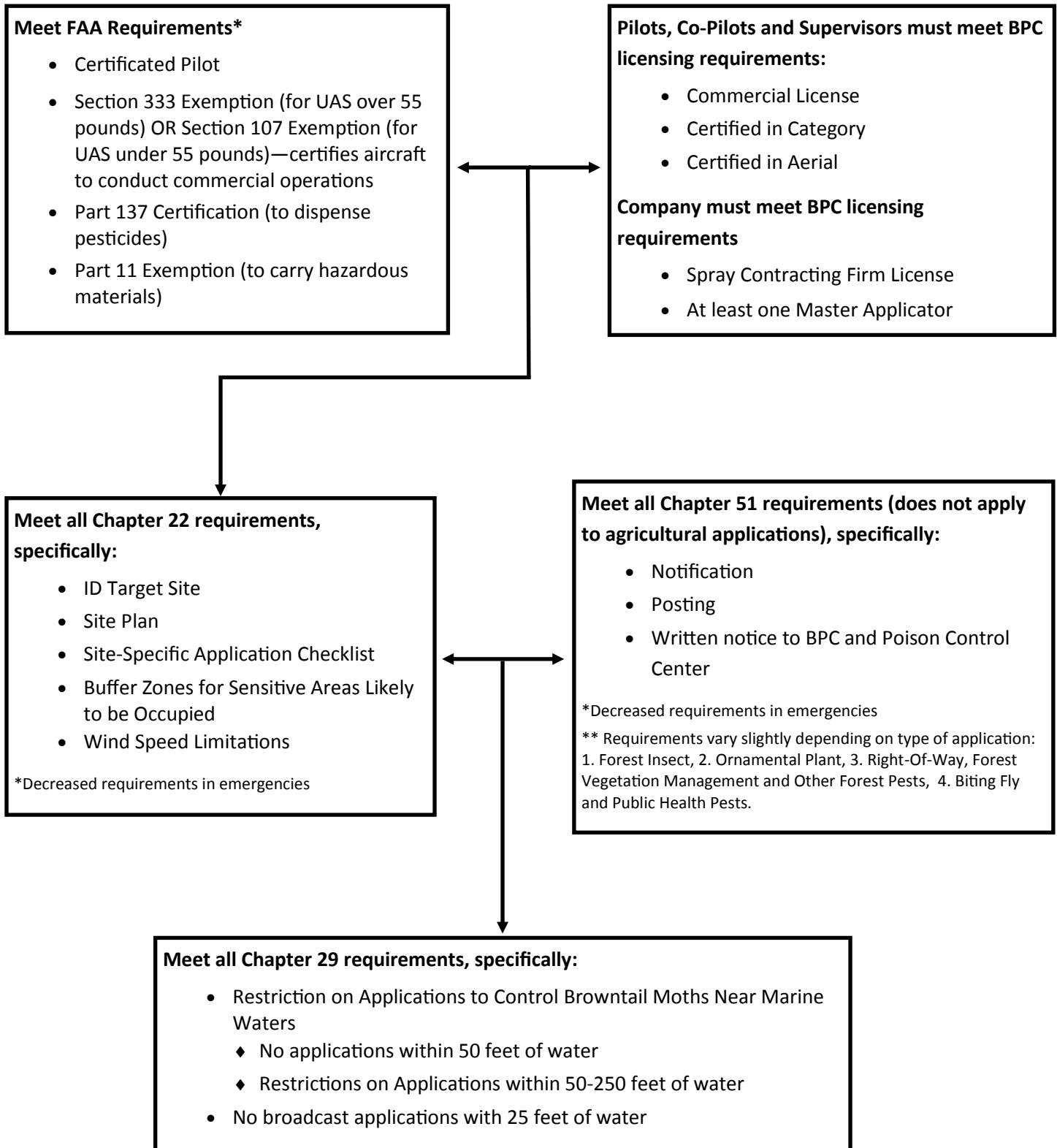


General overview of Maine BPC rules concerning unmanned aerial systems (UAS)

This is a partial list of BPC requirements specific to aerial applications; there are many other requirements (such as mixing/loading, transport, storage) which apply to all applications. Applicators must comply with all state and federal rules, including product labels.

*FAA requirements are estimated based on reading. BPC staff are not FAA experts. For more information contact FAA, Portland at 207-780-3263.



Chapter 10 **DEFINITIONS AND TERMS**

Section 2. **Definitions**

- A. "Aerial applicator" means all persons who dispense pesticides by means of any machine or device used or designed for navigation of or flight in the air. All aerial applicators shall be considered commercial applicators and shall be individually certified.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

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

SUMMARY: These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

SECTION 1. EXEMPTIONS

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. **Equipment**
 - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
 - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.

- III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

B. Weather Conditions

- I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.
- II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.
- III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

C. Identifying and Recording Sensitive Areas

- I. Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- II. This requirement shall not apply to commercial applications conducted under categories 3A (outdoor ornamental), 3B (turf), 6A (rights-of-way vegetation management), 6B (industrial/commercial/municipal vegetation management), 7A (structural general pest control applications), or 7E (biting fly & other arthropod vectors [ticks]).

D. Presence of Humans, Animals

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in

order to avoid adverse impacts on off-target areas and to protect public health and the environment.

SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES

A. Positive Identification of the Target Site

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including;

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

B. Site Plans Required

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
 - (i) delineates the boundaries of the target area and the property lines;
 - (ii) depicts significant landmarks and flight hazards;
 - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
 - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

C. Site-Specific Application Checklist

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application

checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;
- II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
- III. Confirmation that the target site has been positively identified;
- IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
- V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
- VI. Wind speed and direction;
- VII. The measures used to protect all Sensitive Areas;
- VIII. Confirmation that there are no humans visible in or near the target area.

D. Buffer Zones for any Sensitive Area Likely to Be Occupied

Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.

E. Wind Speeds for Aerial Applications

Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE

A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides

Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.

B. Standards for Unconsented, Off-Target Drift of Pesticides

- I. **General Standard.** Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.
- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
 - (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
 - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
 - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
 - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
 - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:
 - (i) The standard of care exercised by the applicator;
 - (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;

- (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. **Consent**

- I. **Consent, How Given.** Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

SECTION 5. **VARIANCES FROM STANDARDS**

A. **Variance Permit Application**

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. 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;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;

- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;
- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.

B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff

- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemptions."

SECTION 6. EMERGENCIES

- A. In the event that severe pest or weather conditions threaten to cause a significant natural resource and/or economic loss, as determined by the Commissioner of the Maine Department of Agriculture, Conservation and Forestry, the requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:
 - I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.
 - II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
 - III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of

aerial application in the affected regions and the approximate dates that the emergency may continue.

- IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
 - V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.
- B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010.

STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:
January 1, 1988

AMENDED:
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):
March 1, 1997

AMENDED:
September 22, 1998 - also converted to MS Word
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)
January 1, 2010 by request of agency in filing 2009-252
June 12, 2013 – filing 2013-135 (Emergency major substantive)

CORRECTIONS:
February, 2014 - formatting

AMENDED:
September 11, 2014 – Section 6, filing 2014-164
May 24, 2015 – filing 2015-075 (Final adoption, major substantive)

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS

SUMMARY: These regulations describe the notification requirements for persons contracting aerial pesticide applications to control forest, ornamental plant, right-of-way, biting fly and public health pests.

Section I. Content of All Newspaper Articles/Advertisements, Written Notices to Property Owners and Posters

- A. All newspaper articles/advertisements and written notices to property owners required by this chapter shall contain the following:
1. Description of the target area sufficient to inform people who may be in the vicinity.
 2. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
 3. Intended purpose of the pesticide application.
 4. Pesticide(s) to be used.
 5. Date or reasonable range of dates on which application(s) are proposed to take place.
 6. Telephone number of the Maine Board of Pesticides Control.
 7. Telephone number of the Maine Poison Control Center.
 8. Public precautions which appear on the pesticide label.
- B. All newspaper articles/advertisements must be printed in a minimum of 10 point types and at least 2 inches wide.
- C. All posters required by this chapter shall contain the following:
1. Name of the person who contracts for the application or her/his representative or the applicator and the address and telephone number to contact for more specific information about the intended application.
 2. Intended purpose of the pesticide application.
 3. Pesticide(s) to be used.

4. Telephone number of the Maine Board of Pesticides Control
5. Telephone number of the Maine Poison Control Center.
6. Public precautions which appear on the pesticide label.

Section II. Forest Insect Applications

A. Responsible Parties

1. In the event of a forest insect spray program administered pursuant to Title 12, Chapter 801, the Maine Department of Conservation, Bureau of Forestry, is responsible for notices.
2. In the case of any other forest insect aerial spray activity, responsibility for notices lies with the landowner, her/his representative or the lessee if the land is leased.

B. Newspaper Articles/Advertisements and Written Notices to Property Owners

1. An article about/advertisement of a major forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 14 days but not more than 30 days prior to commencement of planned spray activity.
2. An article about/advertisement of a minor forest insect aerial spray application shall be published in a newspaper of general circulation in the affected area at least 4 days but not more than 10 days prior to commencement of planned spray activity.
3. An addition of spray areas not specified in the original newspaper article/advertisement and any change from the insecticides specified in the original article/advertisement shall be published in the same newspaper at least 24 hours before the change is effected.
4. A written notice of all forest insect aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. **Posting of Areas Subject to Major and Minor Forest Insect Aerial Spray Applications**

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads; known boat launching sites on rivers leading through spray areas and within the boundaries of the land owned by the person authorizing the spray activity; and marked points of access to foot trails known to be used by the public.
2. Posters shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. They shall contain the information required in Section I(C). The information shall be printed in both English and French.

D. **Written Notice to the Board and the Maine Poison Control Center**

1. A written notice shall be given to the Board and to the Maine Poison Control Center according to the following schedule:
 - a. Written notice of major forest insect aerial spray applications shall be given to the Board and the Maine Poison Control Center at least 15 days but not more than 30 days prior to the commencement of planned spray activity.
 - b. Written notice of minor forest insect spray application shall be given to the Board and the Maine Poison Control Center at least 5 days prior to the commencement of planned spray activity.
 - c. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's office.
2. **Notice to the Board.** These notices shall be prepared on forms provided by the Board and shall consist of:
 - a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
 - b. The date or dates on which spraying is proposed to take place.

- c. The name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
 - d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice and the poster to be used.
 - f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.
3. **Notice to the Maine Poison Control Center.** These notices shall be prepared on forms provided by the Board and shall consist of:
- a. A description of the general area the proposed application activity will take place.
 - b. The date or dates on which spraying is proposed to take place.
 - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.

Section III. Ornamental Plant Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section III(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements and Written Notices to Property Owners

1. An article about/advertisement of ornamental plant aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/ advertisement shall contain the information required in section I(A) and (B) and shall not be limited to a legal notice.

2. A written notice of ornamental plant aerial pesticide applications shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Written Notice to the Board and the Maine Poison Control Center

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

Section IV. Rights-Of-Way, Forest Vegetation Management and Other Forest Pest Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section IV(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements or Written Notices to Property Owners

1. An article about/advertisement of rights-of-way, forest vegetation management or other forest pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice or;
2. In areas where there is no regular newspaper circulation, the person contracting for services may substitute individual notice to all landowners within 500 feet of the target site. This individual notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Posting Requirements for Rights-of-Way, Forest Vegetation Management and Other Forest Pest Aerial Applications

1. A poster shall be posed conspicuously just prior to the planned spray activity and shall not be removed by the landowner or landowner's agent for at least 2 days (48 hours) after spray activity ceases. The poster shall contain the information required in Section I(C). Areas that shall be posed include each major point of ingress and egress of the public into the area to be sprayed. Major points of ingress and egress include federal, state, municipal and private roads open to the public and known to be used by the public that lead into the area to be sprayed; utility crossings of these roads and any place a maintained public trail enters the application site.
2. Poster shall be constructed of brightly colored, weather resistant stock and shall be at least 11 x 14 inches in size. The information shall be printed in both English and French.

D. Written Notice to the Board and the Maine Poison Control Center

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

Section V. Biting Fly and Public Health Pest Applications

A. Responsible Parties

The licensed applicator must provide the person contracting for services with the proper materials to provide notification according to the provisions described in this chapter. The licensed applicator must not commence spray activities until the person contracting for the services provides written proof that the notification procedures contained Section V(B) and (C) have been completed. The person who provides the notification and certifies that the requirements have been fulfilled is responsible for that notification.

B. Newspaper Articles/Advertisements and Written Notice to Property Owners

1. An article about/advertisement of biting fly and public health pest aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray activity. The article/advertisement shall contain the information required in Section I(A) and (B) and shall not be limited to a legal notice.
2. A written notice shall be provided to the person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site at least 3 days but not more than 60 days before the commencement of the intended spray applications. The notice shall contain the information required in Section I(A). For absentee property owners who are

difficult to locate, certified or equivalent mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice.

C. Written Notice to the Board and the Maine Poison Control Center

Written notices to the Board and the Maine Poison Control Center must be given according to Section VI of this rule (Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications).

Section VI. Notices to the Board and the Maine Poison Control Center for Other Than Aerial Forest Insect Applications

A. A written notice shall be given to the Board and the Maine Poison Control Center at least 7 days but not more than 30 days prior to the commencement of planned spray activity.

B. These notices shall be prepared on forms provided by the Board and shall consist of:

1. Written notice to the Board

- a. A description of the proposed spray activity including detailed spray application maps showing sensitive areas and major public routes of ingress and egress. Use of *The Maine Atlas and Gazetteer*, by DeLorme Mapping Company or some other similar atlas is the suggested format for the base map.
- b. The date or dates on which spraying is proposed to take place.
- c. A description of the delivery mechanism which shall include the name, address, telephone number and license number of the spray contracting firm which will carry out the spray activity.
- d. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
- e. A listing of precautions taken to insure notice to the public, including copies of the newspaper notice or the notice given to person(s) owning property or using residential rental, commercial or institutional buildings within 500 feet of the intended target site.
- f. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Board promptly upon request.

2. Written notice to the Maine Poison Control Center

- a. A description of the general area the proposed application activity will take place.

- b. The date or dates on which spraying is proposed to take place.
 - c. Pesticide(s) to be used, dilution agent(s), ratio(s) and notation of any experimental applications.
 - d. The name, address and telephone number of a contact person who will be reasonably accessible by telephone and who will make reasonably current and detailed information about the project available to the Maine Poison Control Center promptly upon request.
- C. Any addition of spray blocks not specified in the original notice to the Board and any change in pesticide assignments to particular blocks shall be given to the Board as soon as practicable, and in any case every reasonable effort shall be made to give notice of change to the Board prior to initiation of pesticide application. Notice under this subsection may be accomplished by telephone communication with the Board's staff.

Section VII. Emergencies

A. Disease Vectors

When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from this chapter provided that the responsible governmental entity submits the written notice to Board and the written notice to the Maine Poison Control Center as described in this chapter.

B. Other Emergencies

The Board's staff may grant an emergency variance from the notice requirements set forth in Sections III, IV, V and VI of this chapter if the notice requirements prevent efficacious application of pesticide(s) and the staff determines that an emergency situation exists.

- 1. An emergency situation:
 - a. Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or
 - b. Will present significant risks to human health; or
 - c. Will present significant risks to threatened or endangered species, beneficial organisms, unique ecosystems or the environment; or
 - d. Will cause significant economic loss due to:
 - i. an outbreak or an expected outbreak of a pest; or

- ii. a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).
 2. Any emergency variance granted by the staff under this section shall include provisions demonstrating the applicant will furnish substantially equivalent notification as provided by this chapter and shall include:
 - a. Documented notification of person(s) owning property or using commercial or institutional buildings within 500 feet of the intended target site prior to the pesticide application and where appropriate;
 - b. Radio or television announcements or,
 - c. Prominently positioned poster.
 3. No variance may be granted if the emergency situation is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
 4. 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".
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-G, M, R and T

EFFECTIVE DATE:

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AMENDED:

May 19, 1991
April 8, 1992
April 19, 1994
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998 - inserted “residential rental,” in II(B)(4), III(B)(2), IV(B)(2), V(B)(2), VI(B)(1)(e); conversion to MS Word 2.0.
March 5, 2003 - VI(A), filing 2003-62
July 11, 2012 - spelling correction in Section II(B)(3)
February 14, 2013 - spelling correction in Sections II(C)(1) and IV(C)(1)
June 12, 2013 – filing 2013-136 (Emergency major substantive)

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

September 11, 2014 – Section VII, filing 2014-165

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 29: STANDARDS FOR WATER QUALITY PROTECTION

SUMMARY: These regulations establish standards for protecting surface water. This chapter establishes a fifty-foot setback from surface water for mixing and loading of pesticides, sets forth requirements for securing containers on sprayers and cleaning up spills occurring within the setback zone, establishes restrictions on pesticide applications to control browntail moths near marine waters and requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near waters of the State.

Section 1. Protecting Waters of the State during Pesticide Mixing and Loading Operations

- A. No person shall mix or load any pesticides or fill a sprayer or mix tank within fifty (50) feet from the high water mark of any surface waters of the State as defined in 38 M.R.S.A. §361-A(7).
- B. No person shall use a pump that pumps pesticide concentrate or formulation or any hose that has been in contact with pesticide solution to draw liquid from any surface waters.
- C. All pesticide pumping systems that come in contact with any surface waters shall be equipped with an anti-siphoning device.

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

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

Section 3. Cleaning up Pesticide Spills within Setback Zone in Section 1

Any person who spills a pesticide within fifty (50) feet from the high water mark of any surface water shall take immediate steps to recover the pesticide by the most efficient means available and remove all contaminated soil to prevent water contamination.

Section 4. Exemptions

The following persons are exempt from Section 1(A) regarding mixing and loading within fifty (50) feet of the high water mark of any surface water:

- A. Applicators with a variance approved by staff for an impervious mixing/loading pad with containment features. Applications for a variance must be submitted to the Board on or before December 31, 1999;
- B. Applicators using chemigation equipment specified on labels to draw water from their tail-water ponds;
- C. Commercial applicators using small individually packaged concentrates to mix no more than five (5) gallons for use in non powered equipment; and
- D. Commercial applicators making aquatic applications from boats and barges.

Section 5. Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters

Pesticide applications for control of browntail moths within 250 feet of the mean high tide mark adjacent to coastal waters and extending upriver or upstream to the first bridge are subject to the requirements of this section:

A. Exemptions

The prohibitions and restrictions in Section 5 do not apply to biological pesticides, to the injection of pesticides directly into the soil or shade and ornamental trees or to the application of pesticides by licensed commercial pesticide applicators using non-powered equipment.

B. Prohibitions and Restrictions

- I. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark.
- II. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.
 - a. Only products with active ingredients specifically approved by the Board for this purpose may be applied.
 - b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
 - c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
 - d. Applications may not be made when the wind is blowing toward marine waters.
 - e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

Section 6. Buffer Requirement

- A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:
- I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;
 - II. Rivers
 - III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15-minute series topographic map;
 - IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) by obtaining a permit to do so from the Board. 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;
 - III. The type(s) of pesticides to 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; and
 - VII. 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 the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:

- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
- II. Demonstrate an appropriate balance of risk and benefit; and
- III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

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 procedures described in his variance 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: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

April 14, 1999

AMENDED:

February 3, 2008 – filing 2008-35 (except that the major substantive language of Section 6, which was undergoing legislative review)

May 1, 2008 - filing 2008-154, including Section 6's final adoption

CORRECTIONS:

February, 2014 – agency names, formatting

Notes regarding unmanned aerial systems (UAS) from previous Board meetings

From February, 2017

- Jesse Gibbons, Coutts Brothers, was present for the UAV discussion. Coutts Brothers provides high-voltage asset inspections, and Gibbons told the Board the company has recently branched into mapping and surveying with drones. He explained that they create a photometric three-dimensional map using GIS and then program the drone's path. Once programmed, the DJI Agras MG-1 Agricultural Drone they are using sprays unpiloted while maintaining a height of one meter above crops and also has the ability to adjust droplet size. Gibbons added that one drawback currently is that the battery needs to be recharged every 45 minutes.
- Stevenson inquired about getting points at the tips of tree branches where browntail moth is located. Gibbons responded that they would first pilot the drone to create a three dimensional map of points and then use the points from the map to program the drones with exact flight patterns for applications. This allows the pesticide to be applied very precisely.
- Jemison asked Gibbons if he considered UAV applications to be aerial applications. Gibbons answered that Coutts Brothers treats them as aerial applications and they hire pilots to fly their drones. The FAA requires and issues Remote Pilot Certificates to commercial UAV operators.

From March, 2017

- Patterson explained that the Board was given a copy of the rules that pertain. Only commercial applicators can do aerial applications, not private. As Coutts stated at the board meeting they attended, they can oversee applications from a bucket truck. There is nothing in our rules to require that. If you're in the airplane, you can see what's happening. There is nothing in our rules that says they have to have a means to see where spray is going to prevent drift.
- Bohlen stated that the rules on aerial application clearly do not envision applications in small areas, which UAVs could be. Also, would need to change the notification requirements; maybe not be as rigid about distances to notify. They make sense on 75 acres, not on 2 acres.
- Flewelling said that it would be easier to classify UAVs as a separate application method. Define and write specific rules. Not really ground, not really aerial.
- Morrill agreed that the rules are blurred, except for Chapter 51. We tend to think of UAVs as small, but they could get bigger. If you're spraying ounces over an oak tree at 8 inches, that's different than spraying gallons over a larger area. Not just acreage but also the size of the equipment. He asked where things stand now as far as being able to spray. Patterson replied that a UAV operator has to be permitted by FAA. Other permits are required for applying pesticides, flying over heavily populated areas, and carrying hazardous chemicals. If they get those permits, there is nothing in Maine's rules to prevent them from doing an application.
- Morrill suggested talking to applicators to determine what should be done. Hicks noted that most labels specify 10 feet over crops for aerial applications; it might be worth looking at them as EPA is slow to add anything to labels.

May, 2017

Daniel Jockett, FAA Aviation Safety Inspector

From February, 2018

- Morrill stated the Board has discussed UAS in the past and had an FAA employee attend a previous Board meeting to explain the federal regulations. He added that if they are going to enter into rulemaking, it would be better to do a few at a time.
- Lay told the Board that he has been researching UAS, and there are some states that are beginning to move forward with a category for them, including North Carolina and Washington. He added that he would like to do further research on what some of the other states are doing. He has received a couple inquiries from individuals who want to start businesses using UAS to make pesticide applications, especially for brown tail moth applications.
- Bohlen stated that there have been a number of conversations in the past about the drones, and asked if there is enough interest that the Board needs to put some rules in place for this summer. Bohlen added that the Board decided to use the current aerial exam for the time being. If any policies need to be changed they need to be done next time the Board meets.
- Granger asked if drone pilots could legally make pesticide applications under the current rules if they passed the aerial exam. Randlett responded that there is nothing in rule that prohibits it.
- Morrill asked if this topic could be brought back at the next Board meeting as an agenda item, and that the Board would like to look at Chapter 51. He told staff he would like a flow chart about the rule that shows if you want to apply to a specific site what are the rules that govern that.
- Patterson reminded the Board they had previously discussed creating standards that would encompass both aerial and ground drones. There was further discussion about creating one standard encompassing both ground and air drones, and how to create rules around this emerging technology.
- Dave Struble, Maine Forest Service, said the Board needs to get this on the fast track because browntail moth is moving into new areas and people will be looking for solutions, legal or otherwise.
- Morrill agreed that the Board needs to have a discussion and get this in place. Bohlen stated there is not time to do rulemaking and have it be in place for this browntail moth season.
- Morrill added that informational fact finding still needs to be done, including what there is in the current rule, what other states are including in their rule, and exactly how the applications are conducted.

From: Lauchlin Titus
Sent: Friday, March 30, 2018 10:47 AM
To: Gibbs, Ann <Ann.Gibbs@maine.gov>
Subject: BPC Meeting

Hi Ann,

I am sorry that I will not be able to attend the BPC meeting next Friday.

I see one of the agenda items is to discuss LD 1823. I went to the public hearing and testified in favor of the bill. I have a couple of comments to make relative to that hearing and the bill. Please share with Board and Staff if and as you fell appropriate.

A former BPC staff member spent his three minutes of testimony time tearing down the Board of Pesticides Control. His allegations were taken very seriously by the State and Local Government Committee and they were going to send a letter to the Committee on ACF relative to that. I disagreed almost in whole with what the individual stated and if necessary I will write or speak in support of the Board of Pesticides Controlboth Board and Staff, as I felt both were bashed harshly. Clark Granger was present so can verify or deny my assessment of the situation.

With regard to the Bill itself, as we know it was voted out Ought Not to Pass and is probably doomed. For some reason, it became an issue of Home Rule trumps everything else. The bill, in my opinion, did not threaten Home Rule. I think the proposal is a good one and it needs to be discussed and crafted well ahead of time. As a Vassalboro Selectman, I was disappointed that Maine Municipal Association spoke in opposition to the Bill. I believe the Agricultural Community and other interested parties should have a discussion with MMA about this bill well in advance if this comes up next year (as was indicated may happen). Those speaking in favor (me included) were not well prepared in understanding the differences in pesticide restrictive ordinances in the 30 communities cited by many. I mentioned all of the above at AgCOM this week, so these thoughts are out there.

Lastly, some in support of the legislation kept quiet, knowing it was doomed to fail. It was expressed to me that agriculture use of pesticides is protected by "Right to Farm" and that it was felt to not be prudent to remind folks of this on an issue doomed to failure anyhow and with a lot of anti-pesticide use people present. While I don't personally agree with that strategy, I get it.

Regards,
Lauchlin Titus

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

From: Jobrien@downeastturf.com

Sent: Wednesday, March 28, 2018 3:46 PM

To: Pesticides <Pesticides@maine.gov>

Subject: Meeting on April 6th

Hello,

My name is Jesse O'Brien. I would like to be put on the agenda speak for a few minutes at your next meeting on April 6th.

The purpose is to speak on future outreach efforts of the BPC.

Thank you

Jesse O'Brien

Jobrien@downeastturf.com

Sent from my iPhone

LePage looks to override local pesticide rules in 30 municipalities. But why?

[pressherald.com/2018/04/01/municipal-ordinances-restricting-pesticide-use-keep-popping-up-in-maine/](https://www.pressherald.com/2018/04/01/municipal-ordinances-restricting-pesticide-use-keep-popping-up-in-maine/)

By Mary Pols

April 1, 2018



Even though Paul Schlein is a careful, detail-oriented sort, he didn't fuss over his testimony before heading to Augusta late last month for a hearing on a pesticides bill. The Arrowsic retiree planned to testify against the bill, which came from Gov. Paul LePage's office and was crafted to override municipal ordinances that set stricter limits on pesticide use than the state does.

Schlein simply printed out the same statement he'd used last year, when Gov. LePage floated slightly differently worded legislation that would have had the same impact: shutting down local ordinances like the one that had just passed in South Portland.

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"There was no need to write it again because nothing changed," Schlein said.

A few things had. Maine's biggest city, Portland, passed its own pesticide ordinance this January and it was a strong one, banning synthetic pesticides for both residents and city workers. And while the 2017 bill, LD 1505, had been such a close mirror of a bill authored by the American Legislative Exchange Council, a national pro-business conservative group generally referred to as ALEC, that one had to focus hard to see the differences, the current bill, LD 1853, had different phrasings. But

the intent was the same. The bill Schlein testified against deviated a little further from the ALEC language, but would still have rendered moot the 30 municipal ordinances that limit pesticide use in Maine.

Although some of those ordinances are nearly 50 years old, increasingly, Maine municipalities, particularly along the coast, have been developing local ordinances with the stated purpose of protecting their residents from the toxicity of pesticides that have been linked to cancer and birth defects. The ordinances also cite concerns over toxic chemicals getting into waterways, affecting marine life and harming other wildlife, including – in the case of a 2004 Harpswell ordinance – the health of pollinators.

Among those speaking in favor of LePage's bill were commercial pesticide applicators and a representative from the Samoset, who raised concerns over maintaining the resort's golf course if Rockland ever banned all pesticides (in 2014, Rockland voted to restrict pesticide use on town-owned, leased or managed lands). Farm Bureau was also in attendance, as well as several anxious vegetable farmers and an apple farmer who do use pesticides and want to be sure they can continue to do so.

The governor's argument against the ordinances is that they create confusing complications to the current system, whereby licensed, trained applicators apply pesticides. "These ordinances only really prohibit the commercial companies from operating in certain towns," his spokesperson Julie Rabinowitz said in an email. "However, the commercial operators are specifically trained in the safe use and hazards of these chemicals and apply them properly and in the minimum amount needed."

Related

Places in Maine that control pesticide use

Not always, otherwise the Maine Board of Pesticide Control, which regulates and enforces pesticide use in the state, would never have to deal with violations. The current chair of the Board of Pesticide Control, Deven Morrill, works for Lucas Tree Experts, a Portland company that has failed to notify an abutting property owner before applying pesticides three times since 2010, and once done so without sufficient notice. The most recent violation was in Scarborough in 2015 and for that, the company was fined \$2,000.

But with commercial operators no longer allowed to use pesticides in some municipalities with ordinances, Rabinowitz theorizes that homeowners – who aren't trained in applications – will end up using pesticides themselves, increasing the chances of chemicals being used or stored improperly. "In this instance, a well-intentioned local ordinance may actually cause exactly the unintended consequence it was trying to prohibit or discourage," Rabinowitz wrote. "This is another case where a statewide, cohesive policy best serves the public interest."

But fighting these local ordinances has seemingly turned into a quixotic effort for LePage. This is the third time Republican-led legislation to suppress the ordinances has been introduced in as many years (in 2016, Republican Rep. Jeff Timberlake introduced similar legislation, which didn't make it out of committee). Even after last year's pesticide ordinance bill failed, it popped up again during last summer's tense budget negotiations as an item that, if slipped in, would appease the governor.

"At one point, there were like 11 or 12 items that he wanted," said State Sen. Tom Saviello (R-Wilton), who presented the governor's new bill to the State and Local Government committee last month. "Somehow, that was one of the items that he wanted."

That idea "died pretty quickly," Saviello said.

This bill appears headed to another defeat after a split vote with 9 of the 11 committee members present voting "ought not to pass" on it. The earliest it would be reported out of the committee and head back to the full legislature would be this coming week.

"I don't care if the bill dies or not," Saviello said after the hearing. He said he testified for the bill because he saw it as an opportunity to increase public awareness. Saviello served on the Maine Pesticide Control Board for 15 years, and he believes Mainers need to be as educated on the toxicity of that rat poison they're using in the home as those who are licensed to use pesticides commercially.



Portland's pesticide ordinance includes exemptions for Riverside Golf Course, above, and Hadlock Field. *Press Herald file photo*

"I don't really care what the governor wants," Saviello said. "But this was personal to me. I hate ALEC. I want nothing to do with ALEC. They are paid by the Koch brothers." He was referring to the powerful billionaire brothers who support Republican candidates and have poured money into ALEC. But the bill Saviello presented did not offer any educational tools for home use of pesticides.

It merely provided an exemption from municipal ordinances to “commercial applicators and spray contracting firms and to private applicators when the private applicators are producing agricultural or horticultural commodities.”

“I am not trying to circumvent the local ordinances,” Saviello said. “I just want people to know how to use them right.”

NO ORDINARY ORDINANCES

There are 488 municipalities in Maine, according to Garrett Corbin, a legislative advocate for the Maine Municipal Association and one of the more than a dozen who testified against the governor’s bill along with Schlein (many more submitted written testimony on both sides of the issue). Only about 6 percent have passed municipal ordinances relating to pesticides. Under home rule (more on that later), they’re allowed to establish these local regulations.

The ordinances vary widely and are spread across 13 of Maine’s 16 counties. The smallest community to enact one, Brighton Plantation in Somerset County, had a population of 70 at the 2010 census. Eleven have been enacted since 2001, and in the last two years, the number of Mainers living in communities with pesticide ordinances shot up significantly when Portland and South Portland (combined population nearly 93,000) enacted ordinances.

Jay Feldman, the executive director of Beyond Pesticides, a nonprofit that advocates for pesticide-free communities (and advised Portland and South Portland on ordinances), attributed recent developments to the high-profile presence of Maine Organic Farmers and Gardeners Association.

“This is happening in Maine I believe because of organizations like MOFGA that have been so successful in penetrating the market with organic brands,” Feldman said. “People in Maine have an intuitive sense that these chemicals are not needed to manage lawns and landscapes.” Falmouth and York are both exploring ordinances, and Feldman expects Falmouth to be next in enacting one. “I think we’ll have most of the communities around Casco Bay. There are a lot of really intelligent people in Maine who have done a lot of research on the science.”

Maine’s first local pesticide ordinance was enacted in March 1970. That’s when residents of Owls Head voted at their annual town meeting “to outlaw the use of defoliant and stop all roadside spraying with poisons...” It was the Vietnam era, and chemical defoliant like the highly toxic-to-humans Agent Orange were very much in the news.

Some of the ordinances on file at the Maine Pesticide Control Board feature handwritten notes from the town. (All municipal ordinances must be filed with the board in a timely fashion or they’re voided, [as Ogunquit learned in 2014](#)). Others look like they came out of a dot matrix printer. They have origin stories, many of them personal. Limerick’s 1988 ordinance limiting roadside spraying was instigated by a mother whose child had developed leukemia.

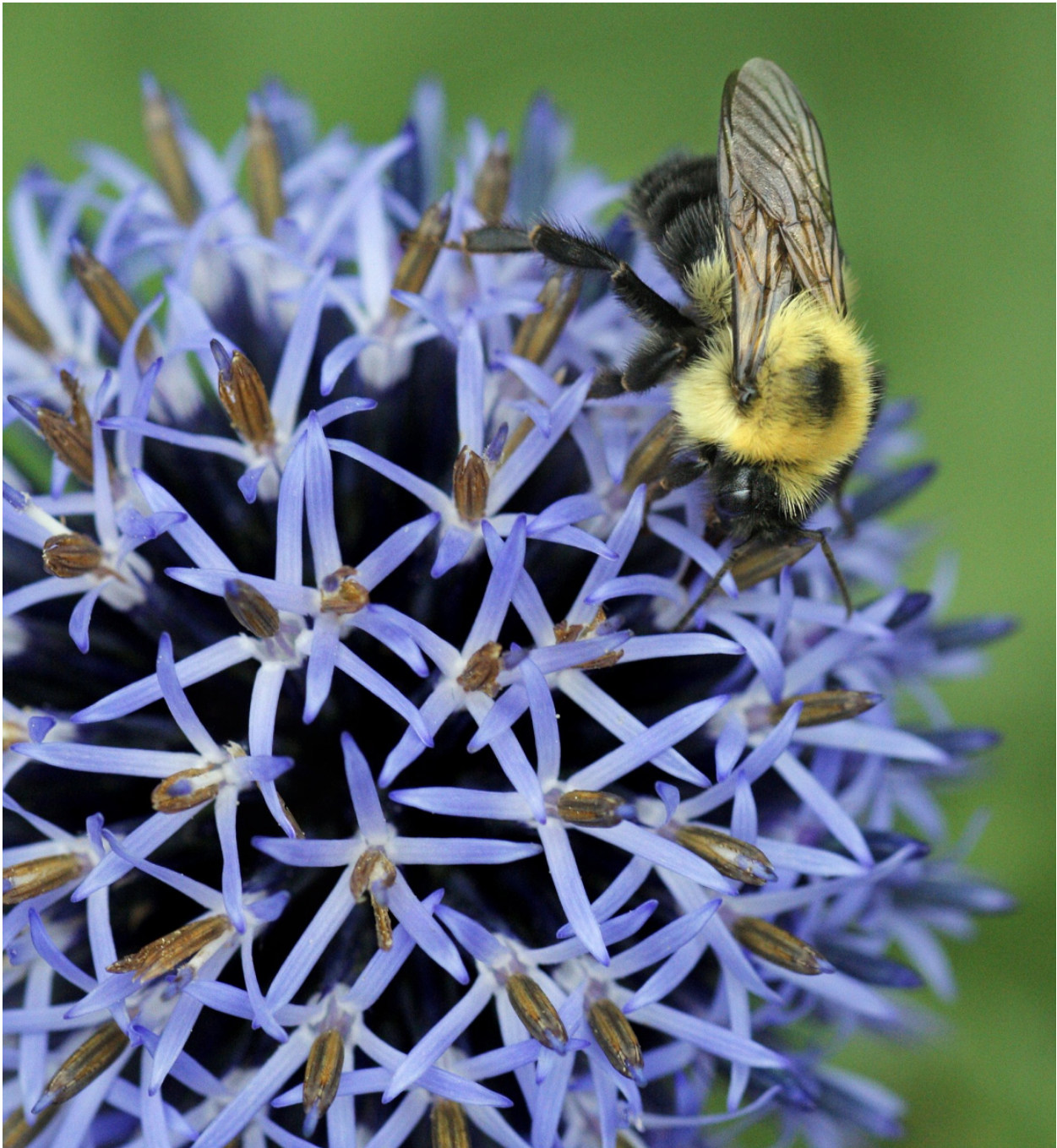
In Allagash, one of the three Aroostook County municipalities with a pesticide ordinance, a ban on herbicides being used in forestry was enacted in 2004. It sprang from a sense that something wrong was going on in the woods in the 135-square-mile municipality, where the J. D. Irving company used aerial spraying on its clear cuts to suppress sprouting hardwoods it didn’t want in favor of spruce.

"There were so many cancer patients," remembers Patricia Pelletier, whose son Louis led the movement to ban herbicides. "You couldn't pick the berries around town."

Allagash still allows residents to put herbicide on say, a stump they are trying to get rid of, Louis Pelletier said. But the ordinance altered the way J. D. Irving conducts its forestry, he said.

The herbicides the foresters were using were legal, Pelletier said, and supposedly safe. "But I had done some research at the time," he said. "And it depends on what scientists you ask. The chemicals they were using were basically safe on their own, but there was no testing done when you mixed them."

Allagash wanted, he said, to "err on the side of caution," and the ordinance passed overwhelmingly.



Proponents of pesticide regulation frequently cite a desire to protect pollinators and other wildlife. Opponents may include those working in commercial operations. "We have zero financial incentive to over-apply pesticides," says Jacob Harvey, the general manager for a franchise of TruGreen lawn care of Westbrook. "We pass exams set by the state. We know what we are doing." *Staff photo by Gregory Rec*

"The Irving boys didn't like it too much," Pelletier said. "But they are still making money, and we're not getting sprayed."

Among those testifying at the committee hearing on LePage's bill were representatives of some commercial operations that could be affected by municipal ordinances, including the National Association of Landscape Professionals and Jacob Harvey, the general manager for a franchise of TruGreen lawn care based in Westbrook. Harvey said his company has about 50 employees at peak season.

"This issue will literally put people out of business," Harvey added, pleading against being "lumped together with any bad actors. We have zero financial incentive to over-apply pesticides."

"We pass exams set by the state," Harvey said. "We know what we are doing."

MEMBERS OF THE BOARD

One of the issues raised at the March 21 committee meeting and public hearing on the legislation had to do with the competency of the Maine Board of Pesticide Control (BPC), which is an appointed group established to oversee and license pesticide use in the state. Schlein, who served as the public information officer for the board from 2005 until 2013 spoke about how the dynamics of the board had changed since LePage appointees joined it. He said the board had operated without a required member from the medical community for a year and a half and had canceled some meetings. "The current board steadfastly refuses to allow the staff to work with towns," Schlein told the committee. "The BPC is not doing its job."

After he spoke, others also questioned the work of the board, and by the time the hearing reached its conclusion, members had agreed to write a letter asking the Agriculture committee, which oversees the pesticide board, to look into its work. There was skepticism in some quarters.

"If we send it, fine," said Sen. Susan Deschambault (D-York). "I don't think it will do anything. The board is its makeup. They were appointed."

The concerns crossed party lines.

"When I hear the public come and talk about this and say that we are having an issue, that is troublesome to me," said Rep. Richard Pickett (R-Dixfield). "It is time for them to make sure that board is doing what it is supposed to be doing."

Rabinowitz defended the governor's picks for the board as all "confirmable" appointments. Five of the seven seats are filled with LePage appointees, including chair Deven Morrill, a licensed arborist with Lucas Tree Experts. "The governor has strived to ensure that his appointments include individuals with a scientific background."

Coincidentally, the director of the Board of Pesticide Control, Cam Lay, recently left his job. His last day was two days after the March 21 hearing. The board is looking for a replacement.

Tom Saviello, who served on the Board of Pesticide Control from 1983 until 1998 and credits it with teaching him how to mediate, said in an interview that he had heard criticism of the current board that made it sound very different from the board he'd been on.

"I can't tell you what the governor has done to it."

He said he understands why municipalities would create ordinances of their own if they felt underrepresented in Augusta.

"What else are they going to?" Saviello said. "They are going to create their own ordinance. I don't blame them."

Feldman, of Beyond Pesticides, sees the action by Maine municipalities as reflective of national politics, during an era when the Environmental Protection Agency is led by Scott Pruitt, an attorney who frequently sued the EPA before joining it.

"There is a new dimension to this in the current political context, in the dismantling of our federal regulatory agencies," Feldman said. "There is a clear agenda to reduce staff and to effectively eliminate enforcement of federal levels, to shift it to state governments."

These local ordinances are trying to address flaws in the Environmental Protection Agency's methods, he said. "What is the effect of mixtures of chemicals?" Feldman said, echoing Louis Pelletier's concerns that led to the 2004 Allagash ordinance. "It's a question that EPA does not ask or answer, because it doesn't really have the resources."

RIGHT TO FARM

There are two more twists and turns to the debate over pesticides in Augusta. The first has to do with a perceived but unlikely threat posed to agriculture by the municipal ordinances, the second has to do with home rule.

Among the farmers who spoke in favor of LePage's bill was Penny Jordan of Jordan Farm in Cape Elizabeth, who is also the president of Maine Farm Bureau. "If this bill does not pass, it is going to put farms at risk," she told the committee.

But many, if not most, municipal pesticide ordinances specifically exclude agriculture. In addition, Maine passed a [Right to Farm Law in 2007](#) that exempts agricultural and composting operations from municipal ordinances and prevents them from being considered a "nuisance." Doesn't that mean they're protected?

"The operating assumption has been that municipal ordinances don't apply to agriculture," John Bott, a spokesman for Maine's Department of Agriculture, Forestry and Conservation wrote in an email. He added that it is unclear whether the applicability of local ordinances has been tested in court.

Reminded of the Right to Farm Act, Jordan said she still worried that the municipal ordinances could have a negative impact on farms. From her perspective, these ordinances, should they reach Cape Elizabeth (she bets they will) will put her and other farmers in a position of having "to constantly go and prove that what they are knowledgeable about and responsible in what they do on a daily basis."

The thrust of LePage's proposed legislation, offering commercial operators exemptions to those local ordinances, seems to stand in direct opposition to one of the defining characteristics of the Maine constitution: the principle of home rule, whereby municipalities have the right to establish their own regulations.

The authority of home rule was cited in a [law that LePage unexpectedly signed in 2017](#) allowing municipalities to declare themselves food sovereign, that is, able to establish their own rules about selling local foods to each other. "The governor believes in home rule as a general principle but

recognizes that it is not the best policy in every instance,” LePage’s spokesperson, Julie Rabinowitz, said. He’s argued against local changes to the minimum wage, for instance, she said, on the grounds they would cause confusion and enforcement issues.

Feldman, unsurprisingly, disagreed. Opting to ignore home rule in some instances, like the pesticide ordinances, “exemplifies big government intruding on a local democratic decision.”

In the end, the majority of committee members who voted “ought not to pass” on LePage’s bill cited their belief in and support of home rule as the reason.

If this version of the bill dies, will it come back again before LePage hands over the gubernatorial reins to someone else in 2019?

“It would be premature to speculate,” Rabinowitz said.

Mary Pols can be contacted at 791-6456 or at:

Twitter: [MaryPols](#)

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Places in Maine that control pesticide use

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April 1, 2018

Since 1970, 30 towns and cities in Maine – roughly 6 percent of the state’s 488 municipalities – have enacted local ordinances to control pesticide use. The ordinances vary in scope and intent from town to town and in some cases refer to pesticides, herbicides or both.

- **Allagash:** Population 239. Aroostook County. In 2004 Maine’s largest town (sizewise, it’s spread out over 135 square miles) enacted an ordinance banning the use of herbicides for forestry purposes. It was motivated by concerns over herbicides sprayed by the J.D. Irving company on its forest holdings in the area.

Related Headlines

[LePage looks to override local pesticide rules in 30 municipalities. But why?](#)

- **Amherst:** Population 265. Hancock County. The town, which is bisected by the Union River, passed a land use ordinance in 1991 establishing resource protection districts and limiting chemical applications in shoreland areas only; applications in those areas require a permit from the planning board.

- **Arrowsic:** Population 501. Sagadahoc County. In 1984, the town voted to ban herbicide use by its public works department, but only as it was applied to leaves. Using herbicide on stumps is still allowed.

- **Brighton Plantation:** Population 70. Somerset County. The town voted to ban use of pesticides in woodlands within the town in 1996. The vote in this tiny town was 19-1 in favor of the ban.

- **Brunswick:** Population 20,278. Cumberland County. In 2005 Brunswick’s Town Council enacted an ordinance to prohibit use or storage of most pesticides within aquifer protection zones. The ordinance also prohibits aerial spraying other than for public health applications. Citing language from the Environmental Protection Agency that “all pesticides are toxic to some degree,” the council agreed that the purpose of the ordinance was to “safeguard the health and welfare” of residents and protect the town’s “good water and other natural resources.”

- **Castine:** Population 1,366. Hancock County. The town passed an ordinance in 2008 that included prohibition of pesticide storage within aquifer protection zones and requires permits for any non-residential use of pesticides.

- **Coplin Plantation:** Population 135. Franklin County. The town voted in 2001 to ban all aerial and mechanical spraying of pesticides. Twenty-six voters were present at the meeting; all voted in favor of the ban.

- **Cranberry Isles:** Population 141. Hancock County. In 1992 the island communities voted on a land use ordinance “to further the maintenance of safe and healthful conditions” and the protection of natural resources that included requiring permits for pesticide and herbicide use in forestry management with the exception of timber harvesting.

- **Harpswell:** Population 4,740. Cumberland County. This coastal community (216 miles of shoreline) established strict rules on the use of pesticides in 2004 and updated them in 2016. The motivation was to protect and maintain the health of “shellfish resources, marine environment, and pollinators.” The ordinance prohibits the use of “insect growth regulators,” or IGRs, which act on insect hormones to limit the insects’ life cycle, as well as insecticides that contain neonicotinoid. It explicitly exempts commercial agriculture, nurseries and golf courses.
- **Lebanon:** Population 6,031. York County. Lebanon voted to ban all aerial pesticide application at a town meeting in 1980. In 1983, Lebanon revisited the ban to limit it to non-agricultural use and to allow exemptions if approved at a town meeting.
- **Limerick:** Population 2,832. York County. At a town meeting in 1988, the town adopted an ordinance prohibiting herbicide application to rights-of-way. Town clerk Judy LePage said the issue was raised by a local mother who believed roadside spraying may have contributed to her daughter developing leukemia. The vote was 252-206 in favor of the ordinance.
- **Limestone:** Population 2,314. Aroostook County. This town banned aerial spraying of insecticides, pesticides and herbicides in 1970 “due to health hazard from air and water pollution.” Fungicides were allowed.
- **Manchester:** Population 2,580. Kennebec County. Manchester voted in June 2017 to prohibit the use of pesticides on all town-owned lands. The ordinance cites the intent to “safeguard the health and welfare of residents” and protect and conserve natural resources. It includes specific exemptions such as outdoor animal repellents, indoor use of rodent control and organic pesticides.
- **Montville:** Population 1,032. Waldo County. Montville passed an anti-spraying ordinance at its annual town meeting in 1980 without specifying pesticides, “based on the increasing evidence that the types of sprays most commonly used for bush control can cause cancer and birth defects in humans.”
- **Newburgh:** Population 1,551. Penobscot County. The town voted at its annual meeting in 1980 to prohibit use of herbicides along the roadside right of way.
- **New Gloucester:** Population 5,542. Cumberland County. In 1982 the town passed an ordinance that said the spraying or spreading of chemical fertilizers or pesticides had to be consistent with the standards of the U.S. Department of Agriculture.
- **New Sweden:** Population 602. Aroostook County. The town voted in 1990 to ban aerial spraying of herbicides and pesticides within town limits.
- **Oqunquit:** Population 892. York County. The ordinance first passed in June 2014 but had to be voted on again at a special town meeting in November 2014 because the town failed to give proper notice to the state Board of Pesticide Control. It restricts the use or applications of synthetic pesticides on private property – the first Maine ordinance to do so – but allows for some uses, including on invasive species and on venomous or disease-carrying insects. It specifically exempts agriculture.

- **Owls Head:** Population 1,580. Knox County. At its March 1970 annual meeting, Owls Head voted “to outlaw the use of defoliant and stop all roadside spraying with poisons” in the town. The vote was the first of its kind in Maine (Limestone voted later in the same month on its pesticide ordinance).
- **Porter:** Population 1,498. Oxford County. The newest pesticide ordinance in Maine was enacted in March in response to a utility crew spraying roadsides without permission.
- **Portland:** Population 66,937. Cumberland County. Portland passed one of the strongest pesticide ordinances in the country in January 2018. Regulations restricting synthetic pesticides apply to city property as well as to private homeowners. It includes exemptions for Hadlock Field and Riverside Golf Course. Five city-owned playing fields will be exempt until 2021.
- **Rangeley:** Population 1,168. Franklin County. Rangeley’s pesticide ordinance limits mechanical application of pesticides on areas larger than two acres. It was submitted to the Board of Pesticide Control in 1989, but may predate that.
- **Rockland:** Population 7,179. Knox County. Rockland’s pesticide ordinance took effect in 2014. It restricts the application of pesticides and herbicides on town owned, leased or managed land, but organic pesticides are allowed.
- **South Portland:** Population 25,577. Cumberland County. South Portland developed its pesticide ordinance over the course of more than a year. When it passed in September 2016 it marked the first time a city of this size in Maine had enacted such an ordinance. It is one of the toughest ordinances, placing limits on private as well as municipal property. It allows the use of only pesticides allowed by the U.S. Department of Agriculture and classified as “minimum risk” by the Environmental Protection Agency. Exemptions include commercial agriculture and golf courses.
- **Southport:** Population 606. Lincoln County. Southport was one of the first towns to restrict pesticides in Maine, voting in 1972 to “prohibit all state and commercial of pesticides and herbicides in the town of Southport.”
- **Standish:** Population 9,285. Cumberland County. Adopted in 2002, Standish’s ordinance limits the storage of pesticides and herbicides in shoreland areas “other than amounts normally associated with individual households or farms.”
- **Sweden:** Population 391. Oxford County. Sweden’s pesticide policy was last amended in 1991 and lays down restrictions on pesticides within the aquifer protection zone. Aerial spraying of herbicides and pesticides is entirely restricted within the zone, but agricultural and home use of chemical fertilizers, pesticides and herbicide use beyond that “use reasonably associated with home lawn and garden care” require a conditional-use permit.
- **Waterboro:** Population 7,693. York County. Waterboro calls its 1986 regulation a hazardous waste ordinance, and it covers much more than pesticides; in fact the word pesticide isn’t even used in the ordinance (“toxics” is, though). It’s really about storing toxics and intended to make sure anyone storing hazardous waste gets a town permit. It exempts agricultural and household waste, as well as gasoline stations.

- **Wayne:** Population 1,189. Kennebec County. Wayne restricts only the storage of pesticides and fertilizers (not the use) and only in shoreland zones. This ordinance includes an exemption for amounts “normally associated with individual households or farms.”
- **Wells:** Population 9,589. York County. In 1990 Wells voted to restrict pesticide use within a protected resource area around Branch Brook and the Branch Brook aquifer. Permission for pesticide use in those areas may be granted by a codes enforcement officer with at least 60 days’ notice.

— *MARY POLS*

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Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-U. MUNICIPAL ORDINANCES

1. Centralized listing. The Board of Pesticides Control shall maintain for informational purposes, for the entire State, a centralized listing of municipal ordinances that specifically apply to pesticide storage, distribution or use.

[1989, c. 93, §1 (RPR) .]

2. Existing ordinances. The clerk of any municipality which, on the effective date of this section, has an ordinance to be listed under subsection 1 shall file a copy of that ordinance with the board by December 31, 1988.

[1989, c. 93, §1 (RPR) .]

3. New ordinances. The clerk of the municipality shall provide the board with notice and a copy of any ordinance to be listed under subsection 1 at least 7 days prior to the meeting of the legislative body or the public hearing at which adoption of the ordinance will be considered. The clerk shall notify the board within 30 days after adoption of the ordinance.

[1989, c. 93, §1 (RPR) .]

4. Intent. It is the intent of this section to provide information on municipal ordinances. This section shall not affect municipal authority to enact ordinances.

[1989, c. 93, §1 (RPR) .]

5. Failure to file. For any ordinance which is not filed with the board, with notice given to the board in accordance with this section, which is otherwise valid under the laws of this State, any provision that specifically applies to storage, distribution or use of pesticides shall be considered void and of no effect after the deadline for filing and until the board is given proper notice and the ordinance is filed with the board.

[1989, c. 93, §1 (RPR) .]

SECTION HISTORY

1987, c. 702, §6 (NEW). 1987, c. 723, §§4,6 (NEW). 1989, c. 93, §1 (RPR).

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