



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

July 21, 2023

9:00 AM Board Meeting

Join the meeting in person in Room 101, Deering Building, 32 Blossom Lane, Augusta
Or

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 246 908 275 489

Passcode: DSg4Xf

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Phone Conference ID: 293 485 210#

AGENDA

1. Introductions of Board and Staff
2. Minutes of the June 9, 2023 Board Meeting

Presentation By: John Pietroski, Acting Director
Action Needed: Amend and/or approve

3. Policy for Distribution of Adjuvant Products

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” was approved by the Maine legislature in 2022. Dealers and growers have approached staff regarding the ability to use adjuvant products that were in their possession prior to or after the effective date of August 8, 2022. Staff are seeking guidance on enforcement discretion regarding this issue.

Presentation By: John Pietroski, Acting Director
Action Needed: Provide guidance to staff on distribution of adjuvants

MEGAN PATTERSON, DIRECTOR
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4. LD 1770 Sales & Use Reporting

At the May 10, 2023 work session the Agriculture, Conservation and Forestry Committee voted this bill ought to pass as amended as a resolve directing the Board to act to enter into rulemaking to require applicators and dealers to submit their annual use reports electronically.

Presentation By: John Pietroski, Acting Director
Action Needed: Discussion

5. Review and Discussion of Potential Rulemaking Topics

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023 Board meeting, the Board discussed several rulemaking topics that had been identified by staff. At the March 25, 2023 Board meeting, the Board narrowed the rulemaking initiatives to more urgent items that needed to be addressed in rule. At the April 7, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts, but decided to postpone rulemaking until the legislature had adjourned given that some additional rulemaking initiatives were likely to pass. Staff have compiled the Board's responses to rulemaking concepts that had interest in moving forward in addition to a timetable of possible hearing dates for Board consideration. The Board will need to vote to move rulemaking forward to initiate this process. *Note: No public comments on rulemaking are being accepted at this time.*

Presentation By: Karla Boyd, Policy & Regulations Specialist
Action Needed: Discuss rulemaking concepts and possibly vote to schedule a hearing

6. Maine State Certification and Training Plan for EPA

Update on continued efforts to receive EPA approval for Maine's Certification and Training Plan and implications of not receiving approval.

Presentation By: John Pietroski, Acting Director
Action Needed: Discussion

7. Consideration of a Consent Agreement with Starbucks Bangor, 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 application and use of a pesticide inconsistent with its label.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

8. Consideration of Consent Agreement with Amelia and Arthur Bond of St. Louis, MO

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 unauthorized application, use of a pesticide inconsistent with the label and use of a pesticide in a negligent manner.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

9. Other Old and New Business

- a. Email From Chantal Longo-Guess
- b. LD 258- “An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025”
- c. EPA Press Release, July 13, 2023: “EPA Requires Additional Mitigation Measures for Seresto Pet Collars”

10. Schedule of Future Meetings

September 1 and October 13 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

Staff have scheduled meeting rooms for: November 3, December 15

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.
- 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. 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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GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

June 9, 2023

9:00 AM Board Meeting

MINUTES

Adams, Carlton, Ianni, Jemison, Lajoie, Neavyn

1. Introductions of Board and Staff
2. Minutes of the April 7, 2023 Board Meeting

Presentation By: John Pietroski, Acting Director
Action Needed: Amend and/or approve

- **Carlton/Lajoie: Moved and seconded to approve minutes**
- **In Favor: Unanimous**

3. Review of Board Responsibilities and Procedures

Mark Randlett, Assistant Attorney General, will review Board procedures and Board member responsibilities.

Presentation By: Mark Randlett, Assistant Attorney General
Action Needed: Board procedural review

- Randlett gave an overview of Board responsibilities and stated that the Board members' ultimate interest was to the public as a whole. He noted that all Board matters and decisions of the Board must be discussed in public. Randlett explained that all correspondence, including emails and text messages were subject to the Freedom of Access Act. Randlett stated that as their legal representation conversations with him were privileged and would not be disclosed.

4. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: John Pietroski, Acting Director
Action Needed: Nomination and election of officers

- **Lajoie/Carlton: Moved and seconded to nominate and elect David Adams as Chair**
- **In Favor: Unanimous**
- **Carlton/Lajoie: Moved and seconded to nominate and elect John Jemison as Vice Chair**
- **In Favor: Unanimous**

5. Review of the Board Budget

At the April 7, 2023 meeting, the Board held its annual review of the Pesticide Control Fund. The goal of the annual budget update is to identify potential resources that could be allocated to Board priorities. The Board asked for additional discussion during this meeting to help clarify potential budget forecasting.

Presentation By: Megan Patterson, Division Director
Action Needed: Provide guidance to the staff on Board budget priorities

- Patterson stated that the Board looked to be solvent for the next three years because they were able to secure a fee increase for pesticide registrations. She went over the revenue from registrations, exams and licenses. Patterson noted that the Board may want to consider the current exam and licensing fees in the near future since they have remained flat for several years. She explained DICAP expenses, which are about 15% for every dollar, and the statutory transfers the Board was required to make annually.
- Carlton asked if there were any changes regarding registration.
- Patterson stated that there were fewer this year. She said that due to the external regulatory burden some companies chose not to register and other companies decided to only register specific products.
- There was further discussion about registration. Adams asked about the number of adjuvants registered.
- Patterson responded that there were currently 162. She added that the number of products other states had estimated was 400-1,100 so staff estimated approximately 400. A lot of the adjuvants are pool products and Maine does not have many pools. The registrar has reached out to adjuvant companies to let them know they now need to register to distribute their products in the state. Patterson stated that staff would continue to provide information to companies and during marketplace inspections.
- Adams stated that convincing the end user community to report these products would be helpful.
- Patterson explained staff expenditures which included five members from the plant health program. She added that the ACF committee was discussing moving those five positions to the general fund. There may also be three additional positions for BPC that

may come under the general fund. Patterson noted that this was not a certainty and was still up in the air.

- Patterson discussed the two contract employees currently on staff, staff travel expenses for both in and out of state, rental fees from Central Fleet Management, and the obsolete collection program. She noted that the BPC was still paying credit card fees for purchases through MePERLS and there was a story to be put in place to recoup some of those monies. Patterson stated that MePERLS expenses had significantly increased. The reason for this was because Maine IT was previously financing about 50% of the cost and they are no longer doing this.
- Adams asked about the potential cost of defending CBI in civil court if the new regulation procedures were challenged. He asked if there should be a line item in there to cover that.
- Randlett stated he was not sure if it came out of Board funds or the Department but there was a flat fee charged for the Assistant Attorney General. He added that there were no additional fees in the event of a legal challenge; it would be covered by what was already paid.
- Jemison asked about the annual depletion of the cash balance.
- Patterson responded that if the five plant health positions were transferred to the general fund the BPC would likely be in a good position for multiple years. She added that there would hopefully be some clarity about this by the next meeting. Patterson stated that another point in the future timeline to face would be the 2030 ban on intentionally added PFAS. Staff have an idea of how many active ingredients would be considered PFAS under Maine's definition but still not a clear number of how many products may have inert ingredients that would qualify as PFAS.

6. LD 1770 Sales & Use Reporting

At the May 10, 2023 work session the Agriculture, Conservation and Forestry Committee voted this bill ought to pass as amended as a resolve directing the Board to act to enter into rulemaking to require applicators and dealers to submit their annual use reports electronically via MePERLS.

Presentation By: Karla Boyd, Policy and Regulations Specialist
Action Needed: Discussion

- Patterson stated that she thought there might be language to share but had only seen draft language. She said she believed the bill would be turned into a resolve to require electronic submission of all currently required end of year sales and use reports. There was discussion about the possible use of optical character recognition if reports were to be collected electronically. This option would require all applicators to use the same template and would require additional funding to build.

7. Discussion and Update on Container Fluorination

Understanding changes in pesticide container fluorination activities is relevant for the Board's ongoing discussions on fluorinated containers. Staff have reached out to EPA for updates on container fluorination actions at the federal level. Staff have also summarized existing federal and Maine rules in an attempt to clarify what is allowed in pesticide products as of spring 2023.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist
Action Needed: Discussion and consideration of container regulations

- Bryer stated this update was mostly about contamination of pesticides by PFAS. She explained the study that had been provided last fall to the Board, Lasee et al. 2022, showed high levels of PFOS in insecticides. The EPA contacted the study author and obtained the same samples used in that study and reanalyzed them using a different method and found no PFAS contamination in the insecticides that had been tested by those authors. On the state level, the Department was having conversations about proper methods for PFAS testing. There have been unreliable results originating from the testing of animals on farms in Maine and the revelation that the testing method being used in the lab could confuse bile acids with PFOS. PFOS is the same PFAS seen in high concentrations in the Lasee et al. paper that EPA re-evaluated. Bryer stated that many pesticides, often insecticides, tend to be in oily matrixes because they are not water soluble, so it is more difficult to measure insecticides for PFAS. This study re-evaluation by EPA does not mean that there is no PFAS contamination in pesticides, but this unusual source does not seem to be a concern at this time. The container fluorination contamination that has been seen was related to a different type of PFAS.
- Bryer mentioned that the company that makes the insecticide Anvil 10-10, which sort of started the PFAS discussion, had switched from fluorinated plastic containers to stainless steel containers. EPA's Toxic Substances Control Act, TSCA, program received nine Significant New Use Notifications, SNUN, related to containers (not specifically pesticide containers). EPA requires manufacturers whose fluorinated containers leach PFAS to notify the agency via the SNUN process. EPA sued Inhance Technologies for not notifying the agency about PFAS that had migrated from containers. Inhance Technologies is the company that produced the original plastic containers used for Anvil 10+10, a mosquito adulticide commonly used in aerial spray programs.
- EPA is working on a system that should allow public access to 6(a)(2) reports, also called "Incident Reports." Manufacturers are required to send EPA incident reports when a company becomes aware of a problem with their products, including contamination issues. Companies are required under FIFRA to report to EPA within 30 days following the discovery of PFAS contamination in their pesticide products or any other deviation from what ingredients were registered with EPA. It is unclear what this public-facing 6(a)(2) reporting would look like because portions of 6(a)(2) reports are protected health information while others are confidential business information. The system is expected to be live within the federal fiscal year.
- Bryer stated that the state of Maine defines PFAS in a very broad sense and there would be approximately 1,300 products that would be classified as PFAS by that definition. The EPA definition recognizes four pesticide active ingredients as PFAS as of June 2023. There is not a history of dealing with a class of chemicals this large and EPA is looking at separating them out into about 70 groups to streamline the next regulatory steps. There has been difficulty classifying them in a way that makes sense, but once the EPA has figured out how many groups there are, they can approach manufacturers to get information on those chemicals.
- There was discussion about whether products being in a fluorinated container would equate with PFAS leaching
- Ianni asked if there was consensus across other state agencies that given these two sampling studies, EPA vs the other one, were other states choosing to agree with EPA or was the jury still out that there may be dozens of other studies coming.

- Bryer stated that the EPA was viewed as the standard setter. The method is really important and that is not saying that the methods the other study used were wrong. They had been using a method for radishes and used that same method for PFAS testing. Bryer said this was all very new.
- Ianni inquired about what are other states doing.
- Bryer stated that Maine did not have a state lab but the Massachusetts laboratory had worked with the Fort Mead laboratory and validated EPA's findings.
- Adams noted the difference that he heard had been found in fluorinated containers, depending on whether they were fluorinated in mold or fluorinated in gas chambers. He stated that some manufacturers have stated their intention to move away from fluorinated containers while others are not sure about what alternative they can use that would pass standards. Given the State of Maine definition versus the EPA definition, Adams asked where Bryer recommended the Board stay focused- on container fluorination or the formulation of products.
- Bryer responded that the type of contamination she saw as a larger problem was container fluorination. Fluorination produces some of the PFAS that had been off the market for 20 years and with known health effects. She stated she saw that type of contamination more dangerous from a human health perspective. Bryer noted that per FDA regulation, it was still legal to use many PFAS as part of a food contact package.
- There was further discussion about the composition of plastics and what may be deemed unavoidable use of products containing PFAS according to Maine DEP. In draft, it stated that anything deemed unavoidable use would need to be deemed so via rulemaking. There was also discussion on whether reporting of packaging would be required.

8. Staff Memo on Possible Addition of Balsam Woolly Adelgid to the Board's Policy on *Approved Invasive Invertebrate Pests On Ornamental Vegetation In Outdoor Residential Landscapes For Neonicotinoids Exemption*

Staff have received a request to add Balsam Woolly Adelgid to the Board's existing policy on the use of neonicotinoids for the management of invasive invertebrate pests in outdoor residential landscapes.

Presentation By: John Pietroski, Acting Director

Action Needed: Discuss the memo; approve/disapprove amendment of the interim policy

- Pietroski stated that this memo stemmed from a request to use a neonicotinoid to treat balsam woolly adelgid (BWA) which is an invasive introduced into the United States around 1900. He added that there were other alternatives that could also be used.
- Jemison stated that BWA was already spread widely around the southern part of the state and it was his understanding that exemptions were for trying to stop an insect before it got to this stage.
- Carlton agreed with Jemison.
- Lajoie asked about alternative treatments.
- Pietroski answered that insecticidal soaps, carbaryl and bifenthrin were some alternatives.
- The other Board members agreed that this was not an emergency use effort that would stop the spread of this pest.
- Patterson mentioned that there was also the option to provide a variance.
- Billy Guess, the applicator who submitted the request, stated that alternative control methods were foliar sprays which were more detrimental to pollinators than a bark application. He

added that this was also a pest in Christmas tree plantations. Guess stated that the fact that neonicotinoids could still be used on commercial turf but not in residential settings did not make sense.

9. Consideration of a Consent Agreement with Davey Tree Expert Company Gorham, 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 unauthorized application and failure to positively identify the application site.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed Review and/or Approve

- Peacock stated that the company had a positive property identification process in place but the applicator did not follow it.
- There was discussion about the possible revocation of licenses for a certain period of time in the future if the same issue continues to reoccur. Peacock stated that that was an option but was not a precedent set in the past.
- Randlett stated that people who do not properly identify the correct location were subject to revocation. He added that it may be subject to appeal if it was a revocation that was done arbitrarily or unreasonably so the seriousness of a violation, the number of violations and recklessness of the violation would be looked at among other things. Randlett explained that if the Board would like this to be more defensible then it should be in rule that persons who fail to make appropriate identification of properties may be subject to license revocation or suspension.
 - **Carlton/Jemison: Moved and seconded to approve consent agreement**
 - **In Favor: Adams, Carlton, Jemison, Lajoie, Neavyn**
 - **Against: Ianni**

10. Consideration of Consent Agreement with Osmose Utilities Services, Inc

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 a vehicle accident resulting in the jettisoning of canisters of restricted use pesticides that were left unattended subsequently leading to an acute human exposure at a later date.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed Review and/or Approve

- Peacock explained that an employee was traveling from out of state and had a car accident which resulted in 541 canisters of restricted use pesticides being dislodged from the vehicle onto the side of the highway. Those remained on the side of the road for several months until an employee from Maine DOT was doing mechanical vegetation control and several of the canisters were punctured by the mowing machine. The employee experienced an acute response to the pesticide and was treated by emergency medical personnel on site. DOT contacted Osmose Utilities Services to recover the rest of the canisters. They came and collected what they found. When DOT went out the next day more canisters were found. Osmose Utilities Services purchased a metal detector to collect the remainder of the canisters.
- There was a discussion about the range of penalties for this incident and about the active ingredient.
 - **Lajoie/Carlton: Moved and seconded to approve**
 - **In Favor: Unanimous**

11. Consideration of Consent Agreement with Cannabis Culture

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 unlicensed applications and improper disposal of pesticides.

Presentation By: Alex Peacock, Manager of Compliance
 Action Needed: Review and/or Approve

- Peacock explained that this consent agreement essentially goes together with the consent agreement detailed in agenda item twelve. The individuals were spraying myclobutanil on the crop, vacuuming the excess off the floor, and dumping it out behind the building. Collected samples were positive for myclobutanil from the crop and from the soil outside of the building. There were other violations also found.
- Jemison noted that myclobutanil is dangerous if combusted and inhaled. He added that it would be great if BPC inspectors could go to multiple sites both medical and adult use and inspect them but understood we were limited by the number of inspectors. Jemison stated that this product was supposed to be medicine for people. He noted that at one point the Department was going to get a joint employee with the Office of Cannabis Policy to help with registration questions and educational training but that did not happen. Jemison asked for an update on where the Department was with that.
- Patterson stated that BPC staff have been offering trainings to the twenty inspectors that OCP currently has. There were about 4,000 facilities that would be susceptible to inspection, but for the BPC to take that on would be nearly impossible unless staff stopped other routine inspections since it would be nearly doubling the existing entities BPC was responsible for pursuing routine enforcement inspections for. There were initial talks with OCP about them helping to support additional staff but for multiple reasons that did not come to fruition.
- Pietroski mentioned that all OCP inspectors just recently received training to get their agricultural basic license and there was a following training in the works to do pesticide inspection training with OCP inspectors.

- There was discussion about the allowance of the payment plan for this consent agreement. Randlett responded payment plans were utilized often in the court system.

12. Consideration of Consent Agreement with Cunningham Cultivation

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 unlicensed applications and improper disposal of pesticides.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

- **Jemison/Carlton: Moved and seconded to approve the consent agreement for both Cannabis Culture and the consent agreement for Cunningham Cultivation**
- **In Favor: Unanimous**

13. Other Old and New Business

- Policy on Clarification of Distribution
- Letter from Zavier Asbridge of IPM Of New Hampshire on the use of neonicotinoids in residential landscapes for invasive species management
- Email and article from Heather Spaulding, Maine Organic Farmer’s and Growers’ Association
- LD 1960: “An Act to Support Farming in Maine by Extending the Deadline for Manufacturers of Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances to Report on Those Products”
- EPA Update: “EPA Completes Scientific Testing of Pesticide Products for PFAS”
- Center for Biological Diversity: PFAS contamination of pesticide products
- Other?

14. Schedule of Future Meetings

- July 21, September 1 and October 13 are the next scheduled Board meeting dates.
- Mark Randlett announced that he would be retiring August 31, 2023.

14. Adjourn

- **Carlton/Jemison: Moved and seconded to adjourn at 11:45 AM**

- **In Favor: Unanimous**



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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control
From: John T. Pietroski | Acting director
Subject: Distribution of Adjuvants Products

July 21, 2023

Summary:

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”(PL 2022 c.673) was approved by the 130th Maine Legislature in 2022. Under this law, adjuvants were added to the definition of pesticides and must be properly registered with BPC. The regular session of the 130th Maine Legislature closed on May 9, 2022. Ninety days from May 9, 2022, was August 8, 2022, which was when the LD became law. Dealers and growers have approached staff regarding the ability to use adjuvant products that were in their possession prior to or after the effective date of August 8, 2022 through the product registration period. Typically, renewal registrations are received by December 31st the year prior, however, the 2023 registration year was postponed to February 28th, 2023 for most products and to March 21, 2023 for those where the company had requested and received written approval for a registration extension.

Previously Purchased Product:

The Board can develop an adjuvant registration implementation plan to allow for the transition of product registrations. Staff propose developing a policy so that adjuvant products can be legally distributed and used within Maine similarly to how pesticides that are no longer registered are allowed for distribution and use by end users in Chapter 20, Section 1(D).

This policy will reduce the burden on dealers that have unsold products and growers that previously relied on these adjuvants to treat their sites effectively. Additionally, it will reduce the amount of waste from these products if they are allowed use on labeled sites. Adjuvant products in this regulatory classification are not required to be registered by EPA as pesticides due to their reduced risk profile. Adjuvants are regulated by EPA and must still meet Federal Food, Drug,

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and Cosmetics Act (FFDCa) requirements for tolerance or tolerance exemption when used on food commodities.

Draft Proposed Policy:

Adjuvant products that were in the possession of dealers, distributors, and end users when PL 2022 c. 673 became effective on August 8, 2022 will be included as “pesticides no longer registered in Maine” under Chapter 20, Section 1(D).

Chapter 20, Section 1. 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.



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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control
From: John Pietroski, Acting Director
Subject: LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

July 21, 2023

Background:

On June 23, 2023, LD 1770 “Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data” was signed by the governor. This resolve directs BPC to conduct rulemaking requiring electronic submission of annual commercial applicator reports and pesticide dealer reports. The Board is also obligated to submit a report to the legislature by March 2024 that reports on the progress made on the implementation of this resolve.

L.D. 1770 Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

Sec. 1. Board of Pesticides Control; pesticides sales and use data. Resolved: That, pursuant to the Maine Revised Statutes, Title 22, section 1471-M, subsection 2, paragraph D, the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall adopt any rules necessary to implement the transition from paper to electronic format of reports required to be submitted to the board as required by Title 22, section 1471-G. The board shall implement a system of electronic data collection that is efficient for those required to submit reports to the board under Title 22, section 1471-G and useful to the board and members of the public. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Report. Resolved: That, no later than March 1, 2024, the director of the Board of Pesticides Control within the Department of Agriculture, Conservation and Forestry shall submit a report regarding rulemaking and implementation of electronic reporting under section 1 to the Joint Standing Committee on Agriculture, Conservation and Forestry,

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which may report out a bill to the Second Regular Session of the 131st Legislature based on the report.

Below are considerations that staff have identified to transition requiring electronic reports.

Software Changes

Currently, BPC has the capacity to electronically collect annual summary report information from commercial applicators. Commercial applicators enter their summarized information into the Maine Pesticide Enforcement, Registration and Licensing Software (MEPERLS) on an annual basis as part of renewing their license. Renewal of licenses requires submission of this data; data may be entered electronically or paper copies may be sent. Information currently collected electronically for commercial applicator use includes: pesticide trade name, EPA registration number, total gallons/pounds of undiluted formulation, crop site, and total area treated. Dealers of restricted use, and general use pesticides must also submit summaries of pesticides sold annually. Within BPC dealer reports are categorized and compiled as General Use Pesticide Dealers (GUP) and Restricted Use Pesticide Dealers (RUP). The MePERLS system is also currently programmed to allow for GUPs to enter their sales data electronically. Currently, RUP sales data can be uploaded as a static document and is collated on an Excel spreadsheet when temporary staff time can be allocated to the task.

To implement this new law, the Board may want to consider what records applicators must keep for adjuvants. When adjuvants were classified as pesticides in 2022 with the passing of LD 2019 all regulations relevant to pesticides became applicable to adjuvant products. Currently in MePERLS, EPA registration number entry auto fills active ingredients and product name and allows the system to flag for unregistered pesticides and other errors. FIFRA 25(b) minimum risk products do not have EPA registration numbers and are entered by selecting a radio button for product type and manually entering data. Given that adjuvants are not registered by EPA, adjuvants also do not have EPA registration numbers. New functionality will need to be developed in MePERLS to capture adjuvant product use summaries.

Potential Rulemaking

The Board may need to engage in rulemaking to implement LD 1770 in Chapter 50: Recordkeeping & Reporting. The Board may want to consider:

1. Adding language that makes reports submitted electronically through a portal
2. Timeline for implementation and start year that electronic reports will be required; and
3. Additional language for the transition from paper to electronic reports, especially for individuals that do not have computer or broadband access.

Notice to constituents

In accordance with the Administrative Procedures Act (M.R.S.A 5 §8001) constituents will be informed of rulemaking once it is officially initiated. Additionally, public comment regarding the rule change will also be collected and integrated into rule if possible. However, given that not all applicators and dealers are engaged with the BPC rulemaking process, additional notifications will need to be sent to commercial applicators, spray contracting firms, general use pesticide dealers, and restricted use pesticide dealers to ensure transition compliance. These notifications will take place in the form of direct and GovDelivery emails, presentations at recertification meetings, reminders at Board meetings regarding implementation, etc.

Reminders for annual summary reports are typically sent out in the fall, and this information will be attached to any licensing renewal reminders that staff submit to these parties.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

—
H.P. 1134 - L.D. 1770**Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data**

Sec. 1. Board of Pesticides Control; pesticides sales and use data. Resolved: That, pursuant to the Maine Revised Statutes, Title 22, section 1471-M, subsection 2, paragraph D, the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall adopt any rules necessary to implement the transition from paper to electronic format of reports required to be submitted to the board as required by Title 22, section 1471-G. The board shall implement a system of electronic data collection that is efficient for those required to submit reports to the board under Title 22, section 1471-G and useful to the board and members of the public. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Report. Resolved: That, no later than March 1, 2024, the director of the Board of Pesticides Control within the Department of Agriculture, Conservation and Forestry shall submit a report regarding rulemaking and implementation of electronic reporting under section 1 to the Joint Standing Committee on Agriculture, Conservation and Forestry, which may report out a bill to the Second Regular Session of the 131st Legislature based on the report.



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

To: Board Members
 From: Staff
 Re: Review of Rulemaking Concepts
 Date: July 21, 2023

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023 Board meeting, the Board discussed several rulemaking topics that had been identified by staff. At the March 25, 2023 Board meeting, the Board narrowed the rulemaking initiatives to more urgent items that needed to be addressed in rule versus items that did not need to be addressed or could become policy. At the April 7, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts, but decided to postpone rulemaking until the legislature had adjourned given that some additional rulemaking initiatives were likely to pass.

Staff have compiled the Board’s responses to rulemaking concepts that had interest in moving forward. The Board identified 4 items of interest, which must be voted on to move forward in initiating rulemaking. The potential rulemaking are categorized by the following criteria:

Required C&T Housekeeping Incorporate Policy	Required by federal rule change Fairly minor and should require very little discussion. Will require some discussion on whether and how to incorporate the policy in rule but the objective is already written in policy.
Requires Discussion	Questions have been raised and a decision needs to made on whether the rule needs to be amended. These will probably take the most time.

The fourth column designates type of rulemaking (see Title 7 Section 610(6)):

MEGAN PATTERSON, DIRECTOR
 90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
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RT
MS

Routine Technical
Major Substantive

The first column corresponds to the attached reference documents.

The second column details the actionable item.

The third column provides a purpose for the rulemaking.

The fourth column provides notes on the Board's discussions at the February 24, 2023, March 15, 2023 and April 7, 2023 Board meeting

The fifth column provides a detailed description of the potential rulemaking concept.

A complete list of possible rulemaking chapters to include 20, 31, 32, 41.

2	Chapter 20, Section 7(A)	<p>The Board expressed interest in incorporating “Chapter 20: Positive Identification of Proper Treatment Site by Commercial Applicators” policy into rule.</p> <p>The Board may want to consider also adding additional methods for proper site identification while reviewing this policy or a clause for submission of methods.</p>	Incorporating Policy	The Board has discussed this policy, must vote to initiate rulemaking	RT
4	Chapter 31(2)(VII)(c)(1)(2)(3) and Chapter 31(3)(VII)(c)(1)(2)(3)	<p>Staff have identified issues with 7C category licensure. See memo “Revisions of 7C categories to reflect licensure”.</p> <p>The Board may want to consider changing these categories by combing all categories to 7C: Biocide and Disinfectants</p> <p>Currently, there is confusion regarding which certification category is needed for commercial application of disinfectants. If these sections are changed, competency standards should also change to reflect categories.</p>	Housekeeping	The Board must vote to initiate rulemaking	RT
7	Chapter 32, section 2 (A)(1)	<p>This was identified when staff revised the state plan.</p> <p>Incorporate by reference 40 CFR § 171.201 requirements for noncertified applicators and their supervision by certified applicators.</p>	Required C&T	The Board must vote to initiate rulemaking	RT
9	Chapter 41, Section 5	A Board member expressed interest in updating and modernizing Chapter 41, Section 5, which addresses plant incorporated protectants. Staff need additional guidance on concepts the Board might want addressed in this section.	Requires Discussion	Staff have incorporated edits from April 7, 2023 meeting, the Board must vote to initiate rulemaking	MS

TIMELINE FOR RULEMAKING

RT Rulemaking Timeline for July 2023				
Step	Timeline	Date		Notes
Send Forms to Initiate APA Process	Monday prior to week of posting	7/24/2023		For initiating rulemaking after 7/21 board meeting
Posting Week		8/2/2023		
Hearing	17 - 24 days after posting	8/19/2023	8/26/2023	
	2 days after submitting notice to SOS	8/4/2023		
Last Day to Receive Written Comments	10 days after public hearing	8/29/2023	9/5/2023	
Board Reviews Comments	Once comments from public hearing are summarized and compiled	9/5/2023	10/13/2023	Next scheduled board meeting is 10/13/2023
AAG reviews, signs, submits for final adoption	150 days from comment deadline (within 90 for emergency)	1/26/2024		

MS Rulemaking Timeline for July 2023

Step	Timeline	Date		Notes
Send Forms to Initiate APA Process	Monday prior to week of posting	7/24/2023		For initiating rulemaking after 7/21 board meeting
Posting Week		8/2/2023		
Hearing	17 - 24 days after posting	8/19/2023	8/26/2023	
	2 days after submitting notice to SOS	8/4/2023		
Last Day to Receive Written Comments	10 days after public hearing	8/29/2023	9/5/2023	
Board Reviews Comments	Once comments from public hearing are summarized and compiled	9/5/2023	10/13/2023	Next scheduled board meeting is 10/13/2023
Provisional Adoption -- must be voted on by the Board	4 documents approved within 120 days of comment deadline	12/27/2023		
Commissioner signature	By beginning of January	1/1/2024		
Sent to AAG for approval and SOS	Within 150 days of comment deadline	1/26/2024		

20 copies sent to Legislative Council, 1 copy to Executive Director, and E-file with legislature	Second Friday of January		1/12/2024	
Resolve written, Hearing in Committee, Vote by Legislature, Sent to Governor				
Formal Adoption of Rules	Within 60 days after effective date of legislation approving rule (stamped date)	Depends on when committee timeline		
Final Adoption	Rule becomes effective 30 days after filing or later as specified	See above (likely into spring/summer)		

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:

2

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.

STATUTORY AUTHORITY:

Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

July 6, 1979

AMENDMENT EFFECTIVE:

April 1, 1985

January 1, 1988

May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65

September 13, 2012 – Section 6(E) and references added, filing 2012-270

(Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version
September 13, 2012 – Section 6(E) and references added, filing 2012-270
(Emergency – expires in 90 days unless proposed and adopted in the meantime
as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008
version
June 12, 2013 – Emergency major substantive filing 2013-134

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

September 11, 2014 – filing 2014-163 (Final adoption, major substantive)

December 9, 2014 – Section 7 added, filing 2014-279

May 16, 2022 – filing 2022-085

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

SUMMARY: These regulations describe the requirements for certification and licensing of commercial applicators.

1. Individual Certification and Company/Agency Licensing Requirements

- A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
- B. All commercial applicators responsible for the supervision of noncertified applicators of restricted use pesticides must ensure compliance with training, record keeping, and all other requirements as indicated in 40 CFR 171.201(c) "Supervision of Noncertified Applicators" (2017).
- C. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- D. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.

E. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

F. **Exemptions**

- I. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- II. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – *Rules Relating to Public Swimming Pools and Spas*, administered by the Maine Department of Health and Human Services, Division of Environmental Health..
- III. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- VI. Adults applying repellents to children with the consent of parents/guardians.
- VII. Persons installing antimicrobial metal hardware.

2. **Categories of Commercial Applicators**

A. All commercial applicators shall be categorized according to the type of work performed as outlined below:

I. **Agricultural Animal and Plant Pest Control**

- a. **Agricultural Animal** - This subcategory includes commercial applicators using or supervising the use of pesticides on animals and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire as pesticide applicators are included in this subcategory; however, those persons applying pesticides as drugs or medication during the course of their normal practice are not included.
- b. **Agricultural Plant** - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of crops including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.

Option I - Limited Commercial Blueberry - This option includes commercial applicators using or supervising the use of pesticides in the production of blueberries only.

Option II - Chemigation - This option includes commercial applicators using or supervising the use of pesticides applied through irrigation equipment in the production of crops.

Option III - Agricultural Soil Fumigation - This option includes commercial applicators using or supervising the use of fumigant pesticides in the production of crops.

Option IV - Post Harvest Treatment - This option includes commercial applicators using or supervising the use of pesticides in the post harvest treatment of food crops.

II. **Forest Pest Management**

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, Christmas trees, and forest seed producing areas.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of outdoor ornamental trees, shrubs and flowers.
- b. **Turf** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of turf, such as at turf farms, golf courses, parks, cemeteries, athletic fields and lawns.
- c. **Indoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of live plants in shopping malls, businesses, residences and institutions.

IV. **Seed Treatment**

This category includes commercial applicators using or supervising the use of pesticides on seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - This subcategory includes commercial applicators using or supervising the use of pesticides applied directly to surface water, including but not limited to outdoor application to public drinking water supplies, golf course ponds, rivers, streams and wetlands.

Excluding applicators engaged in public health related activities included in categories VII(e) and VIII below.

- b. **Sewer Root Control** - This subcategory includes commercial applicators using or supervising the use of pesticides applied to sewers to control root growth in sewer pipes.

VI. **Vegetation Management**

- a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside and railroad rights-of-way.
- b. **General Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation (including invasive plants) on sites not included in category VI a including, but not limited to, municipal and other publicly owned properties, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots, sidewalks, and trails.

VII. **Industrial, Institutional, Structural and Health Related Pest Control**

- a. **General** - This subcategory includes commercial applicators using or supervising the use of pesticides in, on or around human dwellings, office buildings, institutions such as schools and hospitals, stores, restaurants, industrial establishments (other than in Category 6) including factories, warehouses, food processing plants, food or feed transportation facilities and other structures, vehicles, railroad cars, ships, aircraft and adjacent areas; and for the protection of stored, processed or manufactured products. This subcategory also includes commercial applicators using or supervising the use of pesticides to control rodents on refuse areas and to control other pests, including but not limited to birds and mammals.
- b. **Fumigation** - This subcategory includes commercial applicators using or supervising the use of fumigants or fumigation techniques in any type of structure or transportation device.
- c. **Disinfectant and Biocide** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat mold or microbial growth problems, to treat water in manufacturing, industrial cooling towers, public drinking water treatment plants, sewers, and air conditioning systems, and in swimming pools and spas.
 - 1. ~~**Disinfectant and Biocide Treatments**~~—This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in manufacturing, industrial cooling towers, public drinking water treatment plants, sewers, and air conditioning systems.

- 2. ~~**Swimming Pool & Spa**~~—This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in swimming pools and spas.
 - 3. ~~**Mold Remediation**~~—This subcategory includes commercial applicators using or supervising the use of pesticides to treat mold or microbial growth problems.
- d. **Wood Preserving** - This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to treat lumber, poles, railroad ties and other types of wooden structures including bridges, shops and homes. It also includes commercial applicators applying general use pesticides for remedial treatment to utility poles.
 - e. **Biting Fly & other Arthropod Vectors** - This subcategory includes commercial applicators and non-public health governmental officials using or supervising the use of pesticides in management and control of biting flies & other arthropod vectors of public health and public nuisance importance including, but not limited to, ticks, mosquitoes, black flies, midges, and members of the horsefly family.
 - f. **Termite Pests** - This subcategory includes commercial applicators using or supervising the use of pesticides to control termites.

VIII. **Public Health Pest Control**

- a. **Biting Fly Pests** - This subcategory includes governmental officials using pesticides in management and control of potential disease vectors or other pests having medical and public health importance including, but not limited to, mosquitoes, black flies, midges, and members of the horsefly family.
- b. **Other Pests** - This subcategory includes governmental officials using pesticides in programs for controlling other pests of concern to public health including, but not limited to, ticks and birds and mammal vectors of human disease.

IX. **Regulatory Pest Control**

This category includes governmental employees using pesticides in the control of pests regulated by the U.S. Animal and Plant Health Inspection Service or some other governmental agency.

X. **Demonstration and Research Pest Control**

This category includes all individuals who (1) demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration, (2) conduct field research with pesticides, and in doing so, use or supervise the use of pesticides. Individuals who conduct only laboratory-type research are not included. Applicants seeking certification in this category must

also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

XI. **Aerial Pest Control**

This category includes commercial applicators, including pilots and co-pilots, applying or supervising the application of pesticides by means of any aircraft. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

3. **Competency Standards for Certification of Commercial Applicators**

- A. Applicants seeking commercial certification must establish competency in the general principles of safe pest control by demonstrating knowledge of basic subjects including, but not limited to, pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques and applicable laws and regulations. (Core Exam).
- B. Applicants seeking commercial certification must demonstrate competency in each applicable category or subcategory. (Category Exam). Competency in the applicable category or subcategory shall be established as follows:

I. **Agricultural Animal and Plant Pest Control**

- a. **Agricultural Animals.** Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.
- b. **Agricultural Plant.** Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I - IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

II. **Forest Pest Management**

Applicants seeking certification in the category of Forest Pest Management as described in Section 2(A)(II) must demonstrate practical knowledge of forest vegetation management, forest tree biology and associated pests. Such required knowledge shall include population dynamics of pest species, pesticide-organism interactions, integration of pesticide use with other pest control methods, environmental contamination, pesticide effects on non-target organisms, and use of specialized equipment. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals.** Applicants seeking certification in the Outdoor Ornamental subcategory as defined in Section 2(A)(III)(a) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of trees, shrubs and floral plantings. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Turf.** Applicants seeking certification in the Turf subcategory as described in Section 2(A)(III)(b) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of turf. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- c. **Indoor Ornamentals.** Applicants seeking certification in the Indoor Ornamental subcategory described in Section 2(A)(III)(c) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of indoor ornamental plantings. Such knowledge shall include pest recognition, proper pesticide selection, undue pesticide persistence, and application methods with particular reference to techniques used in proximity to human presence.

IV. **Seed Treatment**

Applicants seeking certification in the category of Seed Treatment as described in Section 2(A)(IV) must demonstrate practical knowledge of seed types and problems requiring chemical treatment. Such knowledge shall include seed coloring agents, carriers and binders which may affect germination, hazards associated with handling, sorting, and mixing in the treatment process, hazards of introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - Applicants seeking certification in the subcategory of General Aquatic as described in Section 2(A)(V)(a) must demonstrate practical knowledge of proper methods of aquatic pesticide application, application to limited area, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include basic factors contributing to the development of nuisance aquatic plant growth such as algal blooms, understanding of various water use situations and potential downstream effects from pesticide use, and potential effects of various aquatic pesticides on plants, fish, birds, insects and other organisms associated with the aquatic environment. Also required shall be an understanding of the Department of Environmental Protection laws and regulations pertaining to aquatic discharges and aquatic weed control and a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Sewer Root Control** - Applicants seeking certification in the subcategory of Sewer Root Control as described in Section 2(A)(V)(b) must demonstrate practical knowledge of proper methods of sewer root control pesticide application, application to pipes, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include potential effects on water treatment plants, movement of pesticides into off target pipes or buildings and the hazards of sewer gases.

VI. **Vegetation Management**

Applicants seeking certification in the subcategories under Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of herbicides, and reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of spraying on adjacent public and private properties and activities, and effects of spraying on fish and wildlife species and

their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

VII. Industrial, Institutional, Structural and Health Related Pest

- a. **General.** Applicants seeking certification in the subcategory of General Pest Control as described in Section 2(A)(VII)(a) must demonstrate a practical knowledge of a wide variety of pests and methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.
- b. **Fumigation.** Applicants seeking certification in the subcategory Fumigation as described in Section 2(A)(VII)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees and customers.
- c. **Disinfectant and Biocide.** Applicants seeking certification in the subcategory of Disinfectant, Biocide, Pools and Spas, Mold Remediation, and Water Damage Restoration as described in Section 2(A)(VII)(c) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, drinking water treatment plant designs, cooling water system designs, mold and problematic microbial organisms, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
 - ~~1. **Disinfectant and Biocide Treatments.** Applicants seeking certification in the subcategory of Disinfectant and Biocide Treatments as described in Section 2(A)(VII)(c)(1) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant designs, cooling water system designs, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.~~
 - ~~2. **Swimming Pool & Spa.** Applicants seeking certification in the subcategory of Swimming Pool & Spa as described in Section 2(A)(VII)(c)(2) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.~~

3. **Mold Remediation.** Applicants seeking certification in the subcategory of Mold Remediation as described in Section 2(A)(VII)(c)(3) must demonstrate practical knowledge of mold and problematic microbial organisms, their life cycles, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
- d. **Wood Preserving.** Applicants seeking certification in the Wood Preserving Subcategory described in Section 2(A)(VII)(d) must demonstrate practical knowledge in wood destroying organisms and their life cycles, nonchemical control methods, pesticides appropriate for wood preservation, hazards associated with their use, proper handling of the finished product, proper disposal of waste preservatives, and proper application techniques to assure adequate control while minimizing exposure to humans, livestock and the environment.
- e. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest control as described in Section 2(A)(VII)(e) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- f. **Termite Pests.** Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

VIII. Public Health Pest Control

- a. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest Control as described in Section 2(A)(VIII)(a) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the

importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

- b. **Other Pests.** Applicants seeking certification in the subcategory of Other Pest Control as described in Section 2(A)(VIII)(b) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

IX. **Regulatory Pest Control**

Applicants seeking certification in the category of Regulatory Pest Control as described in Section 2(A)(IX) must demonstrate practical knowledge of regulated pests and applicable laws relating to quarantine and other regulations of pests. Such knowledge shall also include environmental impact of pesticide use in eradication and suppression programs, and factors influencing introduction, spread, and population dynamics of relevant pests. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

X. **Demonstration and Research Pest Control**

Applicants seeking certification in the category of Demonstration and Research Pest Control as described in Section 2(A)(X) must demonstrate practical knowledge in the broad spectrum of activities involved in advising other applicators and the public as to the safe and effective use of pesticides. Persons involved specifically in demonstration activities will be required to demonstrate knowledge of pesticide-organism interactions, the importance of integrating chemical and non-chemical control methods, and a grasp of the pests, life cycles and problems appropriate to the particular demonstration situation. Field researchers will be required to demonstrate general knowledge of pesticides and pesticide safety, as well as a familiarity with the specific standards of this Section which apply to their particular areas of experimentation. All individuals certified in this category must also be certified in one or more of the previous categories or subcategories which represent at least 80% of their practice. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

XI. **Aerial Pest Control**

Applicants seeking certification in the category of Aerial Pest Control as described in Section 2(A)(XI) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Applicants must also demonstrate competency in the specific category or subcategory in which applications will be made, as described in paragraphs I, II, VI and VIII herein. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

4. **Competency Standards for Certification of Commercial Applicator/Master**

- A. **Regulations Exam.** An applicant seeking certification as a commercial applicator/master must successfully complete a closed book exam on the appropriate chapters of the Board's regulations. The passing grade shall be 80%. An applicant must successfully complete the regulations exam before being allowed to proceed to the master exam. The staff may waive the requirements for the closed book regulation exam if it determines that a pest management emergency exists necessitating the issuance of a nonresident license pursuant to Section 6 B. of this chapter, provided that the staff verbally reviews the pertinent regulations with the applicant prior to issuing a nonresident license.
- B. **Master Exam.** An applicant seeking certification as a commercial applicator/master must also demonstrate practical knowledge in ecological and environmental concerns, pesticide container and rinsate disposal, spill and accident mitigation, pesticide storage and on site security, employee safety and training, potential chronic effects of exposure to pesticides, pesticide registration and special review, the potential for groundwater contamination, principles of pesticide drift and measures to reduce drift, protection of public health, minimizing public exposure and use of non pesticide control methods. In addition, applicant must demonstrate the ability to interact with a concerned public.

5. **Certification Procedures for Commercial Applicators**

- A. **Initial Certification.** Individuals attempting to certify as a commercial applicator must be at least 18 years of age.
 - I. **Application for Exams.** Individuals applying to take exams must submit a completed application and associated fees. All fees are waived for governmental employees.
 - a. Information shall include name, home address, company address, name and telephone number of supervisor and categories for which certification is desired.

- b. A non-refundable fee of \$10.00 for each core, category or subcategory exam shall accompany the application.
- c. Study materials for other than the regulations exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
- d. A non-refundable fee of \$10.00 for the regulations exam and \$40.00 for the Master exam shall accompany the application for Master exams. Study material for the regulations exam will be sent to the applicant upon receipt of their application and the required fees.

II. **Appointment for Exams**

- a. Exams will be scheduled by Board staff. It is the responsibility of the applicant to reschedule if necessary.
- b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exams on the scheduled date at least 24 hours in advance of the scheduled exam. Applicants who cancel their exam appointment two times in a row shall also forfeit their exam fees. Re-application shall require an additional \$15.00 fee.
- c. Exams will be available year-round on an appointment basis at the Board's office in Augusta.
- d. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.

III. **Exams**

- a. Applicants † shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.
- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.

IV. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.

- a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.

- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

V. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- b. An applicant who fails a category exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- c. An applicant who passes the core and one category exam shall be considered eligible for operator level licensing in that particular category so long as that person will be working under the supervision of a Master applicator. If at a later date the applicant wishes to add another category, only the appropriate category exam shall be required.
- d. An applicant who fails a master exam must re-apply and pay all required fees and may not retake the examination prior to 6 days after the date of such failed examination.
- e. Any applicant must pass both the core and at least one category exam by December 31 of the third year from the date on which the first exam was passed.
- f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.

VI. **Expiration.** Certification under this Section will expire on December 31st of the third year after the date of successful completion of required exams and on December 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

VII. An applicant's original certification period shall not be extended due to the applicant qualifying for another category or upgrading to the master level.

B. Recertification of Applicators

I. Persons with current valid certification may renew that certification by either providing documentation from a substantially equivalent professional certification program approved by the board or by accumulating recertification credits during the certification period described in Section 5(A)VI according to the following schedule:

a. **Master level** - 9 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.

b. **Operator level** - 6 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.

II. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.

a. Board staff will review program agendas and monitor programs as time permits.

III. Credit will be allowed for topics including, but not limited to:

a. Applicable laws and regulations.

b. Environmental hazards.

c. Calibration and new application techniques.

d. Label review.

e. Applicator safety.

f. Storage and disposal.

g. Pest identification and control.

h. Integrated pest management.

IV. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting with details of the agenda. Board staff will review program agendas and assign credit values.

a. One credit will be assigned for each 1 hour of presentation on appropriate topics.

- b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
 - c. An individual who organizes a meeting shall be required to maintain a sign up sheet and supervise the signing of the sheet by all applicators attending the program. That individual shall submit the signup sheet to the Board at the same time the verification attendance forms are collected and submitted to the Board.
- V. For in state programs, applicants must submit verification of attendance at approved programs to the Board. For out of state programs, applicators must submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
- VI. A person who fails to accumulate the necessary credits during their first three year certification period will have to retake and pass all exam(s) required for initial certification. If a person fails to accumulate the necessary credits again that person must retake and pass all exam(s) required for initial certification and within one year thereafter, obtain the balance of the recertification credits which that person failed to accumulate during the previous certification period. If that person does not obtain the balance of credits needed, the Board will not renew their license until the make- up credits are accrued.
- VII. Applicants must attend the entire approved program(s) for which recertification credit is sought. No other person may complete or sign a verification form on another applicator's behalf. Any form that is completed or signed by a person other than the applicator will be deemed a fraudulent report and will not be approved by the Board for recertification credit(s). Any credit(s) approved by the Board pursuant to an attendance verification form which is subsequently determined by the Board to have been completed or signed by a person other than the applicator shall be void and may not be counted towards the applicator's recertification requirements; and any recertification issued on the basis of such credits shall be void.

6. Licensing

- A. All Commercial Applicators required to be certified under this chapter and state pesticide law shall be licensed before using or supervising the use of pesticides as described in Section 1(A).
- B. **Nonresident licenses.** When the staff determines that a pest management emergency exists which necessitates the use of aerial application and for which there are not sufficient qualified Maine licensees, it may issue a license without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Nonresident licenses issued pursuant to this section are effective until December 31 of the year in which they are issued.
- C. **Application.** Application for a commercial applicator license shall be on forms provided by the Board.

- I. The completed application must include the name of the company or agency employing the applicant.
 - II. Unless the applicant is the owner of a company, the completed application must be signed by both the applicant and that person's supervisor to verify the applicant is an employee of the company/agency.
- D. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - \$105.00 per person.
- E. Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, *Certification & Licensing Provisions/Spray Contracting Firms* which requires an additional Spray Contracting Firm License.
- F. **Insurance.** Commercial applicators who spray for hire (custom applicators) shall be required to have liability insurance in force at any time they make a pesticide application.
- I. Applicators shall submit a completed and signed form provided by the Board at the time they apply for their license which attests that they will have the required amounts of insurance coverage in effect when they make pesticide treatments. The information submitted on the form must be true and correct.
 - II. Insurance coverage must meet or exceed the following minimum levels of liability:
 - a. **Ground applicators**

Public liability	\$100,000 each person
	\$300,000 each occurrence
Property damage	\$100,000 each occurrence
 - b. **Aircraft applicators**

Public liability	\$100,000 each person
	\$300,000 each occurrence
Property damage	\$100,000 each occurrence
- G. **Reports.** Annual Summary Reports described in Chapter 50, Section 2(A) must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license is temporarily suspended until the proper report is received or until a decision is rendered at a formal hearing as described in 22 MRSA §1471-D (7).

H. **Expiration**

- I. All licenses will expire at the end of the certification period as determined in Section 5(A)VI or when an individual licensee terminates employment with the company/agency with which the individual's license is affiliated.
- II. The licensee or a company/agency representative shall notify the Board in writing within 10 days after a licensee is terminated from employment.
- III. Also, all licenses within a company/agency are suspended if the licensed Master is terminated from employment or dies.

I. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

J. **Credentials Contact.** Licenses issued under this rule will include the following information:

- I. Full name of applicator
 - II. License number
 - III. Categories
 - IV. Expiration date
 - V. Maine statute under which license is issued.
-

STATUTORY AUTHORITY: 22 M.R.S.A., Section 1471-D

EFFECTIVE DATE:

January 1, 1983 (filed with Secretary of State August 13, 1982)

AMENDED:

December 29, 1982

January 1, 1984

January 1, 1984 - Section 7

May 20, 1984 - Section 6

May 13, 1985 - Section 5

Emergency amendment effective April 18, 1986 - Section 6

August 3, 1986 - Section 6

November 30, 1986 - Section 3

May 23, 1987 - Section 1

April 27, 1988

April 29, 1990

January 1, 1996 (adopted by Board October 7, 1994 - see Section 8 for transition dates)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

March 4, 2007 – filing 2007-69

July 2, 2009 – filing 2009-318 (EMERGENCY, later reverted to pre-emergency status)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – filing 2014-280

September 23, 2015 – filing 2015-168

July 23, 2019 – filing 2019-131

SUMMARY: These regulations describe the requirements for certification and licensing of private applicators.

1. Competency Standards for Certification - Private Applicator

- A. No person shall be certified as a private applicator unless he has fulfilled requirements demonstrating his knowledge of basic subjects including pesticide label comprehension, ability to read and understand pesticide labeling, safety, environmental concerns, stewardship, pest organisms, pesticides, equipment, application techniques, responsibilities for supervisors of non-certified applicators, and applicable laws and regulations. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans (core exam).
- B. No person shall be certified as a private applicator unless he has demonstrated knowledge of the general principles of pest control for his major commodity, including specific pests of the crop, their life cycle, and proper timing of control measures to be efficacious (Commodity Exam).

2. Certification Procedures for Private Applicators

A. Initial Certification

- 1. Any person attempting to certify as a private applicator must be at least 18 years of age.
- 2. Any person seeking to be certified as a private applicator must pass a written core exam and a written exam in the area of his primary commodity. Both exams shall be closed book.
- 3. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board.
- 4. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
 - a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.

- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

5. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
- b. An applicant who fails the exam in the area of his primary commodity may not retake the that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
- c. Any applicant must pass both the core and at least one commodity exam within 12 months before qualifying for certification.
- d. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.

6. Certification under this section will expire on October 31st of the third year after the date of successful completion of the exams and on October 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. **Supplemental Certification.** Private applicators who are certified as described in Section 2(A), and intend to conduct soil fumigation, non-soil fumigation or aerial applications must be certified in the appropriate supplemental category. Certification is obtained by passing a written exam with a minimum score of 80.

- 1. Supplemental category exams shall be closed book.
- 2. Supplemental category exams will be available year-round on an appointment basis at the Board's office in Augusta.
- 3. Examination and qualification requirements described in Section 2(A)(4-6) pertain to supplemental certification.

4. **Categories for Supplemental Certification of Private Applicators**

- a. **Soil Fumigation.** This category includes private applicators using or supervising the use of pesticides to fumigate crops in production including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.
- b. **Non-soil Fumigation.** This category includes private applicators using or supervising the use of fumigant pesticides or fumigation techniques in any type of structure or transportation device.
- c. **Aerial.** This category includes private applicators, including pilots and co-pilots, applying pesticides by means of any aircraft.

5. **Competency Standards for Supplemental Certification of Private Applicators**

Applicants seeking supplemental private certification must demonstrate competency in each applicable category (Category Exam). Competency in the applicable category shall be established as follows:

- a. **Soil Fumigation.** Applicants seeking supplemental certification in the category of Soil Fumigation as described in Section 2(B)(4)(a) must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (d) (2017).
- b. **Non-soil Fumigation.** Applicants seeking supplemental certification in the category of Structural Fumigation as described in Section 2(B)(4)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (e) (2017).
- c. **Aerial Pest Control.** Applicants seeking supplemental certification in the category of Aerial Pest Control as described in Section 2(B)(4)(c) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical

dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (f) (2017).

- C. **Requirements for Noncertified Applicators.** A certified applicator directly supervising a noncertified applicator to use restricted use pesticides must follow the provisions in 40 CFR 171.201 (2023).

B.D. Recertification

1. Any person with current valid certification may renew that certification by accumulating 6 recertification credits during the certification period described in Section 2(A)6.
2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
3. Credit will be allowed for topics including, but not limited to:
 - a. Applicable laws and regulations.
 - b. Environmental hazards.
 - c. Calibration and new application techniques.
 - d. Label review.
 - e. Applicator safety.
 - f. Storage and disposal.
 - g. Pest identification and control.
 - h. Integrated pest management.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.

- a. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
 - b. An individual conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
5. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
 6. A person who fails to accumulate the necessary credits will have to re-apply to take the exams required for initial certification.

3. Licensing

- A. **Application.** Application for a private applicator license, shall be on forms provided by the Board. Information shall include name; Social Security number; mailing address; farm name, location and telephone number; and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a private applicator license - \$15.00 per person.
 2. For replacement or alteration - \$5.00.
- C. **Expiration.** Private applicator licenses are issued on a three-year period and will expire on October 31st of the third year. Any person who has accumulated the required number of recertification credits must apply for license renewal within one year of the expiration date of the license or the recertification credits are forfeited and that person must retake and pass both the core and commodity exams to again be eligible for licensing.
- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

E. **License Issued.** Licenses issued under this rule will include the following information:

- I. Full name of applicator
- II. License number
- III. Commodities and categories
- IV. Expiration date
- IV. Maine statute under which license is issued

STATUTORY AUTHORITY: 22 M.R.S. §1471-D

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

December 6, 1987

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

August 25, 1997 – fees

January 4, 2005 – filing 2004-605, Section 3.C.

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – Section 2(A)(4)(a, b), filing 2014-281

July 23, 2019 – filing 2019-132

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; (5) plant-incorporated protectants; (6) neonicotinoids (dinotefuran, clothianidin, imidacloprid, thiamethoxam); and (7) chlorpyrifos (Dursban, Lorsban).

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.

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- 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. If refuge is required, total acres planted as refuge and seeding rate; and
- ~~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~~
- ed. 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 available on-line, pass an exam, and acquire an appropriate 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~~ plant-incorporated protectant corn growers whose corn crops are or will be located within 500 feet of a prospective ~~Bt corn~~ plant-incorporated protectant planting site can request that the ~~Bt corn~~ plant-incorporated protectant grower protect the non-~~Bt corn~~ plant-incorporated protectant crop from pollen drift.
 - i. the request must be made prior to planting of the ~~Bt corn~~ plant-incorporated protectant crop;
 - ii. the request must identify the non-~~Bt corn~~ plant-incorporated protectant crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. If a refuge is required, the ~~Bt corn~~ plant-incorporated protectant grower must plant ~~any~~ refuge required by the ~~Bt corn~~ plant-incorporated protectant grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-~~Bt corn~~ plant-incorporated protectant crop; or
 - 2. if no refuge is required, the ~~Bt corn~~ plant-incorporated protectant grower shall maintain at least a 300-foot ~~Bt~~ plant-incorporated protectant ~~corn~~-free buffer to non-~~Bt~~ plant-incorporated protectant crops.
 - d. ~~Bt corn~~ plant-incorporated protectant 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~~ plant-incorporated protectant 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 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

September 20, 2022 – filing 2022-181

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Starbucks
38 Bangor Mall Road
Bangor, ME 04401

Date of Incident(s): July 23, 2020

Background Narrative: On July 27, 2020, the BPC was contacted by a member of the public health inspection team to report an incident where a “bug bomb” had been used inside a Starbucks café that set off the fire alarm and triggered a response by the Bangor Fire Department. The resulting inspection revealed that the Starbucks’ manager, Bianca Godfrey, had released one canister of Raid Max No Mess Dry Fogger, EPA Reg. No. 4822-601, after the café had closed on July 23, 2020, to control a fruit fly infestation. Shortly after releasing the fogger a repairman arrived to work inside the café. Ms. Godfrey opened the building, removed the fogger and attempted to air out the premises which caused the fire alarm to sound.

Summary of Violations: Any person making a pesticide application that is a custom application, including any application to a food establishment, as defined under 22 M.R.S. § 1471-C, must either be a certified commercial applicator or be working under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D.

Raid Max No Mess Dry Fogger bug bombs label states “Do not re-enter for four (4) hours after application.” 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) prohibit the use of any pesticide in manner inconsistent with its label.

Rationale for Settlement: No employees of the Starbucks café are licensed pesticide applicators with the BPC. The product used has a labeled 4-hour re-entry interval that was not followed by Ms. Godfrey. That Bianca Godfrey acted in good faith in attempting to address the ongoing fruit fly infestation and cooperated fully with the Board investigation.

Attachments: Proposed Consent Agreement

JUN 12 2023

CK Amt: 500.00
CK date: 3-25-23
#: 455

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

In the Matter of:
Starbucks
38 Bangor Mall Road
Bangor, Maine 04401

) ADMINISTRATIVE CONSENT AGREEMENT
) AND
) FINDINGS OF FACT
)

This Agreement by and between Starbucks (hereinafter called the "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 develops and manages coffee shops, including in the Bangor area.
- 2) That on July 27, 2020, the City of Bangor Building Code Enforcement Officer, Greg Higgins, notified Public Health Inspector Jennifer Springer of a call he received from the Bangor Fire Department. They were notifying him of a call out to the Company that occurred on July 23, 2020, at 9:17 PM where a bug bomb had set off the fire alarm. Jennifer Springer contacted Maine Board of Pesticides Control.
- 3) That on July 29, 2020, a Board inspector met with Company manager, Bianca Godfrey to document the facts associated with the report directed to the Board as described in paragraph two.
- 4) That during the inspection described in paragraph three, Godfrey reported:
 - a) That the cafe had a severe fruit fly problem. Godfrey stated that a professional pest management company had been there on July 22, 2020. The pest management company treated the drains and walls for fruit flies but had told her they couldn't do anything more about the problem.
 - b) That the severe fruit fly infestation continued following the pest management company's treatment on July 22, 2020.
 - c) That she believed additional steps to control the infestation were necessary due to the continuing pest problem. Consequently, Godfrey purchased a three pack of Raid Max No Mess Dry Fogger bug bombs (EPA Reg. No. 4822-601).
 - d) That on July 23, 2020, after food and utensils were stored safely, and employees had left for the day, she released one bug bomb in the middle of the cafe.
 - e) That as she was leaving, she met a repairman headed into the building to repair grout. Godfrey told him to wait outside. She returned to the building, removing the bug bomb, and then opening the doors to air out the building.
 - f) That while airing the building out, the fire alarms began to sound.
 - g) That she and the repairman waited outside until the fire department to responded to turn off the fire alarms.

- h) That after the fire department left, Godfrey believed it would be safe to reenter the cafe because the fogger had not completely exhausted its contents and the cafe had been aired out. Consequently, she allowed the repairman inside to do the grouting and Godfrey went home.
 - i) That Godfrey disposed of the emptied can at her home.
 - j) That Godfrey requested employees who were scheduled to work the morning of July 24, 2020, to start two hours early to move food and items from the cooler and to clean and sanitize the facility before opening.
- 5) That from the inspection described in paragraphs three and four, the inspector documented the details relating the July 23, 2020, pesticide application involving one Raid Max No Mess Dry Fogger bug bomb, EPA Reg. No. 4822-601, in the Starbucks café on 38 Bangor Mall Road in Bangor, ME.
 - 6) That application of a pesticide inside a cafe constitutes a custom application pursuant to 22 M.R.S. § 1471-C (5) (C).
 - 7) That custom application of a pesticide may only be conducted by persons certified by the Board pursuant to 22 M.R.S. §1471-D.
 - 8) That no one from the Company held a commercial pesticide applicator's license at the time of the application described in paragraphs four and five.
 - 9) That the circumstances described in paragraphs five through eight constitute a violation of 22 M.R.S. §1471-D.
 - 10) The during the inspection described in paragraphs three, four and five, the inspector documented that:
 - a) The repairman entered within the 4-hour window when there is a no re-entry requirement.
 - b) Godfrey believed it was safe because she had aired out the facility.
 - 11) That the Raid Max No Mess Dry Fogger bug bombs label states "Do not re-enter for four (4) hours after application.
 - 12) That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) prohibit the use of any pesticide in manner inconsistent with its label.
 - 13) That the circumstances described in paragraphs ten, eleven and twelve, constitute use of a pesticide inconsistent with the product labeling in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
 - 14) That Bianca Godfrey acted in good faith in attempting to address the ongoing fruit fly infestation and cooperated fully with the Board investigation.
 - 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 cause of action which the Board has against the Company resulting from the violations referred to in paragraphs nine and thirteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$500 (Please make checks payable to Treasurer, State of Maine).

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

STARBUCKS

By: Bianca Godfrey Date: 3/25/23

Type or Print Name: Bianca Godfrey

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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



JANET MILLS
GOVERNOR

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

MEGAN PATTERSON
DIRECTOR

Compliance Verification Statement

12-7-2022

Individual Company or Store Name	Starbucks	Inspection Numbers	<u>220729LRS01</u>
		Inspection Dates	<u>7-29-2022</u>
Address	38 Bangor Mall Road		
Town	Bangor	State	ME Zip 04401

I verify that I have taken steps to correct the violations of:

- **Uncertified/unlicensed commercial pesticide applications.**
- **Failure to use pesticide in a manner consistent with pesticide label.**

Brian Godfrey
Owner or Company Representative Signature

3/25/23
Date:

Bianca Godfrey
Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Amelia and Arthur Bond
The Bond Revocable Trust 6/23/2017
100 Arundel PL
St. Louis, MO 63105

Date of Incident(s): Autumn 2021

Background Narrative: On November 7, 2022, the BPC was contacted by a representative for the homeowner (Lisa Gorman) at 3 Metcalf Rd. in Camden. Mrs. Gorman had observed the decline of oak trees on the property in July of 2022 and had her contracted arborist investigate. Vegetation samples that were collected by the arborist and analyzed were positive for the herbicide Tebuthiuron. On November 8, 2023, a Board representative conducted a site inspection at 3 Metcalf Road and collected 6 soil samples and 2 vegetation samples for analysis. All 8 physical samples were positive for Tebuthiuron. A representative for the Town of Camden was also present at the time of the site inspection and raised concern about the destruction of trees and vegetation within the shoreland zone and possible effects to human health and the environment as the site is adjacent to Camden Harbor and a public park/beach. In December of 2022 the Town of Camden issued a Notice of Violation to the homeowners at 1 Metcalf Rd. (Amelia and Arthur Bond). In a response letter to the Town of Camden, Mrs. Bond's recollection of events is that she purchased a product with the brand name Alligare, in a 4-pound manufacturer's packaging, transported the product from Missouri to Maine and applied it to the base of two oak trees at 3 Metcalf Road that she believed to be dying. Tebuthiuron is the active ingredient in Alligare Tebuthiuron 20P, EPA Reg. No. 81927-41, is available in 4 lb. quantities and is used to control woody vegetation in rangelands.

Summary of Violations: CMR 01-026 Chapter 20 Section 6(D)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.

7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.

Use of a pesticide in a careless, negligent or faulty manner, in violation of 22 M.R.S. § 1471-D (8)(C).

Rationale for Settlement: The Bond's did not have authorization to apply pesticides at 3 Metcalf Road in Camden. Alligare Tebuthiuron 20 P was applied in the vicinity of desirable plant species, in an area of bedrock, and that directly downslope and within thirty (30) feet of the application site there are areas of exposed bedrock, and that this application was in a residential area which are violations of the label. Use of Alligare Tebuthiuron 20 P was conducted in a careless, negligent or faulty manner.

Attachments: Proposed Consent Agreement

JUN 26 2023

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

CK#: 3450
CK AMT: \$4500
Date: 6/14/23

In the Matter of:
Amelia and Arthur Bond
The Bond Revocable Trust 6/23/2017
100 Arundel PL
St. Louis, MO 63105

ADMINISTRATIVE CONSENT
AGREEMENT
AND
FINDINGS OF FACT

This Agreement by and between Amelia and Arthur Bond (hereinafter called the "Bonds") 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 Bonds, through the revocable trust of 2017, are the owners of a residential property in Maine with a physical address of 1 Metcalf Road in Camden Maine.
- 2) That 1 Metcalf Road is directly upslope from a property owned by Lisa Gorman at 3 Metcalf Road in Camden Maine.
- 3) That the ocean is directly downslope from 1 Metcalf Road.
- 4) That Gorman contracts with Bartlett Tree Experts, a full-service arborist company, to care for her trees and shrubs including two large oak trees on Gorman's property.
- 5) That, during July of 2022, Gorman observed symptoms of decline on the two large oak trees on her property and asked Bartlett Tree Experts to assess their condition.
- 6) That, according to Bartlett Tree Experts, a wide variety of trees and shrubs, including the two large oaks, were showing signs of decline in the area generally upslope from the Gorman residence.
- 7) That, based on their analysis, Bartlett Tree Experts arborists suspected herbicides may have been applied.
- 8) That Bartlett Tree Experts arborists collected four (4) foliage samples from four (4) different species of woody species, including oak, maple, blueberry and dogwood.
- 9) That the four (4) foliage samples described in Paragraph Eight were analyzed by the Pacific Agricultural Laboratory in Sherwood, Oregon.
- 10) That all four (4) samples, according to the tests conducted by Pacific Agricultural Laboratory, were positive of the herbicide, Tebuthiuron.
- 11) That on November 8, 2022, a Board representative conducted a site inspection at 3 Metcalf Road and collected six (6) soil samples and two (2) vegetation samples, which include two (2) samples from the base of the two oak trees.
- 12) That the six (6) soil samples were taken from the area on the Gorman property between 1 Metcalf and 3 Metcalf Road, the area of the northern edge of the Gorman property near Camden City Park, and the area adjacent to the high-water mark on the lower edge of the Gorman property.

- 13) That all eight (8) of the samples described in Paragraph Eleven were positive for Tebuthiuron.
- 14) That on December 21, 2022, the Board received a copy of a letter sent to the City of Camden from Attorney Aaron White, representing the Bonds, in which Amelia Bond acknowledges applying an herbicide to the area near the large oak trees on Gorman property during the fall of 2021. According to the letter, to the best of Amelia Bond's recollection, the herbicide applied was under the trade name Alligare.
- 15) That CMR 01-026 Chapter 20 § 6 (D)(2) requires prior authorization to apply pesticides to the property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property, including tenants of rented property.
- 16) That the Bonds did not have authorization to make an herbicide application on the Gorman property.
- 17) That the Board alleges the circumstances described in Paragraphs One (1) through Sixteen (16) constitute a violation of CMR 01-026, Chapter 20, Section 6 (D)(2).
- 18) That 1 and 3 Metcalf Road directly abut the ocean front Camden City Park.
- 19) That the Environmental Protection Agency's Tebuthiuron Registration Eligibility Document and other literature suggest Tebuthiuron is resistant to biological and chemical degradation and that its principal route of dissipation appears to be transport to ground and surface water.
- 20) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminated surface and/or ground water and migrated from the application site to cause plant injury and mortality to a broad range of woody plants across the breadth of the Gorman property.
- 21) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminated the soils in the area of the application site and downslope thereof, in manner that may prevent revegetation of the affected area without remediation.
- 22) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminating any surface and/or ground water could result in migration to marine waters, and that tebuthiuron is toxic to marine plants and plankton.
- 23) That the Board alleges the Alligare 20 P label and open-source literature state that the chemical properties of tebuthiuron present a high risk of surface and ground water contamination. Factors that exacerbate the risk include slope of the topography, depth of soils and presence of exposed and shallow bedrock.
- 24) That Amelia Bond's alleged application of Tebuthiuron was in an area of shallow soils, exposed and shallow bedrock, and steep slopes.
- 25) That the Board alleges the circumstances described in Paragraphs One (1) through Twenty-Four (24) constitute use of a pesticide in a careless, negligent or faulty manner, in violation of 22 M.R.S. § 1471-D (8)(C).
- 26) That the product label for Alligare 20 P contains a series of requirements intended to prevent damage to non-target plants and migration of the product away from the application site, into the ground or surface water, or onto adjacent properties. Said requirements include, but are not limited to the following:
 - a) Do not use Alligare Tebuthiuron 20 P herbicide in any area where desirable species are in the vicinity of the plants to be controlled. A small amount of Alligare Tebuthiuron 20 P in contact with the roots of desirable trees or other woody species may cause severe injury or death. The roots of such plants may extend far beyond their drip lines.

- b) Do not apply Alligare Tebuthiuron 20 P where bedrock is continuously exposed or in areas of bedrock overlain by soils that are shallow or discontinuous.
 - c) Not for residential use.
 - d) Treatment Setback: Do not apply Alligare Tebuthiuron 20 P in the vicinity of desirable plants. Exposure of even a small part of a plant root system to Alligare Tebuthiuron 20 P may cause severe plant injury or death. Plant roots usually occupy an area much larger than the aerial portion of the plant. Treatment setback distance should be 1 to 2 times the height or width of adjacent non-target vegetation, whichever is greater. For example, if adjacent non-target vegetation is 25 feet tall, the treatment setback should be 50 feet. An Arboriculturist (tree expert) should be consulted to help you to determine if there is a question about the appropriate setback distance or if the area of proposed application is free of all roots of desirable vegetation.
 - e) Once rainfall has moved Alligare Tebuthiuron 20 P into the plant root zone, the effect on woody plants is irreversible.
- 27) That Amelia Bond applied Alligaire in the vicinity of plant species, in an area of bedrock, and that directly downslope and within thirty (30) feet of the application site there are areas of exposed bedrock, and that this application was in a residential area.
- 28) That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
- 29) That the Board alleges the circumstances described in Paragraphs Eighteen (18) through Twenty-Six (26) constitute use of a pesticide inconsistent with the product label, in violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
- 30) That, despite the above, the Bonds, by and through their counsel and consultants, have been actively cooperating with the owners of 3 Metcalf Road and the Town of Camden since December 2022 in developing a remediation plan (“the Plan”) that will protect and mitigate against further damage and/or risk at 1 and 3 Metcalf Road, as well as any property owned by the Town determined to be at risk of potential damage. Such cooperation has included but is not limited to the following:
- a) Communicating and providing available information to the owners of 3 Metcalf Road and the Town of Camden regarding the cause of the alleged damages and steps taken to mitigate those damages;
 - b) Retaining two (2) consultants, a licensed landscape architect and arborist, to analyze the currently available information, reports, test results, cost estimates and alleged violations and damages to ascertain the cause, extent and steps necessary to remediate the alleged damages;
 - c) Conducting an on-site inspection of the alleged damage at 1 and 3 Metcalf Road with their counsel and consultants, counsel for the owners of 3 Metcalf Road and their respective consultants in late December 2022; and
 - d) Analyzing and assessing the numerous remediation plans drafted by the consultants of the owners of 3 Metcalf Road, which the Parties intend on finalizing and submitting to the Town for ratification.
- 31) That the Parties intend for the Plan, once finalized and ratified by the Town of Camden, to go into immediate effect and for mitigation to commence thereafter.
- 32) That the Bonds expressly waive:
- 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.

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

34) That in consideration for the release by the Board of the alleged causes of action which the Board may have against the Bonds resulting from the alleged violations referred to in Paragraphs Seventeen (17) and Twenty-Nine (29) and any additional provisions under the aforementioned statutes or any corollary regulations in the State of Maine relating in any way to the application of herbicides and pesticides, the Bonds agree to pay a penalty to the State of Maine in the sum of \$4,500, which checks payable to "Treasurer, State of Maine."

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

AMELIA AND ARTHUR BOND

By: *Amelia & Arthur* Date: 6-13-23
Arthur W. Bond III Date: 6/13/2023

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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



JANET MILLS
GOVERNOR

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

MEGAN PATTERSON
DIRECTOR


Compliance Verification Statement

June 9, 2023

Individual Company or Store Name	Amelia and Arthur Bond The Bond Revocable Trust 6/23/2017	Inspection Numbers	<u>221108ARP01</u>
		Inspection Dates	<u>11-08-2022</u>
Address	100 Arundel Place		
Town	St. Louis	State	MO
		Zip	63105

I verify that I have taken steps to correct the alleged violations of:


- Unauthorized application of a pesticide.
- Use of a pesticide in a careless, negligent or faulty manner.
- Violations of pesticide labeling and label use restrictions.



 Arthur D. Bond III
 Owner or Company Representative Signature

4.13.23
 6/13/2023

 Date:



 ARTHUR D. BOND III
 Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.

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

From: Chantal Longo-Guess <chantal.longoguess@yahoo.com>

Sent: Friday, June 9, 2023 2:00 PM

To: Pesticides <Pesticides@maine.gov>

Subject: Board of Pesticide

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

I am writing today to express my extreme frustration with the Board of Pesticide meeting this morning. My husband, Billy Guess, was asked to attend the meeting this morning to discuss why he wanted to treat balsam fir adelgid with a neonicotinoid. We were told that it would be beneficial for him to be there to represent himself. As we only have one computer for our small business, I also had to sit through the first two hours of the meeting meaning that we both lost time from work. The issue of balsam fir adelgid came up after two long hours of listening to the meeting, and the answer was no before any type of discussion could take place. Clearly my husband was allowed to speak on his behalf as an afterthought. This type of rudeness is unprecedented in my 21 years of science (and I worked at The Jackson Laboratory). The arrogance of the board and the unwillingness to listen to any other information or a difference of opinion was maddening (and not how science works). I am unclear as to why Billy was even asked to be at the meeting. We both could have gone about our days and not gotten further behind in our workloads. Clearly the answer was going to be no from the beginning, and that could have been said in an email (as could most of the first two hours of the meeting).

The customer that I have has a large amount of fir trees that are being attacked by balsam fir adelgid. The BPC is advocating that my company use either carbaryl, permethrin, or bifenthrin instead of a neonicotinoid. All of these products are foliar sprays which have the potential to kill bees and other pollinating insects. The neonicotinoid can be applied as a bark spray. This is a more targeted spray, so there would be less of an issue with pollinators than foliar spray. In addition, conifers are wind pollinated, so there most likely wouldn't be bees in the tree, so again a trunk spray would not affect pollinators. Clearly pollinators are not the issue as the board did not even want to consider these facts.

It is STILL unclear to me as an applicator why we are allowed to use neonicotinoid to treat hemlock wooly adelgid, but not balsam fir adelgid. Do we care more about hemlocks than fir trees? It doesn't make sense. The list of the three insects that are approved for neonicotinoid use is silly. We don't have Asian long horned beetle in this state, and if we did, I probably wouldn't use a neonicotinoid for control. I also wouldn't use a neonicotinoid for emerald ash borer as they aren't as effective as other pesticides at controlling borers. We do use neonics to control HWA, but notice I said control. There was an argument made during the meeting today that balsam fir adelgid had been around too long for eradication to take place. If eradication is the goal, you missed the boat with HWA too. There is a neighborhood where we treat for HWA in the mid coast, and each year we have more and more people in the

neighborhood finding it on their trees. Who knows how long it has been there? Many people probably don't even know what to look for.

It unclear to me as to why Billy was asked to be at the meeting, and I have to say I am disappointed in the rudeness of the Board and their inability to listen to any discussion and present educated evidence as to why the answer should be no. My advice would be to tell anyone with future questions "the answer is no because I said so." That doesn't work with my children, but it is basically what my husband was told, and if he had been told that in an email, he wouldn't have wasted 2 hours of his life this morning.

Sincerely,
Chantal Longo-Guess

Sent from my iPad

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

H.P. 163 - L.D. 258

An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025

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

PART A

Sec. A-1. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Accident - Sickness - Health Insurance 0455

Initiative: Establishes one Public Service Coordinator I position to manage the high volume of contracts necessary to implement the programs of the Office of Employee Health and Wellness.

ACCIDENT, SICKNESS AND HEALTH INSURANCE INTERNAL SERVICE FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$102,076	\$107,833
	<hr/>	<hr/>
ACCIDENT, SICKNESS AND HEALTH INSURANCE INTERNAL SERVICE FUND TOTAL	\$102,076	\$107,833

Accident - Sickness - Health Insurance 0455

Initiative: Establishes 2 Public Service Coordinator I positions to support state employees with all benefits and retirees with health insurance, including educational sessions on retirement for state employees.

ACCIDENT, SICKNESS AND HEALTH INSURANCE INTERNAL SERVICE FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	2.000	2.000

Bureau of Agriculture 0393

Initiative: Establishes one seasonal Entomology Technician position in the Federal Expenditures Fund and provides funding for related All Other costs.

FEDERAL EXPENDITURES FUND	2023-24	2024-25
POSITIONS - FTE COUNT	0.538	0.538
Personal Services	\$39,955	\$42,080
All Other	\$2,503	\$2,636
FEDERAL EXPENDITURES FUND TOTAL	\$42,458	\$44,716

Bureau of Agriculture 0393

Initiative: Transfers and reallocates the cost of one Environmental Specialist III position, one part-time Environmental Specialist II position and one part-time Office Associate II position from 100% Bureau of Agriculture program, General Fund to 100% Pesticides Control - Board of program, Other Special Revenue Funds and transfers and reallocates the cost of 2 Assistant Horticulturist positions, one State Horticulturist position and 2 Entomologist III positions from 100% Pesticides Control - Board of program, Other Special Revenue Funds to 100% Bureau of Agriculture program, General Fund. This initiative also adjusts funding for related All Other costs.

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	4.000	4.000
POSITIONS - FTE COUNT	(1.000)	(1.000)
Personal Services	\$321,271	\$319,766
All Other	(\$10,500)	(\$10,500)
GENERAL FUND TOTAL	\$310,771	\$309,266

Bureau of Agriculture 0393

Initiative: Establishes one Contract/Grant Manager position to oversee multiple grant programs and provides funding for related All Other costs.

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$106,665	\$112,530
All Other	\$3,500	\$3,500
GENERAL FUND TOTAL	\$110,165	\$116,030

BUREAU OF AGRICULTURE 0393**PROGRAM SUMMARY**

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	8.000	8.000
POSITIONS - FTE COUNT	(1.000)	(1.000)
Personal Services	\$652,656	\$669,523
All Other	\$1,114,558	\$1,287,609
Capital Expenditures	\$2,250,000	\$0

PARKS - GENERAL OPERATIONS Z221

PROGRAM SUMMARY

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$99,424	\$104,583
All Other	\$669,772	\$682,385
GENERAL FUND TOTAL	\$769,196	\$786,968

FEDERAL EXPENDITURES FUND	2023-24	2024-25
All Other	\$15,629	\$15,629
FEDERAL EXPENDITURES FUND TOTAL	\$15,629	\$15,629

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$221,840	\$237,562
Capital Expenditures	\$730,000	\$530,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$951,840	\$767,562

Pesticides Control - Board of 0287

Initiative: Provides funding for increased information technology system costs related to pesticides licensing.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$295,759	\$305,540
OTHER SPECIAL REVENUE FUNDS TOTAL	\$295,759	\$305,540

Pesticides Control - Board of 0287

Initiative: Provides funding for statewide central fleet management services provided by the Department of Administrative and Financial Services.

FEDERAL EXPENDITURES FUND	2023-24	2024-25
All Other	\$5,214	\$6,377
FEDERAL EXPENDITURES FUND TOTAL	\$5,214	\$6,377

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$6,688	\$8,552
OTHER SPECIAL REVENUE FUNDS TOTAL	\$6,688	\$8,552

Pesticides Control - Board of 0287

Initiative: Transfers and reallocates the cost of one Environmental Specialist III position, one part-time Environmental Specialist II position and one part-time Office Associate II

position from 100% Bureau of Agriculture program, General Fund to 100% Pesticides Control - Board of program, Other Special Revenue Funds and transfers and reallocates the cost of 2 Assistant Horticulturist positions, one State Horticulturist position and 2 Entomologist III positions from 100% Pesticides Control - Board of program, Other Special Revenue Funds to 100% Bureau of Agriculture program, General Fund. This initiative also adjusts funding for related All Other costs.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	(4,000)	(4,000)
POSITIONS - FTE COUNT	1,000	1,000
Personal Services	(\$321,271)	(\$319,766)
All Other	(\$8,970)	(\$8,876)
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$330,241)	(\$328,642)

PESTICIDES CONTROL - BOARD OF 0287

PROGRAM SUMMARY

FEDERAL EXPENDITURES FUND	2023-24	2024-25
All Other	\$5,214	\$6,377
FEDERAL EXPENDITURES FUND TOTAL	\$5,214	\$6,377

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	(4,000)	(4,000)
POSITIONS - FTE COUNT	1,000	1,000
Personal Services	(\$321,271)	(\$319,766)
All Other	\$293,477	\$305,216
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$27,794)	(\$14,550)

Statewide Hunger Relief Program Z288

Initiative: Provides one-time funding for a grant to a food security hub addressing the nutritional needs of homeless, sheltered or food insecure persons.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$2,000,000	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,000,000	\$0

STATEWIDE HUNGER RELIEF PROGRAM Z288

PROGRAM SUMMARY

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$2,000,000	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,000,000	\$0

From: U.S. EPA Office of Chemical Safety and Pollution Prevention
<oppt.epa@public.govdelivery.com>
Sent: Thursday, July 13, 2023 4:19 PM
To: Bryer, Pamela J
Subject: EPA Requires Additional Mitigation Measures for Seresto Pet Collars

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.



Pesticide Update

EPA's Office of Chemical Safety and Pollution Prevention

EPA Requires Additional Mitigation Measures for Seresto Pet Collars

Today, the U.S. Environmental Protection Agency (EPA) is requiring the implementation of additional measures for Seresto pet collars. The new measures will alert veterinarians and consumers of potential risks and provide more information about how to prevent and report adverse reactions from Seresto collars. The new measures will also improve the quality of adverse incident data reported to EPA to aid in the continued review of this product.

EPA conducted an extensive analysis of incident and other data, with the assistance of the Food and Drug Administration (FDA). From this analysis, EPA concluded that these collars continue to meet EPA's standard under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). However, with the implementation of today's mitigations, EPA expects to receive higher quality data in the coming years. EPA has approved Seresto collar registrations for five years to allow for the continued evaluation of incident reports, which could result in further regulatory action in the future.

Background

Seresto collars offer flea and tick prevention for dogs and cats, as well as lice control for dogs. This use is important because fleas and ticks are considered significant public health pests that can transmit many serious diseases, such as Lyme disease and Rocky Mountain spotted fever, to pets and humans.

Under FIFRA, EPA is required to consider the benefits, as well as the risks, of the use of a pesticide. In addition to its protection against several serious public health pests, Seresto works for up to 8 months per collar, is available without the need for a prescription, and is relatively easy to apply compared to other flea and tick products. For cats and dogs, there are very few flea and tick collar alternatives that can be used for such a prolonged time.

Over the past several years, EPA has been improving its method for considering pet product-incidents, such as those reported for Seresto collars, in the pesticide registration and re-evaluation process. As part of this effort, and due to the number of Seresto-related incidents reported to EPA, the Agency began an in-depth review of the incidents of Seresto collars in 2021.

EPA has reviewed an extensive set of data it required Elanco, the current registrant of Seresto collars, to submit and reviewed the many incidents reported to EPA's Incident Data System to determine whether the collars may contribute to an elevated number of pet-related incidents. Throughout the review process, EPA consulted with FDA, which regulates similar products for cats and dogs, including flea and tick products that are ingested. EPA used information gathered during this review process to make its determination about the product.

EPA's Risk Findings and New Measures to Reduce Risk

EPA's scientific review of Seresto-related incident reports identified the need for more detailed incident reporting and public outreach. EPA analyzed all incidents that reported death for Seresto. This included 1,400 deaths reported to EPA from 2016-2020, which represent 2 percent of all Seresto incidents reported for these years. In many of the death-related incidents, critical details of the incident were often missing, preventing the Agency from determining the cause of the death.

The only reported deaths that were found to be "probably" or "definitely" related to Seresto product use were associated with mechanical strangulation or trauma caused by the collar, often associated with a failure of the release mechanism.

For all other deaths, EPA did not identify cases with a probable or definite association between collar use and death, often due to other factors impacting the animal, such as an existing medical condition. In addition, the rate of deaths reported for Seresto was similar to that for other pet products reviewed.

EPA also analyzed all non-lethal incidents, such as neurological symptoms. In some incidents with moderate or severe clinical sign removal of the collar seemed to alleviate symptoms and/or reapplication of the collar coincided with a reoccurrence of symptoms. Based on these findings, Elanco, the registrant of Seresto, has agreed to implement the following measures:

- **To alert veterinarians and consumers of potential risks**, the terms of continued registration require Elanco to include label warnings on Seresto products that describe common adverse effects that have been reported, along with instructions to remove the collar if those effects occur and instructions on how to report the incident. Elanco also must develop an outreach program to more effectively communicate with veterinarians and the public on the risks of using the product and other similar pesticides on pets.
- **To improve the quality of data reported when receiving reported incidents from consumers**, Elanco must pursue additional information to the greatest

extent possible to ensure that complete details of each event are captured. This information includes whether the pet had any pre-existing conditions or previous history of the reported condition. The Seresto collar registration has also been split into two registrations, one for cats and one for dogs, to make comparison of incident data across products easier in the future. Elanco must report incident and sales data to EPA on an annual basis.

- **To reduce the risk of strangulation**, Elanco must evaluate potential changes to the emergency release mechanism of Seresto collars to prevent death by strangulation or choking. The company must submit a report detailing the data and analysis collected and performed in pursuit of this effort within one year. Based on this evaluation, EPA may require a modified release mechanism for the Seresto collar.
- **To allow for the continued evaluation of reported incidents**, EPA has limited its current approval of Seresto collar registrations to five years. EPA will continue to evaluate Seresto incident data over that period.

Elanco must implement the new registration requirements by the next printing of Seresto pet collar labels, which must occur in the next 12 months. To learn more, read [EPA's decision document](#), [EPA's scientific review document](#), or [EPA's frequent Q&As](#).

EPA Denies Petition to Cancel and Suspend Seresto Pet Collars

Based on the Agency's scientific review of incident data, EPA is denying a [2021 petition](#) from the Center for Biological Diversity (CBD) that requests the cancellation of Seresto collars and the suspension of Seresto collars pending cancellation. EPA received and reviewed more than 5,400 comments on the petition. Read [EPA's full response to the petition and public comments](#).

EPA and FDA Continue to Discuss Pet Product Jurisdiction

EPA and FDA jointly released a whitepaper in February 2023 that outlines an updated approach to clarify regulatory oversight of certain animal products to better align with each agency's expertise. One aspect of that proposed modernized approach includes a process for transferring oversight of flea and tick pet products, such as Seresto collars, from EPA to FDA.

The agencies started discussing a modernized approach to product oversight years before the current review of Seresto collars. However, EPA's review of Seresto pet-related incident reports has highlighted that, as compared to FDA, EPA has less expertise and resources (staff, infrastructure, and funding) to evaluate animal safety and conduct ongoing monitoring of marketed products. Read the [whitepaper](#) to learn more.

Safety Tips for Using Pet Collars

EPA encourages pet owners to discuss with their veterinarian when flea and tick control is needed for their pets and which type of control product they should use. Pet owners should read the entire label before using the recommended product and follow all directions carefully, as well as monitor the pet after treatment.

EPA understands and shares the public's concerns about reported incidents with Seresto pet collars. Pets are part of the family in many American households and the

Agency is committed to following the science and the law as we work on this issue and pursue our mission. [Learn more](#) about how to use these products safely.

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This email was sent to pamela.j.bryer@maine.gov using GovDelivery Communications Cloud on behalf of: U.S. EPA Office of Chemical Safety and Pollution Prevention · 707 17th St, Suite 4000 · Denver, CO 80202 · 1-800-439-1420





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

July 21, 2023

9:00 AM Board Meeting

Join the meeting in person in Room 101, Deering Building, 32 Blossom Lane, Augusta
Or

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 246 908 275 489

Passcode: DSg4Xf

Or call in (audio only)

[+1 207-209-4724,,293485210#](#)

Phone Conference ID: 293 485 210#

AGENDA

1. Introductions of Board and Staff
2. Minutes of the June 9, 2023 Board Meeting

Presentation By: John Pietroski, Acting Director
Action Needed: Amend and/or approve

3. Policy for Distribution of Adjuvant Products

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” was approved by the Maine legislature in 2022. Dealers and growers have approached staff regarding the ability to use adjuvant products that were in their possession prior to or after the effective date of August 8, 2022. Staff are seeking guidance on enforcement discretion regarding this issue.

Presentation By: John Pietroski, Acting Director
Action Needed: Provide guidance to staff on distribution of adjuvants

MEGAN PATTERSON, DIRECTOR
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4. LD 1770 Sales & Use Reporting

At the May 10, 2023 work session the Agriculture, Conservation and Forestry Committee voted this bill ought to pass as amended as a resolve directing the Board to act to enter into rulemaking to require applicators and dealers to submit their annual use reports electronically.

Presentation By: John Pietroski, Acting Director
Action Needed: Discussion

5. Review and Discussion of Potential Rulemaking Topics

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023 Board meeting, the Board discussed several rulemaking topics that had been identified by staff. At the March 25, 2023 Board meeting, the Board narrowed the rulemaking initiatives to more urgent items that needed to be addressed in rule. At the April 7, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts, but decided to postpone rulemaking until the legislature had adjourned given that some additional rulemaking initiatives were likely to pass. Staff have compiled the Board's responses to rulemaking concepts that had interest in moving forward in addition to a timetable of possible hearing dates for Board consideration. The Board will need to vote to move rulemaking forward to initiate this process. *Note: No public comments on rulemaking are being accepted at this time.*

Presentation By: Karla Boyd, Policy & Regulations Specialist
Action Needed: Discuss rulemaking concepts and possibly vote to schedule a hearing

6. Maine State Certification and Training Plan for EPA

Update on continued efforts to receive EPA approval for Maine's Certification and Training Plan and implications of not receiving approval.

Presentation By: John Pietroski, Acting Director
Action Needed: Discussion

7. Consideration of a Consent Agreement with Starbucks Bangor, 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 application and use of a pesticide inconsistent with its label.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

8. Consideration of Consent Agreement with Amelia and Arthur Bond of St. Louis, MO

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 unauthorized application, use of a pesticide inconsistent with the label and use of a pesticide in a negligent manner.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

9. Other Old and New Business

- a. Email From Chantal Longo-Guess
- b. LD 258- “An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025”
- c. EPA Press Release, July 13, 2023: “EPA Requires Additional Mitigation Measures for Seresto Pet Collars”

10. Schedule of Future Meetings

September 1 and October 13 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

Staff have scheduled meeting rooms for: November 3, December 15

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.
- 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. 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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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

June 9, 2023

9:00 AM Board Meeting

MINUTES

Adams, Carlton, Ianni, Jemison, Lajoie, Neavyn

1. Introductions of Board and Staff
2. Minutes of the April 7, 2023 Board Meeting

Presentation By: John Pietroski, Acting Director
Action Needed: Amend and/or approve

- **Carlton/Lajoie: Moved and seconded to approve minutes**
- **In Favor: Unanimous**

3. Review of Board Responsibilities and Procedures

Mark Randlett, Assistant Attorney General, will review Board procedures and Board member responsibilities.

Presentation By: Mark Randlett, Assistant Attorney General
Action Needed: Board procedural review

- Randlett gave an overview of Board responsibilities and stated that the Board members' ultimate interest was to the public as a whole. He noted that all Board matters and decisions of the Board must be discussed in public. Randlett explained that all correspondence, including emails and text messages were subject to the Freedom of Access Act. Randlett stated that as their legal representation conversations with him were privileged and would not be disclosed.

4. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: John Pietroski, Acting Director
Action Needed: Nomination and election of officers

- **Lajoie/Carlton: Moved and seconded to nominate and elect David Adams as Chair**
- **In Favor: Unanimous**
- **Carlton/Lajoie: Moved and seconded to nominate and elect John Jemison as Vice Chair**
- **In Favor: Unanimous**

5. Review of the Board Budget

At the April 7, 2023 meeting, the Board held its annual review of the Pesticide Control Fund. The goal of the annual budget update is to identify potential resources that could be allocated to Board priorities. The Board asked for additional discussion during this meeting to help clarify potential budget forecasting.

Presentation By: Megan Patterson, Division Director
Action Needed: Provide guidance to the staff on Board budget priorities

- Patterson stated that the Board looked to be solvent for the next three years because they were able to secure a fee increase for pesticide registrations. She went over the revenue from registrations, exams and licenses. Patterson noted that the Board may want to consider the current exam and licensing fees in the near future since they have remained flat for several years. She explained DICAP expenses, which are about 15% for every dollar, and the statutory transfers the Board was required to make annually.
- Carlton asked if there were any changes regarding registration.
- Patterson stated that there were fewer this year. She said that due to the external regulatory burden some companies chose not to register and other companies decided to only register specific products.
- There was further discussion about registration. Adams asked about the number of adjuvants registered.
- Patterson responded that there were currently 162. She added that the number of products other states had estimated was 400-1,100 so staff estimated approximately 400. A lot of the adjuvants are pool products and Maine does not have many pools. The registrar has reached out to adjuvant companies to let them know they now need to register to distribute their products in the state. Patterson stated that staff would continue to provide information to companies and during marketplace inspections.
- Adams stated that convincing the end user community to report these products would be helpful.
- Patterson explained staff expenditures which included five members from the plant health program. She added that the ACF committee was discussing moving those five positions to the general fund. There may also be three additional positions for BPC that

may come under the general fund. Patterson noted that this was not a certainty and was still up in the air.

- Patterson discussed the two contract employees currently on staff, staff travel expenses for both in and out of state, rental fees from Central Fleet Management, and the obsolete collection program. She noted that the BPC was still paying credit card fees for purchases through MePERLS and there was a story to be put in place to recoup some of those monies. Patterson stated that MePERLS expenses had significantly increased. The reason for this was because Maine IT was previously financing about 50% of the cost and they are no longer doing this.
- Adams asked about the potential cost of defending CBI in civil court if the new regulation procedures were challenged. He asked if there should be a line item in there to cover that.
- Randlett stated he was not sure if it came out of Board funds or the Department but there was a flat fee charged for the Assistant Attorney General. He added that there were no additional fees in the event of a legal challenge; it would be covered by what was already paid.
- Jemison asked about the annual depletion of the cash balance.
- Patterson responded that if the five plant health positions were transferred to the general fund the BPC would likely be in a good position for multiple years. She added that there would hopefully be some clarity about this by the next meeting. Patterson stated that another point in the future timeline to face would be the 2030 ban on intentionally added PFAS. Staff have an idea of how many active ingredients would be considered PFAS under Maine's definition but still not a clear number of how many products may have inert ingredients that would qualify as PFAS.

6. LD 1770 Sales & Use Reporting

At the May 10, 2023 work session the Agriculture, Conservation and Forestry Committee voted this bill ought to pass as amended as a resolve directing the Board to act to enter into rulemaking to require applicators and dealers to submit their annual use reports electronically via MePERLS.

Presentation By: Karla Boyd, Policy and Regulations Specialist
Action Needed: Discussion

- Patterson stated that she thought there might be language to share but had only seen draft language. She said she believed the bill would be turned into a resolve to require electronic submission of all currently required end of year sales and use reports. There was discussion about the possible use of optical character recognition if reports were to be collected electronically. This option would require all applicators to use the same template and would require additional funding to build.

7. Discussion and Update on Container Fluorination

Understanding changes in pesticide container fluorination activities is relevant for the Board's ongoing discussions on fluorinated containers. Staff have reached out to EPA for updates on container fluorination actions at the federal level. Staff have also summarized existing federal and Maine rules in an attempt to clarify what is allowed in pesticide products as of spring 2023.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist
Action Needed: Discussion and consideration of container regulations

- Bryer stated this update was mostly about contamination of pesticides by PFAS. She explained the study that had been provided last fall to the Board, Lasee et al. 2022, showed high levels of PFOS in insecticides. The EPA contacted the study author and obtained the same samples used in that study and reanalyzed them using a different method and found no PFAS contamination in the insecticides that had been tested by those authors. On the state level, the Department was having conversations about proper methods for PFAS testing. There have been unreliable results originating from the testing of animals on farms in Maine and the revelation that the testing method being used in the lab could confuse bile acids with PFOS. PFOS is the same PFAS seen in high concentrations in the Lasee et al. paper that EPA re-evaluated. Bryer stated that many pesticides, often insecticides, tend to be in oily matrixes because they are not water soluble, so it is more difficult to measure insecticides for PFAS. This study re-evaluation by EPA does not mean that there is no PFAS contamination in pesticides, but this unusual source does not seem to be a concern at this time. The container fluorination contamination that has been seen was related to a different type of PFAS.
- Bryer mentioned that the company that makes the insecticide Anvil 10-10, which sort of started the PFAS discussion, had switched from fluorinated plastic containers to stainless steel containers. EPA's Toxic Substances Control Act, TSCA, program received nine Significant New Use Notifications, SNUN, related to containers (not specifically pesticide containers). EPA requires manufacturers whose fluorinated containers leach PFAS to notify the agency via the SNUN process. EPA sued Inhance Technologies for not notifying the agency about PFAS that had migrated from containers. Inhance Technologies is the company that produced the original plastic containers used for Anvil 10+10, a mosquito adulticide commonly used in aerial spray programs.
- EPA is working on a system that should allow public access to 6(a)(2) reports, also called "Incident Reports." Manufacturers are required to send EPA incident reports when a company becomes aware of a problem with their products, including contamination issues. Companies are required under FIFRA to report to EPA within 30 days following the discovery of PFAS contamination in their pesticide products or any other deviation from what ingredients were registered with EPA. It is unclear what this public-facing 6(a)(2) reporting would look like because portions of 6(a)(2) reports are protected health information while others are confidential business information. The system is expected to be live within the federal fiscal year.
- Bryer stated that the state of Maine defines PFAS in a very broad sense and there would be approximately 1,300 products that would be classified as PFAS by that definition. The EPA definition recognizes four pesticide active ingredients as PFAS as of June 2023. There is not a history of dealing with a class of chemicals this large and EPA is looking at separating them out into about 70 groups to streamline the next regulatory steps. There has been difficulty classifying them in a way that makes sense, but once the EPA has figured out how many groups there are, they can approach manufacturers to get information on those chemicals.
- There was discussion about whether products being in a fluorinated container would equate with PFAS leaching
- Ianni asked if there was consensus across other state agencies that given these two sampling studies, EPA vs the other one, were other states choosing to agree with EPA or was the jury still out that there may be dozens of other studies coming.

- Bryer stated that the EPA was viewed as the standard setter. The method is really important and that is not saying that the methods the other study used were wrong. They had been using a method for radishes and used that same method for PFAS testing. Bryer said this was all very new.
- Ianni inquired about what are other states doing.
- Bryer stated that Maine did not have a state lab but the Massachusetts laboratory had worked with the Fort Mead laboratory and validated EPA's findings.
- Adams noted the difference that he heard had been found in fluorinated containers, depending on whether they were fluorinated in mold or fluorinated in gas chambers. He stated that some manufacturers have stated their intention to move away from fluorinated containers while others are not sure about what alternative they can use that would pass standards. Given the State of Maine definition versus the EPA definition, Adams asked where Bryer recommended the Board stay focused- on container fluorination or the formulation of products.
- Bryer responded that the type of contamination she saw as a larger problem was container fluorination. Fluorination produces some of the PFAS that had been off the market for 20 years and with known health effects. She stated she saw that type of contamination more dangerous from a human health perspective. Bryer noted that per FDA regulation, it was still legal to use many PFAS as part of a food contact package.
- There was further discussion about the composition of plastics and what may be deemed unavoidable use of products containing PFAS according to Maine DEP. In draft, it stated that anything deemed unavoidable use would need to be deemed so via rulemaking. There was also discussion on whether reporting of packaging would be required.

8. Staff Memo on Possible Addition of Balsam Woolly Adelgid to the Board's Policy on *Approved Invasive Invertebrate Pests On Ornamental Vegetation In Outdoor Residential Landscapes For Neonicotinoids Exemption*

Staff have received a request to add Balsam Woolly Adelgid to the Board's existing policy on the use of neonicotinoids for the management of invasive invertebrate pests in outdoor residential landscapes.

Presentation By: John Pietroski, Acting Director

Action Needed: Discuss the memo; approve/disapprove amendment of the interim policy

- Pietroski stated that this memo stemmed from a request to use a neonicotinoid to treat balsam woolly adelgid (BWA) which is an invasive introduced into the United States around 1900. He added that there were other alternatives that could also be used.
- Jemison stated that BWA was already spread widely around the southern part of the state and it was his understanding that exemptions were for trying to stop an insect before it got to this stage.
- Carlton agreed with Jemison.
- Lajoie asked about alternative treatments.
- Pietroski answered that insecticidal soaps, carbaryl and bifenthrin were some alternatives.
- The other Board members agreed that this was not an emergency use effort that would stop the spread of this pest.
- Patterson mentioned that there was also the option to provide a variance.
- Billy Guess, the applicator who submitted the request, stated that alternative control methods were foliar sprays which were more detrimental to pollinators than a bark application. He

added that this was also a pest in Christmas tree plantations. Guess stated that the fact that neonicotinoids could still be used on commercial turf but not in residential settings did not make sense.

9. Consideration of a Consent Agreement with Davey Tree Expert Company Gorham, 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 unauthorized application and failure to positively identify the application site.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed Review and/or Approve

- Peacock stated that the company had a positive property identification process in place but the applicator did not follow it.
- There was discussion about the possible revocation of licenses for a certain period of time in the future if the same issue continues to reoccur. Peacock stated that that was an option but was not a precedent set in the past.
- Randlett stated that people who do not properly identify the correct location were subject to revocation. He added that it may be subject to appeal if it was a revocation that was done arbitrarily or unreasonably so the seriousness of a violation, the number of violations and recklessness of the violation would be looked at among other things. Randlett explained that if the Board would like this to be more defensible then it should be in rule that persons who fail to make appropriate identification of properties may be subject to license revocation or suspension.
 - **Carlton/Jemison: Moved and seconded to approve consent agreement**
 - **In Favor: Adams, Carlton, Jemison, Lajoie, Neavyn**
 - **Against: Ianni**

10. Consideration of Consent Agreement with Osmose Utilities Services, Inc

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 a vehicle accident resulting in the jettisoning of canisters of restricted use pesticides that were left unattended subsequently leading to an acute human exposure at a later date.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed Review and/or Approve

- Peacock explained that an employee was traveling from out of state and had a car accident which resulted in 541 canisters of restricted use pesticides being dislodged from the vehicle onto the side of the highway. Those remained on the side of the road for several months until an employee from Maine DOT was doing mechanical vegetation control and several of the canisters were punctured by the mowing machine. The employee experienced an acute response to the pesticide and was treated by emergency medical personnel on site. DOT contacted Osmose Utilities Services to recover the rest of the canisters. They came and collected what they found. When DOT went out the next day more canisters were found. Osmose Utilities Services purchased a metal detector to collect the remainder of the canisters.
- There was a discussion about the range of penalties for this incident and about the active ingredient.
 - **Lajoie/Carlton: Moved and seconded to approve**
 - **In Favor: Unanimous**

11. Consideration of Consent Agreement with Cannabis Culture

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 unlicensed applications and improper disposal of pesticides.

Presentation By: Alex Peacock, Manager of Compliance
 Action Needed: Review and/or Approve

- Peacock explained that this consent agreement essentially goes together with the consent agreement detailed in agenda item twelve. The individuals were spraying myclobutanil on the crop, vacuuming the excess off the floor, and dumping it out behind the building. Collected samples were positive for myclobutanil from the crop and from the soil outside of the building. There were other violations also found.
- Jemison noted that myclobutanil is dangerous if combusted and inhaled. He added that it would be great if BPC inspectors could go to multiple sites both medical and adult use and inspect them but understood we were limited by the number of inspectors. Jemison stated that this product was supposed to be medicine for people. He noted that at one point the Department was going to get a joint employee with the Office of Cannabis Policy to help with registration questions and educational training but that did not happen. Jemison asked for an update on where the Department was with that.
- Patterson stated that BPC staff have been offering trainings to the twenty inspectors that OCP currently has. There were about 4,000 facilities that would be susceptible to inspection, but for the BPC to take that on would be nearly impossible unless staff stopped other routine inspections since it would be nearly doubling the existing entities BPC was responsible for pursuing routine enforcement inspections for. There were initial talks with OCP about them helping to support additional staff but for multiple reasons that did not come to fruition.
- Pietroski mentioned that all OCP inspectors just recently received training to get their agricultural basic license and there was a following training in the works to do pesticide inspection training with OCP inspectors.

- There was discussion about the allowance of the payment plan for this consent agreement. Randlett responded payment plans were utilized often in the court system.

12. Consideration of Consent Agreement with Cunningham Cultivation

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 unlicensed applications and improper disposal of pesticides.

Presentation By: Alex Peacock, Manager of Compliance
 Action Needed: Review and/or Approve

- **Jemison/Carlton: Moved and seconded to approve the consent agreement for both Cannabis Culture and the consent agreement for Cunningham Cultivation**
- **In Favor: Unanimous**

13. Other Old and New Business

- Policy on Clarification of Distribution
- Letter from Zavier Asbridge of IPM Of New Hampshire on the use of neonicotinoids in residential landscapes for invasive species management
- Email and article from Heather Spaulding, Maine Organic Farmer’s and Growers’ Association
- LD 1960: “An Act to Support Farming in Maine by Extending the Deadline for Manufacturers of Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances to Report on Those Products”
- EPA Update: “EPA Completes Scientific Testing of Pesticide Products for PFAS”
- Center for Biological Diversity: PFAS contamination of pesticide products
- Other?

14. Schedule of Future Meetings

- July 21, September 1 and October 13 are the next scheduled Board meeting dates.
- Mark Randlett announced that he would be retiring August 31, 2023.

14. Adjourn

- **Carlton/Jemison: Moved and seconded to adjourn at 11:45 AM**

- **In Favor: Unanimous**



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

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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control
From: John T. Pietroski | Acting director
Subject: Distribution of Adjuvants Products

July 21, 2023

Summary:

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”(PL 2022 c.673) was approved by the 130th Maine Legislature in 2022. Under this law, adjuvants were added to the definition of pesticides and must be properly registered with BPC. The regular session of the 130th Maine Legislature closed on May 9, 2022. Ninety days from May 9, 2022, was August 8, 2022, which was when the LD became law. Dealers and growers have approached staff regarding the ability to use adjuvant products that were in their possession prior to or after the effective date of August 8, 2022 through the product registration period. Typically, renewal registrations are received by December 31st the year prior, however, the 2023 registration year was postponed to February 28th, 2023 for most products and to March 21, 2023 for those where the company had requested and received written approval for a registration extension.

Previously Purchased Product:

The Board can develop an adjuvant registration implementation plan to allow for the transition of product registrations. Staff propose developing a policy so that adjuvant products can be legally distributed and used within Maine similarly to how pesticides that are no longer registered are allowed for distribution and use by end users in Chapter 20, Section 1(D).

This policy will reduce the burden on dealers that have unsold products and growers that previously relied on these adjuvants to treat their sites effectively. Additionally, it will reduce the amount of waste from these products if they are allowed use on labeled sites. Adjuvant products in this regulatory classification are not required to be registered by EPA as pesticides due to their reduced risk profile. Adjuvants are regulated by EPA and must still meet Federal Food, Drug,

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and Cosmetics Act (FFDCa) requirements for tolerance or tolerance exemption when used on food commodities.

Draft Proposed Policy:

Adjuvant products that were in the possession of dealers, distributors, and end users when PL 2022 c. 673 became effective on August 8, 2022 will be included as “pesticides no longer registered in Maine” under Chapter 20, Section 1(D).

Chapter 20, Section 1. 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.



STATE OF MAINE
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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control
From: John Pietroski, Acting Director
Subject: LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

July 21, 2023

Background:

On June 23, 2023, LD 1770 “Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data” was signed by the governor. This resolve directs BPC to conduct rulemaking requiring electronic submission of annual commercial applicator reports and pesticide dealer reports. The Board is also obligated to submit a report to the legislature by March 2024 that reports on the progress made on the implementation of this resolve.

L.D. 1770 Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

Sec. 1. Board of Pesticides Control; pesticides sales and use data. Resolved: That, pursuant to the Maine Revised Statutes, Title 22, section 1471-M, subsection 2, paragraph D, the Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall adopt any rules necessary to implement the transition from paper to electronic format of reports required to be submitted to the board as required by Title 22, section 1471-G. The board shall implement a system of electronic data collection that is efficient for those required to submit reports to the board under Title 22, section 1471-G and useful to the board and members of the public. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Report. Resolved: That, no later than March 1, 2024, the director of the Board of Pesticides Control within the Department of Agriculture, Conservation and Forestry shall submit a report regarding rulemaking and implementation of electronic reporting under section 1 to the Joint Standing Committee on Agriculture, Conservation and Forestry,

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which may report out a bill to the Second Regular Session of the 131st Legislature based on the report.

Below are considerations that staff have identified to transition requiring electronic reports.

Software Changes

Currently, BPC has the capacity to electronically collect annual summary report information from commercial applicators. Commercial applicators enter their summarized information into the Maine Pesticide Enforcement, Registration and Licensing Software (MEPERLS) on an annual basis as part of renewing their license. Renewal of licenses requires submission of this data; data may be entered electronically or paper copies may be sent. Information currently collected electronically for commercial applicator use includes: pesticide trade name, EPA registration number, total gallons/pounds of undiluted formulation, crop site, and total area treated. Dealers of restricted use, and general use pesticides must also submit summaries of pesticides sold annually. Within BPC dealer reports are categorized and compiled as General Use Pesticide Dealers (GUP) and Restricted Use Pesticide Dealers (RUP). The MePERLS system is also currently programmed to allow for GUPs to enter their sales data electronically. Currently, RUP sales data can be uploaded as a static document and is collated on an Excel spreadsheet when temporary staff time can be allocated to the task.

To implement this new law, the Board may want to consider what records applicators must keep for adjuvants. When adjuvants were classified as pesticides in 2022 with the passing of LD 2019 all regulations relevant to pesticides became applicable to adjuvant products. Currently in MePERLS, EPA registration number entry auto fills active ingredients and product name and allows the system to flag for unregistered pesticides and other errors. FIFRA 25(b) minimum risk products do not have EPA registration numbers and are entered by selecting a radio button for product type and manually entering data. Given that adjuvants are not registered by EPA, adjuvants also do not have EPA registration numbers. New functionality will need to be developed in MePERLS to capture adjuvant product use summaries.

Potential Rulemaking

The Board may need to engage in rulemaking to implement LD 1770 in Chapter 50: Recordkeeping & Reporting. The Board may want to consider:

1. Adding language that makes reports submitted electronically through a portal
2. Timeline for implementation and start year that electronic reports will be required; and
3. Additional language for the transition from paper to electronic reports, especially for individuals that do not have computer or broadband access.

Notice to constituents

In accordance with the Administrative Procedures Act (M.R.S.A 5 §8001) constituents will be informed of rulemaking once it is officially initiated. Additionally, public comment regarding the rule change will also be collected and integrated into rule if possible. However, given that not all applicators and dealers are engaged with the BPC rulemaking process, additional notifications will need to be sent to commercial applicators, spray contracting firms, general use pesticide dealers, and restricted use pesticide dealers to ensure transition compliance. These notifications will take place in the form of direct and GovDelivery emails, presentations at recertification meetings, reminders at Board meetings regarding implementation, etc.

Reminders for annual summary reports are typically sent out in the fall, and this information will be attached to any licensing renewal reminders that staff submit to these parties.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

—
H.P. 1134 - L.D. 1770**Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data**

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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

To: Board Members
 From: Staff
 Re: Review of Rulemaking Concepts
 Date: July 21, 2023

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023 Board meeting, the Board discussed several rulemaking topics that had been identified by staff. At the March 25, 2023 Board meeting, the Board narrowed the rulemaking initiatives to more urgent items that needed to be addressed in rule versus items that did not need to be addressed or could become policy. At the April 7, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts, but decided to postpone rulemaking until the legislature had adjourned given that some additional rulemaking initiatives were likely to pass.

Staff have compiled the Board’s responses to rulemaking concepts that had interest in moving forward. The Board identified 4 items of interest, which must be voted on to move forward in initiating rulemaking. The potential rulemaking are categorized by the following criteria:

<p>Required C&T Housekeeping Incorporate Policy</p>	<p>Required by federal rule change Fairly minor and should require very little discussion. Will require some discussion on whether and how to incorporate the policy in rule but the objective is already written in policy.</p>
<p>Requires Discussion</p>	<p>Questions have been raised and a decision needs to made on whether the rule needs to be amended. These will probably take the most time.</p>

The fourth column designates type of rulemaking (see Title 7 Section 610(6)):

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RT
MS

Routine Technical
Major Substantive

The first column corresponds to the attached reference documents.

The second column details the actionable item.

The third column provides a purpose for the rulemaking.

The fourth column provides notes on the Board's discussions at the February 24, 2023, March 15, 2023 and April 7, 2023 Board meeting

The fifth column provides a detailed description of the potential rulemaking concept.

A complete list of possible rulemaking chapters to include 20, 31, 32, 41.

2	Chapter 20, Section 7(A)	<p>The Board expressed interest in incorporating “Chapter 20: Positive Identification of Proper Treatment Site by Commercial Applicators” policy into rule.</p> <p>The Board may want to consider also adding additional methods for proper site identification while reviewing this policy or a clause for submission of methods.</p>	Incorporating Policy	The Board has discussed this policy, must vote to initiate rulemaking	RT
4	Chapter 31(2)(VII)(c)(1)(2)(3) and Chapter 31(3)(VII)(c)(1)(2)(3)	<p>Staff have identified issues with 7C category licensure. See memo “Revisions of 7C categories to reflect licensure”.</p> <p>The Board may want to consider changing these categories by combing all categories to 7C: Biocide and Disinfectants</p> <p>Currently, there is confusion regarding which certification category is needed for commercial application of disinfectants. If these sections are changed, competency standards should also change to reflect categories.</p>	Housekeeping	The Board must vote to initiate rulemaking	RT
7	Chapter 32, section 2 (A)(1)	<p>This was identified when staff revised the state plan.</p> <p>Incorporate by reference 40 CFR § 171.201 requirements for noncertified applicators and their supervision by certified applicators.</p>	Required C&T	The Board must vote to initiate rulemaking	RT
9	Chapter 41, Section 5	A Board member expressed interest in updating and modernizing Chapter 41, Section 5, which addresses plant incorporated protectants. Staff need additional guidance on concepts the Board might want addressed in this section.	Requires Discussion	Staff have incorporated edits from April 7, 2023 meeting, the Board must vote to initiate rulemaking	MS

TIMELINE FOR RULEMAKING

RT Rulemaking Timeline for July 2023				
Step	Timeline	Date		Notes
Send Forms to Initiate APA Process	Monday prior to week of posting	7/24/2023		For initiating rulemaking after 7/21 board meeting
Posting Week		8/2/2023		
Hearing	17 - 24 days after posting	8/19/2023	8/26/2023	
	2 days after submitting notice to SOS	8/4/2023		
Last Day to Receive Written Comments	10 days after public hearing	8/29/2023	9/5/2023	
Board Reviews Comments	Once comments from public hearing are summarized and compiled	9/5/2023	10/13/2023	Next scheduled board meeting is 10/13/2023
AAG reviews, signs, submits for final adoption	150 days from comment deadline (within 90 for emergency)	1/26/2024		

MS Rulemaking Timeline for July 2023

Step	Timeline	Date		Notes
Send Forms to Initiate APA Process	Monday prior to week of posting	7/24/2023		For initiating rulemaking after 7/21 board meeting
Posting Week		8/2/2023		
Hearing	17 - 24 days after posting	8/19/2023	8/26/2023	
	2 days after submitting notice to SOS	8/4/2023		
Last Day to Receive Written Comments	10 days after public hearing	8/29/2023	9/5/2023	
Board Reviews Comments	Once comments from public hearing are summarized and compiled	9/5/2023	10/13/2023	Next scheduled board meeting is 10/13/2023
Provisional Adoption -- must be voted on by the Board	4 documents approved within 120 days of comment deadline	12/27/2023		
Commissioner signature	By beginning of January	1/1/2024		
Sent to AAG for approval and SOS	Within 150 days of comment deadline	1/26/2024		

20 copies sent to Legislative Council, 1 copy to Executive Director, and E-file with legislature	Second Friday of January		1/12/2024	
Resolve written, Hearing in Committee, Vote by Legislature, Sent to Governor				
Formal Adoption of Rules	Within 60 days after effective date of legislation approving rule (stamped date)	Depends on when committee timeline		
Final Adoption	Rule becomes effective 30 days after filing or later as specified	See above (likely into spring/summer)		

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:

2

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.

STATUTORY AUTHORITY:

Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

July 6, 1979

AMENDMENT EFFECTIVE:

April 1, 1985

January 1, 1988

May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65

September 13, 2012 – Section 6(E) and references added, filing 2012-270

(Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version
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as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008
version
June 12, 2013 – Emergency major substantive filing 2013-134

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

September 11, 2014 – filing 2014-163 (Final adoption, major substantive)

December 9, 2014 – Section 7 added, filing 2014-279

May 16, 2022 – filing 2022-085

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 31: CERTIFICATION AND LICENSING PROVISIONS/COMMERCIAL APPLICATORS

SUMMARY: These regulations describe the requirements for certification and licensing of commercial applicators.

1. Individual Certification and Company/Agency Licensing Requirements

- A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
- B. All commercial applicators responsible for the supervision of noncertified applicators of restricted use pesticides must ensure compliance with training, record keeping, and all other requirements as indicated in 40 CFR 171.201(c) "Supervision of Noncertified Applicators" (2017).
- C. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- D. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual's certification remains in force for the duration of the certification period as described in Section 5 of this regulation.

E. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.

F. **Exemptions**

- I. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- II. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – *Rules Relating to Public Swimming Pools and Spas*, administered by the Maine Department of Health and Human Services, Division of Environmental Health..
- III. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- VI. Adults applying repellents to children with the consent of parents/guardians.
- VII. Persons installing antimicrobial metal hardware.

2. **Categories of Commercial Applicators**

A. All commercial applicators shall be categorized according to the type of work performed as outlined below:

I. **Agricultural Animal and Plant Pest Control**

- a. **Agricultural Animal** - This subcategory includes commercial applicators using or supervising the use of pesticides on animals and to places on or in which animals are confined. Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire as pesticide applicators are included in this subcategory; however, those persons applying pesticides as drugs or medication during the course of their normal practice are not included.
- b. **Agricultural Plant** - This subcategory includes commercial applicators using or supervising the use of pesticides in the production of crops including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.

Option I - Limited Commercial Blueberry - This option includes commercial applicators using or supervising the use of pesticides in the production of blueberries only.

Option II - Chemigation - This option includes commercial applicators using or supervising the use of pesticides applied through irrigation equipment in the production of crops.

Option III - Agricultural Fumigation - This option includes commercial applicators using or supervising the use of fumigant pesticides in the production of crops.

Option IV - Post Harvest Treatment - This option includes commercial applicators using or supervising the use of pesticides in the post harvest treatment of food crops.

II. **Forest Pest Management**

This category includes commercial applicators using or supervising the use of pesticides in forests, forest nurseries, Christmas trees, and forest seed producing areas.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of outdoor ornamental trees, shrubs and flowers.
- b. **Turf** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of turf, such as at turf farms, golf courses, parks, cemeteries, athletic fields and lawns.
- c. **Indoor Ornamentals** - This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance and production of live plants in shopping malls, businesses, residences and institutions.

IV. **Seed Treatment**

This category includes commercial applicators using or supervising the use of pesticides on seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - This subcategory includes commercial applicators using or supervising the use of pesticides applied directly to surface water, including but not limited to outdoor application to public drinking water supplies, golf course ponds, rivers, streams and wetlands.

Excluding applicators engaged in public health related activities included in categories VII(e) and VIII below.

- b. **Sewer Root Control** - This subcategory includes commercial applicators using or supervising the use of pesticides applied to sewers to control root growth in sewer pipes.

VI. **Vegetation Management**

- a. **Rights-of-Way Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation on utility, roadside and railroad rights-of-way.
- b. **General Vegetation Management** - This subcategory includes commercial applicators using or supervising the use of pesticides in the management of vegetation (including invasive plants) on sites not included in category VI a including, but not limited to, municipal and other publicly owned properties, industrial or commercial plants and buildings, lumber yards, airports, tank farms, storage areas, parking lots, sidewalks, and trails.

VII. **Industrial, Institutional, Structural and Health Related Pest Control**

- a. **General** - This subcategory includes commercial applicators using or supervising the use of pesticides in, on or around human dwellings, office buildings, institutions such as schools and hospitals, stores, restaurants, industrial establishments (other than in Category 6) including factories, warehouses, food processing plants, food or feed transportation facilities and other structures, vehicles, railroad cars, ships, aircraft and adjacent areas; and for the protection of stored, processed or manufactured products. This subcategory also includes commercial applicators using or supervising the use of pesticides to control rodents on refuse areas and to control other pests, including but not limited to birds and mammals.
- b. **Fumigation** - This subcategory includes commercial applicators using or supervising the use of fumigants or fumigation techniques in any type of structure or transportation device.
- c. **Disinfectant and Biocide** - This subcategory includes commercial applicators using or supervising the use of pesticides to treat mold or microbial growth problems, to treat water in manufacturing, industrial cooling towers, public drinking water treatment plants, sewers, and air conditioning systems, and in swimming pools and spas.
 - 1. ~~**Disinfectant and Biocide Treatments**—This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in manufacturing, industrial cooling towers, public drinking water treatment plants, sewers, and air conditioning systems.~~

2. ~~**Swimming Pool & Spa**—This subcategory includes commercial applicators using or supervising the use of pesticides to treat water in swimming pools and spas.~~
 3. ~~**Mold Remediation**—This subcategory includes commercial applicators using or supervising the use of pesticides to treat mold or microbial growth problems.~~
- d. **Wood Preserving** - This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to treat lumber, poles, railroad ties and other types of wooden structures including bridges, shops and homes. It also includes commercial applicators applying general use pesticides for remedial treatment to utility poles.
 - e. **Biting Fly & other Arthropod Vectors** - This subcategory includes commercial applicators and non-public health governmental officials using or supervising the use of pesticides in management and control of biting flies & other arthropod vectors of public health and public nuisance importance including, but not limited to, ticks, mosquitoes, black flies, midges, and members of the horsefly family.
 - f. **Termite Pests** - This subcategory includes commercial applicators using or supervising the use of pesticides to control termites.

VIII. **Public Health Pest Control**

- a. **Biting Fly Pests** - This subcategory includes governmental officials using pesticides in management and control of potential disease vectors or other pests having medical and public health importance including, but not limited to, mosquitoes, black flies, midges, and members of the horsefly family.
- b. **Other Pests** - This subcategory includes governmental officials using pesticides in programs for controlling other pests of concern to public health including, but not limited to, ticks and birds and mammal vectors of human disease.

IX. **Regulatory Pest Control**

This category includes governmental employees using pesticides in the control of pests regulated by the U.S. Animal and Plant Health Inspection Service or some other governmental agency.

X. **Demonstration and Research Pest Control**

This category includes all individuals who (1) demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration, (2) conduct field research with pesticides, and in doing so, use or supervise the use of pesticides. Individuals who conduct only laboratory-type research are not included. Applicants seeking certification in this category must

also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

XI. **Aerial Pest Control**

This category includes commercial applicators, including pilots and co-pilots, applying or supervising the application of pesticides by means of any aircraft. Applicants seeking certification in this category must also become certified in whatever category/subcategory they plan to make applications under; e.g., Categories I - IX.

3. **Competency Standards for Certification of Commercial Applicators**

- A. Applicants seeking commercial certification must establish competency in the general principles of safe pest control by demonstrating knowledge of basic subjects including, but not limited to, pesticide labeling, safety, environmental concerns, pest organisms, pesticides, equipment, application techniques and applicable laws and regulations. (Core Exam).
- B. Applicants seeking commercial certification must demonstrate competency in each applicable category or subcategory. (Category Exam). Competency in the applicable category or subcategory shall be established as follows:

I. **Agricultural Animal and Plant Pest Control**

- a. **Agricultural Animals.** Applicants seeking certification in the subcategory of Animal Pest Control as described in Section 2(A)(I)(a) must demonstrate knowledge of animals, their associated pests, and methods of pest control. Areas of practical knowledge shall include specific toxicity, residue potential, relative hazards of different formulations, application techniques, and hazards associated with age of animals, stress, and extent of treatment.
- b. **Agricultural Plant.** Applicants seeking certification in the subcategory of Plant Pest Control as described in Section 2(A)(I)(b) Options I - IV must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

II. **Forest Pest Management**

Applicants seeking certification in the category of Forest Pest Management as described in Section 2(A)(II) must demonstrate practical knowledge of forest vegetation management, forest tree biology and associated pests. Such required knowledge shall include population dynamics of pest species, pesticide-organism interactions, integration of pesticide use with other pest control methods, environmental contamination, pesticide effects on non-target organisms, and use of specialized equipment. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

III. **Ornamental and Turf Pest Control**

- a. **Outdoor Ornamentals.** Applicants seeking certification in the Outdoor Ornamental subcategory as defined in Section 2(A)(III)(a) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of trees, shrubs and floral plantings. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Turf.** Applicants seeking certification in the Turf subcategory as described in Section 2(A)(III)(b) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of turf. Such knowledge shall include potential phytotoxicity, undue pesticide persistence, and application methods, with particular reference to techniques used in proximity to human habitations. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- c. **Indoor Ornamentals.** Applicants seeking certification in the Indoor Ornamental subcategory described in Section 2(A)(III)(c) must demonstrate practical knowledge of pesticide problems associated with the production and maintenance of indoor ornamental plantings. Such knowledge shall include pest recognition, proper pesticide selection, undue pesticide persistence, and application methods with particular reference to techniques used in proximity to human presence.

IV. **Seed Treatment**

Applicants seeking certification in the category of Seed Treatment as described in Section 2(A)(IV) must demonstrate practical knowledge of seed types and problems requiring chemical treatment. Such knowledge shall include seed coloring agents, carriers and binders which may affect germination, hazards associated with handling, sorting, and mixing in the treatment process, hazards of introduction of treated seed into food and feed channels, and proper disposal of unused treated seeds.

V. **Aquatic Pest Control**

- a. **General Aquatic** - Applicants seeking certification in the subcategory of General Aquatic as described in Section 2(A)(V)(a) must demonstrate practical knowledge of proper methods of aquatic pesticide application, application to limited area, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include basic factors contributing to the development of nuisance aquatic plant growth such as algal blooms, understanding of various water use situations and potential downstream effects from pesticide use, and potential effects of various aquatic pesticides on plants, fish, birds, insects and other organisms associated with the aquatic environment. Also required shall be an understanding of the Department of Environmental Protection laws and regulations pertaining to aquatic discharges and aquatic weed control and a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- b. **Sewer Root Control** - Applicants seeking certification in the subcategory of Sewer Root Control as described in Section 2(A)(V)(b) must demonstrate practical knowledge of proper methods of sewer root control pesticide application, application to pipes, and a recognition of the adverse effects which can be caused by improper techniques, dosage rates, and formulations. Such knowledge shall include potential effects on water treatment plants, movement of pesticides into off target pipes or buildings and the hazards of sewer gases.

VI. **Vegetation Management**

Applicants seeking certification in the subcategories under Vegetation Management as described in Section 2(A)(VI) (a-b) must demonstrate practical knowledge of the impact of pesticide use on a wide variety of environments. Such knowledge shall include an ability to recognize target organisms and circumstances specific to the subcategory, awareness of problems of runoff, root pickup and aesthetic considerations associated with excessive foliage destruction and "brown-out", and an understanding of the mode of action of herbicides, and reasons for the choice of particular chemicals for particular problems, importance of the assessment of potential impact of spraying on adjacent public and private properties and activities, and effects of spraying on fish and wildlife species and

their habitat. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

VII. Industrial, Institutional, Structural and Health Related Pest

- a. **General.** Applicants seeking certification in the subcategory of General Pest Control as described in Section 2(A)(VII)(a) must demonstrate a practical knowledge of a wide variety of pests and methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.
- b. **Fumigation.** Applicants seeking certification in the subcategory Fumigation as described in Section 2(A)(VII)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees and customers.
- c. **Disinfectant and Biocide.** Applicants seeking certification in the subcategory of Disinfectant, Biocide, Pools and Spas, Mold Remediation, and Water Damage Restoration as described in Section 2(A)(VII)(c) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, drinking water treatment plant designs, cooling water system designs, mold and problematic microbial organisms, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
 - ~~1. **Disinfectant and Biocide Treatments.** Applicants seeking certification in the subcategory of Disinfectant and Biocide Treatments as described in Section 2(A)(VII)(c)(1) must demonstrate practical knowledge of water organisms and their life cycles, drinking water treatment plant designs, cooling water system designs, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.~~
 - ~~2. **Swimming Pool & Spa.** Applicants seeking certification in the subcategory of Swimming Pool & Spa as described in Section 2(A)(VII)(c)(2) must demonstrate practical knowledge of water organisms and their life cycles, pool and spa design systems, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.~~

3. **Mold Remediation.** Applicants seeking certification in the subcategory of Mold Remediation as described in Section 2(A)(VII)(c)(3) must demonstrate practical knowledge of mold and problematic microbial organisms, their life cycles, labels, and hazards of disinfectants and biocides and proper application techniques to ensure adequate control while minimizing exposure to humans and the environment.
- d. **Wood Preserving.** Applicants seeking certification in the Wood Preserving Subcategory described in Section 2(A)(VII)(d) must demonstrate practical knowledge in wood destroying organisms and their life cycles, nonchemical control methods, pesticides appropriate for wood preservation, hazards associated with their use, proper handling of the finished product, proper disposal of waste preservatives, and proper application techniques to assure adequate control while minimizing exposure to humans, livestock and the environment.
- e. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest control as described in Section 2(A)(VII)(e) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.
- f. **Termite Pests.** Applicants seeking certification in this subcategory must demonstrate a practical knowledge of Termite pests and methods for their control. Such knowledge shall include identification of termites and knowledge of life cycles, formulations appropriate for various indoor and outdoor uses, methods to avoid contamination of food and feed, and damage to structures and furnishings, avoidance of risk to humans, domestic animals, and non-target organisms and risks to the environment associated with structural pesticide use.

VIII. Public Health Pest Control

- a. **Biting Fly and Other Arthropod Vector Pests.** Applicants seeking certification in the subcategory of Biting Fly and Other Arthropod Vector Pest Control as described in Section 2(A)(VIII)(a) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the

importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

- b. **Other Pests.** Applicants seeking certification in the subcategory of Other Pest Control as described in Section 2(A)(VIII)(b) must demonstrate a practical knowledge of the species involved, their potential roles in disease transmission, and the use of pesticides in their control. Such knowledge shall include identification of and familiarity with life cycles and habitat requirements, special environmental hazards associated with the use of pesticides in control programs, and knowledge of the importance of integrating chemical and non-chemical control methods. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

IX. **Regulatory Pest Control**

Applicants seeking certification in the category of Regulatory Pest Control as described in Section 2(A)(IX) must demonstrate practical knowledge of regulated pests and applicable laws relating to quarantine and other regulations of pests. Such knowledge shall also include environmental impact of pesticide use in eradication and suppression programs, and factors influencing introduction, spread, and population dynamics of relevant pests. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

X. **Demonstration and Research Pest Control**

Applicants seeking certification in the category of Demonstration and Research Pest Control as described in Section 2(A)(X) must demonstrate practical knowledge in the broad spectrum of activities involved in advising other applicators and the public as to the safe and effective use of pesticides. Persons involved specifically in demonstration activities will be required to demonstrate knowledge of pesticide-organism interactions, the importance of integrating chemical and non-chemical control methods, and a grasp of the pests, life cycles and problems appropriate to the particular demonstration situation. Field researchers will be required to demonstrate general knowledge of pesticides and pesticide safety, as well as a familiarity with the specific standards of this Section which apply to their particular areas of experimentation. All individuals certified in this category must also be certified in one or more of the previous categories or subcategories which represent at least 80% of their practice. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

XI. **Aerial Pest Control**

Applicants seeking certification in the category of Aerial Pest Control as described in Section 2(A)(XI) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Applicants must also demonstrate competency in the specific category or subcategory in which applications will be made, as described in paragraphs I, II, VI and VIII herein. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans.

4. **Competency Standards for Certification of Commercial Applicator/Master**

- A. **Regulations Exam.** An applicant seeking certification as a commercial applicator/master must successfully complete a closed book exam on the appropriate chapters of the Board's regulations. The passing grade shall be 80%. An applicant must successfully complete the regulations exam before being allowed to proceed to the master exam. The staff may waive the requirements for the closed book regulation exam if it determines that a pest management emergency exists necessitating the issuance of a nonresident license pursuant to Section 6 B. of this chapter, provided that the staff verbally reviews the pertinent regulations with the applicant prior to issuing a nonresident license.
- B. **Master Exam.** An applicant seeking certification as a commercial applicator/master must also demonstrate practical knowledge in ecological and environmental concerns, pesticide container and rinsate disposal, spill and accident mitigation, pesticide storage and on site security, employee safety and training, potential chronic effects of exposure to pesticides, pesticide registration and special review, the potential for groundwater contamination, principles of pesticide drift and measures to reduce drift, protection of public health, minimizing public exposure and use of non pesticide control methods. In addition, applicant must demonstrate the ability to interact with a concerned public.

5. **Certification Procedures for Commercial Applicators**

- A. **Initial Certification.** Individuals attempting to certify as a commercial applicator must be at least 18 years of age.
 - I. **Application for Exams.** Individuals applying to take exams must submit a completed application and associated fees. All fees are waived for governmental employees.
 - a. Information shall include name, home address, company address, name and telephone number of supervisor and categories for which certification is desired.

- b. A non-refundable fee of \$10.00 for each core, category or subcategory exam shall accompany the application.
- c. Study materials for other than the regulations exam are available through the University of Maine Cooperative Extension Pest Management Office for a fee.
- d. A non-refundable fee of \$10.00 for the regulations exam and \$40.00 for the Master exam shall accompany the application for Master exams. Study material for the regulations exam will be sent to the applicant upon receipt of their application and the required fees.

II. **Appointment for Exams**

- a. Exams will be scheduled by Board staff. It is the responsibility of the applicant to reschedule if necessary.
- b. All exam fees shall be forfeited if an applicant fails to notify the Board that he/she cannot sit for the exams on the scheduled date at least 24 hours in advance of the scheduled exam. Applicants who cancel their exam appointment two times in a row shall also forfeit their exam fees. Re-application shall require an additional \$15.00 fee.
- c. Exams will be available year-round on an appointment basis at the Board's office in Augusta.
- d. Exams may also be offered at other locations designated by the Board staff. Appointments for these exams should be arranged by application with the Board's office in Augusta.

III. **Exams**

- a. Applicants † shall take a closed book core exam plus a closed book category technical exam on each applicable category or subcategory for which they anticipate making pesticide applications.
- b. In addition to the exams described above in sections (a), applicants for commercial applicator/master certification must complete a closed book written regulations exam as well as a master exam. Applicants for commercial applicator/master must successfully complete the core and at least one category exam or the combined exam before being eligible to take the master exams. Applicants must also successfully complete the regulations exam before being allowed to commence on the master exam.

IV. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.

- a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.

- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, cellular telephones, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

V. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- b. An applicant who fails a category exam must re-apply and pay all required fees and may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must reapply and pay all required fees and wait 6 more days before retaking again.
- c. An applicant who passes the core and one category exam shall be considered eligible for operator level licensing in that particular category so long as that person will be working under the supervision of a Master applicator. If at a later date the applicant wishes to add another category, only the appropriate category exam shall be required.
- d. An applicant who fails a master exam must re-apply and pay all required fees and may not retake the examination prior to 6 days after the date of such failed examination.
- e. Any applicant must pass both the core and at least one category exam by December 31 of the third year from the date on which the first exam was passed.
- f. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retaking.

VI. **Expiration.** Certification under this Section will expire on December 31st of the third year after the date of successful completion of required exams and on December 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

VII. An applicant's original certification period shall not be extended due to the applicant qualifying for another category or upgrading to the master level.

B. Recertification of Applicators

I. Persons with current valid certification may renew that certification by either providing documentation from a substantially equivalent professional certification program approved by the board or by accumulating recertification credits during the certification period described in Section 5(A)VI according to the following schedule:

a. **Master level** - 9 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.

b. **Operator level** - 6 credit hours in subject areas applicable to the categories/subcategories in which the licensee is certified.

II. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.

a. Board staff will review program agendas and monitor programs as time permits.

III. Credit will be allowed for topics including, but not limited to:

a. Applicable laws and regulations.

b. Environmental hazards.

c. Calibration and new application techniques.

d. Label review.

e. Applicator safety.

f. Storage and disposal.

g. Pest identification and control.

h. Integrated pest management.

IV. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting with details of the agenda. Board staff will review program agendas and assign credit values.

a. One credit will be assigned for each 1 hour of presentation on appropriate topics.

- b. An individual who conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
 - c. An individual who organizes a meeting shall be required to maintain a sign up sheet and supervise the signing of the sheet by all applicators attending the program. That individual shall submit the signup sheet to the Board at the same time the verification attendance forms are collected and submitted to the Board.
- V. For in state programs, applicants must submit verification of attendance at approved programs to the Board. For out of state programs, applicators must submit verification of attendance; they may also be asked to provide documentation such as an agenda or descriptions of the presentations attended.
- VI. A person who fails to accumulate the necessary credits during their first three year certification period will have to retake and pass all exam(s) required for initial certification. If a person fails to accumulate the necessary credits again that person must retake and pass all exam(s) required for initial certification and within one year thereafter, obtain the balance of the recertification credits which that person failed to accumulate during the previous certification period. If that person does not obtain the balance of credits needed, the Board will not renew their license until the make- up credits are accrued.
- VII. Applicants must attend the entire approved program(s) for which recertification credit is sought. No other person may complete or sign a verification form on another applicator's behalf. Any form that is completed or signed by a person other than the applicator will be deemed a fraudulent report and will not be approved by the Board for recertification credit(s). Any credit(s) approved by the Board pursuant to an attendance verification form which is subsequently determined by the Board to have been completed or signed by a person other than the applicator shall be void and may not be counted towards the applicator's recertification requirements; and any recertification issued on the basis of such credits shall be void.

6. Licensing

- A. All Commercial Applicators required to be certified under this chapter and state pesticide law shall be licensed before using or supervising the use of pesticides as described in Section 1(A).
- B. **Nonresident licenses.** When the staff determines that a pest management emergency exists which necessitates the use of aerial application and for which there are not sufficient qualified Maine licensees, it may issue a license without examination to nonresidents who are licensed or certified by another state or the Federal Government substantially in accordance with the provisions of this chapter. Nonresident licenses issued pursuant to this section are effective until December 31 of the year in which they are issued.
- C. **Application.** Application for a commercial applicator license shall be on forms provided by the Board.

- I. The completed application must include the name of the company or agency employing the applicant.
 - II. Unless the applicant is the owner of a company, the completed application must be signed by both the applicant and that person's supervisor to verify the applicant is an employee of the company/agency.
- D. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
- I. For a commercial applicator license - \$105.00 per person.
- E. Commercial applicators who apply pesticides for hire (custom applicators) and operate a company that is incorporated or which employs more than one applicator (licensed or unlicensed) must comply with Chapter 35, *Certification & Licensing Provisions/Spray Contracting Firms* which requires an additional Spray Contracting Firm License.
- F. **Insurance.** Commercial applicators who spray for hire (custom applicators) shall be required to have liability insurance in force at any time they make a pesticide application.
- I. Applicators shall submit a completed and signed form provided by the Board at the time they apply for their license which attests that they will have the required amounts of insurance coverage in effect when they make pesticide treatments. The information submitted on the form must be true and correct.
 - II. Insurance coverage must meet or exceed the following minimum levels of liability:
 - a. **Ground applicators**

Public liability	\$100,000 each person
	\$300,000 each occurrence
Property damage	\$100,000 each occurrence
 - b. **Aircraft applicators**

Public liability	\$100,000 each person
	\$300,000 each occurrence
Property damage	\$100,000 each occurrence
- G. **Reports.** Annual Summary Reports described in Chapter 50, Section 2(A) must be submitted for each calendar year by January 31 of the following year. In the event a required report is not received by the due date, the person's license is temporarily suspended until the proper report is received or until a decision is rendered at a formal hearing as described in 22 MRSA §1471-D (7).

H. **Expiration**

- I. All licenses will expire at the end of the certification period as determined in Section 5(A)VI or when an individual licensee terminates employment with the company/agency with which the individual's license is affiliated.
- II. The licensee or a company/agency representative shall notify the Board in writing within 10 days after a licensee is terminated from employment.
- III. Also, all licenses within a company/agency are suspended if the licensed Master is terminated from employment or dies.

I. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

J. **Credentials Contact.** Licenses issued under this rule will include the following information:

- I. Full name of applicator
 - II. License number
 - III. Categories
 - IV. Expiration date
 - V. Maine statute under which license is issued.
-

STATUTORY AUTHORITY: 22 M.R.S.A., Section 1471-D

EFFECTIVE DATE:

January 1, 1983 (filed with Secretary of State August 13, 1982)

AMENDED:

December 29, 1982

January 1, 1984

January 1, 1984 - Section 7

May 20, 1984 - Section 6

May 13, 1985 - Section 5

Emergency amendment effective April 18, 1986 - Section 6

August 3, 1986 - Section 6

November 30, 1986 - Section 3

May 23, 1987 - Section 1

April 27, 1988

April 29, 1990

January 1, 1996 (adopted by Board October 7, 1994 - see Section 8 for transition dates)

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

December 28, 1999 -- also converted to MS Word

March 5, 2003

July 3, 2005 – filing 2005-267

March 4, 2007 – filing 2007-69

July 2, 2009 – filing 2009-318 (EMERGENCY, later reverted to pre-emergency status)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – filing 2014-280

September 23, 2015 – filing 2015-168

July 23, 2019 – filing 2019-131

SUMMARY: These regulations describe the requirements for certification and licensing of private applicators.

1. Competency Standards for Certification - Private Applicator

- A. No person shall be certified as a private applicator unless he has fulfilled requirements demonstrating his knowledge of basic subjects including pesticide label comprehension, ability to read and understand pesticide labeling, safety, environmental concerns, stewardship, pest organisms, pesticides, equipment, application techniques, responsibilities for supervisors of non-certified applicators, and applicable laws and regulations. Also required shall be knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans (core exam).
- B. No person shall be certified as a private applicator unless he has demonstrated knowledge of the general principles of pest control for his major commodity, including specific pests of the crop, their life cycle, and proper timing of control measures to be efficacious (Commodity Exam).

2. Certification Procedures for Private Applicators

A. Initial Certification

- 1. Any person attempting to certify as a private applicator must be at least 18 years of age.
- 2. Any person seeking to be certified as a private applicator must pass a written core exam and a written exam in the area of his primary commodity. Both exams shall be closed book.
- 3. Exams may be taken at cooperating County University of Maine Cooperative Extension offices. Exams may also be offered at other locations designated by the Board staff or available on an appointment basis at the office of the Board.
- 4. **Examination Procedures.** All applicants shall comply with these rules or forfeit their opportunity to complete the exams at a specified appointment.
 - a. Applicant shall present a government issued identification to the moderator prior to commencement of exams.

- b. Applicants should be present and ready to take the exams at the appointed time.
- c. Applicants shall not talk during the examination period.
- d. Applicants shall not be allowed to bring any books, papers, calculators or electronically stored data into the examining room. Pencils and work sheets will be provided and all papers shall be collected at the end of the period.
- e. Applicants shall not make notes of the exams and shall not leave the table during an exam unless authorized by the staff.

5. **Qualification Requirements.** An applicant must achieve a passing score of 80 percent on each exam.

- a. An applicant who fails the core exam may not retake that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
- b. An applicant who fails the exam in the area of his primary commodity may not retake the that examination prior to 6 days after the date of such failed examination. If an applicant fails again the applicant must wait 6 more days before retaking the exam again.
- c. Any applicant must pass both the core and at least one commodity exam within 12 months before qualifying for certification.
- d. Any applicant who violates any of the rules pertaining to examinations shall wait a minimum of 60 days before retesting.

6. Certification under this section will expire on October 31st of the third year after the date of successful completion of the exams and on October 31st of every third year thereafter unless a special restricted certification period is assigned by the Board or Board staff.

B. **Supplemental Certification.** Private applicators who are certified as described in Section 2(A), and intend to conduct soil fumigation, non-soil fumigation or aerial applications must be certified in the appropriate supplemental category. Certification is obtained by passing a written exam with a minimum score of 80.

- 1. Supplemental category exams shall be closed book.
- 2. Supplemental category exams will be available year-round on an appointment basis at the Board's office in Augusta.
- 3. Examination and qualification requirements described in Section 2(A)(4-6) pertain to supplemental certification.

4. **Categories for Supplemental Certification of Private Applicators**

- a. **Soil Fumigation.** This category includes private applicators using or supervising the use of pesticides to fumigate crops in production including blueberries, orchard fruit, potatoes, vegetables, forage, grain and industrial or non-food crops.
- b. **Non-soil Fumigation.** This category includes private applicators using or supervising the use of fumigant pesticides or fumigation techniques in any type of structure or transportation device.
- c. **Aerial.** This category includes private applicators, including pilots and co-pilots, applying pesticides by means of any aircraft.

5. **Competency Standards for Supplemental Certification of Private Applicators**

Applicants seeking supplemental private certification must demonstrate competency in each applicable category (Category Exam). Competency in the applicable category shall be established as follows:

- a. **Soil Fumigation.** Applicants seeking supplemental certification in the category of Soil Fumigation as described in Section 2(B)(4)(a) must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using pesticides. Areas of such practical knowledge shall include soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, potential for environmental contamination, non-target injury, and community problems related to pesticide use in certain areas. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (d) (2017).
- b. **Non-soil Fumigation.** Applicants seeking supplemental certification in the category of Structural Fumigation as described in Section 2(B)(4)(b) must demonstrate a practical knowledge of a wide variety of pests and fumigation methods for their control. Such knowledge shall include identification of pests and knowledge of life cycles, fumigant formulations, methods to avoid contamination of food and damage to structures and furnishings, and avoidance of risks to employees. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (e) (2017).
- c. **Aerial Pest Control.** Applicants seeking supplemental certification in the category of Aerial Pest Control as described in Section 2(B)(4)(c) must demonstrate at least a practical knowledge of problems which are of special significance in aerial application of pesticides, including chemical

dispersal equipment, tank, pump and plumbing arrangements; nozzle selection and location; ultra-low volume systems; aircraft calibration; field flight patterns; droplet size considerations; flagging methods; and loading procedures. Also required shall be a knowledge of current methodology and technology for the control of pesticide drift to non-target areas, the proper meteorological conditions for the application of pesticides, and the potential adverse effect of pesticides on plants, animals or humans. In addition to the above competencies, private applicators obtaining supplemental certification in this category must demonstrate practical knowledge of topics indicated in 40 CFR 171.105 (f) (2017).

- C. **Requirements for Noncertified Applicators.** A certified applicator directly supervising a noncertified applicator to use restricted use pesticides must follow the provisions in 40 CFR 171.201 (2023).

B.D. Recertification

1. Any person with current valid certification may renew that certification by accumulating 6 recertification credits during the certification period described in Section 2(A)6.
2. Recertification credits will be available through Board-approved meetings including but not limited to industry and trade organization seminars, workshops where pesticide topics are presented and approved home study courses.
3. Credit will be allowed for topics including, but not limited to:
 - a. Applicable laws and regulations.
 - b. Environmental hazards.
 - c. Calibration and new application techniques.
 - d. Label review.
 - e. Applicator safety.
 - f. Storage and disposal.
 - g. Pest identification and control.
 - h. Integrated pest management.
4. Persons organizing meetings for which they want credits awarded must contact the Board in writing at least 15 days in advance of the meeting and submit details of the pesticide topics, including titles and length of time devoted to them. Board staff will review program agendas and assign credit values. Board staff will monitor programs as time permits.

- a. A minimum credit of one hour shall be assigned for each one hour of presentation on appropriate topics.
 - b. An individual conducts a meeting for which the Board does assign recertification credits will be eligible for two credits for each 1 hour of presentation on appropriate topics.
5. For in state programs, each participant will complete a form to verify attendance at each program for which credit is allowed at the site. For out of state programs, applicators must notify the Board about attendance and send a registration receipt or other proof of attendance and a copy of the agenda or other description of the presentations attended. The agenda must show the length of each presentation and describe what was covered.
 6. A person who fails to accumulate the necessary credits will have to re-apply to take the exams required for initial certification.

3. Licensing

- A. **Application.** Application for a private applicator license, shall be on forms provided by the Board. Information shall include name; Social Security number; mailing address; farm name, location and telephone number; and major crop(s).
- B. **Fee.** At the time of application, the applicant must tender the appropriate fee as follows:
 1. For a private applicator license - \$15.00 per person.
 2. For replacement or alteration - \$5.00.
- C. **Expiration.** Private applicator licenses are issued on a three-year period and will expire on October 31st of the third year. Any person who has accumulated the required number of recertification credits must apply for license renewal within one year of the expiration date of the license or the recertification credits are forfeited and that person must retake and pass both the core and commodity exams to again be eligible for licensing.
- D. **Decision.** Within 60 days of receipt of application by the Board, unless the applicant agrees to a longer period of time, the Director shall issue, renew or deny the license. The Director's decision shall be considered final agency action for purposes of 5 M.R.S.A. §11001 *et seq.*

E. **License Issued.** Licenses issued under this rule will include the following information:

- I. Full name of applicator
- II. License number
- III. Commodities and categories
- IV. Expiration date
- IV. Maine statute under which license is issued

STATUTORY AUTHORITY: 22 M.R.S. §1471-D

EFFECTIVE DATE:

January 1, 1983

AMENDMENT EFFECTIVE:

December 6, 1987

August 17, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

August 25, 1997 – fees

January 4, 2005 – filing 2004-605, Section 3.C.

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

December 9, 2014 – Section 2(A)(4)(a, b), filing 2014-281

July 23, 2019 – filing 2019-132

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; (5) plant-incorporated protectants; (6) neonicotinoids (dinotefuran, clothianidin, imidacloprid, thiamethoxam); and (7) chlorpyrifos (Dursban, Lorsban).

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.

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- 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. If refuge is required, total acres planted as refuge and seeding rate; and
- ~~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~~
- ed. 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 available on-line, pass an exam, and acquire an appropriate 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~~ plant-incorporated protectant corn growers whose corn crops are or will be located within 500 feet of a prospective ~~Bt corn~~ plant-incorporated protectant planting site can request that the ~~Bt corn~~ plant-incorporated protectant grower protect the non-~~Bt corn~~ plant-incorporated protectant crop from pollen drift.
 - i. the request must be made prior to planting of the ~~Bt corn~~ plant-incorporated protectant crop;
 - ii. the request must identify the non-~~Bt corn~~ plant-incorporated protectant crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. If a refuge is required, the ~~Bt corn~~ plant-incorporated protectant grower must plant ~~any~~ refuge required by the ~~Bt corn~~ plant-incorporated protectant grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-~~Bt corn~~ plant-incorporated protectant crop; or
 - 2. if no refuge is required, the ~~Bt corn~~ plant-incorporated protectant grower shall maintain at least a 300-foot ~~Bt~~ plant-incorporated protectant ~~corn~~ free buffer to non-~~Bt~~ plant-incorporated protectant crops.
 - d. ~~Bt corn~~ plant-incorporated protectant 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~~ plant-incorporated protectant 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 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

September 20, 2022 – filing 2022-181

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Starbucks
38 Bangor Mall Road
Bangor, ME 04401

Date of Incident(s): July 23, 2020

Background Narrative: On July 27, 2020, the BPC was contacted by a member of the public health inspection team to report an incident where a “bug bomb” had been used inside a Starbucks café that set off the fire alarm and triggered a response by the Bangor Fire Department. The resulting inspection revealed that the Starbucks’ manager, Bianca Godfrey, had released one canister of Raid Max No Mess Dry Fogger, EPA Reg. No. 4822-601, after the café had closed on July 23, 2020, to control a fruit fly infestation. Shortly after releasing the fogger a repairman arrived to work inside the café. Ms. Godfrey opened the building, removed the fogger and attempted to air out the premises which caused the fire alarm to sound.

Summary of Violations: Any person making a pesticide application that is a custom application, including any application to a food establishment, as defined under 22 M.R.S. § 1471-C, must either be a certified commercial applicator or be working under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D.

Raid Max No Mess Dry Fogger bug bombs label states “Do not re-enter for four (4) hours after application.” 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) prohibit the use of any pesticide in manner inconsistent with its label.

Rationale for Settlement: No employees of the Starbucks café are licensed pesticide applicators with the BPC. The product used has a labeled 4-hour re-entry interval that was not followed by Ms. Godfrey. That Bianca Godfrey acted in good faith in attempting to address the ongoing fruit fly infestation and cooperated fully with the Board investigation.

Attachments: Proposed Consent Agreement

JUN 12 2023

CK AMT: 500.00
CK DATE: 3-25-23
#: 455

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

In the Matter of:
Starbucks
38 Bangor Mall Road
Bangor, Maine 04401

) ADMINISTRATIVE CONSENT AGREEMENT
) AND
) FINDINGS OF FACT
)

This Agreement by and between Starbucks (hereinafter called the "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 develops and manages coffee shops, including in the Bangor area.
- 2) That on July 27, 2020, the City of Bangor Building Code Enforcement Officer, Greg Higgins, notified Public Health Inspector Jennifer Springer of a call he received from the Bangor Fire Department. They were notifying him of a call out to the Company that occurred on July 23, 2020, at 9:17 PM where a bug bomb had set off the fire alarm. Jennifer Springer contacted Maine Board of Pesticides Control.
- 3) That on July 29, 2020, a Board inspector met with Company manager, Bianca Godfrey to document the facts associated with the report directed to the Board as described in paragraph two.
- 4) That during the inspection described in paragraph three, Godfrey reported:
 - a) That the cafe had a severe fruit fly problem. Godfrey stated that a professional pest management company had been there on July 22, 2020. The pest management company treated the drains and walls for fruit flies but had told her they couldn't do anything more about the problem.
 - b) That the severe fruit fly infestation continued following the pest management company's treatment on July 22, 2020.
 - c) That she believed additional steps to control the infestation were necessary due to the continuing pest problem. Consequently, Godfrey purchased a three pack of Raid Max No Mess Dry Fogger bug bombs (EPA Reg. No. 4822-601).
 - d) That on July 23, 2020, after food and utensils were stored safely, and employees had left for the day, she released one bug bomb in the middle of the cafe.
 - e) That as she was leaving, she met a repairman headed into the building to repair grout. Godfrey told him to wait outside. She returned to the building, removing the bug bomb, and then opening the doors to air out the building.
 - f) That while airing the building out, the fire alarms began to sound.
 - g) That she and the repairman waited outside until the fire department to responded to turn off the fire alarms.

- h) That after the fire department left, Godfrey believed it would be safe to reenter the cafe because the fogger had not completely exhausted its contents and the cafe had been aired out. Consequently, she allowed the repairman inside to do the grouting and Godfrey went home.
 - i) That Godfrey disposed of the emptied can at her home.
 - j) That Godfrey requested employees who were scheduled to work the morning of July 24, 2020, to start two hours early to move food and items from the cooler and to clean and sanitize the facility before opening.
- 5) That from the inspection described in paragraphs three and four, the inspector documented the details relating the July 23, 2020, pesticide application involving one Raid Max No Mess Dry Fogger bug bomb, EPA Reg. No. 4822-601, in the Starbucks café on 38 Bangor Mall Road in Bangor, ME.
 - 6) That application of a pesticide inside a cafe constitutes a custom application pursuant to 22 M.R.S. § 1471-C (5) (C).
 - 7) That custom application of a pesticide may only be conducted by persons certified by the Board pursuant to 22 M.R.S. §1471-D.
 - 8) That no one from the Company held a commercial pesticide applicator's license at the time of the application described in paragraphs four and five.
 - 9) That the circumstances described in paragraphs five through eight constitute a violation of 22 M.R.S. §1471-D.
 - 10) The during the inspection described in paragraphs three, four and five, the inspector documented that:
 - a) The repairman entered within the 4-hour window when there is a no re-entry requirement.
 - b) Godfrey believed it was safe because she had aired out the facility.
 - 11) That the Raid Max No Mess Dry Fogger bug bombs label states "Do not re-enter for four (4) hours after application.
 - 12) That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) prohibit the use of any pesticide in manner inconsistent with its label.
 - 13) That the circumstances described in paragraphs ten, eleven and twelve, constitute use of a pesticide inconsistent with the product labeling in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
 - 14) That Bianca Godfrey acted in good faith in attempting to address the ongoing fruit fly infestation and cooperated fully with the Board investigation.
 - 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 cause of action which the Board has against the Company resulting from the violations referred to in paragraphs nine and thirteen, the Company agrees to pay a penalty to the State of Maine in the sum of \$500 (Please make checks payable to Treasurer, State of Maine).

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

STARBUCKS

By: Bianca Godfrey Date: 3/25/23

Type or Print Name: Bianca Godfrey

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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



JANET MILLS
GOVERNOR

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

MEGAN PATTERSON
DIRECTOR

Compliance Verification Statement

12-7-2022

Individual Company or Store Name	Starbucks	Inspection Numbers	<u>220729LRS01</u>
		Inspection Dates	<u>7-29-2022</u>
Address	38 Bangor Mall Road		
Town	Bangor	State	ME Zip 04401

I verify that I have taken steps to correct the violations of:

- **Uncertified/unlicensed commercial pesticide applications.**
- **Failure to use pesticide in a manner consistent with pesticide label.**

Brian Godfrey
Owner or Company Representative Signature

3/25/23
Date:

Bianca Godfrey
Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.

**Proposed Administrative Consent Agreement
Background Summary**

Subject: Amelia and Arthur Bond
The Bond Revocable Trust 6/23/2017
100 Arundel PL
St. Louis, MO 63105

Date of Incident(s): Autumn 2021

Background Narrative: On November 7, 2022, the BPC was contacted by a representative for the homeowner (Lisa Gorman) at 3 Metcalf Rd. in Camden. Mrs. Gorman had observed the decline of oak trees on the property in July of 2022 and had her contracted arborist investigate. Vegetation samples that were collected by the arborist and analyzed were positive for the herbicide Tebuthiuron. On November 8, 2023, a Board representative conducted a site inspection at 3 Metcalf Road and collected 6 soil samples and 2 vegetation samples for analysis. All 8 physical samples were positive for Tebuthiuron. A representative for the Town of Camden was also present at the time of the site inspection and raised concern about the destruction of trees and vegetation within the shoreland zone and possible effects to human health and the environment as the site is adjacent to Camden Harbor and a public park/beach. In December of 2022 the Town of Camden issued a Notice of Violation to the homeowners at 1 Metcalf Rd. (Amelia and Arthur Bond). In a response letter to the Town of Camden, Mrs. Bond's recollection of events is that she purchased a product with the brand name Alligare, in a 4-pound manufacturer's packaging, transported the product from Missouri to Maine and applied it to the base of two oak trees at 3 Metcalf Road that she believed to be dying. Tebuthiuron is the active ingredient in Alligare Tebuthiuron 20P, EPA Reg. No. 81927-41, is available in 4 lb. quantities and is used to control woody vegetation in rangelands.

Summary of Violations: CMR 01-026 Chapter 20 Section 6(D)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.

7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.

Use of a pesticide in a careless, negligent or faulty manner, in violation of 22 M.R.S. § 1471-D (8)(C).

Rationale for Settlement: The Bond's did not have authorization to apply pesticides at 3 Metcalf Road in Camden. Alligare Tebuthiuron 20 P was applied in the vicinity of desirable plant species, in an area of bedrock, and that directly downslope and within thirty (30) feet of the application site there are areas of exposed bedrock, and that this application was in a residential area which are violations of the label. Use of Alligare Tebuthiuron 20 P was conducted in a careless, negligent or faulty manner.

Attachments: Proposed Consent Agreement

JUN 26 2023

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

CK#: 3450
CK AMT: \$4500
Date: 6/14/23

In the Matter of:
Amelia and Arthur Bond
The Bond Revocable Trust 6/23/2017
100 Arundel PL
St. Louis, MO 63105

ADMINISTRATIVE CONSENT
AGREEMENT
AND
FINDINGS OF FACT

This Agreement by and between Amelia and Arthur Bond (hereinafter called the "Bonds") 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 Bonds, through the revocable trust of 2017, are the owners of a residential property in Maine with a physical address of 1 Metcalf Road in Camden Maine.
- 2) That 1 Metcalf Road is directly upslope from a property owned by Lisa Gorman at 3 Metcalf Road in Camden Maine.
- 3) That the ocean is directly downslope from 1 Metcalf Road.
- 4) That Gorman contracts with Bartlett Tree Experts, a full-service arborist company, to care for her trees and shrubs including two large oak trees on Gorman's property.
- 5) That, during July of 2022, Gorman observed symptoms of decline on the two large oak trees on her property and asked Bartlett Tree Experts to assess their condition.
- 6) That, according to Bartlett Tree Experts, a wide variety of trees and shrubs, including the two large oaks, were showing signs of decline in the area generally upslope from the Gorman residence.
- 7) That, based on their analysis, Bartlett Tree Experts arborists suspected herbicides may have been applied.
- 8) That Bartlett Tree Experts arborists collected four (4) foliage samples from four (4) different species of woody species, including oak, maple, blueberry and dogwood.
- 9) That the four (4) foliage samples described in Paragraph Eight were analyzed by the Pacific Agricultural Laboratory in Sherwood, Oregon.
- 10) That all four (4) samples, according to the tests conducted by Pacific Agricultural Laboratory, were positive of the herbicide, Tebuthiuron.
- 11) That on November 8, 2022, a Board representative conducted a site inspection at 3 Metcalf Road and collected six (6) soil samples and two (2) vegetation samples, which include two (2) samples from the base of the two oak trees.
- 12) That the six (6) soil samples were taken from the area on the Gorman property between 1 Metcalf and 3 Metcalf Road, the area of the northern edge of the Gorman property near Camden City Park, and the area adjacent to the high-water mark on the lower edge of the Gorman property.

- 13) That all eight (8) of the samples described in Paragraph Eleven were positive for Tebuthiuron.
- 14) That on December 21, 2022, the Board received a copy of a letter sent to the City of Camden from Attorney Aaron White, representing the Bonds, in which Amelia Bond acknowledges applying an herbicide to the area near the large oak trees on Gorman property during the fall of 2021. According to the letter, to the best of Amelia Bond's recollection, the herbicide applied was under the trade name Alligare.
- 15) That CMR 01-026 Chapter 20 § 6 (D)(2) requires prior authorization to apply pesticides to the property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property, including tenants of rented property.
- 16) That the Bonds did not have authorization to make an herbicide application on the Gorman property.
- 17) That the Board alleges the circumstances described in Paragraphs One (1) through Sixteen (16) constitute a violation of CMR 01-026, Chapter 20, Section 6 (D)(2).
- 18) That 1 and 3 Metcalf Road directly abut the ocean front Camden City Park.
- 19) That the Environmental Protection Agency's Tebuthiuron Registration Eligibility Document and other literature suggest Tebuthiuron is resistant to biological and chemical degradation and that its principal route of dissipation appears to be transport to ground and surface water.
- 20) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminated surface and/or ground water and migrated from the application site to cause plant injury and mortality to a broad range of woody plants across the breadth of the Gorman property.
- 21) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminated the soils in the area of the application site and downslope thereof, in manner that may prevent revegetation of the affected area without remediation.
- 22) That the Board alleges the sample results and visual evidence suggest the tebuthiuron contaminating any surface and/or ground water could result in migration to marine waters, and that tebuthiuron is toxic to marine plants and plankton.
- 23) That the Board alleges the Alligare 20 P label and open-source literature state that the chemical properties of tebuthiuron present a high risk of surface and ground water contamination. Factors that exacerbate the risk include slope of the topography, depth of soils and presence of exposed and shallow bedrock.
- 24) That Amelia Bond's alleged application of Tebuthiuron was in an area of shallow soils, exposed and shallow bedrock, and steep slopes.
- 25) That the Board alleges the circumstances described in Paragraphs One (1) through Twenty-Four (24) constitute use of a pesticide in a careless, negligent or faulty manner, in violation of 22 M.R.S. § 1471-D (8)(C).
- 26) That the product label for Alligare 20 P contains a series of requirements intended to prevent damage to non-target plants and migration of the product away from the application site, into the ground or surface water, or onto adjacent properties. Said requirements include, but are not limited to the following:
 - a) Do not use Alligare Tebuthiuron 20 P herbicide in any area where desirable species are in the vicinity of the plants to be controlled. A small amount of Alligare Tebuthiuron 20 P in contact with the roots of desirable trees or other woody species may cause severe injury or death. The roots of such plants may extend far beyond their drip lines.

- b) Do not apply Alligare Tebuthiuron 20 P where bedrock is continuously exposed or in areas of bedrock overlain by soils that are shallow or discontinuous.
 - c) Not for residential use.
 - d) Treatment Setback: Do not apply Alligare Tebuthiuron 20 P in the vicinity of desirable plants. Exposure of even a small part of a plant root system to Alligare Tebuthiuron 20 P may cause severe plant injury or death. Plant roots usually occupy an area much larger than the aerial portion of the plant. Treatment setback distance should be 1 to 2 times the height or width of adjacent non-target vegetation, whichever is greater. For example, if adjacent non-target vegetation is 25 feet tall, the treatment setback should be 50 feet. An Arboriculturist (tree expert) should be consulted to help you to determine if there is a question about the appropriate setback distance or if the area of proposed application is free of all roots of desirable vegetation.
 - e) Once rainfall has moved Alligare Tebuthiuron 20 P into the plant root zone, the effect on woody plants is irreversible.
- 27) That Amelia Bond applied Alligaire in the vicinity of plant species, in an area of bedrock, and that directly downslope and within thirty (30) feet of the application site there are areas of exposed bedrock, and that this application was in a residential area.
- 28) That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F) prohibit the use of a pesticide inconsistent with its label.
- 29) That the Board alleges the circumstances described in Paragraphs Eighteen (18) through Twenty-Six (26) constitute use of a pesticide inconsistent with the product label, in violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S.A. § 606 (2)(B) and 22 M.R.S.A § 1471-D(8)(F).
- 30) That, despite the above, the Bonds, by and through their counsel and consultants, have been actively cooperating with the owners of 3 Metcalf Road and the Town of Camden since December 2022 in developing a remediation plan (“the Plan”) that will protect and mitigate against further damage and/or risk at 1 and 3 Metcalf Road, as well as any property owned by the Town determined to be at risk of potential damage. Such cooperation has included but is not limited to the following:
- a) Communicating and providing available information to the owners of 3 Metcalf Road and the Town of Camden regarding the cause of the alleged damages and steps taken to mitigate those damages;
 - b) Retaining two (2) consultants, a licensed landscape architect and arborist, to analyze the currently available information, reports, test results, cost estimates and alleged violations and damages to ascertain the cause, extent and steps necessary to remediate the alleged damages;
 - c) Conducting an on-site inspection of the alleged damage at 1 and 3 Metcalf Road with their counsel and consultants, counsel for the owners of 3 Metcalf Road and their respective consultants in late December 2022; and
 - d) Analyzing and assessing the numerous remediation plans drafted by the consultants of the owners of 3 Metcalf Road, which the Parties intend on finalizing and submitting to the Town for ratification.
- 31) That the Parties intend for the Plan, once finalized and ratified by the Town of Camden, to go into immediate effect and for mitigation to commence thereafter.
- 32) That the Bonds expressly waive:
- 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.

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

34) That in consideration for the release by the Board of the alleged causes of action which the Board may have against the Bonds resulting from the alleged violations referred to in Paragraphs Seventeen (17) and Twenty-Nine (29) and any additional provisions under the aforementioned statutes or any corollary regulations in the State of Maine relating in any way to the application of herbicides and pesticides, the Bonds agree to pay a penalty to the State of Maine in the sum of \$4,500, which checks payable to "Treasurer, State of Maine."

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

AMELIA AND ARTHUR BOND

By: *Amelia & Arthur* Date: 6-13-23
Arthur W. Bond III Date: 6/13/2023

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED:

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



JANET MILLS
GOVERNOR

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

MEGAN PATTERSON
DIRECTOR

Compliance Verification Statement

June 9, 2023

Individual Company or Store Name	Amelia and Arthur Bond The Bond Revocable Trust 6/23/2017	Inspection Numbers	<u>221108ARP01</u>
		Inspection Dates	<u>11-08-2022</u>
Address	100 Arundel Place		
Town	St. Louis	State	MO
		Zip	63105

I verify that I have taken steps to correct the alleged violations of:

- Unauthorized application of a pesticide.
- Use of a pesticide in a careless, negligent or faulty manner.
- Violations of pesticide labeling and label use restrictions.

Arthur D. Bond III

 Owner or Company Representative Signature

6.13.23
6/13/2023

 Date:

Amelia D.J. Bond
 ARTHUR D. BOND III

 Print Name

The above **Compliance Verification Statement** should be signed and returned with the **signed Consent Agreement** to verify that steps have been taken to prevent violations in the future.

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

From: Chantal Longo-Guess <chantal.longoguess@yahoo.com>

Sent: Friday, June 9, 2023 2:00 PM

To: Pesticides <Pesticides@maine.gov>

Subject: Board of Pesticide

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon,

I am writing today to express my extreme frustration with the Board of Pesticide meeting this morning. My husband, Billy Guess, was asked to attend the meeting this morning to discuss why he wanted to treat balsam fir adelgid with a neonicotinoid. We were told that it would be beneficial for him to be there to represent himself. As we only have one computer for our small business, I also had to sit through the first two hours of the meeting meaning that we both lost time from work. The issue of balsam fir adelgid came up after two long hours of listening to the meeting, and the answer was no before any type of discussion could take place. Clearly my husband was allowed to speak on his behalf as an afterthought. This type of rudeness is unprecedented in my 21 years of science (and I worked at The Jackson Laboratory). The arrogance of the board and the unwillingness to listen to any other information or a difference of opinion was maddening (and not how science works). I am unclear as to why Billy was even asked to be at the meeting. We both could have gone about our days and not gotten further behind in our workloads. Clearly the answer was going to be no from the beginning, and that could have been said in an email (as could most of the first two hours of the meeting).

The customer that I have has a large amount of fir trees that are being attacked by balsam fir adelgid. The BPC is advocating that my company use either carbaryl, permethrin, or bifenthrin instead of a neonicotinoid. All of these products are foliar sprays which have the potential to kill bees and other pollinating insects. The neonicotinoid can be applied as a bark spray. This is a more targeted spray, so there would be less of an issue with pollinators than foliar spray. In addition, conifers are wind pollinated, so there most likely wouldn't be bees in the tree, so again a trunk spray would not affect pollinators. Clearly pollinators are not the issue as the board did not even want to consider these facts.

It is STILL unclear to me as an applicator why we are allowed to use neonicotinoid to treat hemlock wooly adelgid, but not balsam fir adelgid. Do we care more about hemlocks than fir trees? It doesn't make sense. The list of the three insects that are approved for neonicotinoid use is silly. We don't have Asian long horned beetle in this state, and if we did, I probably wouldn't use a neonicotinoid for control. I also wouldn't use a neonicotinoid for emerald ash borer as they aren't as effective as other pesticides at controlling borers. We do use neonics to control HWA, but notice I said control. There was an argument made during the meeting today that balsam fir adelgid had been around too long for eradication to take place. If eradication is the goal, you missed the boat with HWA too. There is a neighborhood where we treat for HWA in the mid coast, and each year we have more and more people in the

neighborhood finding it on their trees. Who knows how long it has been there? Many people probably don't even know what to look for.

It unclear to me as to why Billy was asked to be at the meeting, and I have to say I am disappointed in the rudeness of the Board and their inability to listen to any discussion and present educated evidence as to why the answer should be no. My advice would be to tell anyone with future questions "the answer is no because I said so." That doesn't work with my children, but it is basically what my husband was told, and if he had been told that in an email, he wouldn't have wasted 2 hours of his life this morning.

Sincerely,
Chantal Longo-Guess

Sent from my iPad

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 163 - L.D. 258

An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025

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

PART A

Sec. A-1. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Accident - Sickness - Health Insurance 0455

Initiative: Establishes one Public Service Coordinator I position to manage the high volume of contracts necessary to implement the programs of the Office of Employee Health and Wellness.

ACCIDENT, SICKNESS AND HEALTH INSURANCE INTERNAL SERVICE FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$102,076	\$107,833
	\$102,076	\$107,833
ACCIDENT, SICKNESS AND HEALTH INSURANCE INTERNAL SERVICE FUND TOTAL		

Accident - Sickness - Health Insurance 0455

Initiative: Establishes 2 Public Service Coordinator I positions to support state employees with all benefits and retirees with health insurance, including educational sessions on retirement for state employees.

ACCIDENT, SICKNESS AND HEALTH INSURANCE INTERNAL SERVICE FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	2.000	2.000

Bureau of Agriculture 0393

Initiative: Establishes one seasonal Entomology Technician position in the Federal Expenditures Fund and provides funding for related All Other costs.

FEDERAL EXPENDITURES FUND	2023-24	2024-25
POSITIONS - FTE COUNT	0.538	0.538
Personal Services	\$39,955	\$42,080
All Other	\$2,503	\$2,636
FEDERAL EXPENDITURES FUND TOTAL	\$42,458	\$44,716

Bureau of Agriculture 0393

Initiative: Transfers and reallocates the cost of one Environmental Specialist III position, one part-time Environmental Specialist II position and one part-time Office Associate II position from 100% Bureau of Agriculture program, General Fund to 100% Pesticides Control - Board of program, Other Special Revenue Funds and transfers and reallocates the cost of 2 Assistant Horticulturist positions, one State Horticulturist position and 2 Entomologist III positions from 100% Pesticides Control - Board of program, Other Special Revenue Funds to 100% Bureau of Agriculture program, General Fund. This initiative also adjusts funding for related All Other costs.

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	4.000	4.000
POSITIONS - FTE COUNT	(1.000)	(1.000)
Personal Services	\$321,271	\$319,766
All Other	(\$10,500)	(\$10,500)
GENERAL FUND TOTAL	\$310,771	\$309,266

Bureau of Agriculture 0393

Initiative: Establishes one Contract/Grant Manager position to oversee multiple grant programs and provides funding for related All Other costs.

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$106,665	\$112,530
All Other	\$3,500	\$3,500
GENERAL FUND TOTAL	\$110,165	\$116,030

BUREAU OF AGRICULTURE 0393**PROGRAM SUMMARY**

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	8.000	8.000
POSITIONS - FTE COUNT	(1.000)	(1.000)
Personal Services	\$652,656	\$669,523
All Other	\$1,114,558	\$1,287,609
Capital Expenditures	\$2,250,000	\$0

PARKS - GENERAL OPERATIONS Z221

PROGRAM SUMMARY

GENERAL FUND	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	1,000	1,000
Personal Services	\$99,424	\$104,583
All Other	\$669,772	\$682,385
GENERAL FUND TOTAL	\$769,196	\$786,968

FEDERAL EXPENDITURES FUND	2023-24	2024-25
All Other	\$15,629	\$15,629
FEDERAL EXPENDITURES FUND TOTAL	\$15,629	\$15,629

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$221,840	\$237,562
Capital Expenditures	\$730,000	\$530,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$951,840	\$767,562

Pesticides Control - Board of 0287

Initiative: Provides funding for increased information technology system costs related to pesticides licensing.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$295,759	\$305,540
OTHER SPECIAL REVENUE FUNDS TOTAL	\$295,759	\$305,540

Pesticides Control - Board of 0287

Initiative: Provides funding for statewide central fleet management services provided by the Department of Administrative and Financial Services.

FEDERAL EXPENDITURES FUND	2023-24	2024-25
All Other	\$5,214	\$6,377
FEDERAL EXPENDITURES FUND TOTAL	\$5,214	\$6,377

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$6,688	\$8,552
OTHER SPECIAL REVENUE FUNDS TOTAL	\$6,688	\$8,552

Pesticides Control - Board of 0287

Initiative: Transfers and reallocates the cost of one Environmental Specialist III position, one part-time Environmental Specialist II position and one part-time Office Associate II

position from 100% Bureau of Agriculture program, General Fund to 100% Pesticides Control - Board of program, Other Special Revenue Funds and transfers and reallocates the cost of 2 Assistant Horticulturist positions, one State Horticulturist position and 2 Entomologist III positions from 100% Pesticides Control - Board of program, Other Special Revenue Funds to 100% Bureau of Agriculture program, General Fund. This initiative also adjusts funding for related All Other costs.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	(4,000)	(4,000)
POSITIONS - FTE COUNT	1,000	1,000
Personal Services	(\$321,271)	(\$319,766)
All Other	(\$8,970)	(\$8,876)
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$330,241)	(\$328,642)

PESTICIDES CONTROL - BOARD OF 0287

PROGRAM SUMMARY

FEDERAL EXPENDITURES FUND	2023-24	2024-25
All Other	\$5,214	\$6,377
FEDERAL EXPENDITURES FUND TOTAL	\$5,214	\$6,377

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
POSITIONS - LEGISLATIVE COUNT	(4,000)	(4,000)
POSITIONS - FTE COUNT	1,000	1,000
Personal Services	(\$321,271)	(\$319,766)
All Other	\$293,477	\$305,216
OTHER SPECIAL REVENUE FUNDS TOTAL	(\$27,794)	(\$14,550)

Statewide Hunger Relief Program Z288

Initiative: Provides one-time funding for a grant to a food security hub addressing the nutritional needs of homeless, sheltered or food insecure persons.

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$2,000,000	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,000,000	\$0

STATEWIDE HUNGER RELIEF PROGRAM Z288

PROGRAM SUMMARY

OTHER SPECIAL REVENUE FUNDS	2023-24	2024-25
All Other	\$2,000,000	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,000,000	\$0

From: U.S. EPA Office of Chemical Safety and Pollution Prevention
<oppt.epa@public.govdelivery.com>
Sent: Thursday, July 13, 2023 4:19 PM
To: Bryer, Pamela J
Subject: EPA Requires Additional Mitigation Measures for Seresto Pet Collars

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.



Pesticide Update

EPA's Office of Chemical Safety and Pollution Prevention

EPA Requires Additional Mitigation Measures for Seresto Pet Collars

Today, the U.S. Environmental Protection Agency (EPA) is requiring the implementation of additional measures for Seresto pet collars. The new measures will alert veterinarians and consumers of potential risks and provide more information about how to prevent and report adverse reactions from Seresto collars. The new measures will also improve the quality of adverse incident data reported to EPA to aid in the continued review of this product.

EPA conducted an extensive analysis of incident and other data, with the assistance of the Food and Drug Administration (FDA). From this analysis, EPA concluded that these collars continue to meet EPA's standard under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). However, with the implementation of today's mitigations, EPA expects to receive higher quality data in the coming years. EPA has approved Seresto collar registrations for five years to allow for the continued evaluation of incident reports, which could result in further regulatory action in the future.

Background

Seresto collars offer flea and tick prevention for dogs and cats, as well as lice control for dogs. This use is important because fleas and ticks are considered significant public health pests that can transmit many serious diseases, such as Lyme disease and Rocky Mountain spotted fever, to pets and humans.

Under FIFRA, EPA is required to consider the benefits, as well as the risks, of the use of a pesticide. In addition to its protection against several serious public health pests, Seresto works for up to 8 months per collar, is available without the need for a prescription, and is relatively easy to apply compared to other flea and tick products. For cats and dogs, there are very few flea and tick collar alternatives that can be used for such a prolonged time.

Over the past several years, EPA has been improving its method for considering pet product-incidents, such as those reported for Seresto collars, in the pesticide registration and re-evaluation process. As part of this effort, and due to the number of Seresto-related incidents reported to EPA, the Agency began an in-depth review of the incidents of Seresto collars in 2021.

EPA has reviewed an extensive set of data it required Elanco, the current registrant of Seresto collars, to submit and reviewed the many incidents reported to EPA's Incident Data System to determine whether the collars may contribute to an elevated number of pet-related incidents. Throughout the review process, EPA consulted with FDA, which regulates similar products for cats and dogs, including flea and tick products that are ingested. EPA used information gathered during this review process to make its determination about the product.

EPA's Risk Findings and New Measures to Reduce Risk

EPA's scientific review of Seresto-related incident reports identified the need for more detailed incident reporting and public outreach. EPA analyzed all incidents that reported death for Seresto. This included 1,400 deaths reported to EPA from 2016-2020, which represent 2 percent of all Seresto incidents reported for these years. In many of the death-related incidents, critical details of the incident were often missing, preventing the Agency from determining the cause of the death.

The only reported deaths that were found to be "probably" or "definitely" related to Seresto product use were associated with mechanical strangulation or trauma caused by the collar, often associated with a failure of the release mechanism.

For all other deaths, EPA did not identify cases with a probable or definite association between collar use and death, often due to other factors impacting the animal, such as an existing medical condition. In addition, the rate of deaths reported for Seresto was similar to that for other pet products reviewed.

EPA also analyzed all non-lethal incidents, such as neurological symptoms. In some incidents with moderate or severe clinical sign removal of the collar seemed to alleviate symptoms and/or reapplication of the collar coincided with a reoccurrence of symptoms. Based on these findings, Elanco, the registrant of Seresto, has agreed to implement the following measures:

- **To alert veterinarians and consumers of potential risks**, the terms of continued registration require Elanco to include label warnings on Seresto products that describe common adverse effects that have been reported, along with instructions to remove the collar if those effects occur and instructions on how to report the incident. Elanco also must develop an outreach program to more effectively communicate with veterinarians and the public on the risks of using the product and other similar pesticides on pets.
- **To improve the quality of data reported when receiving reported incidents from consumers**, Elanco must pursue additional information to the greatest

extent possible to ensure that complete details of each event are captured. This information includes whether the pet had any pre-existing conditions or previous history of the reported condition. The Seresto collar registration has also been split into two registrations, one for cats and one for dogs, to make comparison of incident data across products easier in the future. Elanco must report incident and sales data to EPA on an annual basis.

- **To reduce the risk of strangulation**, Elanco must evaluate potential changes to the emergency release mechanism of Seresto collars to prevent death by strangulation or choking. The company must submit a report detailing the data and analysis collected and performed in pursuit of this effort within one year. Based on this evaluation, EPA may require a modified release mechanism for the Seresto collar.
- **To allow for the continued evaluation of reported incidents**, EPA has limited its current approval of Seresto collar registrations to five years. EPA will continue to evaluate Seresto incident data over that period.

Elanco must implement the new registration requirements by the next printing of Seresto pet collar labels, which must occur in the next 12 months. To learn more, read [EPA's decision document](#), [EPA's scientific review document](#), or [EPA's frequent Q&As](#).

EPA Denies Petition to Cancel and Suspend Seresto Pet Collars

Based on the Agency's scientific review of incident data, EPA is denying a [2021 petition](#) from the Center for Biological Diversity (CBD) that requests the cancellation of Seresto collars and the suspension of Seresto collars pending cancellation. EPA received and reviewed more than 5,400 comments on the petition. Read [EPA's full response to the petition and public comments](#).

EPA and FDA Continue to Discuss Pet Product Jurisdiction

EPA and FDA jointly released a whitepaper in February 2023 that outlines an updated approach to clarify regulatory oversight of certain animal products to better align with each agency's expertise. One aspect of that proposed modernized approach includes a process for transferring oversight of flea and tick pet products, such as Seresto collars, from EPA to FDA.

The agencies started discussing a modernized approach to product oversight years before the current review of Seresto collars. However, EPA's review of Seresto pet-related incident reports has highlighted that, as compared to FDA, EPA has less expertise and resources (staff, infrastructure, and funding) to evaluate animal safety and conduct ongoing monitoring of marketed products. Read the [whitepaper](#) to learn more.

Safety Tips for Using Pet Collars

EPA encourages pet owners to discuss with their veterinarian when flea and tick control is needed for their pets and which type of control product they should use. Pet owners should read the entire label before using the recommended product and follow all directions carefully, as well as monitor the pet after treatment.

EPA understands and shares the public's concerns about reported incidents with Seresto pet collars. Pets are part of the family in many American households and the

Agency is committed to following the science and the law as we work on this issue and pursue our mission. [Learn more](#) about how to use these products safely.

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