

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

SUMMARY: These provisions regulate the use, storage and disposal of pesticides with specific emphasis on registered pesticides, right of way and aquatic applications and employer/employee requirements.

Section 1. Registered Pesticides

A. Definitions

“Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS” means substances that include any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

- B.** The use of any pesticide not registered by the Maine Board of Pesticides Control in accordance with Title 7 M.R.S.A. §601 is prohibited except as otherwise provided in this chapter or by FIFRA, Section 2(ee).
- C.** The use of registered pesticides for other than registered uses, or at greater than registered dosages, or at more frequent than registered intervals is prohibited, provided that application or use of unregistered pesticides and unregistered applications or uses of registered pesticides may be made for experimental purposes if in accordance with requirements of the Maine Board of Pesticides Control, and the U.S. Environmental Protection Agency.
- D.** Retailers and end users of pesticides no longer registered in Maine may continue to sell and use those items provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other Federal law.
- E.** In conducting review of registration or re-registration pursuant to 7 M.R.S.A. §607-A, the Board may consider the potential for environmental damage by the pesticide through direct application on or off-target or by reason of drift. If the Board finds that the use of the pesticide is anticipated to result in significant adverse impacts on the environment, whether on or off-target, which cannot be avoided or adequately mitigated, registration or re-registration will not be granted unless the Board finds that anticipated benefits of registration clearly outweigh the risks. In any case where the Board may request data in connection with registration or re-registration of any pesticide, such data may include that concerning pesticide residues, propensity for drift and testing therefor. Such data, if requested, shall provide information regarding residues and residue effects on plant tissues, soil and water and other potential deposition sites, and shall take into consideration differences in plants, soils, climatic conditions at the time of application and application techniques.

- F. In conducting review of registration or reregistration pursuant to 7 M.R.S.A §607-A, the Board shall require submission of the confidential statement of formula as defined in 7 M.R.S.A. §607 (5-A) and the following affidavits:
1. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide has or has never been stored, distributed, or packaged in a fluorinated container; and
 2. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide formulation does or does not contain perfluoroalkyl or polyfluoroalkyl substances as defined by the Board for this purpose of this section.

Section 2. Right-of-Way

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

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.

Section 4. Aquatic Applications

No person, firm, corporation or other legal entity shall, for the purpose of controlling aquatic pests, apply any pesticide to or in any waters of the state as defined in 38 M.R.S.A. §361-A(7) without approval of the Maine Department of Environmental Protection.

Section 5. Employer/Employee Requirements

- A. Any person applying pesticide shall instruct their employees and those working under their direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and shall instruct such persons as to the proper steps to be taken to avoid such hazards.
- B. Any person applying pesticides shall provide and maintain, for the protection of their employees and persons working under their direction, the necessary safety equipment as set forth on the label of the pesticide to be used.

Section 6. Authorization for Pesticide Applications

- A. Authorization to apply pesticides to private property is not required when a pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of establishing or maintaining such easement or right of way.
- B. When the Maine Center for Disease Control and Prevention (CDC) has identified that an organism is a vector of human disease and the vector and disease are present in an area, a government entity shall obtain authorization for ground-based applications by:
 - 1. Sending a written notice to the person(s) owning property or using residential rental, commercial or institutional buildings within the intended target site at least three days but not more than 60 days before the commencement of the intended spray applications. For absentee property owners who are difficult to locate, mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice; and
 - 2. Implementing an “opt out” option whereby residents and property owners may request that their property be excluded from the application by submitting written notice to the government entity at least 24 hours before spraying is scheduled to commence. Authorization is considered given for any property for which written notice was submitted and no “opt out” request was received by the sponsoring government entity.
- C. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government entities are not required to receive prior authorization to apply pesticides to private property, provided that the government entity sponsoring the vector control program:
 - 1. Provides advance notice to residents about vector control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and
 - 2. Implements an “opt out” option whereby residents and property owners may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and

3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.

D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:

1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
 - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

Section 7. Positive Identification of Proper Treatment Site

A. Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. ~~The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.~~ After December 31, 2023, the master applicator responsible for the supervision of certified and noncertified applicators at each branch location must ensure that all applicators under their supervision are trained, annually, on positive identification of proper treatment sites. This master applicator must maintain records of the method of positive identification of proper treatment sites as adopted by the branch location. Appropriate positive identification methods that must be employed include at least one of the following:

1. Obtain the customer’s electric meter number in advance of the treatment, list it on the work order or invoice, and require the applicator to check for that number before initiating the treatment.

2. Visit the customer in advance of the treatment, and using a global positioning system (GPS), identify the coordinates of each property to be treated. Include the coordinates on the work order or invoice, equip the applicator with a GPS unit, and require that employee to check for those coordinates before initiating any treatment.
3. Visit the customer in advance of the treatment and take a digital time/date stamped photo of the home and any distinctive features of the property. Include the photo on the work order or invoice and require the applicator to carefully check the photo before initiating any treatment.
4. Visit the customer in advance of the treatment and attach a company logo or other unique identifying tag on the property. Include the location of the logo/tag on the work order or invoice and require the applicator to carefully check for its presence before initiating any treatment.
5. Any methods that were submitted in writing to the Board prior to X. Any methods submitted after this date may be subject to approval by staff.

B. Violations of Chapter 20, Section 7 is grounds for the suspension of certification or licensure under 22 M.R.S.A §1471-D(7).

1. For a first violation the applicator's license/certification may be suspended;
2. For a second violation within a 5-year period the applicator's and master's licensure/certification may be suspended; and
3. For a third violation within a five year period the applicator's, master's and firm's licensure/certification may be suspended.

Penalties may also be imposed pursuant to 7 M.R.S.A. § 616-A (2) for violations of Chapter 20, Section 7 in addition to any suspensions imposed under Chapter 20, Section 7 (B)(1), (2) or (3). Nothing in this subsection may be construed as prohibiting the Board from seeking license or certification revocation pursuant to 22 M.R.S.A. §§ 1471-D(6) and 1471-J where the Board determines revocation is warranted under the circumstances.

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December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

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