be sufficient to supply the legislature with a report about what the Board had been doing.
- Randlett responded that he suggested providing the legislature with a report about steps the Board had taken in response to LD 2019.
- There was discussion amongst the Board about the difficulty of creating rules without more information. Carlton stated it was unwise to make a decision based on the limited information they currently had and said that this would likely change the whole world of packaging, not just pesticides.
- Adams asked if there was a way staff could work on laying the foundation for a working session, either as part of the next meeting or as a separate meeting.
- Jemison commented that this issue was so challenging because there was not enough known about it and suggested approaching the problem by taking the majority of a Board meeting to understand the topic.

- The Board asked staff to bring back information on this topic for the next meeting.

6. Consideration of a Consent Agreement with Caribou Country Club, Caribou, 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 insufficient records and multiple unlicensed and unsupervised pesticide applications made to an area open to use by the public—thus requiring commercial licensure.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Review and/or approve

- Connors stated that Caribou Country Club made 22 unlicensed applications and kept incomplete records. He added that a new president of the club had since taken over and followed through with a solution of contracting with a commercial applicator. Connors told the Board that the consent agreement was sent and a fine of \$800 was paid.
- There was discussion amongst the Board about the amount of this and other recent consent agreements. Carlton stated that he thought the fines were insufficient to be an incentive to correct the action. Adams added that this was the fourth consecutive meeting where at least one Board member stated that the fines needed to be raised. Ianni noted that the penalty for this consent agreement came out to approximately \$36 per unlicensed application, which did not seem like a deterrent.
- Randlett explained that \$1500 per violation was the maximum allowed for a first-time violation. He added that consent agreements were complex because staff needed to consider several factors, including the seriousness of the violation(s), the kinds of penalties assessed in the past for similar violation(s), the degree to which a violator would be impacted, whether the violator derived income from unlicensed applications, and more. Randlett stated that there was no set formula for this and there had been an attempt to create a penalty matrix in the past, but it had been unsuccessful. He said that other agencies do have matrices. If the Board wanted to discuss appropriate guidelines for staff to take into account when assessing penalties, that would be a good idea.
- Jemison stated that he agreed that \$800 was not a sufficient penalty, but he appreciated that assessing these fines was not an easy thing to do and would like the opportunity to discuss the topic more.
- Adams asked that the next meeting agenda include a discussion about how these consent agreement amounts were reached.
- Carlton added that it would be good to look at the matrixes from other state agencies.
- Ianni agreed and stated that she would like to see how DEP assesses their consent agreements because they seemed more analogous to the Board's role. She added that she did not think they could also ignore the cumulative impact of these violations.
- Randlett said that he did not think DEP had a rule that established penalty ranges, but that they may have a policy and he would try to find that. He added that DEP's statutory authorization for amounts of fines was much larger than BPC's penalty authority.
- Patterson suggested that staff could also survey other states about their matrices.

- **Jemison/Carlton: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

7. Other Old and New Business

a. Chlorpyrifos Use Permit Policy for Applicators Intending to Use Existing Stocks of Chlorpyrifos

b. Press Inquiry about SLN Decision

- Patterson stated that an inquiry came to the department with the intent of forwarding it to the Board. She said that the main component of inquiry was asking how that process for Special Local Needs registration worked and what information was used to make those decisions.

c. Other items?

- Jemison noted that he believed his term officially ended in July, but he was happy to continue serving until he heard otherwise.
- Patterson noted that the Board was facing a potential budget shortfall and flat funding at the federal level. She added that she intended to put in a bill or budgetary request for additional funding, and that would likely come in the format of increasing registration fees. Patterson explained that they had an obligation to maintain the budget at a certain level to support legislative directives.

8. Schedule of Future Meetings

August 5, 2022, September 9, 2022, and October 21, 2022, are the next tentative Board meeting dates.

- Randlett stated that there was new legislation pertaining to remote meetings that would allow for Board members to participate remotely as long as there was a policy, but that there may be a need for the Board to have a space available where members of the public could attend in person.
- Adams suggested hosting the August meeting remotely and trying to meet in person in September.

10. Adjourn

- **Carlton/Ianni: Moved and seconded to adjourn at 11:30 AM**
- **In Favor: Unanimous**

STATE OF MAINE

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

—  
H.P. 1501 - L.D. 2019

**An Act To Require the Registration of Adjuvants in the State and To  
Regulate the Distribution of Pesticides with Perfluoroalkyl and  
Polyfluoroalkyl Substances**

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

**Sec. 1. 7 MRSA §604, sub-§22-A** is enacted to read:

**22-A. Perfluoroalkyl and polyfluoroalkyl substances or PFAS.** "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" has the same meaning as in Title 32, section 1732, subsection 5-A.

**Sec. 2. 7 MRSA §604, sub-§25**, as amended by PL 2005, c. 620, §3, is repealed and the following enacted in its place:

**25. Pesticide.** "Pesticide" means:

A. Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests;

B. Any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and

C. Any substance or mixture of substances intended to be used as a spray adjuvant.

"Pesticide" includes a highly toxic pesticide.

**Sec. 3. 7 MRSA §604, sub-§31-A** is enacted to read:

**31-A. Spray adjuvant.** "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent that is intended to be used with any other pesticide as an aid to the application or the effect of it and that is in a package or container separate from that of the other pesticide.

**Sec. 4. 7 MRSA §606, sub-§1**, as amended by PL 2021, c. 105, §§1 to 3, is further amended to read:

**1. Unlawful distribution.** A person may not distribute in the State any of the following:

- A. A pesticide that has not been registered pursuant to the provisions of this subchapter;
- B. A pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect that change and if that change will not violate any provision of FIFRA or this subchapter;
- C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and rules adopted under this subchapter;
- D. A pesticide that has not been colored or discolored pursuant to section 610, subsection 1, paragraph D;
- E. A pesticide that is adulterated or misbranded or any device that is misbranded;
- F. A pesticide in containers that are unsafe due to damage; or
- G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient;
- H. A pesticide that has been contaminated by perfluoroalkyl and polyfluoroalkyl substances; or
- I. Beginning January 1, 2030, a pesticide that contains intentionally added PFAS that may not be sold or distributed pursuant to Title 38, section 1614, subsection 5, paragraph D.

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

**2. Unlawful alteration, misuse, divulging of formulas, transportation, disposal and noncompliance.** A person may not:

- A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or rules adopted under this subchapter;
- A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter;
- B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling;
- C. Use for that person's own advantage or reveal, other than to the board or proper officials or employees of the state or federal executive agencies, to the courts of this State or of the United States in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board to contain or relate to trade secrets or commercial



or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

D. Handle, transport, store, display or distribute pesticides in such a manner as to endanger human beings or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticides;

E. Dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife or beneficial insects or pollute any water supply or waterway;

F. Refuse or otherwise fail to comply with the provisions of this subchapter, the rules adopted under this subchapter, or any lawful order of the board; or

G. Apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board; or

H. Use or cause to be used any pesticide container inconsistent with rules for pesticide containers adopted by the board.

**Sec. 6. Board of Pesticides Control; rules.** The Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall adopt rules regulating pesticide containers as authorized in the Maine Revised Statutes, Title 7, section 606, subsection 2, paragraph H no later than January 1, 2023. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 7. Appropriations and allocations.** The following appropriations and allocations are made.

**AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF  
Office of the Commissioner 0401**

Initiative: Provides allocations for position technology and STA-CAP costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
All Other	\$0	\$11,502
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$11,502</b>

**Pesticides Control - Board of 0287**

Initiative: Provides allocations for one Environmental Specialist III position, one part-time Environmental Specialist II position, one part-time Office Associate II position and associated All Other costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
POSITIONS - FTE COUNT	0.000	1.000
Personal Services	\$0	\$168,311
All Other	\$0	\$10,500
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$178,811</b>

**AGRICULTURE, CONSERVATION AND  
FORESTRY, DEPARTMENT OF  
DEPARTMENT TOTALS**

	<b>2021-22</b>	<b>2022-23</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$190,313</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$190,313</b>

## Federal Pesticide Container Regulations

On the June 17, 2022 Board meeting, Board members indicated that they would like a summary of all federal and state pesticide container laws. The pesticide container regulations establish standards for pesticide containers and repackaging as well as label instructions to ensure the safe use, reuse, disposal and adequate cleaning of the containers. Below are the specific regulations that discuss pesticide containers (49 CFR §165); however these regulations cite multiple 49 CFR sections, which will be provided in a separate document ([49 CFR 107 – 180; Page 19 – 1007 Vol. 2; Page 1 – 383 Vol. 3](#)) See the Board Meetings page for a link to these documents.

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## **PART 165 - PESTICIDE MANAGEMENT AND DISPOSAL**

**Authority:** 7 U.S.C. 136 through 136y.

**Source:** 71 FR 47422, Aug. 16, 2006, unless otherwise noted.

### **Subpart A - General**

#### **§ 165.1 Scope.**

The part 165 regulations establish standards and requirements for pesticide containers, repackaging pesticides, and pesticide containment structures.

#### **§ 165.3 Definitions.**

Terms used in this part have the same meaning as in the Act and part 152 of this chapter. In addition, as used in this part, the following terms shall have the meanings set forth below.

*Act* means the Federal Insecticide, Fungicide, and Rodenticide Act.

*Agricultural pesticide* means any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

*Appurtenance* means any equipment or device which is used for the purpose of transferring a pesticide from a stationary pesticide container or to any refillable container, including but not limited to, hoses, fittings, plumbing, valves, gauges, pumps and metering devices.

*Capacity* means, as applied to containers, the rated capacity of the container.

*Container* means any package, can, bottle, bag, barrel, drum, tank, or other containing-device (excluding any application tanks) used to enclose a pesticide. Containers that are used to sell or distribute a pesticide product and that also function in applying the product (such as spray bottles, aerosol cans and containers that become part of a direct injection system) are considered to be containers for the purposes of this part.

*Containment pad* means any structure that is designed and constructed to intercept and contain pesticides, rinsates, and equipment wash water at a pesticide dispensing area.

*Containment structure* means either a secondary containment unit or a containment pad.

*Custom blending* means the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when:

- (1) The blend is prepared to the order of the customer and is not held in inventory by the blender;
- (2) The blend is to be used on the customer's property (including leased or rented property);
- (3) The pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend;
- (4) The blend is prepared from registered pesticides; and
- (5) The blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of the mixture.

*Dilutable* means that the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application or use.

*Dry pesticide* means any pesticide that is in solid form and that has not been combined with liquids; this includes formulations such as dusts, wettable powders, dry flowables, water-soluble powders, granules, and dry baits.

*Establishment* means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

*Facility* means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person who controls, who is controlled by, or who is under common control with such person).

*Nonrefillable container* means a container that is not a refillable container and that is designed and constructed for one-time use and is not intended to be filled again with a pesticide for sale or distribution. Reconditioned containers are considered to be nonrefillable containers.

*One-way valve* means a valve that is designed and constructed to allow virtually unrestricted flow in one direction and no flow in the opposite direction, thus allowing the withdrawal of material from, but not the introduction of material into, a container.

*Operator* means any person in control of, or having responsibility for, the daily operation of a facility at which a containment structure is located.

*Owner* means any person who owns a facility at which a containment structure is required.

*Pesticide compatible as applied to containers* means that the container construction materials will not chemically react with the formulation. A container is not compatible with the formulation if, for example, the formulation:

- (1) Is corrosive to the container;
- (2) Causes softening, premature aging, or embrittlement of the container;
- (3) Otherwise causes the container to weaken or to create the risk of discharge;
- (4) Reacts in a significant chemical, electrolytic, or galvanic manner with the container, or
- (5) Interacts in a way, such as the active ingredient permeating the container wall, that would cause the formulation to differ from its composition as described in the statement required in connection with its registration under FIFRA section 3.

*Pesticide compatible as applied to containment* means that the containment construction materials are able to withstand anticipated exposure to stored or transferred substances without losing the capability to provide the required containment of the same or other substances within the containment area.

*Pesticide dispensing area* means an area in which pesticide is transferred out of or into a container.

*Portable pesticide container* means a refillable container that is not a stationary pesticide container.

*Produce* means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, and any active ingredient or device, or to package, repack, label, relabel, or otherwise change the container of any pesticide or device.

*Producer* means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

*Refillable container* means a container that is intended to be filled with pesticide more than once for sale or distribution.

*Refiller* means a person who engages in the activity of repackaging pesticide product into refillable containers. This could include a registrant or a person operating under contract to a registrant.

*Refilling establishment* means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

*Repackage* means, for the purposes of this part, to transfer a pesticide formulation from one container to another without a change in the composition of the formulation, the labeling content, or the product's EPA registration number, for sale or distribution.

*Rinsate* means the liquid resulting from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

*Runoff* means surface water leaving the target site.

*Secondary containment unit* means any structure, including rigid diking, that is designed and constructed to intercept and contain pesticide spills and leaks and to prevent runoff and leaching from stationary pesticide containers.

*Stationary pesticide container* means a refillable container that is fixed at a single facility or establishment or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

*Suspension concentrate* means a stable suspension of solid particulate active ingredients in a liquid intended for dilution with water before use.

*Tamper-evident device* means a device which can be visually inspected to determine if a container has been opened.

*Transport vehicle* means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode.

*Washwater* means the liquid resulting from the rinsing of the exterior of any equipment or containers that have or may have come in direct contact with any pesticide or system maintenance compound, such as oil or antifreeze.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64224, Oct. 29, 2008]

## **§§ 165.4-165.19 [Reserved]**

## **Subpart B - Nonrefillable Container Standards: Container Design and Residue Removal**

### **§ 165.20 General provisions.**

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish design and construction requirements for nonrefillable containers used for the distribution or sale of some pesticide products.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in nonrefillable containers. If your pesticide product is subject to the regulations in this subpart as set out in § 165.23, your pesticide product must be distributed or sold in a nonrefillable container that meets the standards of these regulations.

(c) *When do I have to comply?* Any pesticide product packaged in a nonrefillable container and released for shipment by you after August 16, 2009 must be packaged in a nonrefillable container that complies with the regulations of this subpart.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

### **§ 165.23 Scope of pesticide products included.**

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to manufacturing use products, as defined in § 158.153(h) of this chapter.

(b) *Are plant-incorporated protectants subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(c) *Which antimicrobial pesticide products are not subject to the regulations in this subpart?* The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm);  
or

(ii) The pesticide product:

(A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems,



surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (d) of this section.

***(d) How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?***

(1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the nonrefillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant

a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in nonrefillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the nonrefillable container regulations within the time frames established by EPA in the rule or in its notification.

**(e) *What other pesticide products are subject to the regulations in this subpart?***

(1) Except for manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt under paragraph (c) of this section, all of the regulations in this subpart apply to a pesticide product if it satisfies at least one of the following criteria:

(i) The pesticide product meets the criteria of Toxicity Category I as set out in § 156.62 of this chapter.

(ii) The pesticide product meets the criteria of Toxicity Category II as set out in § 156.62 of this chapter.

(iii) The pesticide product is classified for restricted use as set out in §§ 152.160 - 152.175 of this chapter.

(2) Except for manufacturing use products, plant-incorporated protectants, antimicrobial products that are exempt under (c) of this section, and other pesticide products that are regulated under paragraph (e)(1) of this section, a pesticide product must be packaged in compliance with 49 CFR 173.24. If the pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the Department of Transportation requires it to be packaged according to 49 CFR parts 171-180.

**(f) *What does “pesticide product” or “pesticide” mean in the rest of this subpart?*** In §§ 165.25 through 165.27, the term “pesticide product” or “pesticide” refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (e) of this section.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

## **§ 165.25 Nonrefillable container standards.**

**(a) *What Department of Transportation (DOT) standards do my nonrefillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?*** A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material, or, if subject to a

special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

**(b) *What DOT standards do my nonrefillable containers have to meet under this part if my pesticide product is a DOT hazardous material?***

(1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a nonrefillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

**(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations?*** If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the Federal Register. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

**(d) *What standards for closures do my nonrefillable containers have to meet?*** If your nonrefillable container is a rigid container with a capacity equal to or greater than 3.0 liters (0.79 gallons), if the container is not an aerosol container or a pressurized container, and if the container is used to distribute or sell a liquid agricultural pesticide, each nonrefillable container must have at least one of the following standard closures:

(1) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 11.5 threads per inch, National Pipe Straight (NPS) standard.

(2) Bung, 2 inch pipe size (2.375 inches in diameter), external threading, 5 threads per inch, buttress threads.

(3) Screw cap, 63 millimeters, at least one thread revolution at 6 threads per inch.

(4) Screw cap, 38 millimeters, at least one thread revolution at 6 threads per inch. The cap may fit on a separate rigid spout or on a flexible pull-out plastic spout.

**(e) *What standards for dispensing do my nonrefillable containers have to meet?*** If your nonrefillable container has a capacity of 5 gallons (18.9 liters) or less, if the container is not an

aerosol container, a pressurized container, or a spray bottle, and if the container holds a liquid pesticide, your nonrefillable container must do both of the following:

- (1) Allow the contents of the nonrefillable container to pour in a continuous, coherent stream.
- (2) Allow the contents of the nonrefillable container to be poured with a minimum amount of dripping down the outside of the container.

(f) ***What standards for residue removal do my nonrefillable containers have to meet?*** Each nonrefillable container and pesticide formulation combination must meet the applicable residue removal standard of this section.

(1) If the nonrefillable container is rigid and has a capacity less than or equal to 5 gallons (18.9 liters) for liquid formulations or 50 pounds (22.7 kilograms) for solid formulations and if the pesticide product's labeling allows or requires the pesticide product to be mixed with a liquid diluent prior to application (that is, if the pesticide is dilutable), each container/formulation combination must be capable of attaining at least 99.99 percent removal of each active ingredient when tested using the EPA test procedure "Rinsing Procedures for Dilutable Pesticide Products in Rigid Containers."

(2) The test must be conducted only if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case by case basis.

(3) For the rigid container/dilutable product standard in paragraph (f)(1) of this section, percent removal represents the percent of the original concentration of the active ingredient in the pesticide product when compared to the concentration of that active ingredient in the fourth rinse. Percent removal is calculated by the formula:

percent removal =  $[1.0 - RR] \times 100.0$ , where

RR = rinsate ratio = Active ingredient concentration in fourth rinsate/Original concentration of active ingredient in the product

(g) ***Can I obtain a waiver from or a modification to any of the nonrefillable container standards?*** Yes, it is possible for you to obtain a waiver from or a modification to the nonrefillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves

a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

(3) EPA may approve a non-standard closure (that is, a closure not listed in paragraph (d) of this section) if EPA determines that both of the following conditions are satisfied:

(i) The non-standard closure is necessary for the proper mixing, loading, or application of the pesticide product.

(ii) The non-standard closure offers exposure protection to handlers during mixing and loading that is the same or greater than that provided by the standard closures.

(4) EPA may waive or modify the container dispensing capability standards in paragraph (e) of this section if EPA determines that at least one of the following conditions is satisfied:

(i) The product is typically removed from the container by a method other than pouring.

(ii) Compliance with the container dispensing capability standards would increase exposure to the pesticide container handler.

(5) EPA may waive or modify the requirements of paragraph (f) of this section regarding the residue removal standard if EPA determines that both of the following conditions are satisfied:

(i) The residue remaining in the container would not cause an unreasonable adverse effect on the environment; and

(ii) The product offers significant benefits and cannot be economically reformulated or repackaged.

**(h) *How do I obtain a waiver from or a modification to any of the nonrefillable container standards?*** To obtain a waiver from or a modification to any of the nonrefillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a nonrefillable container that does not comply with all of the nonrefillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the nonrefillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

## **§ 165.27 Reporting and recordkeeping.**

(a) *What information must I report about my nonrefillable containers?* You are not required to report to EPA with information about your nonrefillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

(b) *What recordkeeping do I have to do for my nonrefillable containers?* For each pesticide product that is subject to §§ 165.25 through 165.27 and is distributed or sold in nonrefillable containers, you must maintain the records listed in this section for as long as a nonrefillable container is used to distribute or sell the pesticide product and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe. You must keep the following records:

(1) The name and EPA registration number of the pesticide product.

(2) A description of the nonrefillable container(s) in which the pesticide product is distributed or sold.

(3) At least one of the following records to document compliance with the requirement for closures in § 165.25(d) for each nonrefillable container used to distribute or sell the pesticide product that must comply with § 165.25(d):

(i) A letter or document from the container supplier that describes the closure.

(ii) A specification about the closure in the contract between the registrant or applicant and the container supplier.

(iii) A copy of EPA's approval of any non-standard closure.

(4) At least one of the following records pertaining to the container dispensing capability requirements in § 165.25(e) for each nonrefillable container used to distribute or sell the pesticide product that must comply with § 165.25(e):

- (i) Test data or documentation demonstrating that the nonrefillable container meets the standards in § 165.25(e) when it contains the pesticide product.
- (ii) Test data or documentation demonstrating that a different nonrefillable container meets the standards in § 165.25(e) when it contains the pesticide product or even a different pesticide product and a written explanation of why such data or documentation demonstrates that the container meets the standards in § 165.25(e) for the pesticide product.
- (iii) A copy of EPA's approval of a request for a waiver from the container dispensing requirement.

(5) At least one of the following records pertaining to the nonrefillable container residue removal requirement in § 165.25(f) if the pesticide product is a suspension concentrate or if EPA specifically requests the records on a case-by-case basis:

- (i) Test data showing that the nonrefillable container and pesticide formulation meet the standard in § 165.25(f) .
- (ii) Test data showing that a different nonrefillable container with the same or a different pesticide formulation meets the standard in § 165.25(f), together with a written explanation of why such data demonstrate that the nonrefillable container and pesticide formulation meet the standard in § 165.25(f).
- (iii) A copy of EPA's approval of a request for a waiver from the residue removal standard requirement.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64225, Oct. 29, 2008]

## **§§ 165.28-165.39 [Reserved]**

### **Subpart C - Refillable Container Standards: Container Design**

#### **§ 165.40 General provisions.**

- (a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish design and construction requirements for refillable containers used for the distribution or sale of some pesticide products.
- (b) *Do I have to comply with the regulations in this subpart?*

(1) You must comply with all of the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers. If your pesticide product is subject to the regulations in this subpart as set out in § 165.43, your pesticide product must be distributed or sold in a refillable container that meets the standards of these regulations. This includes your pesticide products that are repackaged according to subpart D of this part.

(2) You must comply with the regulations in § 165.45(f) for stationary pesticide containers if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. If the pesticide product is subject to the regulations in this subpart as set out in § 165.43, the stationary pesticide containers used to distribute or sell the product must meet the standards of § 165.45(f).

(3) If you are a refiller of a pesticide product and you are not a registrant of the pesticide product, § 165.45(a)(2) provides an exemption from some of the requirements in § 165.45(a)(1).

(c) ***When do I have to comply?*** Any pesticide product packaged in a refillable container and released for shipment by you after August 16, 2011 must be packaged in a refillable container that complies with the regulations of this subpart.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64226, Oct. 29, 2008]

## **§ 165.43 Scope of pesticide products included.**

(a) ***Are manufacturing use products subject to the regulations in this subpart?*** No, the regulations in this subpart do not apply to manufacturing use products, as defined in § 158.153(h) of this chapter.

(b) ***Are plant-incorporated protectants subject to the regulations in this subpart?*** No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(c) ***Which antimicrobial pesticide products are not subject to the regulations in this subpart?*** The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm);  
or

(ii) The pesticide product:

(A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems,



surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

**(d) Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?** An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except § 165.45(d) regarding marking and § 165.45(e) regarding openings. For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(1) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(2) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

**(e) How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?**

(1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.

(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the refillable container regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be distributed or sold in refillable containers that comply with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the refillable container regulations within the time frames established by EPA in the rule or in its notification.

(f) *What other pesticide products are subject to the regulations in this subpart?* The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt by paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in paragraph (d) of this section.

(g) *What does “pesticide product” or “pesticide” mean in the rest of this subpart?* In § 165.43(h) through § 165.47, the term “pesticide product” or “pesticide” refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

(h) *Are there any other exceptions?*

(1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64226, Oct. 29, 2008]

## **§ 165.45 Refillable container standards.**

**(a) *What Department of Transportation (DOT) standards do my refillable containers have to meet under this part if my pesticide product is not a DOT hazardous material?***

(1) A pesticide product that does not meet the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR 173.4, 173.5, 173.6, 173.24, 173.24a, 173.24b, 173.28, 173.155, 173.203, 173.213, 173.240(c), 173.240(d), 173.241(c), 173.241(d), part 178, and part 180 that are applicable to a Packing Group III material, or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

(2) A refiller is not required to comply with 49 CFR 173.28(b)(2) for pesticide products that are not DOT hazardous materials if the refillable container to be reused complies with the refillable container regulations in this subpart and the refilling is done in compliance with the repackaging regulations in subpart D of this part.

**(b) *What DOT standards do my refillable containers have to meet under this part if my pesticide product is a DOT hazardous material?***

(1) If your pesticide product meets the definition of a hazardous material in 49 CFR 171.8, the DOT requires your pesticide product to be packaged according to 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B.

(2) For the purposes of these regulations, a pesticide product that meets the definition of a hazardous material in 49 CFR 171.8 must be packaged in a refillable container that, if portable, is designed, constructed, and marked to comply with the requirements of 49 CFR parts 171-180 or, if subject to a special permit, according to the applicable requirements of 49 CFR part 107 subpart B. The requirements in this paragraph apply to the pesticide product as it is packaged for transportation in commerce.

**(c) *What will EPA do if DOT proposes to change any of the cross-referenced regulations?*** If the DOT proposes to change any of the regulations that are incorporated in paragraphs (a) and (b) of this section, EPA will provide notice of the proposed changes and an opportunity to comment in the Federal Register. Following notice and comment, EPA will take final action regarding whether or not to revise its rules, and the extent to which any such revision will correspond with revised DOT regulations.

**(d) *What standards for marking do my refillable containers have to meet?*** Each refillable container must be marked in a durable and clearly visible manner with a serial number or other identifying code that will distinguish the individual container from all other containers. Durable marking includes, but is not limited to, etching, embossing, ink jetting, stamping, heat stamping, mechanically attaching a plate, molding, and marking with durable ink. The serial number or other identifying code must be located on the outside part of the container except on

a closure. Placement on the label or labeling is not sufficient unless the label is an integral, permanent part of or permanently stamped on the container.

(e) ***What standards for openings do my refillable containers have to meet?*** If your refillable container is a portable pesticide container that is designed to hold liquid pesticide formulations and is not a cylinder that complies with the DOT Hazardous Materials Regulations in 49 CFR parts 171-180, each opening of the container other than a vent must have a one-way valve, a tamper-evident device or both. A one-way valve may be located in a device or system separate from the container if the device or system is the only reasonably foreseeable way to withdraw pesticide from the container. A vent must be designed to minimize the amount of material that could be introduced into the container through it.

(f) ***What standards do my stationary pesticide containers have to meet?*** If a stationary pesticide container designed to hold undivided quantities of pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide is located at the refilling establishment of a refiller operating under written contract to you, the stationary pesticide container must meet the following standards:

(1) Except during a civil emergency or any unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, each stationary pesticide container (for liquid and dry pesticides) and its appurtenances must meet both of the following standards:

(i) Each stationary pesticide container and its appurtenances must be resistant to extreme changes in temperature and constructed of materials that are adequately thick to not fail and that are resistant to corrosion, puncture, or cracking.

(ii) Each stationary pesticide container must be capable of withstanding all operating stresses, taking into account static heat, pressure buildup from pumps and compressors, and any other foreseeable mechanical stresses to which the container may be subjected in the course of operations.

(2) Each stationary container of liquid pesticides must meet all of the following standards:

(i) Each stationary container of liquid pesticides must be equipped with a vent or other device designed to relieve excess pressure, prevent losses by evaporation, and exclude precipitation.

(ii) External sight gauges, which are pesticide-containing hoses or tubes that run vertically along the exterior of the container from the top to the bottom, are prohibited on stationary containers of liquid pesticides.

(iii) Each connection on a stationary container of liquid pesticides that is below the normal liquid level must be equipped with a shutoff valve which is capable of being locked closed.

A shutoff valve must be located within a secondary containment unit if one is required by subpart E of this part.

**(g) *Can I obtain a waiver from or a modification to any of the refillable container standards?*** Yes, it is possible for you to obtain a waiver from or a modification to some of the refillable container standards, as follows:

(1) EPA may waive or modify the requirements of paragraph (a) of this section regarding the DOT standards for pesticide products that are not DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (a) of this section.

(2) EPA may waive or modify the requirements of paragraph (b) of this section regarding the DOT standards for pesticide products that are DOT hazardous materials if EPA determines that an alternative (partial or modified) set of standards or pre-existing requirements achieves a level of safety that is at least equal to that specified in the requirements of paragraph (b) of this section. EPA will modify or waive the requirements of paragraph (b) of this section only after consulting with DOT to ensure consistency with DOT regulations and exemptions.

**(h) *How do I obtain a waiver from or a modification to any of the refillable container standards?*** To obtain a waiver from or a modification to any of the refillable container standards, you must submit a written request for a waiver or a modification to the EPA to the following address: Office of Pesticide Programs (7504P); U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, N.W., Washington, DC 20460. You cannot distribute or sell the pesticide product in a refillable container that does not comply with all of the refillable container standards unless and until EPA approves the request for the waiver or modification in writing. You must include two copies of the following information (which may be part of an application for registration or amended registration) with your written request:

(1) The name and address of the registrant; the date; and the name, title, signature, and phone number of the company official making the request.

(2) The name and EPA registration number of the pesticide product for which the waiver or modification is requested.

(3) A statement specifying the requirement or requirements from which you are requesting a waiver or a modification.

(4) A description of the refillable container or containers for which the waiver or modification is requested.

(5) Documentation or justification to demonstrate that the applicable waiver or modification criteria in paragraph (g) of this section are satisfied.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64226, Oct. 29, 2008]

## **§ 165.47 What information must I report about my refillable containers?**

You are not required to report to EPA with information about your refillable containers under the regulations in this subpart. You should refer to the reporting standards in part 159 of this chapter to determine if information on container failures or other incidents involving pesticide containers must be reported to EPA under FIFRA section 6(a)(2) (7 U.S.C. 136d(a)(2)).

## **§§ 165.48-165.59 [Reserved]**

## **Subpart D - Standards for Repackaging Pesticide Products into Refillable Containers**

### **§ 165.60 General provisions.**

(a) *What is the purpose of the regulations in this subpart?* The regulations in this subpart establish requirements for repackaging some pesticide products into refillable containers for distribution or sale.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are a registrant who distributes or sells a pesticide product in refillable containers, if you are a registrant who distributes or sells pesticide products to a refiller (that is not part of your company) for repackaging into refillable containers, or if you are a refiller of a pesticide product and you are not the registrant of the pesticide product. Each pesticide product that is subject to the regulations in this subpart as set out in § 165.63 and that is distributed or sold in a refillable container must be distributed or sold in compliance with the standards of these regulations.

(c) *When do I have to comply?* Any pesticide product repackaged into a refillable container and released for shipment by you after August 16, 2011 must be repackaged in compliance with the regulations of this subpart.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

### **§ 165.63 Scope of pesticide products included.**

(a) *Are manufacturing use products subject to the regulations in this subpart?* No, the regulations in this subpart do not apply to manufacturing use products, as defined in § 158.153(h) of this chapter.

(b) ***Are plant-incorporated protectants subject to the regulations in this subpart?*** No, the regulations in this subpart do not apply to plant-incorporated protectants, as defined in § 174.3 of this chapter.

(c) ***Which antimicrobial pesticide products are not subject to the regulations in this subpart?***

The regulations in this subpart do not apply to a pesticide product if it satisfies all of the following conditions:

(1) The pesticide product meets one of the following two criteria:

(i) The pesticide product is an antimicrobial pesticide as defined in FIFRA section 2(mm);  
or

(ii) The pesticide product:

(A) Is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) In the intended use is subject to a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act or a food additive regulation under section 409 of such Act.

(2) The labeling of the pesticide product includes directions for use on a site in at least one of the following antimicrobial product use categories: food handling/storage establishments premises and equipment; commercial, institutional, and industrial premises and equipment; residential and public access premises; medical premises and equipment; human drinking water systems; materials preservatives; industrial processes and water systems; antifouling coatings; wood preservatives; or swimming pools.

(3) The pesticide product is not a hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(4) EPA has not specifically determined that the pesticide product must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment according to the provisions of paragraph (e) of this section.

(d) ***Which requirements must an antimicrobial swimming pool product comply with if it is not exempt from these regulations?***

(1) An antimicrobial swimming pool product that is not exempt by paragraph (a), (b), or (c) of this section must comply with all of the regulations in this subpart except for the following requirements:

Requirement	Requirement for registrants who distribute or sell directly in refillable containers	Requirement for refillers who are not registrants
Recordkeeping specific to each instance of repackaging	§ 165.65(i)(2)	§ 165.70(j)(2)
Container inspection: criteria regarding a serial number or other identifying code	§ 165.65(e)(2)	§ 165.70(f)(2)
Container inspection: criteria regarding one-way valve or tamper-evident device	§ 165.65(e)(3)	§ 165.70(f)(3)
Cleaning requirement: criteria regarding one-way valve or tamper-evident device	§ 165.65(f)(1)	§ 165.70(g)(1)
Cleaning if the one-way valve or tamper-evident device is not intact	§ 165.65(g)	§ 165.70(h)

(2) For the purposes of this subpart, an antimicrobial swimming pool product is a pesticide product that satisfies both of the following conditions:

(i) The pesticide product is intended to: disinfect, sanitize, reduce or mitigate growth or development of microbiological organisms; or protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime.

(ii) The labeling of the pesticide product includes directions for use on only a site or sites in the antimicrobial product use category of swimming pools.

***(e) How will EPA determine if an antimicrobial pesticide product otherwise exempted must be subject to the regulations in this subpart to prevent an unreasonable adverse effect on the environment?***

(1) EPA may determine that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment if all of the following conditions exist:

(i) EPA obtains information, data or other evidence of a problem with the containers of a certain pesticide product or related group of products.

(ii) The information, data or other evidence is reliable and factual.

(iii) The problem causes or could reasonably be expected to cause an unreasonable adverse effect on the environment.



(iv) Complying with the container regulations could reasonably be expected to eliminate the problem.

(2) If EPA determines that an antimicrobial pesticide product otherwise exempted by paragraph (c) of this section must be subject to the repackaging regulations in this subpart to prevent an unreasonable adverse effect on the environment, EPA may require, by rule, that the product be repackaged in compliance with all or some of the requirements in this subpart. Alternatively, EPA may notify the applicant or registrant of its intent to make such a determination. After allowing the applicant or registrant a reasonable amount of time to reply, EPA may require, by notification and as a condition of registration, that the product be repackaged in compliance with all or some of the requirements in this subpart. For the purpose of the previous sentence, 60 days would be a reasonable amount of time to reply, although EPA may, in its discretion, provide more time. EPA may deny registration or initiate cancellation proceedings if the registrant fails to comply with the repackaging regulations within the time frames established by EPA in the rule or in its notification.

(f) *What other pesticide products are subject to the regulations in this subpart?* The regulations in this subpart apply to all pesticide products other than manufacturing use products, plant-incorporated protectants, and antimicrobial products that are exempt paragraph (c) of this section. Antimicrobial products covered under paragraph (d) of this section are subject to the regulations indicated in that section.

(g) *What does “pesticide product” or “pesticide” mean in the rest of this subpart?* In §§ 165.63(h) through 165.70, the term “pesticide product” or “pesticide” refers only to a pesticide product or a pesticide that is subject to the regulations in this subpart as described in paragraphs (a) through (f) of this section.

(h) *Are there any other exceptions?*

(1) The regulations in this subpart do not apply to transport vehicles that contain pesticide in pesticide-holding tanks that are an integral part of the transport vehicle and that are the primary containment for the pesticide.

(2) Custom blending is not subject to the regulations in this subpart.

(3) The regulations in this subpart do not apply to containers that hold pesticides that are gaseous at atmospheric temperature and pressure.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

## **§ 165.65 Registrants who distribute or sell pesticide products in refillable containers.**

(a) *Must I comply with the standards in this section?* You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products in refillable

containers. This means that you conduct all of the repackaging for a pesticide product and that you do not distribute or sell the pesticide product to a refiller that is not part of your company for repackaging into refillable containers. If you are a registrant that repackages a product directly into refillable containers for sale or distribution and you also sell or distribute other quantities of that product to an independent refiller for repackaging, then you must meet the requirements in this section for those quantities you distribute or sell directly and the requirements in § 165.67 for those quantities that you distribute or sell to an independent refiller.

(b) ***Am I responsible for product integrity?*** Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(c) ***What information must I develop?*** For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under “Directions for Use,” or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(d) ***What requirements must my individual establishments follow regarding repackaging a pesticide product into refillable containers?*** A refiller at your individual establishment that

repackages a pesticide product into refillable containers for distribution or sale must comply with all of the following provisions.

- (1) The establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.
- (2) The refiller must not change the pesticide formulation unless the refiller has a registration for the new formulation.
- (3) The refiller must repackage a pesticide product only into a refillable container that is identified on your description of acceptable containers for that pesticide product.
- (4) The refiller may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that the refiller can use.
- (5) The refiller must have all of the following items at the establishment before repackaging a pesticide product into any refillable container for distribution or sale:
  - (i) The pesticide product's label and labeling.
  - (ii) The written refilling residue removal procedure for the pesticide product.
  - (iii) The written description of acceptable containers for the pesticide product.
- (6) Before repackaging a pesticide product into any refillable container for distribution or sale, the refiller must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (f) of this section. The refiller may identify the previous pesticide product by referring to the label or labeling.
- (7) The refiller must inspect each refillable container according to paragraph (e) of this section.
- (8) The refiller must clean each refillable container according to paragraph (f) or (g) of this section, if required by either paragraph.
- (9) The refiller must ensure that each refillable container is properly labeled according to paragraph (h) of this section.
- (10) The establishment must maintain records in accordance with paragraph (i) of this section.
- (11) The establishment must maintain records as required by part 169 of this chapter.
- (12) The establishment must report as required by part 167 of this chapter.

(e) ***How must my individual establishments inspect refillable containers?*** Before repackaging a pesticide product into any refillable container, a refiller at your establishment must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (e)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (e)(2) or (e)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by § 165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(f) ***How must my individual establishments clean refillable containers?*** A refiller at your establishment must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (f)(1) of this section and either paragraph (f)(2) or (f)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied:

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(g) ***How must my individual establishments clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve?*** As required in paragraph (f) of this section, a refiller at your establishment must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(h) ***How must my individual establishments label refillable containers?*** Before distributing or selling a pesticide product in a refillable container, a refiller at your establishment must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, the refiller at your establishment must ensure that the net contents statement and EPA establishment number appear on the label.

(i) ***What recordkeeping must my individual establishments do?*** Each of your individual establishments that repackages a pesticide product into refillable containers for distribution or sale must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. The establishment must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, both of the following records must be maintained for the current operating year and for 3 years after that:

(i) The written refilling residue removal procedure for the pesticide product.

(ii) The written description of acceptable containers for the pesticide product.

(2) Each time a refiller at your establishment repackages a pesticide product into a refillable container and distributes or sells the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:

(i) The EPA registration number of the pesticide product distributed or sold in the refillable container.

(ii) The date of the repackaging.

(iii) The serial number or other identifying code of the refillable container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

## **§ 165.67 Registrants who distribute or sell pesticide products to refillers for repackaging.**

(a) ***Must I comply with the standards in this section?*** You must comply with the standards in this section if you are a registrant who distributes or sells pesticide products to a refiller that is not part of your company for repackaging into refillable containers.

(b) ***Under what conditions can I allow a refiller to repack my pesticide product into refillable containers?*** You may allow a refiller to repack your pesticide product into refillable containers and to distribute or sell such repackaged product under your existing registration if all of the following conditions are satisfied:

(1) The repackaging results in no change to the pesticide formulation.

(2) One of the following conditions regarding a registered refilling establishment is satisfied:

(i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.

(ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.

(3) You have entered into a written contract with the refiller to repack the pesticide product and to use the label of your pesticide product.

(4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.

(5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refiller's EPA establishment number.

(c) ***What violations are applicable to illegal repackaging?*** Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the refiller that is repackaging your pesticide product under written contract with you may be liable for violations pertaining to the repackaged product.

(d) ***When must I provide the written contract to the refiller?*** If you allow a refiller to repack your product as specified in paragraph (b) of this section you must provide the

written contract referred to in paragraph (b)(3) of this section to the refiller before you distribute or sell the pesticide product to the refiller.

(e) ***Am I responsible for product integrity?*** Yes, for a product that you distribute or sell to a refiller that is not part of your company for repackaging into refillable containers, you are responsible for the pesticide product not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(f) ***What information must I develop?*** For each pesticide product distributed or sold in refillable containers, you must develop both of the following documents in writing.

(1) You must develop a refilling residue removal procedure that describes how to remove pesticide residue from a refillable container (portable or stationary pesticide container) before it is refilled.

(i) The refilling residue removal procedure must be adequate to ensure that the composition of the pesticide product does not differ at the time of its distribution or sale from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(ii) If the refilling residue removal procedure requires the use of a solvent other than the diluent used for applying the pesticide as specified on the labeling under “Directions for Use,” or if there is no diluent used for application, the refilling residue removal procedure must describe how to manage any rinsate resulting from the procedure in accordance with applicable Federal and State regulations.

(2) You must develop a description of acceptable refillable containers (portable or stationary pesticide containers) that can be used for distributing or selling that pesticide product.

(i) An acceptable container is one that you have determined meets the standards in subpart C of this part and is compatible with the pesticide formulation intended to be distributed and sold using the refillable container.

(ii) You must identify the containers by specifying the container materials of construction that are compatible with the pesticide formulation and specifying information necessary to confirm compliance with the refillable container requirements in subpart C of this part.

(g) ***When must I provide the information to the refiller?*** You must provide the refiller with all of the following information and documentation before or at the time of distribution or sale of your pesticide product to the refiller:

(1) Your written refilling residue removal procedure for the pesticide product.

(2) Your written description of acceptable containers for the pesticide product.

(3) The pesticide product's label and labeling.

(h) ***What recordkeeping must I do?*** You must maintain all of the records listed in this section for the current operating year and for 3 years after that. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

- (1) Each written contract entered into with a refiller for repackaging your pesticide product into refillable containers.
- (2) Your written refilling residue removal procedure for the pesticide product.
- (3) Your written description of acceptable containers for the pesticide product.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

## **§ 165.70 Refillers who are not registrants.**

(a) ***Must I comply with the standards in this section?*** You must comply with the standards in this section if you are a refiller of a pesticide product and you are not the registrant of the pesticide product.

(b) ***Under what conditions can I repackage a registrant's pesticide product into refillable containers?*** A registrant may allow you to repackage the registrant's pesticide product into refillable containers and to distribute or sell such repackaged product under the registrant's existing registration if all of the following conditions are satisfied:

- (1) The repackaging results in no change to the pesticide formulation.
- (2) One of the following conditions regarding a registered refilling establishment is satisfied:
  - (i) The pesticide product is repackaged at a refilling establishment registered with EPA as required by § 167.20 of this chapter.
  - (ii) The pesticide product is repackaged by a refilling establishment registered with EPA as required by § 167.20 of this chapter at the site of a user who intends to use or apply the product.
- (3) The registrant has entered into a written contract with you to repackage the pesticide product and to use the label of the registrant's pesticide product.
- (4) The pesticide product is repackaged only into refillable containers that meet the standards of subpart C of this part.
- (5) The pesticide product is labeled with the product's label with no changes except the addition of an appropriate net contents statement and the refillers EPA establishment number.



(c) ***What violations are applicable to illegal repackaging?*** Repackaging a pesticide product for distribution or sale without either obtaining a registration or meeting all of the conditions in paragraph (b) of this section is a violation of section 12 of the Act. Both you and the pesticide product's registrant may be liable for violations pertaining to the repackaged product.

(d) ***Am I responsible for product integrity?*** Yes, you are responsible for the pesticide product that you distribute or sell in refillable containers not being adulterated or different from the composition described in its confidential statement of formula that is required under FIFRA section 3.

(e) ***What requirements must I follow regarding repackaging a pesticide product into refillable containers?*** You must comply with all of the following provisions.

(1) Your establishment must be registered with EPA as a producing establishment as required by § 167.20 of this chapter.

(2) You must not change the pesticide formulation unless you have a registration for the new formulation.

(3) You must repackage a pesticide product only into a refillable container that is identified on the description of acceptable containers for that pesticide product provided by the registrant.

(4) You may repackage any quantity of a pesticide product into a refillable container up to the rated capacity of the container. In addition, there are no general limits on the size of the refillable containers that you can use.

(5) You must have all of the following items at your establishment before repackaging a pesticide product into any refillable container for distribution or sale:

(i) The written contract referred to in paragraph (b)(3) of this section from the pesticide product's registrant.

(ii) The pesticide product's label and labeling.

(iii) The registrant's written refilling residue removal procedure for the pesticide product.

(iv) The registrant's written description of acceptable containers for the pesticide product.

(6) Before repackaging a pesticide product into any refillable container for distribution or sale, you must identify the pesticide product previously contained in the refillable container to determine whether a residue removal procedure must be conducted in accordance with paragraph (g) of this section. You may identify the previous pesticide product by referring to the label or labeling.

(7) You must inspect each refillable container according to paragraph (f) of this section.

(8) You must clean each refillable container according to paragraph (g) or (h) of this section, if required by either paragraph.

(9) You must ensure that each refillable container is properly labeled according to paragraph (i) of this section.

(10) You must maintain records in accordance with paragraph (j) of this section.

(11) You must maintain records as required by part 169 of this chapter.

(12) You must report as required by part 167 of this chapter.

(13) The stationary pesticide containers at your establishment must meet the standards in § 165.45(f).

(14) You may be required to comply with the containment standards in subpart E of this part.

(f) ***How must I inspect refillable containers?*** Before repackaging a pesticide product into any refillable container, you must visually inspect the exterior and (if possible) the interior of the container and the exterior of appurtenances. The purpose of the inspection is to determine whether the container meets the necessary criteria with respect to continued container integrity, required markings, and openings. If the condition in paragraph (f)(1) of this section exists, the container fails the inspection and must not be refilled unless the container is repaired, reconditioned, or remanufactured in compliance with the relevant DOT requirement. If the condition in paragraph (f)(2) or (f)(3) of this section exists (or both), the container fails the inspection and must not be refilled until the container meets the standards specified in subpart C of this part. The conditions are:

(1) The integrity of the container is compromised in at least one of the following ways:

(i) The container shows signs of rupture or other damage which reduces its structural integrity.

(ii) The container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects.

(iii) The container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation.

(iv) There is damage to the fittings, valves, tamper-evident devices or other appurtenances that may cause failure of the container.

(2) The container does not bear the markings required by § 165.45(a), (b) and (d), or such markings are not legible.

(3) The container does not have an intact and functioning one-way valve or tamper-evident device on each opening other than a vent, if required.

(g) ***How must I clean refillable containers?*** You must clean each refillable container by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container, unless the conditions in paragraph (g)(1) of this section and either paragraph (g)(2) or (g)(3) of this section are satisfied:

(1) If required, each tamper-evident device and one-way valve is intact.

(2) The refillable container is being refilled with the same pesticide product.

(3) Both of the following conditions are satisfied.

(i) The container previously held a pesticide product with a single active ingredient and is being used to repackage a pesticide product with the same single active ingredient.

(ii) There is no change that would cause the composition of the product being repackaged to differ from the composition described in its confidential statement of formula that is required under FIFRA section 3. Examples of unallowable changes include the active ingredient concentration increasing or decreasing beyond the limits established by the confidential statement of formula or a reaction or interaction between the pesticide product being repackaged and the residue remaining in the container.

(h) ***How must I clean a refillable container that has a broken (non-intact) tamper-evident device or one-way valve?*** As required in paragraph (g) of this section, you must clean each refillable container that has a tamper-evident device or one-way valve that is not intact by conducting the pesticide product's refilling residue removal procedure before repackaging the pesticide product into the refillable container. In addition, other procedures may be necessary to assure that product integrity is maintained in such cases.

(i) ***How must I label refillable containers?*** Before distributing or selling a pesticide product in a refillable container, you must ensure that the label of the pesticide product is securely attached to the refillable container such that the label can reasonably be expected to remain affixed during the foreseeable conditions and period of use. The label and labeling must comply in all respects with the requirements of part 156 of this chapter. In particular, you must ensure that the net contents statement and EPA establishment number appear on the label.

(j) ***What recordkeeping must I do?*** You must maintain all of the records listed in this section in addition to the applicable records identified in parts 167 and 169 of this chapter. You must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe.

(1) For each pesticide product distributed or sold in refillable containers, all of the following records must be maintained for the current operating year and for 3 years after that:

- (i) The written contract from the pesticide product's registrant for the pesticide product.
  - (ii) The written refilling residue removal procedure for the pesticide product.
  - (iii) The written description of acceptable containers for the pesticide product.
- (2) Each time you repackage a pesticide product into a refillable container and distribute or sell the product, the following records must be generated and maintained for at least 3 years after the date of repackaging:
- (i) The EPA registration number of the pesticide product distributed or sold in the refillable container.
  - (ii) The date of the repackaging.
  - (iii) The serial number or other identifying code of the refillable container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

## **§§ 165.71-165.79 [Reserved]**

### **Subpart E - Standards for Pesticide Containment Structures**

#### **§ 165.80 General provisions.**

(a) *What is the purpose of the regulations in this subpart?* The purpose of the containment regulations in this subpart is to protect human health and the environment from exposure to agricultural pesticides which may spill or leak from stationary pesticide containers. This protection is achieved by the construction of secondary containment units or pads at certain facilities handling agricultural pesticides. These regulations will also reduce waste generation associated with:

- (1) Storage and handling of large quantities of pesticide products.
- (2) Pesticide dispensing and container-refilling operations.

(b) *Do I have to comply with the regulations in this subpart?* You must comply with the regulations in this subpart if you are an owner or operator of one of the following businesses and if you also have a stationary pesticide container or a pesticide dispensing (including container refilling) area:

- (1) Refilling establishments who repackage agricultural pesticides and whose principal business is retail sale (*i.e.*, more than 50% of total annual revenue comes from retail operations).

(2) Custom blenders of agricultural pesticides.

(3) Businesses which apply an agricultural pesticide for compensation (other than trading of personal services between agricultural producers).

(c) ***When do I have to comply?*** You must comply with all applicable containment regulations for new and existing structures as of August 17, 2009.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

## **§ 165.81 Scope of stationary pesticide containers included.**

(a) ***What is a stationary pesticide container?*** A stationary pesticide container is a refillable container that is fixed at a single facility or establishment, or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

(b) ***What stationary pesticide containers are subject to the regulations in this subpart?*** Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this subpart unless any of the following conditions exists:

(1) The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping or aspirating has been removed (whether or not the container has been rinsed or washed).

(2) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.

(3) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.

(4) The container is dedicated to non-pesticide use, and is labeled accordingly.

## **§ 165.82 Scope of pesticide dispensing areas included.**

(a) ***What pesticide dispensing areas are subject to the regulations in this subpart?*** A pesticide dispensing area is subject to the containment regulations in this subpart and must have a containment pad that complies with the requirements of this subpart if any of the following activities occur:

(1) Refillable containers of agricultural pesticide are emptied, cleaned or rinsed.

(2) Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including, but not limited to:

- (i) Refillable containers;
- (ii) Service containers;
- (iii) Transport vehicles;
- (iv) Application equipment.

(3) Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

(4) Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

(b) ***What pesticide dispensing areas are exempt from the regulations in this subpart?*** A pesticide dispensing area is exempt from the regulations in this subpart if any of the following conditions exist:

- (1) The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.
- (2) The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers which are already protected by a secondary containment unit that complies with the provisions of this subpart.
- (3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car which does not remain at a facility long enough to meet the definition of a stationary pesticide container; that is, 30 days.

## **§ 165.83 Definition of new and existing structures.**

(a) ***What is a new containment structure?*** A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

- (1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

(b) *What is an existing containment structure?* An existing containment structure is defined as one whose installation began on or before November 16, 2006.

## **§ 165.85 Design and capacity requirements for new structures.**

(a) *For all new containment structures, what construction materials must I use?* These are the material specifications for a new containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

(b) *For all new containment structures, what are the general design requirements?* These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets or gravity drains must not be configured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

**(c) For new secondary containment units for stationary containers of liquid pesticides and new containment pads in pesticide dispensing areas, what are the capacity requirements?**

These are the capacity requirements:

(1) New secondary containment units for stationary containers of liquid pesticides, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) New secondary containment units for stationary containers of liquid pesticides, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(3) New containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(4) New containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

**(d) For new secondary containment units for stationary containers of liquid pesticides, what are the specific design requirements?** You must either anchor or elevate each stationary container of liquid pesticides protected by a new secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

**(e) For new containment pads in pesticide dispensing areas, what are the specific design requirements?** Each new containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.



(4) Have its surface sloped toward an area where liquids can be collected for removal, such as a liquid-tight sump or a depression, in the case of a single-pour concrete pad.

(f) ***For new secondary containment units for stationary containers of dry pesticides, what are the specific design requirements?*** These are the specific design requirements for new secondary containment units for stationary containers of dry pesticides:

(1) The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

(2) Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary containers of dry pesticides must be stored.

(4) The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64227, Oct. 29, 2008]

## **§ 165.87 Design and capacity requirements for existing structures.**

(a) ***For all existing containment structures, what construction materials must I use?*** These are the material specifications for an existing containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

(b) ***For all existing containment structures, what are the general design requirements?*** These are the general design requirements for existing containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to,

supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) You must seal all appurtenances, discharge outlets and gravity drains through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

**(c) *For existing secondary containment units for stationary containers of liquid pesticides and existing containment pads in pesticide dispensing areas, what are the capacity requirements?*** These are the capacity requirements:

(1) Existing secondary containment units for stationary containers of liquid pesticides must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) Existing containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(3) Existing containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

**(d) *For existing secondary containment units for stationary containers of liquid pesticides, what are the specific design requirements?*** You must either anchor or elevate each stationary container of liquid pesticides protected by an existing secondary containment unit to prevent flotation in the event that the secondary containment unit fills with liquid.

**(e) *For existing containment pads in pesticide dispensing areas, what are the specific design requirements?*** Each existing containment pad in a pesticide dispensing area must:

(1) Be designed and constructed to intercept leaks and spills of pesticides which may occur in the pesticide dispensing area.

(2) Have enough surface area to extend completely beneath any container on it, with the exception of transport vehicles dispensing pesticide for sale or distribution to a stationary pesticide container. For such vehicles, the surface area of the containment pad must accommodate at least the portion of the vehicle where the delivery hose or device couples to

the vehicle. This exception does not apply to transport vehicles that are used for prolonged storage or repeated on-site dispensing of pesticides.

(3) Allow, in conjunction with its sump, for removal and recovery of spilled, leaked, or discharged material and rainfall, such as by a manually activated pump. Automatically-activated pumps which lack automatic overflow cutoff switches for the receiving container are prohibited.

**(f) *For existing secondary containment units for stationary containers of dry pesticides, what are the specific design requirements?*** These are the specific design requirements for existing secondary containment units for stationary containers of dry pesticides:

(1) The stationary containers of dry pesticides within the containment unit must be protected from wind and precipitation.

(2) Stationary containers of dry pesticides must be placed on pallets or a raised concrete platform to prevent the accumulation of water in or under the pesticide.

(3) The storage area for stationary containers of dry pesticides must include a floor that extends completely beneath the pallets or raised concrete platforms on which the stationary containers of dry pesticides must be stored.

(4) The storage area for stationary containers of dry pesticides must be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64228, Oct. 29, 2008]

## **§ 165.90 Operational, inspection and maintenance requirements for all new and existing containment structures.**

**(a) *What are the operating procedures required for all new and existing containment structures?*** As the owner or operator of a new or existing pesticide containment structure, you must:

(1) Manage the structure in a manner that prevents pesticides or materials containing pesticides from escaping from the containment structure (including, but not limited to, pesticide residues washed off the containment structure by rainfall or cleaning liquids used within the structure.)

(2) Ensure that pesticide spills and leaks on or in any containment structure are collected and recovered in a manner that ensures protection of human health and the environment (including surface water and groundwater) and maximum practicable recovery of the pesticide spilled or leaked. Cleanup must occur no later than the end of the day on which pesticides have been spilled or leaked except in circumstances where a reasonable delay

would significantly reduce the likelihood or severity of adverse effects to human health or the environment.

(3) Ensure that all materials resulting from spills and leaks and any materials containing pesticide residue are managed according to label instructions and applicable Federal, State and local laws and regulations.

(4) Ensure that transfers of pesticides between containers, or between containers and transport vehicles are attended at all times.

(5) Ensure that each lockable valve on a stationary pesticide container, if it is required by § 165.45(f), is closed and locked, or that the facility is locked, whenever the facility is unattended.

***(b) What are the inspection and maintenance requirements for all new and existing containment structures?*** As owner or operator of a new or existing pesticide containment structure, you must:

(1) Inspect each stationary pesticide container and its appurtenances and each containment structure at least monthly during periods when pesticides are being stored or dispensed on the containment structure. Your inspection must look for visible signs of wetting, discoloration, blistering, bulging, corrosion, cracks or other signs of damage or leakage.

(2) Initiate repair to any areas showing visible signs of damage and seal any cracks and gaps in the containment structure or appurtenances with material compatible with the pesticide being stored or dispensed no later than the end of the day on which damage is noticed and complete repairs within a time frame that is reasonable, taking into account factors such as the weather, and the availability of cleanup materials, trained staff, and equipment.

(3) Not store any additional pesticide on a containment structure if the structure fails to meet the requirements of this subpart until suitable repairs have been made.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64228, Oct. 29, 2008]

## **§ 165.92 What if I need both a containment pad and a secondary containment unit?**

You may combine containment pads and secondary containment units as an integrated system provided the requirements set out in this subpart for containment pads and secondary containment units in §§ 165.85(a) and (b), 165.87(a) and (b) and § 165.90, and as applicable, §§ 165.85(c)-(f) and 165.87(c)-(f) are satisfied separately.

## **§ 165.95 What recordkeeping do I have to do as a facility owner or operator?**

As a facility owner or operator subject to the requirements of this subpart, you must maintain the following records, and you must furnish these records for inspection and copying upon request by an employee of EPA or any entity designated by EPA, such as a State, another political subdivision or a Tribe:

(a) Records of inspection and maintenance for each containment structure and for each stationary pesticide container and its appurtenances must be kept for 3 years and must include the following information:

(1) Name of the person conducting the inspection or maintenance;

(2) Date the inspection or maintenance was conducted;

(3) Conditions noted;

(4) Specific maintenance performed.

(b) Records for any non-stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide that holds pesticide but is not protected by a secondary containment unit meeting these regulations must be kept for 3 years. Records on these non-stationary pesticide containers must include the time period that the container remains at the same location.

(c) Records of the construction date of the containment structure must be kept for as long as the pesticide containment structure is in use, and for 3 years afterwards.

## **§ 165.97 States with existing containment programs.**

(a) *What options are available to States that already have containment regulations?* States that have promulgated containment regulations effective prior to August 16, 2006, and which also have primary enforcement responsibility and/or certification programs, have the option of continuing to implement their own programs in lieu of these Federal regulations.

(b) *How may a State request authority to continue implementing its State containment regulations?* A State with pesticide containment regulations may request the authority to continue implementing State containment regulations by August 16, 2007 in the following manner:

(1) The State must submit a letter and any supporting documentation to EPA. Supporting documentation must demonstrate that the State's program is providing environmental protection equivalent to or more protective than that expected to be provided by the Federal regulations in this subpart.

(2) The State must identify any significant changes to State regulations which would be necessary in order to provide environmental protection equivalent to the EPA regulations,

and develop an estimated timetable to effect these changes. The letter must be signed by the designated State Lead Agency.

(c) ***How will EPA notify the State if its request is granted?*** EPA's Office of Pesticide Programs will review the State's correspondence and determine whether the State program is adequate to provide environmental protection equivalent to or more protective than these Federal regulations for new and existing containment structures. EPA's Office of Pesticide Programs will inform the State of its determination through a letter authorizing or declining to authorize the State to continue implementing its containment regulations and will detail any reasons for declining authorization.

(d) ***How must a State inform EPA of revisions to its containment regulations?*** Any state that has received authorization to continue implementing its state containment regulations must inform EPA by letter signed by the designated State Lead Agency within 6 months of any revision to the State's containment regulations. EPA will inform the state by letter if it determines that the State's containment regulations are no longer adequate based on the revisions. The State's containment regulations will remain in effect, unless and until EPA sends the state a letter making this determination.

[71 FR 47422, Aug. 16, 2006, as amended at 73 FR 64228, Oct. 29, 2008]

## State Pesticide Container Regulations

On the June 17, 2022 Board meeting, the Board indicated that they would like a summary of all federal and state pesticide container laws. In Maine, there are some pesticide container regulations in place, but the majority of regulations are at the federal level. Below are regulations from the Maine Board of Pesticide Control Rules (CMR01-26) and Maine Department of Environmental Protection (CMR06-96) regarding pesticide containers. In Maine, once pesticide containers are triple rinsed, they are then considered universal waste and may be recycled/disposed of according to general waste provisions CMR 06-96 Chapter 858: Universal Waste Rules.

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## CMR01-26 CHAPTER 20: SPECIAL PROVISIONS

### Section 3. Pesticide Storage and Disposal

- A. Unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
- B. Obsolete, expired, illegal, physically or chemically altered or unusable pesticides, except household pesticide products, shall be either:
  - 1. stored in a secure, safe place under conditions that will prevent deterioration of containers or any contamination of the environment or risk to public health, or
  - 2. returned to the manufacturer or formulator for recycling, destruction, or disposal as appropriate, or
  - 3. disposed of in a licensed hazardous waste facility or other approved disposal site that meets or exceeds all current requirements of the Maine Department of Environmental Protection and the U.S. Environmental Protection Agency for facilities receiving such waste.

## CMR01-26 CHAPTER 24: PESTICIDE STORAGE FACILITY STANDARDS/PESTICIDE DISTRIBUTORS

### Section 6. Operational and Emergency Equipment Requirements for All Major and Minor Pesticide Storage Facilities

- A. All pesticide storage facilities shall be kept securely locked at all times, except when authorized personnel are present.
- B. Each entrance to the pesticide storage facility shall be prominently posted with the words, "Danger - Pesticide Storage - Keep Out."
- C. No smoking shall be allowed in any pesticide storage area. All entrances to the pesticide storage facility shall be posted with signs indicating smoking is not allowed.
- D. All pesticide containers shall be stored in a manner that prevents damage and allows inspection for rusting, bulging or leaking. All containers held in storage



shall be in good condition and have full labeling intact. Pesticide distributors must conduct periodic inspection of containers for rust and/or leaks.

E. Emergency Equipment

- I. All pesticide storage facilities shall be equipped with at least one eye wash station capable of flushing eyes for a minimum of fifteen minutes.
- II. All pesticide storage facilities shall be equipped with fire extinguishers that are capable of extinguishing all types of fires that may occur in the pesticide storage facility. These fire extinguishers must be clearly marked as to their fire suppression capabilities. The number and placements of fire extinguishers shall conform with the National Fire Protection Association Standard No. 10.
- III. All pesticide storage facilities shall be equipped with spill response and clean-up equipment, including, but not limited to, absorbents, empty containers, brooms and shovels and personal protective equipment for employees.
  - a. Compatible absorbents for water and oil-based products shall be present in sufficient quantity to clean up two-times the volume of the largest container stored in the facility.
  - b. Proper personal protective clothing and equipment, as well as training to use that equipment, shall be provided to employees and emergency responders.
  - c. Pesticide distributors may coordinate the provision of spill response equipment with other facilities in the locality as well as with appropriate municipal safety agencies.

F. Pesticides shall not be stored within 10 feet from products intended for human or animal consumption. 01-026 Chapter 24 page 9

Section 7. Special Requirements for Pesticide Distributor Self-Service Sales Areas

- A. All pesticides, unless they are exempted products under 22 M.R.S.A. §1471-W(5), shall be displayed in a separate area that is identified by a Board approved sign informing the public where to obtain additional information. The signs must be positioned between four and seven feet above the floor and prominently posted in all areas where non-exempt pesticides are displayed.
- B. All pesticide containers in the self-service sales area shall be in good condition and have full labeling intact. It is prohibited to have torn, punctured, rusted or leaking pesticide containers in the self-service sales area.
- C. All pesticide products not exempted under 22 M.R.S.A. §1471-W(5) shall not be displayed within 10 feet of food or animal feed products unless they are stored in

adjoining aisles separated by a solid barrier. Pesticides shall not be on display above food or animal feed products.

- D. Any outdoor pesticide display area must be securely fenced and must have a roof to protect the material from the elements.
- E. Each retail or wholesale establishment must be equipped with spill cleanup materials sufficient to absorb 2 times the volume of the largest container stored. These cleanup materials must be readily available and easily accessible.

#### Section 8. Local Ordinances

These regulations are minimum standards and are not meant to preempt any local ordinances which may be more stringent.

#### Section 9. 40 CFR, Part 165, *Federal Pesticide Management and Disposal Rule* Adopted by Reference

The Federal Pesticide Management and Disposal Rule, 40 CFR, Part 165 (July 1, 2008), is incorporated herein by reference

## CMR01-26 CHAPTER 29: STANDARDS FOR WATER QUALITY PROTECTION

### Section 2. Securing Pesticide Product Containers and Mix Tanks on Sprayers, Nurse Vehicles and Other Support Vehicles during Transportation

No person shall transport any pesticide unless it is secured so as to prevent release of pesticides onto the vehicle or from the vehicle. All tanks, liquid containers, cartons and bags must be securely held so they may not shift and become punctured or spilled

## CMR01-26 CHAPTER 21 [REPEALED—Effective: December 23, 2012] Pesticide Container Disposal and Storage

These rules set forth the regulations for the management of emptied pesticide containers for limited and restricted use pesticides. They establish deposit amounts, sticker requirements, triple rinse or equivalent procedures, and refund places and procedures. The rules are organized according to classification of the pesticide as to whether it was purchased in state or out of state.

## CMR06-96 Chapter 102: OPEN BURNING

### 1. Scope

- A. This section shall be applicable in all ambient air quality regions in the State of Maine.
- B. This section shall not interfere with or supersede any local law or ordinance which is more stringent.

2. Prohibitions and Permissible Open Burning. Outdoor burning is prohibited in all areas of the State, except as follows:

**A. Permissible Open Burning With Permit.** When not prohibited by local ordinances the following types of burning are permissible if a permit has been obtained from the Town Forest Fire Warden, forest ranger, or local fire prevention official having jurisdiction over the location where the fire is to be set, so long as the burning is conducted according to the terms and conditions of such permit and provided no nuisance is created.

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NOTE: Any kindling or use of out-of-door fires is regulated by the Department of Conservation, Maine Forest Service. Any requirements or conditions of issuance of a fire permit must be in accordance with Title 12, Chapter 807 - Forest Fire Control, Subchapter IV - Regulation of Open Burning, Article II Out-of-Door Fires, Sections 9321-9324 and Title 25, Chapter 317 - Preventative Measures and Restrictions, sec. 2436-A.

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- (1) Recreational campfires kindled when the ground is not covered by snow;
- (2) Fires in conjunction with holiday and festive celebration, pursuant to Section 2(A)(5) of this rule;
- (3) Burning of solid or liquid fuels and structures for the purpose of research or bona fide instruction and training of municipal or volunteer firefighters pursuant to Maine Revised Statutes Title 26, section 2102 and industrial fire fighters in methods of fighting fires when conducted under the direct control and supervision of qualified instructors and with a written objective for the training. For purposes of this section, “qualified instructor” means the fire chief or designee or a fire-fighting instructor. Structures burned for instructional purposes must first be emptied of waste materials that are not part of the training objective.
- (4) Burning for agricultural purposes which include but are not limited to open burning of blueberry fields, potato tops, hayfields and prescribed burning for timberland management.
- (5) Out-of-door burning of wood wastes and painted and unpainted wood from demolition debris in the open, or in an incinerator with a primary chamber volume no greater than 133 cubic feet or 1,000 gallons that is not licensed by the Department of Environmental Protection. For purposes of this chapter, the term “wood wastes” means brush, stumps, lumber, bark, wood chips, shavings, slabs, edgings, slash, sawdust and wood from production rejects that are not mixed with other solid or liquid waste, and “lumber” means material that is entirely made of wood and is free from metal, plastics, coatings and chemical treatments.
- (6) Open burning of leaves, brush, deadwood and tree cuttings accrued from normal property maintenance by the individual landowner or lessee of the land unless expressly prohibited by municipal ordinance.
- (7) Burning on site for the disposal of wood wastes and painted and unpainted wood from construction and demolition debris generated from the clearing of any land or by the erection, modification, maintenance, demolition or construction of any highway, railroad, power line, communication line, pipeline, building or development.

- (8) Burning of vegetative growth for hazardous abatement purposes, such as, but not limited to, the burning of grass fields.
- (9) Burning for the containment or control of spills of gasoline, kerosene, heating oil or similar petroleum product.
- (10) The burning of wood wastes and painted and unpainted wood from construction and demolition debris at solid waste facilities in accordance with a facility license issued pursuant to Maine's Solid Waste Management Rules, 06-096 CMR 400 to 409.
- (11) The burning of empty containers, including fiberboard boxes and paper bags, previously containing explosives and being disposed of in accordance with the provisions of Maine Revised Statutes Title 25, section 2472.
- (12) Explosives being disposed of under the direct supervision and control of the State Fire Marshal

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NOTE: Although this rule does not require the separation of painted and unpainted wood from demolition debris, Maine law requires that "A person engaged in any renovation, remodeling, maintenance or repair project involving lead-based paint ...shall take reasonable precautions to prevent the release of lead to the environment, including the cleanup, removal and appropriate disposal of all visible lead-based paint debris generated by the project." (Title 38 MRSA § 1296)

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NOTE: Any open burning occurring at a municipal solid waste disposal site must be conducted in accordance with those forest fire prevention measures specified in Title 12, Chapter 807 - Forest Fire Control, Subchapter IV - Regulation of Open Burning, Article I - Dumps, Sections 9301 - 9304.

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**B. Permissible Open Burning Without Permit.** When not prohibited by local ordinances, the following types of burning are permissible without a permit so long as no nuisance is created.

- (1) Residential use of outdoor grills and fireplaces for recreational purposes such as preparing food.
- (2) Recreational campfires kindled when the ground is covered with snow or on frozen bodies of water.
- (3) Use of outdoor grills and fireplaces for recreational purposes such as preparing food at commercial campgrounds in organized towns, as long as the commercial campgrounds are licensed by the health engineering division of the Department of Human Services.

**C.** No person, firm, corporation, association, municipal or state agency shall engage in any open burning except in conformity with Section 2.

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NOTE: Paper or cardboard may be burned as kindling only in amounts necessary to ensure ignition of fires pursuant to Sections 2(A) and 2(B) of this rule.

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## CMR06-96 CHAPTER 400: GENERAL PROVISIONS

1. Definitions. The following terms, as used in the Maine Solid Waste Laws and in these rules have the following meanings, unless the context indicates otherwise:

- D. Agricultural waste.** "Agricultural waste," means wastes that result from agricultural activities (the growing of vegetables, fruits, seeds, nursery crops, poultry, livestock, field crops, cultivated or pasture hay and farmlot wood products, including Christmas trees) that are returned to the soils as fertilizers. It includes waste pesticides when generated by a farmer, provided that the farmer triple rinses each emptied pesticide container in accordance with Departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label. It does not include any material regulated as a residual under 06-096 CMR 419.

## CMR06-96 CHAPTER 850: IDENTIFICATION OF HAZARDOUS WASTES

C. Identification of hazardous wastes by particular substance, by chemical class or as waste products of specific industrial activities

(2) **Hazardous wastes from non-specific sources.** A waste is a hazardous waste if it is listed below:

(a) The F-listed wastes listed in the table below:

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F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use [as a reactant, chemical intermediate or component in a formulating process] of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)
F020	Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use [as a reactant, chemical intermediate or component in a formulating process] of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.)	(H)

(b) The provisions of 40 C.F.R. § 261.31(b) further define the F037 and F038 listings.

(c) Polychlorinated biphenyl (PCB) and polychlorinated biphenyls (PCBs), where PCB and PCBs mean any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance.

- (i) Any waste chemical substances or combination of waste substances that contain 50 parts per million (on a dry weight basis) or greater of PCBs are hazardous waste.

Substances that are regulated by this Chapter include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and byproducts. "PCB Item" as defined in 40 C.F.R. § 761.3 is also subject to this Chapter.

In addition, the use of waste oil that contains any detectable concentration of PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes.

- (3) **Hazardous Wastes from specific sources.** A waste is a hazardous waste if it is listed in the table below:

Pesticides:		(T)
K031	By-product salts generated in the production of MSMA and cacodylic acid.	
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.	(T)
K034	Filter solids from the filtration of hexachloro-cyclopentadiene in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphoro-dithioic acid in the production of phorate.	(T)

K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)
K097	Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.	(T)
K098	Untreated process wastewater from the production of toxaphene.	(T)
K099	Untreated wastewater from the production of 2,4-D.	(T)
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	(C,T)
K125	Purification solids (including filtration, evaporation, and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)
K131	Wastewater from the reactor and spent sulfuric acid from the acid drier from the production of methyl bromide.	(C,T)
K132	Spent adsorbent and wastewater separator solids from the production of methyl bromide.	(T)

## CMR06-96 CHAPTER 851: STANDARDS FOR GENERATORS OF HAZARDOUS WASTE

### 4. Applicability

- A. A generator who handles hazardous waste on the site of its generation also shall comply with applicable standards and requirements set forth in 06-096 C.M.R. chs. 850, 852, 854, 855, 856 and 857.

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NOTE: Refer to 06-096 C.M.R. ch. 850, § 3(A)(5)(d) for the standards for a Small Quantity Generator or Small Quantity Generator Plus as defined in this Chapter.

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- B.** Any person who imports hazardous waste from a foreign country into the State of Maine or exports hazardous waste to a foreign country shall comply with the standards and requirements applicable to generators established in this Chapter, in 06-096 C.M.R. ch. 857 and in 40 C.F.R. Part 262 Subpart H.
- C.** A farmer who generates waste pesticide residues which are hazardous waste as a result of farming activity on the farmer's own farm and who complies with all of the requirements of Section 10 of this Chapter is not required to comply with other standards in this Chapter or in 06-096 C.M.R. chs. 852, 854, 855 and 856 with respect to such pesticide residues.

10. **Farmers.**

A farmer, disposing of waste pesticide residues which are hazardous wastes generated from farming activity on the farmer's own farm, is not required to comply with the standards in this Chapter or other standards in 06-096 C.M.R. chs. 852, 854, 855 or 856 for those waste residues provided the farmer collects wash and rinse water from the cleaning of spray equipment and triple rinses each emptied pesticide container in accordance with 06-096 C.M.R. ch. 850, § 3(C)(4)(c) of the Department's rules and disposes of the pesticide residues on the farmer's own farm in a manner consistent with the use or disposal instructions on the pesticide label. The containers must then be disposed of in accordance with rules administered by the Pesticide Control Board, Maine Department of Agriculture, Conservation and Forestry.

## CMR06-96 CHAPTER 852: LAND DISPOSAL RESTRICTIONS

13. **Prohibitions on Land Disposal**

Generators, owners or operators of treatment facilities, and owners or operators of land disposal facilities shall comply with the prohibitions and effective dates of 40 C.F.R. §§ 268.20 and 268.30 through 268.39, provided however, that references to:

- 40 C.F.R. § 261.31 shall mean 06-096 C.M.R. ch. 850, § 3(C)(2),
- 40 C.F.R. § 261.32 shall mean 06-096 C.M.R. ch. 850, § 3(C)(3),
- 40 C.F.R. § 261.33 shall mean 06-096 C.M.R. ch. 850, § 3(C)(4),
- 40 C.F.R. Part 268 or sections thereof shall mean this Chapter,
- sections or subparts of 40 C.F.R. Part 264 shall mean applicable provisions of Chapter 854,
- sections or subparts of 40 C.F.R. Part 265 shall mean applicable provisions of Chapter 855,
- 40 C.F.R. § 268.5(h)(2) shall mean Section 8(B)(2) of this Chapter,

and the prohibitions in 06-096 C.M.R. ch. 854, § 5(E) and 06-096 C.M.R. ch. 855, § 5(B)(7) continue to apply. Refer to 40 C.F.R. Part 268 Appendix VII for tables of effective dates organized by waste code.

### Appendix III: List of Halogenated Organic Compounds Regulated Under Section 13 of this Chapter

In determining the concentration of HOCs in a hazardous waste for purposes of the land disposal prohibition of Section 13 of this Chapter, the Department has defined the HOCs (see Section 3(B) of



this Chapter) that must be included in the calculation as any compounds having a carbon halogen bond which are listed in this Appendix. Appendix III to Chapter 852 consists of the following compounds:

### **Organochlorine Pesticides**

Aldrin  
alpha-BHC  
beta-BHC  
delta-BHC  
gamma-BHC  
Chlordane  
DDD  
DDE  
DDT  
Dieldrin  
Endosulfan I  
Endosulfan II  
Endrin  
Endrin aldehyde  
Heptachlor  
Heptachlor epoxide  
Isodrin  
Kepone  
Methoxychlor  
Toxaphene



October 31, 1996

OFFICE OF  
PREVENTION, PESTICIDES, AND  
TOXIC SUBSTANCES

PESTICIDE REGULATION (PR) NOTICE 96-8

NOTICE TO MANUFACTURERS, FORMULATORS, PRODUCERS  
AND REGISTRANTS OF PESTICIDE PRODUCTS

ATTENTION: Persons Responsible for Registration of Pesticide Products

SUBJECT: Toxicologically Significant Levels of Pesticide Active Ingredients

This notice sets out the Environmental Protection Agency's (EPA's) interpretation of the term "toxicologically significant" as it applies to contaminants in pesticide products that are also pesticide active ingredients (AIs). This notice provides risk-based concentration levels of such contaminants that will generally be considered toxicologically significant. These concentrations are defined according to the type of pesticide that is contaminated and the pesticide category of the contaminant. As provided by regulation, registrants must report to EPA contamination exceeding toxicologically significant levels. This Notice sets out procedures for reporting such contamination.

The following contamination scenarios are excluded from this notice: (1) rodenticides as a contaminant and/or as the contaminated product; (2) microbial and biochemical pesticides that are manufactured in fermentors and that are contaminated by active microbial pesticide ingredients; and (3) plant-pesticides that are contaminated with other active plant-pesticide ingredients. EPA would like to clarify that the Agency's previous position on toxicologically significant levels of impurities that are also AIs would apply to pesticides that are exempt from this notice. In other words, any level of a contaminant in these three exempted categories would be considered potentially toxicologically significant and must be reported to EPA.

I. **BACKGROUND**

EPA requires all impurities of toxicological significance to be reported and accepted as part of product registration (40 CFR 158.167). EPA also requires that registrants propose upper certified limits for toxicologically significant impurities in technical grade active ingredients or products produced by an integrated system (40 CFR 158.175), and may require upper certified limits for other impurities.

At the time EPA promulgated these regulations it did not set quantitative criteria for determining whether an impurity is toxicologically significant. Rather, EPA has taken the

position that any level of an active ingredient that is an impurity or contaminant in another product is potentially toxicologically significant and must be reported to the Agency. Failure to report such an impurity is a violation of FIFRA section 12(a)(1)(C) (composition of the product differs from that registered with the Agency).

The Agency did make clear at the time it promulgated its current reporting regulations that its interpretation of the term "toxicologically significant" could be subject to further refinement to the extent new information on impurities was available to the Agency. Based on the analysis conducted during the development of this notice, the Agency has now determined that for certain pesticides (see section IV below) it can establish generally applicable quantitative criteria for determining the toxicological significance of contaminants that are also active ingredients. For this reason, EPA is today further refining its interpretation of the term "toxicologically significant."

In Section IV of this notice, EPA is setting risk-based levels at which active ingredients that are contaminants will generally be considered "toxicologically significant." For the purposes of this notice, a contaminant is defined as an active ingredient that is not accurately listed on the product's confidential statement of formula or listed in the discussion of impurities. This notice addresses only impurities that are also active ingredients; EPA's position on other impurities has not changed.

Additionally, nothing in this notice changes the conditions outlined in the Bulk Pesticides Enforcement Policy (Bulk Policy) dated July 11, 1977 and amended on March 4, 1991. The Bulk Policy is an important part of applying the 40 CFR Part 158 standards to bulk pesticides at repackaging/refilling establishments (often retail dealers). Specifically, EPA's position that both parties (the registrant and the repackager) are accountable for the integrity of the product as set out in the Bulk Policy remains the same.

## II. OBJECTIVES

EPA determined that this interpretation on cross contamination should:

- o Recognize that cross contamination is a reality, and that not all cross contamination is problematical;
- o Set a **clear standard** that can be readily applied by EPA/States and the regulated industry **alike**;
- o Ensure that allowable cross contamination does not pose unreasonable adverse effects;
- o **Minimize** the paperwork burden for EPA and registrants;
- o **Maintain** accountability for the product from the registrant to the end user; and

- o Not preclude marketplace/private solutions to correct problems that do arise.

### III. APPROACH

EPA decided that a risk-based approach would most likely meet these objectives.

EPA considered the risks for several endpoints, including human health, adulterated food, contamination of ground water, and ecological effects to determine which endpoints would be most sensitive to cross contamination and what levels of cross contamination could be tolerated and remain generally protective of human health and the environment. For each endpoint, an analysis was done to evaluate a reasonable worst case scenario or a range of potential scenarios to see if an overall, generally protective contaminant concentration could be determined. EPA grouped contaminants and pesticides into different categories (see the table in section IV) to yield a scheme of toxicologically significant concentrations.

The following end points were considered. In most cases phytotoxicity to the target plants is the most sensitive endpoint and, therefore, the limiting factor in determining toxicological significance.

Human health effects. Because cross contamination caused by a specific AI is most likely an intermittent event, short-term exposure is most likely. Therefore, EPA focused on the potential risks to individuals who would be handling contaminated products. The analyses of these human health risks show that acute risks to humans at the cross contamination levels allowed by this interpretation are negligible. Although intermittent contamination is the most likely scenario for cross contamination, it is possible that the same AI contaminant would be present in a particular pesticide product over a long period of time. EPA analyses indicate that chronic exposure to cross contamination is unlikely to present an unreasonable risk to human health.

EPA also considered contamination in pesticides applied to the human body (e.g., insect repellents) and concluded that the risks from cross contamination at the level set in this notice for these pesticides are negligible.

Adulterated food. Theoretically, a contaminant could cause residues in food or feed for which no tolerance has been established or that are in excess of an established tolerance. In this case, that food or feed would be adulterated under the Federal Food, Drug, and Cosmetic Act. EPA's analysis indicates that this is a highly unlikely occurrence. Moreover, because cross contamination with a specific AI occurs intermittently and at low levels, EPA believes that potential exposure to and dietary risk from residues of unreported contaminants under this notice would be negligible.

Ground water. The possibility of the contamination of ground water was raised as a potential concern in locations with sandy soils and shallow aquifers. The Florida Department

of Agriculture and Consumer Services (DACS) conducted a preliminary ground water modeling exercise using a number of conservative assumptions regarding leachability, pesticide half-life, and product application rate. EPA accepts the Florida DACS conclusion that, while contamination of ground water is possible, it is of minimal concern because pesticide AIs as contaminants at the levels allowed by this notice are unlikely to move to ground water in concentrations that would pose significant risk to human health.

Ecological effects/phytotoxicity. Based on a preliminary review of potential ecological effects from cross contamination (e.g., risks to birds, aquatic organisms, and plants), EPA believes that plant toxicity, or phytotoxicity, is the most sensitive endpoint given the relatively low concentrations of contaminants being considered. EPA believes that phytotoxicity damage poses the greatest potential for ecological harm. EPA's phytotoxicity analyses focus on the direct application of the contaminated product to terrestrial plants because this scenario represents a higher level of exposure than other exposure pathways, such as runoff and off-target drift.

EPA conducted several risk analyses based upon phytotoxicity as the end point of concern to determine the appropriate toxicologically significant levels. These analyses are presented in a technical support document. (See section VII on how to obtain more information.)

Rationale for not including certain microbial and biochemical pesticides and plant-pesticides. Many microbial and certain biochemical pesticides are manufactured in fermentors. A likely source of contamination of these pesticide products arises when a fermentor is used also for the production of a different microbial pesticide active ingredient. Quantitative criteria are not appropriate for determining whether active microbial pesticide ingredients are contaminants of 'toxicological significance'. This is because microorganisms can multiply in the environment, and especially in association with target pest hosts. The criteria of from 20 ppm to 1000 ppm as "toxicologically significant levels" (Section IV) when applied to a microbial pesticide active ingredient could allow for the presence of thousands to millions of contaminating microorganisms per gram or milliliter of pesticide product. It cannot be assumed that such levels of contamination are of insignificant toxicity, especially to non-target organisms.

EPA is in the process of developing policy for regulatory oversight of plant-pesticides, including defining the scope of oversight. Therefore, any determination of whether the quantitative criteria for toxicological significance apply to plant pesticides should be made once the plant-pesticide rule is finalized. Where applicants/registrants voluntarily submit plant-pesticides for EPA regulation, the reporting as discussed in Section V of this Notice will remain applicable unless otherwise changed by regulation.

#### IV. TOXICOLOGICALLY SIGNIFICANT LEVELS OF CONTAMINATION

The following table defines the levels of contaminants that EPA generally considers to be toxicologically significant. Specifically, the presence of a contaminant at a concentration greater than the concentration specified in the table will generally be considered toxicologically significant. Each contaminant should be considered individually.

The toxicologically significant levels apply to all registered products that are sold or distributed, regardless of whether the container is nonrefillable (i.e., "packaged product") or refillable (i.e., "bulk product.") The toxicologically significant levels do not apply to products that are not sold or distributed, such as tank mixtures in an end user's application equipment.

**Toxicologically Significant Levels of Contaminants<sup>1,2</sup>**

Category	Type of Contaminant	Type of Pesticide that is Contaminated	Toxicol. Significant Level <sup>3</sup> (ppm) <sup>4</sup>
1	Insecticide <sup>5</sup> , fungicide, molluscicide, or nematocide in...	Any insecticide, fungicide, molluscicide, nematocide, herbicide, plant growth regulator, defoliant, or desiccant	1000
2	Herbicide, plant growth regulator, defoliant, or desiccant in...	Any pesticide <sup>6</sup> where the contaminant is accepted for use on all sites for which the product is labeled	1000
3	Any pesticide <sup>6</sup> other than a low application rate herbicide <sup>7</sup> in...	An antimicrobial pesticide	1000
4	Normal rate herbicide <sup>8</sup> , plant growth regulator, defoliant, or desiccant in...	Any herbicide, plant growth regulator, defoliant, or desiccant	250
5	Any pesticide <sup>6</sup> in...	A pesticide <sup>6</sup> applied to the human body	100
6	Normal rate herbicide, plant growth regulator, defoliant, or desiccant in...	Any insecticide, fungicide, molluscicide, or nematocide	100
7	Low application rate herbicide in...	A low application rate herbicide	Level of quantification <sup>9</sup> or 100 ppm, whichever is higher

8	Low application rate herbicide in...	A normal rate herbicide, plant growth regulator, defoliant, or desiccant	Level of quantification <sup>9</sup> or 20 ppm, whichever is higher
9	Low application rate herbicide in...	A pesticide <sup>6</sup> other than a herbicide, plant growth regulator, defoliant, or desiccant	Level of quantification <sup>9</sup> or 1 ppm, whichever is higher

Notes:

- (1) For the purposes of this notice, a contaminant is defined as an AI that is not on the product's confidential statement of formula or listed in the discussion of impurities.
- (2) The following contamination scenarios are excluded from this notice: (1) rodenticides as a contaminant and/or as the contaminated product; (2) microbial and biochemical pesticides that are manufactured in fermentors and that are contaminated by active microbial pesticide ingredients; and (3) plant-pesticides that are contaminated with other active plant-pesticide ingredients. EPA would like to clarify that the Agency's previous position on toxicologically significant levels of impurities that are also AIs would apply to pesticides that are exempt from this notice. In other words, any level of a contaminant in these three exempted scenarios would be considered potentially toxicologically significant and would have to be reported to EPA.
- (3) This column presents the toxicologically significant level, i.e., the concentration at or above which EPA would consider the contaminant to be toxicologically significant.
- (4) The concentration is determined in ppm based on the ratio of the weight of the contaminant to the weight of the formulated product.
- (5) The FIFRA definition of insect includes mites and other arthropods that are not classified by scientific nomenclature as "insects." See FIFRA section 2(o).
- (6) The phrases "any pesticide" and "a pesticide" do not include the pesticides that are specifically exempt from this notice as described in note #2 above.
- (7) For the purposes of this notice, a low application rate herbicide is defined as a herbicide with a maximum labeled application rate of AI less than or equal to 0.5 pounds AI/acre. This definition is intended to include products with AIs that are amino acid inhibitors or ALS inhibitors, including but not limited to the sulfonylureas, imidazolinones, and triazolopyrimidines. (8) For the purposes of this notice, a normal rate herbicide is defined as a herbicide with a maximum labeled application rate of AI greater than 0.5 pounds AI/acre.
- (9) For purposes of this notice, the level of quantification is the level of quantification achievable by EPA or its designated representative (State Lead Agency) using an analytical method suitable for enforcement purposes at the time the analysis is performed.

For categories 7, 8 and 9, the level of quantification is included in the table because EPA does not currently have analytical methods to detect and quantify these AIs in other products at concentrations as low as 100 ppm for category 7 (or lower for categories 8 and 9). EPA does not want to set a standard it cannot enforce. Conversely, EPA does not want to set a standard that constantly changes over time as analytical methods are continuously refined. Therefore, the standard of category 7 is the level of quantification until the point in time when the quantification limit drops below 100 ppm. The standard would then be 100 ppm, which is the limit based on toxicological significance. For purposes of this notice, the level of quantification is the level of quantification achievable by EPA or its designated representative (State Lead Agency) using an analytical method suitable for enforcement purposes at the time the analysis is performed.



In selecting the levels in the table, EPA attempted to strike a reasonable balance between greater protectiveness and cost/burden considerations. If future experience indicates that these values are not sufficiently protective, the Agency may find it appropriate to modify these levels of toxicological significance.

EPA believes the values in the table are generally protective in most contaminant/product combinations. Because it is impracticable to consider every potential contaminant/product permutation, however, adverse effects could occur when contamination is present below the concentrations in the table.

The Agency recognizes that these standards will not prevent all possible adverse effects from occurring; this is not a zero risk standard. For example, EPA is aware of a situation where a normal rate herbicide contaminated an insecticide at levels below 100 ppm (as set out in Category 6) and plant damage occurred. The Agency will continue to deal with such situations using other regulatory tools including section 6(a)(2) of FIFRA.

Accordingly, this notice does not excuse applicants or registrants from the requirement to submit to EPA factual information regarding unreasonable adverse effects of a pesticide under section 6(a)(2) of FIFRA and EPA regulations at 40 CFR 152.50(f)(3). If an applicant or registrant possesses factual information not previously reported to EPA indicating that a contaminant in a product may pose risk to human health or the environment in concentrations lower than those specified in the above table, that information must be submitted to EPA. Failure to submit such information on a timely basis is a violation of sections 12(a)(2)(B)(ii) and 12(a)(2)(N) of FIFRA. In addition, the distribution or sale of any product containing an unreported contaminant that exceeds the levels identified in this notice is a violation of section 12(a)(1)(C) (composition differs) of FIFRA.

#### V. WHAT REGISTRANTS MUST DO

##### A. CONTAMINANT LEVEL EQUAL TO OR GREATER THAN THE TOXICOLOGICALLY SIGNIFICANT LEVEL

If an applicant or registrant knows or has reason to believe that a contaminant that EPA would consider toxicologically significant (i.e., an AI at a concentration equal to or greater than the appropriate level in the table) may be present, s/he must then include an expanded discussion of the possible formation of the impurity and the amounts at which it might be present in accordance with 40 CFR 158.167(c). EPA would then make a regulatory decision on whether to approve the registration or amendment to allow the sale and distribution of the product under FIFRA. Sale or distribution of a pesticide which equals or exceeds the toxicologically significant level prior to EPA approval of the registration amendment would be a violation. Reporting would be required regardless of where the contamination would be expected to occur in the production and distribution processes. As noted in the preamble to the regulations at 40 CFR 158.167, formulators utilizing registered materials are not required



to seek information on the identity or level of impurities in the registered technical products they purchase. The Agency realizes that such information may not be made known to the formulator.

To submit an expanded discussion in accordance with 40 CFR § 158.167(c), an applicant or registrant must provide EPA with (1) the identity of the contaminant and (2) the concentration at which it might be present. The information should be sent to EPA as follows.

For US Postal Service submissions:

Document Processing Desk  
Office of Pesticide Programs (7504C)  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460-0001.

For courier deliveries:

Document Processing Desk  
Office of Pesticide Programs (7504C)  
U.S. Environmental Protection Agency  
Room 266A, Crystal Mall 2  
1921 Jefferson Davis Highway  
Arlington, VA 22202.

B. CONTAMINANT LEVEL LESS THAN THE TOXICOLOGICALLY SIGNIFICANT LEVEL

If an applicant or registrant knows or has reason to believe that a contaminant may be present at a concentration that is less than the toxicologically significant level, s/he is not required to report this information to EPA. Please note that if a product is distributed or sold with levels of contamination that are equal to or exceed the toxicologically significant level, the product is in violation of FIFRA, irrespective of the registrant's knowledge.

However, adverse effects could still occur below the "toxicologically significant" concentrations set out in this notice. Registrants are reminded that they are responsible for reporting any adverse effects under FIFRA section 6(a)(2). Specifically, if an applicant or registrant possesses factual information not previously reported to EPA indicating that a contaminant in a product may pose risk to human health or the environment in concentrations lower than those specified in the above table, that information must be submitted to EPA. Failure to submit such information on a timely basis is a violation of sections 12(a)(2)(B)(ii) and 12(a)(2)(N) of FIFRA.

This notice is not intended to relieve registrants from liability that may exist under State law resulting from damage caused by contaminants.

As noted above, this notice is intended to inform registrants of the interpretation of the term "toxicologically significant" that the Agency intends to apply in implementing the provisions of 40 CFR Part 158. It is not intended, nor can it be relied upon, to create any rights enforceable by any party on litigation with the United States. EPA officials may act at variance with the guidance when circumstances indicate that a contaminant is of toxicological significance at levels different from those set forth in this notice.

EPA will take any regulatory action necessary to ensure that the levels of contamination in a product do not cause unreasonable adverse effects to human health or the environment.

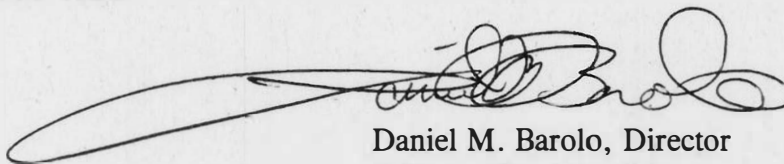
VI. EFFECTIVE DATE

This notice is effective immediately.

VII. FURTHER INFORMATION

The public comments received on the proposed interpretation, the comment summary and response document, and the technical support document for this notice are available in the public docket under document number "OPP-00424." The public docket is located at: Public Docket and Freedom of Information Section, Field Operations Division, Office of Pesticide Programs, U.S. Environmental Protection Agency (7506C), Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia, 22202.

If you have questions about the implementation of this notice, please contact Jim Jones at (703) 308-8358.



Daniel M. Barolo, Director  
Office of Pesticide Programs



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE

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**SUMMARY:** This chapter describes special limitations placed upon the use of (1) aldicarb (Temik 15G) in proximity to potable water bodies; (2) trichlorfon (Dylox, Proxol); (3) hexazinone (Velpar, Pronone), (4) aquatic herbicides in the State of Maine; ~~and~~(5) plant-incorporated protectants; (6) neonicotinoids (dinotefuran, clothianidin, imidacloprid, thiamethoxam); and (7) chlorpyrifos (Dursban, Lorsban).

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**Section 1. ALDICARB (TEMIK®)**

The registration of aldicarb (Temik 15G) is subject to the following buffer zone requirements:

- A. Aldicarb (Temik 15G) shall not be applied within 50 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in the range of one to ten parts per billion (ppb). The 50 foot buffer would be mandatory for one year with a required retesting of the water at the end of the period.
- B. Aldicarb (Temik 15G) shall not be applied within 100 feet of any potable water source if that water source has been tested and found to have an aldicarb concentration in excess of 10 ppb. The 100 foot buffer would be mandatory for one year with a required retesting of the water at the end of this period.

**Section 2. TRICHLORFON (DYLOX, PROXOL)**

The registration of trichlorfon (Dylox, Proxol) is subject to the following requirements:

- A. Trichlorfon shall only be used for control of subsurface insects on turf.
- B. Prior to application the target pest must be identified and the severity of the infestation must be determined, including the extent of the damage.
- C. Only infested areas shall be treated with trichlorfon. Broadcast treatments of the entire turf area are prohibited.
- D. Following application, the trichlorfon must be watered into the soil with at least ½ inch of water and according to the label directions. The applicator must assure that the appropriate watering will take place prior to re-entry by any unprotected person.

**Section 3.      HEXAZINONE (VELPAR, PRONONE)**

The registration of hexazinone is subject to the following limitations and conditions.

**A.      Licenses Required**

No person shall use or supervise the use of any pesticide containing the active ingredient hexazinone unless they have obtained an applicators license in accordance with 22 M.R.S. §1471-D.

**Section 4.      AQUATIC HERBICIDES**

The registration of pesticides for which there is an aquatic herbicide use on the product label shall be subject to the following limitations and conditions.

**A.      Board Publication of List**

The Board of Pesticides Control will publish by May 23, 2003 and by March 15th of each year thereafter a list of herbicide products registered in Maine for which the manufacturer has verified that there is an aquatic use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of aquatic vegetation. Pesticides labeled solely for use in aquariums and antifouling paints, are specifically exempt from this list.

**B.      Licenses Required**

I.      Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.

II.     No person shall:

a.      Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or

b.      Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.

III.    Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

**C. Disclosure**

The Board will make a disclosure form available to dealers distributing any aquatic herbicides identified on the Board's annual listing. The Board requests that dealers present to customers the disclosure form that advises purchasers that, (1) an aquatic discharge license must be obtained from the Maine Department of Environmental Protection before any application may be made to any surface waters of the State as defined in 38 M.R.S.A. Section 361-A(7) including any private ponds that may flow into such a body of water at any time of year, (2) that Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection on the use of aquatic herbicides are available.

**D. Records and Reporting**

Dealers distributing any aquatic herbicides identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

**E. Use of Best Management Practices**

Aquatic herbicides applied to private ponds and not subject to an aquatic discharge permit may only be applied consistent with Best Management Practices developed jointly by the Board and the Maine Department of Environmental Protection.

**Section 5. PLANT-INCORPORATED PROTECTANTS**

The registration, distribution and use of plant-incorporated protectants are subject to the following limitations and conditions:

**A. Definitions**

"Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

**B. License Required**

No person shall distribute any plant-incorporated protectant without either a general use pesticide dealer license or a (restricted or limited use) pesticide dealer license from the Board.

**C. Dealer Requirements**

Dealers distributing plant-incorporated protectants are subject to the following requirements:

- I. General use and (restricted or limited use) pesticide dealers shall notify the Board of their intent to distribute plant-incorporated protectants on all initial license and license renewal application forms provided by the Board.
- II. General use and (restricted or limited use) pesticide dealers shall maintain sales records showing the list of the names and addresses of all purchasers of plants, plant parts or seeds containing plant-incorporated protectants. These records must be made available to representatives of the Board for inspection at reasonable times, upon request, and must be maintained for two calendar years from the date of sale.
- III. Any general use and (restricted or limited use) pesticide dealer who discontinues the sale of plant-incorporated protectants shall notify the Board in writing and shall provide the Board, upon request, with all records required by Section 5(C)II of this chapter.

**D. Grower Requirements**

- I. All users of plant-incorporated protectants shall maintain the records listed below for a period of two years from the date of planting. Such records shall be kept current by recording all the required information on the same day the crop is planted. These records shall be maintained at the primary place of business and shall be available for inspection by representatives of the Board at reasonable times, upon request.
  - a. Site and planting information, including town and field location, a map showing crop location and refuge configuration in relation to adjacent crops within 500 feet that may be susceptible to cross-pollination;
  - b. Total acres planted with the plant-incorporated protectant and seeding rate;
  - c. Total acres planted as refuge and seeding rate;
  - d. Detailed application information on any pesticide applied to the refuge as described in Section 1(A) of Chapter 50, "Record Keeping and Reporting Requirements"; and
  - e. Planting information for each distinct site including:
    - i. date and time of planting; and
    - ii. brand name of the plant-incorporated protectant used.
- II. There are no annual reporting requirements for growers.

**E. Product-Specific Requirements**

- I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
  - a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for

its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.

- b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
  - c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
    - i. the request must be made prior to planting of the Bt-corn crop;
    - ii. the request must identify the non-Bt-corn crop to be protected; and
    - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
      - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or
      - 2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.
  - d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.
- II. Dealers distributing Bt-sweet corn shall only sell the seed in quantities large enough to plant one acre or more.

F. **Confidentiality**

Any person providing information to the Board in connection with the record-keeping and reporting requirements of Section 5 of this chapter may designate that information as confidential in accordance with 7 M.R.S.A. §20.

**Section 6. NEONICOTINOIDS (DINOTEFURAN, CLOTHIANIDIN, IMIDACLOPRID, OR THIAMETHOXAM)**

The registration of pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam for which there is an outdoor ornamental plant or turf use on the product label shall be subject to the following limitations and conditions.



A. **Definitions**

- I. “Emerging Invasive Invertebrate Pests” means any invertebrate, including its eggs or other biological material capable of propagating that species that occurs outside of its eco-region and its introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health, to include:
  - a. Species both known now and unknown now but showing up at a later date;
  - b. Species that occur outside of their eco-region (level III) as defined by EPA; and
  - c. Species on a Board approved list.
- II. “Ornamental Plants” means shrubs, trees and related vegetation excluding turf and lawn, in and around residences.

B. **Board Publication of Product List**

The Board of Pesticides Control will publish within 30 days of adoption and by March 15th of each year thereafter a list of insecticide products containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam registered in Maine for which the manufacturer has verified that there is an outdoor ornamental plant or turf use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of emerging invasive invertebrate pests on outdoor ornamental plants or turf. Pesticides labeled solely for use in preserving wood, managing indoor pests, managing structural pests within five (5) feet of a human dwelling, and treating pets are specifically exempt from this list.

C. **Licenses Required**

- I. No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. Unless exempted under Chapter 41, Section 6 (C) (IV) no person shall purchase, use or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.
- III. No person shall distribute any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.
- IV. Registered pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use described in Chapter 41, Section 6 (C) (II) where by:

- a. The applicator obtains an emergency permit from the Board; or
- b. The use of these products is for management of emerging invasive invertebrate pests on ornamental plants in outdoor residential landscapes.

V. No person shall use any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing for the purposes of managing turf and lawn in outdoor residential landscapes.

**D. Records and Reporting**

Dealers distributing any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing shall keep records of such sales and provide reports to the Board as described for restricted use pesticides in Chapter 50, "Record Keeping and Reporting Requirements."

**E. Emergencies**

The Board's staff may grant an emergency permit authorizing neonicotinoid use in compliance with Sections 6(C) of this chapter if the restrictions in this chapter prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists as outlined in Chapter 51(VII)(B)(1).

- I. No variance may be granted if the emergency is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
- II. If the staff does not grant the variance, the applicator or the person requesting the pesticide application may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemption".

**F. Emergency Use Permits**

Emergency use permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate application date(s);
- VI. The type(s) of application equipment to be employed;
- VII. The approved pest species for which the application is being made as defined in policy or by the board; and

VIII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

**Section 7. CHLORPYRIFOS (DURSBAN, LORSBAN)**

The registration of chlorpyrifos (Dursban, Lorsban) is subject to the following limitations and conditions.

- A. No person shall use or supervise the use of any pesticide containing the active ingredient chlorpyrifos unless they have obtained a private or commercial applicator's license from the Board, possess the pesticide in the State before January 1, 2022, and obtain a temporary use authorization permit from the Board.
- B. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
  - I. The name, address and telephone number of the applicant;
  - II. The brand name of the pesticides to be applied;
  - III. The date on which the pesticides were purchased;
  - IV. The approximate quantity of the pesticides possessed;
  - V. The purpose for which the pesticide application(s) will be made; and
  - VI. The duration for which the applications will take place or until the product is gone.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if:
  - I. The permit application is received prior to December 31, 2022;
  - II. The applicant possesses a valid pesticide applicator license issued by the State;
  - III. The pesticides proposed for use were purchased prior to January 1, 2022;

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

STATUTORY AUTHORITY: 5 M.R.S.A. §§ 8051 *et seq.*  
7 M.R.S.A. §§ 601-610  
22 M.R.S.A. §§ 1471-A, 1471-B, 1471-C, 1471-D, 1471-M

EFFECTIVE DATE:  
March 8, 1981 (Captan)

AMENDED:  
May 7, 1981 (Trichlorfon)  
January 2, 1984 (Aldicarb)  
May 8, 1988 (Trichlorfon)  
August 5, 1990 (Captan)  
August 17, 1996 (Hexazinone)  
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

AMENDED:  
May 7, 1997 - Section 3(B)(II)

CONVERTED TO MS WORD:  
March 11, 2003

AMENDED:  
May 12, 2003 - Section 4 added

NON-SUBSTANTIVE CORRECTIONS:  
June 24, 2003 - summary only

AMENDED:  
February 2, 2004 - Section 4, 1st paragraph and sub-section A, filing 2004-31  
April 30, 2007 – filing 2007-154  
February 3, 2008 – filing 2008-36  
July 16, 2009 – filing 2009-253 (final adoption, major substantive)  
May 3, 2012 – filing 2012-99 (final adoption, major substantive)

CORRECTIONS:  
February, 2014 – agency names, formatting

AMENDED:  
December 9, 2014 – Section 3, filing 2014-283



**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 41—RESTRICTIONS ON PESTICIDE USE**

**Basis Statement**

Two amendments are proposed:

1. Add a new section pertaining to neonicotinoids (dinotefuran, clothianidin, imidacloprid or thiamethoxam) to prohibit use in outdoor residential landscapes for the purposes of managing pests in turf and ornamental vegetation. Add an allowance for management of emerging invasive invertebrate pests in ornamental vegetation and an emergency permitting process.
2. Add a new section prohibiting the use of chlorpyrifos, except for licensed applicators who obtain a use permit from the Board by December 31, 2022 to apply chlorpyrifos products purchased prior to January 1, 2022. Allow for applicators to use remainder of product in future growing seasons until the remainder of product is used up.

The amendments to the proposed rule are in response to Public Law Chapter 33 and recent legislation from the 130<sup>th</sup> Maine Legislature LD 155: Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use and Public Law Chapter 105 and LD 316: An Act To Prohibit the Use of Chlorpyrifos. These laws direct the Board of Pesticides Control to amend rules to make four active ingredients of neonicotinoid pesticides and all chlorpyrifos products restricted use. Neonicotinoid substances have been attributed to pollinator decline and are widely used in Maine for ornamental and turf management. The US EPA has revoked the food tolerances for all chlorpyrifos products, citing several concerns for human health and safety. Exemptions laid out in this chapter include allowing certified applicators to use neonicotinoid products for invasive species management in ornamental vegetation and allowing growers to apply for use permits from the Board to use up existing stock of chlorpyrifos.

Zero comments were received, however the current proposed language incorporates significant public comment regarding Section 6 from the previous rulemaking hearing on January 14, 2022. The Board responded by considering these comments and incorporating them into the newly proposed rules. No significant comments were received for Section 7 of the rule, regarding chlorpyrifos.

**Impact on Small Business**

In accordance with 5 MRSA §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

Summary of Comments Received Regarding 130<sup>th</sup> Legislature, LD 155, Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use

Board of Pesticides Control CMR01-26 Chapter 41

Name	Summary of Comments	Response
No public comments received		

No public comments received



Summary of Comments Received Regarding 130<sup>th</sup> Legislature, LD 316, An Act To Prohibit the Use of Chlorpyrifos

Board of Pesticides Control CMR01-26 Chapter 41

Name	Summary of Comments	Response

No public comments received

# **Rulemaking Statement of Impact on Small Business**

## **5 MRSA §8052, sub-§5-A**

### **Agency**

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

### **Chapter Number and Title of Rule**

CMR 01-026, Chapter 41—Special Restrictions on Pesticide Use

### **Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule**

In Maine, there are 200 spray contracting firms and 785 commercial applicators that are registered with the BPC and have the correct licensure for both turf and outdoor ornamental management that might conduct business in outdoor residential landscapes with neonicotinoids. There are around 112 forestry and christmas tree growers registered with the BPC that potentially use chlorpyrifos in their growing operations. They will all be affected by this amendment:

1. Applicators and homeowners will be prohibited from using certain neonicotinoid products in residential landscapes and will need to either use alternatives or determine if they meet the exemption requirements.
2. If applicators do not meet the requirements and they believe there is an emergency use for the product as outlined in this chapter, additional paperwork must be filed with the Board for an emergency use permit.
3. Growers that have existing stock of chlorpyrifos must complete additional paperwork to obtain a permit to use the remainder of their product. In Maine, this mainly affects Christmas trees.

### **Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record**

No additional skills will be necessary for the reporting and recordkeeping required by this new rule, these will be additional steps applicators must take if they want to apply restricted use pesticides. Required reporting includes:

1. Applying for an emergency use permit if applicators determine they must use neonicotinoid products in residential landscapes for emerging invasive invertebrate pests;
2. The standard recordkeeping rules as outlined in Chapter 41; and
3. Applying for permits to continue applying chlorpyrifos with already existing stock.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The amendments will result in a decrease in the amount of pesticide products that may be available to and used in residential landscapes for both homeowners and certified applicators. These amendments will also make chlorpyrifos restricted use and give a permitting process for growers that wish to use remaining stock of these products.

**Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule**

These products could be strictly put on the restricted use pesticide list (Chapter 40), with no exemption process for use. This option, however, could cause excess waste as products are disposed of and reduce the number of products available for invasive species management in residential landscapes.

# Proposed Administrative Consent Agreement Background Summary

6

**Subject:** Nervous Ticks, LLC  
516 Cross Point Road  
Edgecomb, Maine 04573

**Date of Incident(s):** Various dates in 2019

**Background Narrative:** Eric and Heather Brewer, owners of Nervous Ticks, LLC made a minimum of forty-nine unlicensed and unsupervised commercial pesticide applications in 2019. The applications were made in the Mid Coast region. Neither Mr. nor Mrs. Brewer were licensed commercial pesticide applicators at the time of these applications. The required commercial pesticide application records for these applications were not kept and treated sites were not posted as required by Board regulations.

## **Summary of Violation(s):**

- 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III. Any commercial applicator must be a certified commercial applicator or under the direct supervision of a certified applicator.
- CMR 01-026 Chapter 50, Section I(A). Commercial applicators making pesticide applications, must keep complete and up to date pesticide application records.
- CMR 01-026 Chapter 28 Section 3(B)1(a) requires posting when commercial pesticide applications are made to outdoor ornamentals and CMR 01-026 Chapter 28 Section 3(B)2 prescribes those posting requirements.

**Rationale for Settlement:** There were a significant number of unlicensed/unsupervised applications made in this case. Application records were incomplete. The company's posting practice was not compliant with the Board's posting requirement of treated areas.

**Attachments:** Proposed Consent Agreement

JUN 10 2022

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

CK#: 1222  
Date: 6/7/22  
Amt: 5000.00

Nervous Ticks, LLC )  
516 Cross Point Road ) ADMINISTRATIVE CONSENT AGREEMENT  
Edgecomb, Maine 04573 ) AND  
FINDINGS OF FACT


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

The parties to this Agreement agree as follows:

1. That the Company is a commercial pesticide application company offering services in Maine.
2. That on June 11, 2019, a caller contacted Board staff about an April 25, 2019 article about the Company in The Lincoln County News. The article implied the product the Company was applying to control ticks was not a pesticide, which was contrary to the caller's understanding.
3. That in response to the call described in paragraph two, on June 11, 2019 Board staff conducted a follow up inspection with the Company owners Eric and Heather Brewer.
4. That during the inspection described in paragraph three, Board staff documented that the Company applied Tick Killz insecticide, to a minimum, of forty-nine lawns and property perimeters of residential customers to control ticks. The applications were made in the mid-coast area.
5. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
6. That a custom application as defined in 22 M.R.S. § 1471-C(5-A) includes any application of any pesticide under contract or for which compensation is received, or any application of a pesticide to a property open to use by the public. The applications described in paragraph four were applications for which compensation were received and, therefore, they were custom applications under 22 M.R.S. § 1471-C(5-A).
7. That the Company did not employ a master applicator, and no one from the Company had a commercial pesticide applicator's license at the time the applications described in paragraph four were made.
8. That the circumstances described in paragraphs one through seven constitute multiple violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
9. That commercial applicators making pesticide applications, must keep complete and up to date pesticide application records as required by CMR 01-026 Chapter 50, Section I(A).
10. That from a review of the Company's applicator records collected on June 11, 2019, it was concluded that the Company application records were incomplete.
11. That the circumstances described in paragraphs one through six, nine, and ten, constitute a violation of CMR 01-026 Chapter 50, Section I(A).

12. That CMR 01-026 Chapter 28 Section 3(B) requires that when outdoor tick applications are made, the treated area must be posted prior to making the pesticide application.
13. That the Company's applications described in paragraphs four were not in compliance with the requirements of CMR 01-026 Chapter 28 Section 3(B).
14. That the circumstances described in paragraphs four, six, twelve, and thirteen, constitute multiple violations of CMR 01-026 Chapter 28 Section 3(B).
15. That the Board has regulatory authority over the activities described herein.
16. 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.
17. That this Agreement shall not become effective unless and until the Board accepts it.
18. 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 eight, eleven, and fourteen, the Company agrees to pay to the State of Maine the sum of \$5,000. (Please make checks payable to Treasurer, State of Maine).

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

NERVOUS TICKS, LLC  
By:  Date: 6/7/22  
Type or Print Name: Heather L. Brewer

BOARD OF PESTICIDES CONTROL

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

APPROVED

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

## **ENFORCEMENT RESPONSE POLICY INTRODUCTION**

In order to be consistent and predictable about enforcement of pesticide laws, the BPC has developed an Enforcement Response Policy. All potential violations are described together with the enforcement remedies available.

### **ENFORCEMENT TIMETABLE**

Upon detection of a pesticide law violation, the BPC will complete case preparation (when possible) within 30 days and refer the case to the Chief of Enforcement. The Chief will then review the case and whether the facts are adequately documented; if appropriate, he will initiate an enforcement action or refer the case within 90 days.

### **PENALTIES**

The BPC has essentially six types of enforcement actions available. They are:

- 1) Warning letter (WL)
- 2) Civil Action (including consent agreements and adjudicatory judgments) (CA)
- 3) Suspension, revocation or denial of registration, license or permit (SRD)
- 4) Referral to the Attorney General's office (RAG)
- 5) Referral to EPA (REPA)
- 6) Criminal Action where violations are both willful and intentional (CRA)

The BPC has statutory authority to suspend, revoke or deny licenses and registrations subject to a hearing and to levy fines via adjudicatory judgments. The maximum fine is \$1500 for the first offense and \$4000 for second and subsequent offenses. Criminal violations for willful and intentional violations are punishable by a maximum fine of \$7500 and/or imprisonment of up to 30 days.

### **SEVERITY OF VIOLATION**

The severity of each violation will be evaluated based on the criteria listed below as provided by 7 M.R.S.A., Chapter 103, '616-A (7) and whether the violator acted willfully and intentionally (criminal violation). An appropriate remedy will then be selected from remedies section.

- A. Prior violations by the same party;
- B. The degree of harm to the public and the environment;
- C. The degree of environmental damage that has not been abated or corrected;

- D. The extent to which the violation continued following the board’s notice to the violator;
- E. The importance of deterring the same person or others from future violations; and
- F. The cause and circumstances of the violation, including:
  - (1) The foreseeability of the violation;
  - (2) The standard of care exercised by the violator; and
  - (3) Whether or not the violator reported the incident to the board.

In addition to the criteria set forth in statute, the BPC may also consider, where applicable:

- A. The toxicity of the pesticide involved;
- B. Whether a general, restricted or state limited use pesticide was involved; and
- C. Whether the alleged violator was or should have been licensed by the BPC as a private or commercial applicator or general or restricted use dealer.

**ENFORCEMENT RESPONSE POLICY/LIST OF REMEDIES**

<u>Use Violations</u>	<u>Remedies Available</u>
1) Use inconsistent with product labeling and/or the federal Worker Protection Standard	WL,CA,RAG, REPA,SRD,CRA
2) Use in a careless, faulty or negligent manner	WL,CA,RAG, REPA,SRD,CRA
3) Violation of state regulation	WL,CA,RAG, SRD,CRA
4) Use of a canceled or suspended product	WL,CA,RAG, REPA,SRD,CRA
5) Use of unregistered product	WL,CA,RAG, REPA,SRD,CRA



- |    |                                                 |                            |
|----|-------------------------------------------------|----------------------------|
| 6) | Use of RUP not under direct supervision         | WL,CA,RAG,<br>REPA,SRD,CRA |
| 7) | Custom application not under direct supervision | WL,CA,RAG,<br>REPA,SRD,CRA |
| 8) | Violation of EUP, 24-C or SSURO                 | WL,CA,RAG,<br>REPA,SRD,CRA |

**Non-Use Violations**

- |    |                                      |                       |
|----|--------------------------------------|-----------------------|
| 1) | Failure to maintain required records | WL,CA,RAG,<br>SRD     |
| 2) | Improper disposal of pesticides      | WL,CA,RAG,<br>SRD,CRA |
| 3) | Improper container disposal          | WL,CA,RAG,<br>SRD,CRA |
| 4) | Unlawful/unsafe storage              | WL,CA,RAG,<br>SRD,CRA |

**Dealer Violations**

- |    |                                         |                        |
|----|-----------------------------------------|------------------------|
| 1) | Illegal recommendation                  | CA,RAG,CRA<br>REPA,SRD |
| 2) | Sale of RUP to uncertified applicator   | WL,CA,RAG,<br>SRD,CRA  |
| 3) | Sales of canceled or suspended products | WL,CA,RAG,<br>SRD,CRA  |
| 4) | Failure to maintain required records    | WL,CA,RAG,<br>SRD      |
| 5) | Sales by unlicensed dealer              | WL,CA,RAG,CRA          |
| 6) | Violation of BPC Regulation             | WL,CA,RAG,<br>SRD,CRA  |

**Product Violation**

- |    |                                         |                         |
|----|-----------------------------------------|-------------------------|
| 1) | Inadequate information on label         | CA,RAG,CRA,<br>REPA,SRD |
| 2) | Non-registered product or establishment | CA,RAG,CRA,<br>REPA,SRD |
| 3) | Deficient or adulterated product        | CA,RAG,CRA,<br>REPA,SRD |
| 4) | False or misleading claims              | CA,RAG,CRA,<br>REPA,SRD |
| 5) | Improper packaging                      | CA,RAG,CRA,<br>REPA,SRD |

# Title 7:

## Subchapter 2-A: MAINE PESTICIDE CONTROL ACT OF 1975

7

### §601. Title

This subchapter may be known and cited as the "Maine Pesticide Control Act of 1975."

### §616-A. Penalties

**1. Informal hearing.** When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing under the Maine Administrative Procedure Act.

[PL 2005, c. 620, §16 (AMD).]

**2. Civil violations.** The following violations are civil violations.

A. A person may not violate this subchapter or a rule adopted pursuant to this subchapter or [Title 22, chapter 258-A](#) or a rule adopted pursuant to Title 22, chapter 258-A. Except as provided in paragraph B, the following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$4,000 may be adjudged. [PL 2003, c. 452, Pt. B, §6 (RPR); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A private applicator, as defined in [Title 22, section 1471-C](#), may not violate a rule regarding records maintained pursuant to [section 606, subsection 2, paragraph G](#). The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [PL 2011, c. 510, §1 (AMD).]

[PL 2011, c. 510, §1 (AMD).]

**2-A. Criminal violation.** A person may not intentionally or knowingly violate this subchapter or Title 22, chapter 258-A, a rule adopted under this subchapter or Title 22, chapter 258-A or a restriction of a registration issued pursuant to this subchapter. A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, section 1604, subsection 1 and sections 1704 and 1705, the court may impose a sentencing alternative of a fine of not more than \$7,500 or a term of imprisonment of not more than 30 days, or both, for each violation. Prosecution under this subsection is by summons and not by warrant. A prosecution under this subsection is separate from an action brought pursuant to subsection 2.

[PL 2019, c. 113, Pt. C, §1 (AMD).]

**3. Continuation.** Each day that the violation continues is considered a separate offense.

[PL 1989, c. 841, §3 (NEW).]

**4. Exceptions.**

[PL 2003, c. 452, Pt. B, §8 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

**5. Criminal violations.**

[PL 2003, c. 452, Pt. B, §8 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

**6. Other relief.** Notwithstanding [Title 22, section 1471-D](#), subsections 6 to 8 and in addition to other sanctions provided under this section, the court may order that a violator obtain recertification credits through board-approved meetings or courses as a condition of retaining, maintaining or renewing a certification or license required under Title 22, chapter 258-A.

[PL 1989, c. 841, §3 (NEW).]

**7. Considerations.** In setting a penalty under this section, the court shall consider, without limitation:

A. Prior violations by the same party; [PL 1989, c. 841, §3 (NEW).]

B. The degree of harm to the public and the environment; [PL 1989, c. 841, §3 (NEW).]

C. The degree of environmental damage that has not been abated or corrected; [PL 1989, c. 841, §3 (NEW).]

D. The extent to which the violation continued following the board's notice to the violator; [PL 1989, c. 841, §3 (NEW).]

E. The importance of deterring the same person or others from future violations; and [PL 1989, c. 841, §3 (NEW).]

F. The cause and circumstances of the violation, including:

(1) The foreseeability of the violation;

(2) The standard of care exercised by the violator; and

(3) Whether or not the violator reported the incident to the board. [PL 1989, c. 841, §3 (NEW).]

[PL 1989, c. 841, §3 (NEW).]

**8. Injunction.** The board may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any rule made pursuant to this subchapter in a court of competent jurisdiction of the district in which the violation occurs or is about to occur.

[PL 1989, c. 841, §3 (NEW).]

**9. No damages from administrative action if probable cause exists.** A court may not allow the recovery of damages from administrative action taken, or for a stop sale, use or removal order, if the court finds that there was probable cause for the administrative action.

[PL 1989, c. 841, §3 (NEW).]

**10. Sunset.**

## Title 22: Chapter 258-A: BOARD OF PESTICIDES CONTROL

### §1471-D. Certification and licenses

#### 7. Suspension.

A. If the board determines that there may be grounds for revocation of a license or certificate, it may temporarily suspend said license or certificate pending inquiry and opportunity for hearing, provided that such suspension shall not extend for a period longer than 45 days. [PL 1975, c. 397, §2 (NEW).]

B. The board shall notify the licensee or certificate holder of the temporary suspension, indicating the basis therefor and informing the licensee or certificate holder of the right to request a public hearing. [PL 1983, c. 819, Pt. A, §47 (AMD).]

C. If the licensee or certificate holder fails to request a hearing within 20 days of the date of suspension, such right shall be deemed waived. If the licensee or certificate holder requests such a hearing, notice shall be given at least 20 days prior to the hearing to the licensee or certificate holder and to appropriate federal and state agencies. In addition, public notice shall be given by publication in a newspaper of general circulation in the State and such other publications as the board deems appropriate. [PL 1983, c. 819, Pt. A, §48 (AMD).]

D. This subsection is not governed by the provisions of [Title 4, chapter 5](#) or [Title 5, chapter 375](#).

#### 8. Revocation.

The District Court may suspend or revoke the certification or license of a licensee or certificate holder upon a finding that the applicant:

A. Is no longer qualified; [PL 1975, c. 397, §2 (NEW).]

B. Has engaged in fraudulent business practices in the application or distribution of pesticides; [PL 1975, c. 397, §2 (NEW).]

C. Used or supervised the use of pesticides applied in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment; [PL 1975, c. 397, §2 (NEW).]

D. Has stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare; [PL 1975, c. 397, §2 (NEW).]

E. Has violated the provisions of this chapter or the rules and regulations issued hereunder; [PL 1975, c. 397, §2 (NEW).]

F. Has made a pesticide recommendation, use or application, or has supervised such use or application, inconsistent with the labelling or other restrictions imposed by the board; [PL 1975, c. 397, §2 (NEW).]

G. Has made false or fraudulent records or reports required by the board under this chapter or under regulations pursuant thereto; [PL 1981, c. 470, Pt. A, §67 (AMD).]

H. Has been subject to a criminal conviction under [section 14](#) (b) of the amended FIFRA or a final order imposing a civil penalty under [section 14](#) (a) of the amended FIFRA; or [PL 1981, c. 470, Pt. A, §67 (AMD).]

I. Has had the license or certificate, which supplied the basis for the Maine license or certification pursuant to subsection 10, revoked or suspended by the appropriate federal or other state government authority

## **§1471-J. Penalties**

A person who violates any provision of this chapter or any order, rule, decision, certificate or license issued by the board or commits any act constituting a ground for revocation, except acts punishable under [section 1471-D, subsection 8](#), paragraphs A and H, commits a civil violation subject to the penalties established in [Title 7, section 616-A](#)

**Department of Agricultural Resources**

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## **State of Massachusetts, Pesticide Division** **Enforcement Matrix**

### **Introduction**

The Massachusetts Department of Agricultural Resources, Pesticide Division (Department) has been designated as the authority with exclusive jurisdiction with regards to pesticides through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Massachusetts Pesticide Control Act (M.G.L. 132B), and its regulations promulgated at 333 CMR. Through its governing statutes, the Department has the authority to issue enforcement actions when the statute/regulations have been violated. Enforcement Actions may include but not be limited to: Letters of Warning, Administrative Orders, Notice of Assessment (Fine), Licenses Suspension, License Revocation, License Modification.

There are many issues to consider when issuing an enforcement action including but not limited to the following:

- Size of the company
- Severity of the violation
- How the violation was found
- Human/ public health impact
- Environmental impact
- History of violations

Due to the fact that each inspection/investigation is different and there are a multitude of factors that contribute to finding violations, this Enforcement Matrix ("Matrix") is not to be considered a definitive rule of enforcement but rather a guideline to ensure consistency and fairness when issuing enforcement actions. (See Appendix A)

### **Authority**

The authority to regulate pesticides within the Commonwealth is given in the following statute/regulations (See Appendix B):

- M.G.L. c. 132B, Section 10: Certifications and Licenses to Use Pesticides
- M.G.L. c. 132B, Section 12: Orders Requiring Production of Samples and Records; Orders Imposing Restraints
- M.G.L. c. 132B, Section 14: Fines and Penalties; Jurisdiction of Superior Court to Secure Compliance with Chapter
- M.G.L. c. 132B, Section 14A: Pesticide Violations; Enforcement and Penalties

## **Intent**

It is important when considering an enforcement action to determine what the intent, to the extent possible. For the purposes of this Matrix, intent can be broken down into the following three categories:

1. **Lack of Knowledge**: When a person or company who has committed a violation was not aware or would not, within reason, be expected to have been aware of statutory requirements. While this is not a defense to any violation, the type of violation coupled with the statute or regulation at issue may show a lack of intent to negligently or willfully committing a violation. An example might be a record keeping violation or an accident not caused by negligence.
2. **Negligence**: When an individual uses a pesticide in a potentially reckless or harmful manner that may pose a threat to human health or the environment and the individual should have known that such manner had the potential to cause such threat. Negligence may also include when an individual does not know a statute or regulation, but based on their credentials or position should have knowledge. An example might be when an individual does not follow label directions.
3. **Willful**: When a person or company has committed a violation in a flagrant manner, knowing the statute, regulation, or label requirements and yet still commits the violation. Examples might be ignoring warnings given by an inspector, knowingly giving false information to the Department or customer, attempting to defraud, or having numerous previous violations of a related fashion thereby having notice of the correct requirements.

## **Level of Severity**

It is important when considering an enforcement action to determine the level of severity of the violation. For the purposes of this Matrix, the level of severity can be broken down into the following three categories:

1. **Minimal (A)**: When there are no injuries or damage, and no large potential for any injuries or damage, and when there has been no inconvenience caused to the client or public, and when all reasonable corrective measures have been taken by the applicator at his own expense.
2. **Moderate (B)**: When there is any potential for or actual minor damage to non-target species, but where there is no actual threat to the client, public, or environment. Minor injuries, may be considered moderate if all reasonable efforts were made to rectify the situation in a manner that significantly reduced the potential for continued damage or problems.
3. **Extreme (C)**: Any application or related activity that results in, or has a reasonable potential for causing the injury or death of any person; any wide-spread or long-term damage to non-target species; contamination by a pesticide with potentially long term consequences or; any application that has or likely to have long term damage to the environment.

## **Enforcement Actions**

Enforcement actions may be issued to the company, individual or both depending on the violation(s). The Department will determine who the enforcement action is issued to on a case by case basis.

**Letters of Warning (LOW)**: Letters of Warning can be given on site and/or written up and issued at a later date.

Standard LOW: LOWs issued on site are usually given during a routine inspection/stop. These LOW's are already on a standard form. These are given for minor infractions which are usually "administrative," such as incomplete records or not providing proper notification. The inspector



should plan on conducting a follow up inspection at a later date to ensure that the infractions are fixed. In some instances, certain materials are required to be submitted to the inspector or Department within a reasonable time frame.

**Non-Standard LOW:** LOWs that are not issued on site are usually due to a violation that was found during an investigation but either due to the nature of the violation or information available to the inspector the violation does not arise to the level of issuing an administrative order. LOW's may include minor actions that the applicator must perform or materials that must be submitted. LOW's will be issued when the infraction is not considered egregious and where there has not been any history of violation with the Department.

Administrative Orders (AO): AOs may be issued under the following circumstances:

- Repeat violation/History of Violations
- Egregious violations
- Violation may have caused a potential for harm or actual harm

AO may order a company/individual to perform certain actions. These actions are intended to ensure that the violation does not occur again and provide avenues so that human/environment is protected. A violation of an AO may lead to referral to the Attorney General's office for further enforcement action.

Notice of Assessments (NOA): NOA are administrative fines that are expressly authorized by statute. These may only be issued under the following circumstances: Unlicensed pesticide application or violations of M.G.L. c. 132B, Section 10

- Failure to comply with a 90 Day Corrective Action (LOW)
- Violations regarding 333 CMR 14.00
- Illegal applications to a public or private place used for human occupation and habitation, except residential properties with 3 or less dwelling units

NOAs can be up to \$1000 per day per violation. In some instances, the Department may add up a fine based on the number of products used in the violation.

License Suspension/Revocation: License Suspensions/Revocations may be issued for egregious violations such as but not limited to the following:

- Not following label directions
- Making false or fraudulent statements
- Causing an unreasonable adverse effect to the environment or persons

A suspension will be for a period of time, while a revocation is for a period of time with the requirement of re-taking the licensing test. The suspension/revocation cannot be for more than a two year period, as set forth in G.L. c. 132B, Section 10.

License Modification: Modifications may be put on a license when the violation is not egregious enough to suspend /revoke the license but the Department feels the individual needs limitations placed on the license or additional education to ensure this violation does not occur again.

**GUIDANCE FOR ENFORCEMENT ACTION**

<b>LACK OF KNOWLEDGE</b>			
<b>PREVIOUS VIOLATIONS</b>	<b>A</b>	<b>B</b>	<b>C</b>
0	LOW	LOW/AO	LOW/AO
1	LOW/AO	AO/NOA	AO/NOA
2	AO	AO/NOA	AO/NOA/LIC

<b>NEGLIGENT</b>			
<b>PREVIOUS VIOLATIONS</b>	<b>A</b>	<b>B</b>	<b>C</b>
0	LOW/AO	LOW/AO/LIC	LOW/AO/LIC
1	LOW/AO	AO/NOA/LIC	AO/NOA/LIC
2	AO	AO/NOA/LIC	AO/NOA/LIC

<b>WILLFUL</b>			
<b>PREVIOUS VIOLATIONS</b>	<b>A</b>	<b>B</b>	<b>C</b>
0	LOW/AO	LOW/AO/LIC	LOW/AO/LIC
1	LOW/AO	AO/NOA/LIC	AO/NOA/LIC
2	AO	AO/NOA/LIC	AO/NOA/LIC

**\*\*LOW=** Letter of Warning  
**AO =** Administrative Order  
**NOA=** Notice of Assessment  
**LIC =** License Suspension/Revocation/Modification

If a Notice of Assessment is issued, the following matrix may be used for guidance:

<b>LACK OF KNOWLEDGE</b>			
PREVIOUS VIOLATIONS	A Sm-Med-Lg	B Sm-Med-Lg	C Sm-Med-Lg
0	0-0-0	0-0-0	0-0-0
1	250-250-250	250-250-250	250-250-250
2 or more	500-750-1000	500-750-1000	500-750-1000

<b>NEGLIGENT</b>			
PREVIOUS VIOLATIONS	A Sm-Med-Lg	B Sm-Med-Lg	C Sm-Med-Lg
0	250-250-250	250-250-250	250-250-250
1	500-750-1000	750-900-1000	750-900-1000
2 or more	750-900-1000	750-900-1000	750-900-1000

<b>WILLFUL</b>			
PREVIOUS VIOLATIONS	A Sm-Med-Lg	B Sm-Med-Lg	C Sm-Med-Lg
0	250-250-250	250-250-250	250-250-250
1	1000-1000-1000	1000-1000-1000	1000-1000-1000
2 or more	1000-1000-1000	1000-1000-1000	1000-1000-1000

\*\*Small Business = 1-2 applicators  
 Medium Business = 3-4 applicators  
 Large Business = 5+ applicators

## **Relevant Statute/Regulations**

### **M.G.L.c. 132B Section 10**

*The department may revoke, suspend, cancel or deny any certification or license, or any class thereof, at any time, if it believes: that the terms or conditions thereof are being violated or are inadequate to avoid unreasonable adverse effects on the environment, or that the holder of or applicant for the certification or license has violated any provision of this chapter or FIFRA or any regulation, standard, order, license, certification or permit issued thereunder or that the holder or applicant for said certification or license is not competent with respect to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered by said individual's certification or license. Any person whose certification or license is suspended or revoked hereunder shall also be subject to such other punishment, penalties, sanctions or liabilities as may be provided by law. As part of its determination to refuse to grant, to revoke, or to suspend a certification or license the department may specify a period, not to exceed two years, within which the applicant may not reapply for a certification or license. In the event that the department has refused to issue or has revoked or suspended such a certification or license, and has specified a period for non-application, the department may later, at its discretion, shorten or waive such period.*

*(k) The department may impose an administrative or civil penalty on a person who has not been issued either a temporary or permanent certification, license or permit from the department or who uses a pesticide in a public or private place used for human occupation and habitation, except residential properties with 3 or less dwelling units, of not more than \$500 for a first offense and not more than \$1,000 for a subsequent offense.*

### **M.G.L.c 132B Section 12**

*Whenever it appears to the department that there is an imminent hazard, or a potential threat of unreasonable adverse effect on the environment, or a violation or a potential violation of any provision of this chapter or of any license, certification, permit, order, registration or regulation issued or adopted thereunder, the department may issue to such persons as it deems necessary an order requiring the production of samples and records, or an order imposing restraints on or requiring such action, as it deems necessary. Issuance of an order under this section shall not preclude and shall not be deemed an election to forego any action to recover for damages to interests of the commonwealth or, under section fourteen of this act, for civil penalties or for criminal fines and penalties*

### **M.G.L.c 132B Section 14**

*Any person who knowingly violates any provision of section six shall be punished by a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment, for each such violation, or shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violations shall constitute a separate offense.*

*Any person who violates any provision of section 6A to 6I, inclusive or section 7A or who violates any regulation adopted under the provisions of this chapter, (a) shall be punished by a fine of not more than one thousand dollars, or imprisonment for not more than six months, or both such fine and imprisonment,*

*for the second and each subsequent offense knowingly committed, or (b) shall be subject to a civil penalty not to exceed ten thousand dollars for any offense, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.*

*Any person who violates any order issued under the provisions of this chapter, (a) shall be punished by a fine of not more than twenty-five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment, for each violations knowingly committed, or (b) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.*

*The superior court shall have jurisdiction to enjoin violations of, or grant such relief as it deems necessary or appropriate to secure compliance with, any provision of this chapter or the terms of an order, license, certification registration, permit or regulation issued or adopted thereunder.*

**DIVISION OF PESTICIDE CONTROL**  
**New Hampshire Department of Agriculture, Markets & Food**

NAME OF FIRM: \_\_\_\_\_

SUPERVISOR/MGR. \_\_\_\_\_

CASE NAMES & DATES: \_\_\_\_\_

\_\_\_\_\_

SIZE OF FIRM (circle):                      Small                                              Medium                                              Large  
 (see attached criteria)

List violations by allegation numbers. Categories are: Lack of Knowledge, Negligent, and Willful (see *Categories*, attached). Under the appropriate category show the number of previous violations and the gravity, expressed as A, B, or C (least to most grave), e.g. gravity B with 1 previous violation would be expressed - 1/B.

VIOLATIONS	LACK OF KNOWLEDGE	NEGLIGENT	WILLFUL	PENALTY, \$
ADJUSTMENTS				(+)
				(-)
TOTAL ADMINISTRATIVE FINE				\$

COMMENTS: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

SIGNATURE // DATE \_\_\_\_\_ // \_\_\_\_\_

## SIZE OF FIRM

To the extent possible, the size of the firm is estimated from the data that is on file in this Division. Other information, as might become available, can be employed to adjust these estimates, as needed. The different categories of business will be assessed as follows:

1. Commercial for Hire: In the absence of any other information, size estimates will be based on the number of licensed applicators (supervisors plus operators) under a particular firm. 1-2 applicators = *Small*; 3-4 applicators = *Medium*; 5+ = *Large*.
2. Commercial Not For Hire: In this case the number of applicators is not necessarily tied to the size of the business. For example, a golf course might have only one or two licensed applicators, yet be considered a *Large* firm. Other than golf courses, which constitute the majority of CNFH certificates that are on record at this division, certificates have been issued to municipalities, lumber companies, campgrounds, and large corporations. In all cases, those concerns that are large enough to employ their own licensed applicator(s) are large companies, so other information to the contrary, all CNFH situations (unless levied against an individual) will be considered *Large*.
3. Private Applicators: Here the connection between number of applicators and size of the firm is even less well correlated. A small farm using general-use pesticides might have more licensed applicators than a large farm with a restricted-use permit, only because of the relative ease of obtaining a general use permit. In this case, therefore, the size of the business should be based upon the number of acres of cropland, as reported to this division with the annual renewals. Again, unless other information becomes available to the Division, less than three (3) acres will be considered a *Small* firm; 3-10 acres a *Medium* firm; and greater than 10 acres a *Large* firm. Nurseries where (only) greenhouses are involved might better be based on the area under glass. Less than 10,000 square feet will be considered a *Small* firm; 10,000-25,000 square feet, a *Medium* firm; and greater than 25,000 feet, a *Large* firm.
4. Dealers and Manufacturers: These are even less tied to the possession or number of licensed individuals and must be based on some knowledge of the operation. Barring other information, all dealers who are parts of major chains (i.e. Agway, Blue Seal, etc.) will be considered *Large* firms. Other dealers or retailers who operate out of their own facility will be considered *Medium* firms. Manufacturers who formulate and process their own products will be considered *Large* firms. Those who simply repackage or dilute pesticides manufactured elsewhere will be considered *Medium* firms if there are 3 or fewer products, and *Large* firms if more than 3.

If financial information becomes available for any situation consider less than \$150,000 in gross, annual sales to be a *Small* firm; \$150,000-\$500,000 a *Medium* firm; and greater than \$500,000 to be a *Large* firm.

Note that the ability to remain in business will be taken into consideration in any penalty assessments.

## CATEGORIES

1. LACK OF KNOWLEDGE: When a person or firm who has committed a violation was not aware, or would not, within reason, be expected to have been aware of statutory requirements. An example might be a lawn-cutting operation who applies a general-use, "weed and feed" type of "fertilizer," and who does no other pesticide applications on any routine basis. Accidents that are not caused by negligence would also fall under this category.
2. NEGLIGENCE: Use description under Pes 401.02(3) - "has made [an]...application in a careless or negligent manner so as to harm or pose a threat of harm to human health, domestic animals...." Negligence will also include any unlicensed business or applicator who knowingly deals with pesticides (as evidenced by advertising, invoices, etc.), but who did not know of certification or statutory requirements. Failure on their part to have looked into the regulatory aspects of their business will be considered to be a negligent act, as will accidents that occur because of careless operation or poorly maintained or inappropriate equipment.
3. WILLFUL: When a person or firm has committed a violation in a flagrant manner, such as ignoring warnings given by an inspector, knowingly giving false information, attempting to defraud, or having numerous previous violations of a related fashion. In situations where persons make applications without proper certification or special permits the division shall consider it a willful violation if there is reasonable expectation that such person should have been aware of certification or special permit requirements.

## GRAVITY DESIGNATIONS

1. MINIMAL GRAVITY (A): When there are no injuries or damage, and no large potential for any injuries or damage, and when there has been no inconvenience caused to the client or community, and when all reasonable corrective measures have been taken by the applicator at his own expense. Examples of Gravity "A" situations might be minor spills that are cleaned up in a timely fashion; drift that does not pose any threat to non-target species; or use of unregistered pesticides in accordance with label instructions.
2. MODERATE GRAVITY (B): When there is any potential for or actual minor damage to non-target species, such as burned turf or damage to shrubbery, but where there is no actual threat to people. Commercial applications by unlicensed parties, by virtue of potential threat to people, will fall in this category. Minor injuries to pets, or death of small numbers of birds or other common species of wildlife, and justified complaints regarding misapplication would also be considered to be of moderate gravity, if all reasonable efforts were made to rectify a situation in a manner that significantly reduced the potential for continued damage or problems.
3. EXTREME GRAVITY (C): Any application or related activity that results in, or has a reasonable potential for causing the injury or death of any person; any wide-spread or long-term damage to non-target species, or contamination by a pesticide with potentially long-term consequences; any application that has or is likely to contaminate drinking water; or any application that might result in the death of domestic or farm animals; or any other act that would be construed as having severe consequences, would be considered to be of extreme gravity.



PENALTIES

LACK OF KNOWLEDGE			
PREVIOUS VIOLATIONS	A	B	C
	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE
0	0 - 0 - 0	0 - 50 - 100	100 - 175 - 250
1	0 - 50 - 100	100 - 175 - 250	250 - 375 - 500
2 or more	100 - 175 - 250	250 - 375 - 500	500 - 625 - 750

NEGLIGENT			
PREVIOUS VIOLATIONS	A	B	C
	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE
0	0 - 50 - 100	100 - 175 - 250	250 - 375 - 500
1	100 - 175 - 250	250 - 375 - 500	500 - 625 - 750
2 or more	250 - 375 - 500	500 - 625 - 750	750 - 875 - 1000

WILLFUL			
PREVIOUS VIOLATIONS	A	B	C
	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE	SMALL-MEDIUM-LARGE
0	100 - 175 - 250	250 - 375 - 500	500 - 625 - 750
1	250 - 375 - 500	500 - 625 - 750	750 - 875 - 1000
2 or more	500 - 625 - 750	750 - 875 - 1000	1000

Figures represent dollar amounts of administrative fines for categories of violations (Lack of Knowledge, Negligent, Willful), and for different gravities of violations (A, B, or C), depending on the numbers of previous violations and size of firm (Small to Large). Definitions of categories and gravity designations are attached. Results should be tabulated on attached compilation form. The amount of compensation associated with any alleged unlawful act may be taken into consideration and the proposed penalty may be increased accordingly - not to exceed \$1000.00 per violation - to discourage future violations.

**VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS (VAAFMM)**

**PESTICIDE PROGRAMS**

**ADMINISTRATIVE PENALTY FORM**

This form is to be used to determine proposed administrative penalties.

Case Name \_\_\_\_\_ Complaint No. \_\_\_\_\_

Violation(s) \_\_\_\_\_

**CLASSIFICATION OF VIOLATION(S)**

The class of the violation must be first determined. To do so, the Administrative Penalty Guidance on pages 6 through 9 may be used. The Guidance is a listing of common violations and their typical class type. Each violation must be evaluated as to whether the typical class type found in the Guidance is appropriate given the specific facts of the violation using these criteria:

**CLASS I – A Class I violation meets one or more of the following criteria:**

- (1) An assurance of discontinuance; or
- (2) An order issued pursuant to 6 V.S.A. Chapter 87; or
- (3) The violation presents a threat of substantial harm to the public health, safety, or welfare or to the environment.

**CLASS II – A Class II violation is a minor to moderate violation of a statute listed in 6 V.S.A. Chapter 87, a rule promulgated under 6 V.S.A. Chapter 87, or a related permit.**

**CLASS III – A Class III violation is a de minimis violation of a statute listed in 6 V.S.A. Chapter 87, a rule promulgated under 6 V.S.A. Chapter 87, or a related permit.**

## INITIAL PENALTY CALCULATION

Once the class of violation is determined, an initial penalty calculation must be made. Each of the following sections should be completed by circling the appropriate score.

- 1. The degree of actual or potential impact on public health, safety, and welfare:**
  - (a) No actual impact or minor potential impact 0
  - (b) Minor actual impact or moderate potential impact 1
  - (c) Moderate actual impact or major potential impact 2
  - (d) Major actual impact 3
  
- 2. The degree of actual or potential impact on the environment:**
  - (a) No actual impact or minor potential impact 0
  - (b) Minor actual impact or moderate potential impact 1
  - (c) Moderate actual impact or major potential impact 2
  - (d) Major actual impact 3
  
- 3. Did the respondent know or have reason to know that the violation existed:**
  - (a) Knowledge of the requirements:**
    - (i) New requirement 0
    - (ii) Had reason to know about violated requirement 1
    - (iii) Had a permit or permit by rule, applicator certificate, company license, or dealer license. 2
    - (iv) Repeated the violation after written notice, sent by certified mail 3
  
  - (b) Knowledge of the facts of the violation:**
    - (i) Could not have reasonably known that the violation existed 0
    - (ii) Should have reasonably known that the violation existed 1
    - (iii) Some evidence that the respondent knew the violation existed 2
    - (iv) Clear evidence that the respondent knew the violation existed 3

**Lower number of 3(a) or 3(b)** \_\_\_\_\_

**4. The respondent’s record of compliance with 6 V.S.A. Chapter 87 or related rules, permits, orders, or assurances of discontinuance in the seven years preceding the violation:**

- (a) No prior violations 0
- (b) One prior violation 1
- (c) Two prior violations 2
- (d) Three or more prior violations 3

**5. The length of time the violation existed:**

This is not to be assessed if VAAFm is also seeking continuing violation(s) under Section 8 because otherwise the fact that a violation is continuing would be considered twice in the calculating of the total penalty amount.

- (a) Immediate correction 0
- (b) A violation of very short duration 1
- (c) A violation of moderate duration 2
- (d) A violation of long duration 3

**Total of Sections 1, 2, 3, 4, and 5** \_\_\_\_\_

**Comments, if any:**

**6. PERCENTAGE OF MAXIMUM PENALTY CALCULATION**

After Sections 1 through 5 have been scored and added to compute a total score, the initial penalty amount shall be determined by multiplying the applicable percentage based on the total score by the maximum penalty amount for the Class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class, with the first number being the penalty amount for private applicators or certified private applicators, and the second number being the penalty amount for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders:

TOTAL SCORE	PERCENTAGE	CLASS I	CLASS II	Class III
1-5	50	\$500.00/\$2,500.00	\$325.00/\$1,625.00	\$175.00/\$850.00
6-10	75	\$750.00/\$3,750.00	\$500.00/\$2,400.00	\$260.00/\$1,300.00
11-15	100	\$1,000.00/\$5,000.00	\$650.00/\$3,250.00	\$350.00/\$1,750.00

**INITIAL PENALTY AMOUNT BEFORE ADJUSTMENTS** \$ \_\_\_\_\_

**7. ECONOMIC BENEFIT AND COST OF ENFORCEMENT ADJUSTMENT**

The penalty amount calculated in Section 6 may be adjusted when the respondent has realized an economic benefit as a result of the violation(s) and/or the State has incurred costs of enforcement related to the violation(s) by adding an amount equal to such economic benefit and/or enforcement costs to the penalty amount.

(a) Economic benefit \$ \_\_\_\_\_

Calculation:

(b) Cost of enforcement \$ \_\_\_\_\_

Calculation:

**Total of Sections 7(a) and 7(b)** \$ \_\_\_\_\_

**8. CONTINUING VIOLATIONS**

Any violation of a statute listed in 6 V.S.A. Chapter 87 or a rule thereunder or a condition of a related permit, order, or assurance of discontinuance that continues longer than one day may be considered a continuing violation subject to additional penalties for each day of continuance.

The continuing violation amount may be determined by multiplying the applicable percentage based on the total score by the per-day maximum continuing violation penalty for the class of violation. The following table lists the applicable percentage based on the total score and resulting calculation for each class:

TOTAL SCORE	PERCENTAGE	CLASS I	CLASS II	Class III
1-5	50	\$200.00/\$1,000.00	\$130.00/\$650.00	\$70.00/\$350.00
6-10	75	\$300.00/\$1,500.00	\$195.00/\$975.00	\$105.00/\$525.00
11-15	100	\$400.00/\$2,000.00	\$260.00/\$1,300.00	\$140.00/\$700.00

(a) Per-day penalty amount for continuing violation \_\_\_\_\_

(b) Number of days constituting continuance of the violation \_\_\_\_\_

**Total of Sections 8(a) multiplied by 8(b)** \$ \_\_\_\_\_

**9. FINAL ADJUSTMENTS**

After the initial penalty amount and the amount of economic benefit and/or the costs of enforcement and the penalty for a continuing violation, if applicable, have been determined, the criteria below shall be considered.

(a) Mitigating circumstances \$ \_\_\_\_\_

If mitigating circumstances exist, the penalty may be reduced. Unreasonable delay by VAAFm in seeking enforcement shall be considered a mitigating circumstance. Mitigating circumstances may include factors outside the control of the respondent.

Explanation:

(b) Deterrent effect \$ \_\_\_\_\_

The penalty amount may be increased up to the maximum allowed in the class of the violation if it is determined that a larger penalty is reasonably necessary to deter the respondent from committing this violation or similar violations in the future.

Explanation:

**Total of Sections 9(a) and 9(b)** \$ \_\_\_\_\_

**FINAL PENALTY AMOUNT**

The maximum administrative penalty assessed for separate and distinct violations of 6 V.S.A. Chapter 87 shall not exceed \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders for each violation pursuant to 6 V.S.A. § 1111.

Initial Penalty	Section 6	\$ _____
Economic Benefit and Enforcement Cost	Section 7	\$ _____
Continuing Violation(s)	Section 8	\$ _____
Final Adjustment	Section 9	\$ _____
<b>TOTAL PENALTIES:</b>		\$ _____

Prepared by \_\_\_\_\_ Date \_\_\_\_\_

## ADMINISTRATIVE PENALTY GUIDANCE

This Guidance is only intended to provide a listing of common violations and their typical class type. It is not intended to substitute for the consideration of each violation under Classification of Violations on page 1.

**Class I** (*Up to \$1,000.00 per violation for private applicators or certified private applicators or \$5,000.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders*)

- **IV. 1.a.** - Use inconsistent with product label resulting in pesticide release to environment and/or impact to human health.
- **IV. 1.b.** - Pesticide use resulting in drift.
- **IV. 2.l. and m.** - Pesticide use not in accordance with Ground Water Protection Rule and Strategy, 10 V.S.A. Chapter 48.
- **IV. 2.d.** - Failure to operate in a careful manner resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.e.** - False or fraudulent claims.
- **IV. 2.b. and c.** - Failure to use anti-siphoning device when filling pesticide application devices or during chemigation operations.
- **IV. 2.g.** – “Permit Violations” - Application restrictions established in 6 V.S.A. Chapter 87, the Regulations for Control of Pesticides and permits issued thereunder resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.o.** – Application of pesticide within 50-foot application buffer around private wells – with contamination of well resulting.
- **IV. 3.** - Application of a pesticide in a manner not protective of bees.
- **XII. 1.** - Failure to take immediate action following a pesticide accident to protect human health and the environment.
- **XII. 2.** - Failure to report a pesticide accident immediately to the Agency and the Vermont Department of Public Safety.
- **XIII. 2.(4)(a)–(f)** - Failure to construct, install and maintain storage containers and appurtenances so as to prevent the discharge of liquid bulk pesticide.
- **XIII. 2.(5)** – Failure to have a mixing, loading and rinsate collection area(s) consisting of curbed, paved surfaces with catch basins protected from damage by moving vehicles and designed for the recovery of spills.
- **XIII. 2.(5)(c)** – Failure to recover discharges incident to loading and unloading of pesticides and use as originally intended or dispose of in accordance with 10 V.S.A. Chapter 159.
- **XIII. 2.(6)(a)-(f)** – Failure to store pesticide containers in an appropriately designed secondary containment facility which is adequate, in the event of a discharge, to prevent the movement of liquid pesticide to waters of the state including groundwater.
- **XIII. 10.(a)** – Storage of liquid bulk pesticide or pesticide rinsate underground. (This prohibition does not apply to a watertight catch basin used for temporary collection of discharges or runoff.)

**Class II** (Up to \$650.00 per violation per violation for private applicators or certified private applicators or \$3,250.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders)

- **IV. 1.a.** - Use inconsistent with product label NOT resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.a.**- Failure to use only methods and equipment which ensure the safe and efficient application of materials.
- **IV. 2.d.** - Failure to operate in a careful manner NOT resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.g.** – “Permit Violations” - Application restrictions established in 6 V.S.A. Chapter 87, the Regulations for Control of Pesticides and permits issued thereunder NOT resulting in pesticide release to environment and/or impact to human health.
- **IV. 2.h.** - Failure to cooperate with Agency investigations (use).
- **IV. 2.o.** – Application of pesticide within 50-foot application buffer around private wells – without contamination of well resulting.
- **II. 1.a./VI. 1.** - Application of pesticides by Company without required Company License.
- **II. 2.a./VII. 1. (Comm and non-comm)** - Application of pesticides without certification or without the direct supervision by a certified applicator.
- **VII. 3.** - Application by comm / non-comm certified applicator in a category in which the applicator is not certified.
- **II. 2.b./IX. 1. (Private)** - Application of pesticides without certification or without the direct supervision by a certified applicator.
- **II. b.(1)/X. 4.a.(1)/XI. 1.a.(1)** - Sale of Class A pesticides without a Class A Dealer License (FTE).
- **II. b.(2)/X. 4.b.(1)/XI. 1.a.(2)** - Sale of Class B pesticides without a Class A or B Dealer License (FTE).
- **IV. 2.n.** – Application of pesticides to waters of the State without first obtaining a Water Quality Permit from the Vermont Department of Environmental Conservation, Water Quality Division.
- **IV. 4.a** – Application of herbicides for the purpose of clearing or maintaining a right-of-way (ROW) without first obtaining a ROW permit from the Agency.
- **IV. 5.c.** – Aerial application of pesticides without first obtaining an Aerial Application Permit from the Agency.
- **IV. 6.a.** – Any use of an unregistered pesticide or a registered pesticide for an unregistered use without first obtaining an Experimental Use Permit from the Agency.
- **IV. 7.a.** – Use of a pesticide for the lethal control of pest birds or other animals without first obtaining a bird or other animal control permit from the Agency.
- **IV. 9.a.** – Use of a pesticide on a golf course without first obtaining a permit from the Agency.
- **X. 4.a.(2)** - Sale of Class A pesticides to uncertified applicators / individuals unable to produce authorization from a certified applicator.
- **X. 4.a.(3)** - Display of Class A pesticides for self-service / storage of Class A pesticides in food areas.
- **XI. 3.** - Failure of sales and technical field representatives of commercial companies recommending or demonstrating pesticides to be certified under Category 10.
- **XIII. 1.(a)** - Failure to secure pesticides to prevent spillage during transportation.
- **XIII. 2.(1)** – Failure to prevent unauthorized access by persons, livestock or wildlife to pesticides or pesticide containers.



- **XIII. 3.a.(1)** – Failure to dispose of pesticides in a manner consistent with the product’s label.
- **XIII. 2.(6)(a)/XIII. 3.a.(3)** – Storage of empty pesticide containers within a secondary containment facility.
- **XIII. 3.b.** – Failure to dispose of obsolete, excess, and mixtures of pesticides in accordance with 10 V.S.A. Chapter 159.
- **XIII. 3.c.** – Failure to triple rinse pesticide containers (not made of paper).
- **XIII. 2.(2)(a)** – Failure to maintain legible labels on all bulk storage containers at all times.
- **XIII. 2.(3)(a)** – Failure to properly store dry bulk pesticides.
- **XIII. 2.(6)(g)** – Failure to promptly recover discharges within secondary containment facilities.
- **XIII. (7)(a)-(d)** – Failure to routinely inspect and maintain pesticide storage facilities, storage containers, and appurtenances in accordance with the Regulations in order to minimize the risk of a discharge.
- **XIII. 9.(a)-(c)** – Failure to prepare, and keep current, a written discharge response plan for the pesticide storage facility. / Failure to have accessible all equipment and supplies needed to respond to a discharge. / Failure to train employees in the discharge response procedures.

**Class III** (*Up to \$350.00 per violation for private applicators or certified private applicators or \$1,750.00 per violation for certified noncommercial applicators, certified commercial applicators, licensed dealers, licensed companies, or permit holders*)

- **II. b. (3)/X. 4.c.(1)/XI. 2.** - Sale of Class C pesticides without a Class A or B Dealer License, or Retail License.
- **IV. 2.f.** - Failure to fill out weekly spray reports.
- **IV. 2.j.** - Failure to provide proper invoicing.
- **IV. 8.** – Failure to provide notification of and/or properly post turfgrass applications.
- **IV. 2.h.** - Failure to cooperate with Agency investigations (non-use - recordkeeping, etc.).
- **IV. 9.i.(1)** – Failure of golf course to keep and maintain required operating records and report of pesticide use.
- **V. 1.** - Failure of Private applicator to accurately record use of restricted use pesticides.
- **V. 1.** - Failure of Private applicator to maintain records of restricted use pesticide use for two years.
- **V. 2.a.** - Failure of comm / non-comm applicator to create accurate routine operational records.
- **V. 2.a.** - Failure of comm / non-comm applicator to maintain routine operational records for two years.
- **V. 2.b.** - Failure of comm / non-comm applicator to submit accurate Annual Pesticide Usage Report.
- **V. 5.a.** - Failure of Class A Dealer to accurately record sales of restricted use pesticides.
- **V. 5.a.** - Failure of Class A Dealer to submit accurate Annual Restricted Use Sales report.
- **X. 4.b.(2)** - Display or storage of Class B pesticides in food areas.
- **X. 4.c.(2)** - Display or storage of Class C pesticides in food areas.
- **XI. 3.** - Failure of applicator licensed under Category 10 (Research and Demonstration) to submit accurate Annual Restricted Use Sales report.
- **XI. 1.c.** - Failure of Class A and B Dealers to notify Agency of a change of employment within 30 days.

- **XIII. 1.(b)** – Failure to ensure that vehicles used for transporting pesticides are properly placarded.
- **XIII. (7)(e)** - Failure to maintain a written record of all inspections and maintenance of pesticide storage facilities, storage containers and appurtenances on the day of the inspection or maintenance.
- **XIII. (8)(a)-(f)** – Failure to maintain records for five years of discharges from the storage facility, pesticide levels in each storage container, monthly inventory reconciliations, storage containers, appurtenances, and secondary containment facilities, and manufacture’s compatibility statements.



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

8

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

**MAINE BOARD OF PESTICIDES CONTROL POLICY ON  
EMERGENCY PERMITTING FOR NEONICOTINOIDS  
EXEMPTION**

Adopted August 5, 2022

**BACKGROUND**

On August 5, 2021, the Board adopted Section 6 of Chapter 41 which limits the use of dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to only certified private or commercial applicators. Further, these active ingredients may only be used for the management of emerging invasive invertebrate pests on ornamental vegetation or in emergency situations with an approved permit obtained from the Board. On February 18, 2022, the Board recommended compiling a list of approved emerging invasive invertebrate pests that meet this definition and to allow for permitting for use of neonicotinoids in emergency situations as outlined in CMR01-26 Chapter 51(VII)(B)(1).

**POLICY**

Any person who seeks a variance from rules in Chapter 41 Section 6 may only do so for emergency situations as outlined in CMR01-26 Chapter 51(VII)(B)(1).

An emergency situation exists if it:

- Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or
- Will present significant risks to human health; or
- Will present significant risks to threatened or endangered species, beneficial organisms, unique ecosystems or the environment; or
- Will cause significant economic loss due to:
  - an outbreak or an expected outbreak of a pest; or
  - a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).

Once an emergency situation is identified, applicators who wish to use neonicotinoids in residential landscapes must submit an emergency use permit to

the Board. The permit application must be submitted on forms provided by the Board and must include:

- The name, address and telephone number of the applicant;
- The brand name of the pesticides to be applied;
- The area(s) where pesticides will be applied;
- The purpose for which the pesticide application(s) will be made;
- The approximate application date(s);
- The type(s) of application equipment to be employed;
- The approved pest species for which the application is being made as defined in policy or by the Board; and
- The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of CMR01-26 Chapter 41 Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

**BOARD OF PESTICIDES CONTROL APPLICATION FOR EMERGENCY USE  
PERMIT TO USE NEONICOTINOIDS IN RESIDENTIAL LANDSCAPES**

I. \_\_\_\_\_  
Name Telephone Number

\_\_\_\_\_  
Address City State Zip

II. \_\_\_\_\_  
Brand name of pesticide(s) to be applied

III. \_\_\_\_\_  
Approximate area(s) where pesticides will be applied

IV. The purpose for which the pesticide application(s) will be made: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. The approximate application dates:  
\_\_\_\_\_  
\_\_\_\_\_

VI. The type(s) of application equipment to be employed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. The approved pest species for which the application is being made:  
\_\_\_\_\_  
\_\_\_\_\_

VIII. The reasons why the applicant seeks a variance from the requirements of CMR01-26 Chapter 41 Section 6:  
\_\_\_\_\_  
\_\_\_\_\_

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Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME  
04333-0028**

**OR email to: [pesticides@maine.gov](mailto:pesticides@maine.gov)**



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

**MAINE BOARD OF PESTICIDES CONTROL POLICY ON  
APPROVED INVASIVE INVERTEBRATE PESTS ON  
ORNAMENTAL VEGETATION IN OUTDOOR RESIDENTIAL  
LANDSCAPES FOR NEONICOTINOIDS EXEMPTION**

Adopted August 5, 2022

**BACKGROUND**

On August 5, 2021, the Board adopted Section 6 of Chapter 41 which limits the use of dinotefuran, clothianidin, imidacloprid, and thiamethoxam in outdoor residential landscapes to only certified private or commercial applicators. However, these active ingredients may be used for the management of emerging invasive invertebrate pests on ornamental vegetation or in emergency situations with an approved permit obtained from the Board. On February 18, 2022, the Board recommended compiling a list of approved emerging invasive invertebrate pests that meet this definition. On August 5, 2022, the Board approved the following list of emerging invasive invertebrate pests in accordance with CMR 01-026 Chapter 41: Special Restrictions on Pesticide Use.

**POLICY**

Any person who seeks a variance from Chapter 41 Section 6 may only do so for the following emerging invasive invertebrate pests as defined in Chapter 41 Section 6 (I):

Asian long-horned beetle (*Anoplophora glabripennis*)  
Emerald ash borer (*Agrilus planipennis*)  
Hemlock woolly adelgid (*Adelges tsugae*)

This list of species is only to be used in the context of emerging invasive invertebrate pests in outdoor residential landscapes on ornamental vegetation. If an emergency situation exists as outlined in CMR01-26 Chapter 51(VII)(B)(1) for species not on this list, emergency permits must be obtained from the Board prior to use of products with dinotefuran, clothianidin, imidacloprid, or thiamethoxam as active ingredients in residential landscapes.



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

9a

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

July 26, 2022

Basswood Environmental, LLC  
Mr. Erik Lema  
32 Brentwood Road  
Cape Elizabeth, ME 04107

**RE: Variance permit for CMR 01-026 Chapter 29, Royal River Conservation Trust, New Gloucester**

Dear Mr. Lema,

The Board of Pesticides Control considered your application for a variance from Chapter 29. The variance is approved, with the following conditions.

Mixing and loading activities must be completed at a distance greater than 50 feet from the mean high water line. Cut stump applications rather than foliar applications are preferable and using only non-powered low-pressure applications within 25 feet of water is required by law. Applications are required to be made with the applicator facing away from the water and when there is an onshore wind between 2-10 mph. Cut stem applications should be made with a sponge dauber/brush rather than spraying and applications to plants in standing water is not permitted. All pesticide label directions must be strictly adhered to.

Please ensure compliance with all other regulations including public notification and posting for any nearby trails and sidewalks used by the public. Additional information about notification may be found in the BPC policy concerning 'Appropriate Methods for Notifying the Public About Commercial Applications to Sidewalks and Trails' [[PDF](#)].

The issuance of two-year variances for Chapter 29 is authorized by the Board; therefore, this variance is valid until December 31, 2023, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

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

At its August 5, 2022 meeting, I will alert the Board that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
THINKFIRSTSPRAYLAST.ORG



Sincerely,

A handwritten signature in black ink that reads "E. Ann Gibbs". The signature is written in a cursive style with a large, stylized initial "E".

E. Ann Gibbs  
Director, Animal and Plant Health Division

**BOARD OF PESTICIDES CONTROL  
APPLICATION FOR VARIANCE PERMIT  
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Erik Lema \_\_\_\_\_ (207)518-8442 \_\_\_\_\_  
Name Telephone Number

\_\_\_\_\_ Basswood Environmental LLC \_\_\_\_\_  
Company Name

32 Brentwood Rd \_\_\_\_\_ Cape Elizabeth \_\_\_\_\_ ME \_\_\_\_\_ 04107 \_\_\_\_\_  
Address City State Zip

II. Erik Lema \_\_\_\_\_ CMA-5752 \_\_\_\_\_  
Master Applicator (if applicable) License Number

\_\_\_\_\_ See above \_\_\_\_\_  
Address City State Zip

III. **As part of your application, please send a revegetation plan and digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to [pesticides@maine.gov](mailto:pesticides@maine.gov)**

IV. Area(s) where pesticide will be applied:  
\_\_\_\_\_ Japanese Knotweed, bank of the Royal River, New Gloucester. At the crossing of Rt 231, \_\_\_\_\_  
\_\_\_\_\_ Intervale Preserve Land, part of the Royal River Conservation Trust \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Pesticide(s) to be applied: (Including EPA Registration Number)  
\_\_\_\_\_ Rodeo EPA Reg#: 62719-324 \_\_\_\_\_  
\_\_\_\_\_

VI. Purpose of pesticide application:  
\_\_\_\_\_ Control Japanese knotweed along river at the location of the river access. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. Approximate dates of spray application:  
Late July/Early August 2022, depending on height of knotweed after initial June cut.

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VIII. Application Equipment:  
Low-volume backpack foliar spray fitted with a fan nozzle. Limited use of a sponge dabber

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IX. Standard(s) to be varied from:  
Spray within 25-feet of open water/river.

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X. Method to ensure equivalent protection and Revegetation Plan:  
The knotweed has been cut in mid June and will be allowed to resprout to a height that will allow for complete access (2-3') without spraying overhead or in a manner that may lead to off-target drift. Stems along the immediate bank will be cut and treated with a cut-stem application of 25% Rodeo where spraying would otherwise be applied directly to open water or would affect non-target native species. these native species (dogwoods, willows, and a variety of herbaceous species) will be preserved to the greatest extent possible to maintain bank integrity. Where the bank is observed to contain no native understory or woody plants, the knotweed will be re-cut but not treated to ensure that the bank will remain vegetated.

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XI. Revegetation Plan (attach separately if necessary)  
Native co-occurring species will be preserved wherever possible, with special emphasis on those woody plants that are currently colonizing the immediate bank. Any plantings will not occur until such time that the knotweed population has been controlled in a particular area. Upon controlling an area, any native or non-invasive herbaceous species that are currently on site will be preserved, and plantings of native woody species will be sourced from on-site, including fall planting of live stakes from native dogwoods and willows that are present. Transplanting volunteer seedlings from upland areas from the interior of the site may be performed if needed to achieve full colonization of the site. Knotweed that was

preserved along the bank will be cut and treated at such time as the remainder of the site is stabilized by desirable vegetation. These stems will still be routinely cut to inhibit spread until treatment can occur.

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Signed:  Date: 6/24/2022

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**  
OR E-mail to: [pesticides@maine.gov](mailto:pesticides@maine.gov)

Rev. 2/2022




Area to be treated.



# Rt 231 Crossing of the Royal River

Intervale Preserve, New Gloucester, Maine  
Approximately 5,300 square-feet of knotweed infestation total

## Legend

 Polygon Measure







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

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PAUL R. LEPAGE  
GOVERNOR

WALTER E. WHITCOMB  
COMMISSIONER

July 26, 2022

Basswood Environmental, LLC  
Mr. Erik Lema  
32 Brentwood Road  
Cape Elizabeth, ME 04107

**RE: Variance Permit for CMR 01-026, Chapter 29 for Invasive Species Control in Alna, ME**

Dear Mr. Lema:

The Board of Pesticides Control considered your application for a variance from Chapter 29. The variance is approved, with the following conditions.

Mixing and loading activities must be completed at a distance greater than 50 feet from the mean high water line. Cut stump applications rather than foliar applications are preferable and using only non-powered low-pressure applications within 25 feet of water is required by law. Applications are required to be made with the applicator facing away from the water and when there is an onshore wind between 2-10 mph. Cut stem applications should be made with a sponge dauber/brush rather than spraying and applications to plants in standing water is not permitted. All pesticide label directions must be strictly adhered to.

Please ensure compliance with all other regulations including public notification and posting for any nearby trails and sidewalks used by the public. Additional information about notification may be found in the BPC policy concerning 'Appropriate Methods for Notifying the Public About Commercial Applications to Sidewalks and Trails' [[PDF](#)].

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

The Board has authorized the issuance of two-year permits for Chapter 29. Therefore, this permit is valid until December 31, 2023, as long as applications are consistent with the information provided on the variance request. Please notify the Board, in advance, of significant changes, particularly if you plan to use a different product from those listed.

At its August 5, 2022 meeting, I will alert the Board that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

A handwritten signature in black ink that reads "E. Ann Gibbs". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

E. Ann Gibbs  
Director, Animal and Plant Health Division

**BOARD OF PESTICIDES CONTROL**  
**APPLICATION FOR VARIANCE PERMIT**  
**(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Isobel Curtis \_\_\_\_\_ (203-814-7224 )  
Name Telephone Number

\_\_\_\_\_ Midcoast Conservancy  
Company Name

290 Rt 1 \_\_\_\_\_ Edgecomb, ME 04556  
Address City State Zip

II. Erik Lema, Basswood Environmental LLC \_\_\_\_\_ #CMA-5752\_\_  
Master Applicator (if applicable) License Number

32 Brentwood Rd Cape Elizabeth \_\_\_\_\_ ME 04107  
Address City State Zip

III. **As part of your application, please send a revegetation plan and digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to [pesticides@maine.gov](mailto:pesticides@maine.gov)**

IV. Area(s) where pesticide will be applied:  
\_\_\_\_\_ Along bank of Sheepscot River in Alna, ME. Area below Head Tide Damn, GPS  
44.109896, -69.617874. Knotweed patch is 0.89 acres in size.

V. Pesticide(s) to be applied: (Including EPA Registration Number)  
\_\_\_\_\_ Rodeo (i.e. glyphosate) EPA #62719-324

VI. Purpose of pesticide application:  
\_\_\_\_\_ Eliminate a Japanese Knotweed infestation on the bank of the Sheepscot River in order to  
improve native biodiversity in this area of rich floodplain flora, safeguard water quality on this section of river, and prevent knotweed from washing down river and starting new colonies farther downstream.

VII. Approximate dates of spray application:  
\_\_\_\_\_ One spray application in late summer (august) or early fall (September)



VIII. Application Equipment:

Applied with a low-volume backpack unit fitted with a fan nozzle. Rodeo applied as a 3% solution. Knotweed on the terrestrial edge of patch will be treated with the cut and dab method, utilizing a spong applicator with a 25% solution of Rodeo and water. A volume not to exceed label requirements per acre will be prepared, and application will cease if this volume is used prior to complete treatment.

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IX. Standard(s) to be varied from: Foliar application within 25-feet of river/open water

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X. Method to ensure equivalent protection and Revegetation Plan:

For application: 1) cutting of knotweed prior to treatment (no spraying tall vegetation), 2) use of a non-persistent herbicide, 3) low-volume application by non-powered equipment, 4) avoid application on windy or wet days and 5) application will be highly targeted to preserve any co-occurring native plant species. The terrestrial edge of the knotweed patch will be treated with a cut and dab method so as to avoid any native plant species. A 10ft wide strip of knotweed that borders the Sheepscot River will not be cut and treated in order to minimize drift and to prevent erosion. 6) For revegetation, native plantings will not be made until the area is mostly free of knotweed and maintenance treatments can be made with negligible impact to planted and co-occurring native species.

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XI. Revegetation Plan (attach separately if necessary)

Once an area is mostly free of knotweed and no longer requires foliar herbicide application, the following re-vegetation schedule will commence paired with appropriate erosion control measures to stabilize the river bank while native vegetation takes root. 1) Early spring: Live staking of cut stems of native plant species such as Dogwood (*Cornus species*), Elderberry (*Sambucus canadensis*), and Willow (*Salix species*) sourced on site when possible. Dormant seeding of native seed species. Start planting landscape plugs of native wetland species. 2) Summer: continue planting native spp landscape plugs. 3) Fall: Resume live staking and continue with landscape plugs.

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Signed:



Date: 6/23/2022

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**  
OR E-mail to: [pesticides@maine.gov](mailto:pesticides@maine.gov)

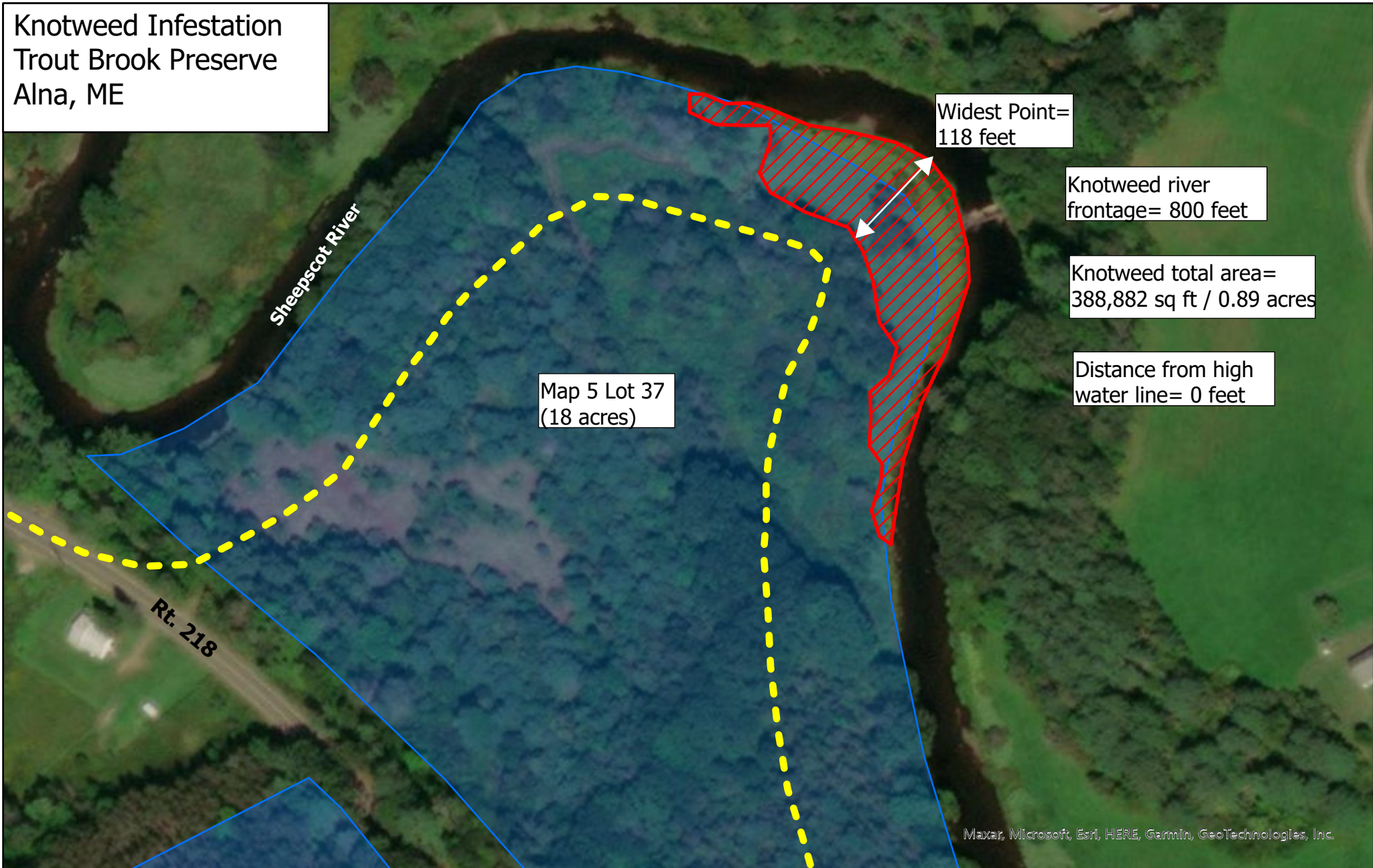
Rev. 2/2022

Attached: Site photos and location map.





Knotweed Infestation  
Trout Brook Preserve  
Alna, ME



Map 5 Lot 37  
(18 acres)

Widest Point=  
118 feet

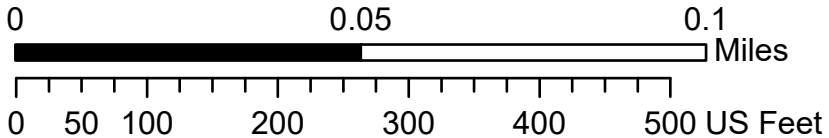
Knotweed river  
frontage= 800 feet

Knotweed total area=  
388,882 sq ft / 0.89 acres




Distance from high  
water line= 0 feet

Rt. 218

Maxar, Microsoft, Esri, HERE, Garmin, GeoTechnologies, Inc.



Center: 69.6186°W 44.1094°N

-  Knotweed Infestation
-  Property Bounds
-  Resource Protection Zone (150ft setback)

Map by I. Curtis May 2022  
Data Sources: ESRI World Imagery (ESRI);  
BWH Dataset (MNAP);  
Alna Town Parcels (MEGIS)



PAUL R. LEPAGE  
GOVERNOR

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

9c

WALTER E. WHITCOMB  
COMMISSIONER

June 14, 2022

Mr. Donald J. Dubois  
Dubois Contracting  
295 St. John Road  
Fort Kent, ME 04743

**RE: Variance Permit for CMR 01-026, Chapters 29 for Vegetation Control on the Fort Kent Levee**

Dear Mr. Dubois:

This letter will serve as your variance permit for the broadcast application of herbicides to portions of the Fort Kent levee along St. John and Fish Rivers.

The Board has authorized the issuance of two-year permits for Chapter 29. Therefore this permit is valid until December 31, 2023, as long as applications are consistent with the information provided on the variance request. Please notify the Board, in advance, of significant changes, particularly if you plan to use a different product from those listed.

Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section IX of your application.

At its August 5, 2022 meeting, I will alert the Board that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Megan Patterson  
Director

**BOARD OF PESTICIDES CONTROL**  
**APPLICATION FOR VARIANCE PERMIT**  
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)

I. Donald Dubois (207) 316-8016  
Name Telephone Number

Dubois Contracting  
Company Name  
295 St John Rd Fort Kent Me 04743  
Address City State Zip

II. Donald Dubois CMA 44820/3A3B6A6B  
Master Applicator (if applicable) License Number

295 St John Rd Fort Kent Me 04743  
Address City State Zip

III. As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to [pesticides@maine.gov](mailto:pesticides@maine.gov)

IV. Area(s) where pesticide will be applied:

Fort Kent Dike along the St John  
and Fish Rivers

V. Pesticide(s) to be applied:  
Rodeo, Milestone, A1700, Blue Dye

VI. Purpose of pesticide application:  
Total elimination of all vegetation on  
the rocky portion of the dike on the  
river side per requirements of the  
Army Core of Engineers, Federal Gov.

VII. Approximate dates of spray application:

June 1 to August 30, 2022 while  
vegetation is active & river is at its lowest

VIII. Application Equipment:

Manual Backpack

IX. Standard(s) to be varied from:

Allowable use of these products on a  
dry flood plain use within 25' of  
high water mark

X. Method to ensure equivalent protection:

Will incorporate use of Low Pressure backpack  
application to minimize leaching of spray  
solution. Herbicide application of Rodeo and  
Milestone will be made for complete control  
of any tall vegetation growing in said area. Will  
also use LI 700 a non ionic surfactant containing  
drift control & defoamer all in one. Will also use  
Blue dye to reduce any over application.  
Application date of June 1 to August 30 to assure  
river level is at its lowest, with no wind where  
temperature will allow for fastest drying time & no  
suspension of spray.

Signed:

Daniel O'Brien

Date:

3/14/2022

Return completed form to: Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028  
OR E-mail to: [pesticides@msine.gov](mailto:pesticides@msine.gov)













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