



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**December 13, 2013**

**AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine**

**AGENDA**

**8:30 AM**

1. Introductions of Board and Staff
2. Minutes of the October 18, 2013, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

3. Request for Amendment to Chapter 22, Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition

Chapter 22 contains a requirement to identify and record sensitive areas, but exempts from this requirement commercial application categories 3B (turf), 3A (outdoor ornamental) and 7A (structural general pest control). A constituent has requested that the Board consider also exempting categories 7E (biting fly and other arthropod vectors) and 6B (industrial/commercial/municipal vegetation management).

Presentation By: Gary Fish  
Manager of Pesticides Programs

Action Needed: Provide Guidance to the Staff about Whether/When to Initiate Rulemaking

4. Streamlining the Applicator Licensing Process

At the September 6, 2013, Planning Session, the Board discussed streamlining of the commercial applicator licensing process, which had been identified as the highest priority topic. The Board debated several ideas to improve the system. Companies are trying to get new and seasonal employees licensed quickly in the spring and summer. At the October 18, 2013, Board meeting, some of the ideas from the Planning Session were further discussed. The three ideas that seemed the most feasible were an optional combined application for exam and licensing, a temporary license/receipt and accepting credit card payments. The staff has done research and is prepared to discuss these options with the Board.

Presentation By: Gary Fish  
Manager of Pesticides Programs

Action Needed: Provide Guidance to the Staff about Potential Changes

5. Review of Variance Policy for Chapter 29

At the October 18, 2013, meeting, the Board discussed the process for issuing variances from Chapter 29 for the control of invasive plants and instructed the staff to draft a policy allowing multiyear variances, provided certain conditions are met in the application. The staff has drafted a policy for the Board's review and discussion.

Presentation by: Gary Fish  
Manager of Pesticides Programs

Action Needed: Provide Guidance to the Staff about the Policy

6. Increasing the Availability of Online Continuing Education Options

At the September 6, 2013, Planning Session, the Board discussed increasing online continuing education options, which had been identified as its third highest priority topic. At the October 18, 2013, Board meeting, there was further discussion around the topic and the Board asked the staff to provide data on what topics are currently covered by available online training. The staff has prepared a summary and is prepared to further discuss the subject with the Board.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff

7. Review of the Board's Enforcement Protocol

At the September 6, 2013, Board meeting, concerns arose about the proposed fine imposed by a pending consent agreement. At the October 18, 2013, meeting, the Board reviewed the enforcement protocol, and discussed when enforcement cases should be presented to the Board prior to negotiating an agreement, as well as the Board's options regarding executive sessions. However, because the Assistant Attorney General was not present, it was agreed that discussion of this topic should be continued at the next meeting.

Presentation By: Henry Jennings  
Director

Action Needed: Determine Whether Changes Should be Made to the Board's Enforcement Protocol and Provide Guidance to the Staff

8. Review of the Board's Reciprocal License Policy

Since 1992, the Board has had a policy requiring all applicators to pass Maine exams for certification (no reciprocal licenses). However, the Board promulgated emergency rule amendments to allow for reciprocal licensing when potato fields were too wet for ground spraying two different times. In addition, if a mosquito-borne health threat arises, and the Maine CDC recommends aerial spraying for mosquito control, the urgency of this situation may not allow sufficient time to license aerial applicators through the normal, sometimes time-consuming, process. The staff is suggesting that the Board consider amending its policy to allow issuance of reciprocal licenses when the staff determines an urgent need exists in which out-of-state applicators are likely to be needed.

Presentation By: Henry Jennings  
Director

Action Needed: Provide Guidance to the Staff about Potential Policy Changes

9. Consideration of a Consent Agreement with Barry Churchill of Fort Fairfield

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 and resolve the matter. This case involved an application of a “weed & feed” product to an area open to the public by an unlicensed applicator.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

10. Update on Persistent Herbicides

Persistent herbicides have been the cause of numerous plant injury incidents in recent years. During the summer of 2013, the staff received an anonymous complaint from an organic farmer whose crops had been diagnosed with damage caused by persistent herbicide contamination of his compost. The farmer had purchased hay from a local supplier, and the hay land had been treated with ForeFront (aminopyralid). The ForeFront label prohibits movement of treated hay from the farm where it originated. The staff will update the Board on its investigation.

Presentation By: Henry Jennings  
Director

Action Needed: None—Information Only

11. Other Old or New Business

- a. Legislative Update—H. Jennings
- b. BPC Website Changes—Anne Bills
- c. Other?

12. Schedule of Future Meetings

January 8, February 21, March 28, May 9, and June 17, 2014, are tentative Board meeting dates. The January 8 meeting will take place at the Maine Agricultural Trades Show, along with a Listening Session cohosted by the Maine IPM Council. The exact schedule for the Trades Show proceedings still needs to be finalized. The June 17 meeting is tentatively planned to be held in the Madison/Skowhegan area, following a tour of Backyard Farms. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

13. Adjourn

## NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org).
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
  - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Anne Bills, at the Board's office or [anne.bills@maine.gov](mailto:anne.bills@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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**BOARD OF PESTICIDES CONTROL**

**October 18, 2013**

**AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine**

**MINUTES**

**8:30 AM**

Present: Morrill, Bohlen, Jemison, Eckert, Flewelling, Granger

1. Introductions of Board and Staff

- The Board and staff introduced themselves.
- Staff present: Jennings, Connors, Hicks, Fish, Tomlinson, Bills

2. Minutes of the September 6, 2013, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

- On page 3, take out the extra "it" in the last sentence of the bullet.
  - **Eckert/Granger: Moved and seconded to accept minutes as amended**
  - **In Favor: Unanimous**

3. Review of Ideas about Streamlining the Applicator Licensing Process

At the September 6, 2013, Planning Session, the Board discussed streamlining of the commercial applicator licensing process, identified as the highest priority topic, and debated several ideas to improve the system. Companies are trying to get new and seasonal employees licensed quickly in the spring and summer. The staff has reviewed some of the ideas from the Planning Session and is prepared to discuss them further with the Board.

Presentation By: Gary Fish  
Manager of Pesticides Programs

Action Needed: Provide Guidance to the Staff about Potential Changes

- Fish explained that the Department is currently working with a state vendor to consolidate databases, and provide an e-commerce application for online and electronic issuance of licenses. Many of the issues discussed by the Board would be included in that effort, but that is a long-term solution, so

really important issues need to be addressed in another way. The only option for doing online transactions would be going through InforMe, a state-approved contractor, and would be very expensive because there aren't enough transactions to adequately fund the application.

- Discussion turned toward a combined exam/license fee where companies could pay ahead with the understanding that they would forfeit the money if the applicant failed to pass the exams. This has been requested by some companies because they have a short period of time to get people licensed, so some are sending a person to Augusta to pay the fee to facilitate the process. Fish explained that a license can't be issued until payment is received. He also explained that the state's accounting system will not allow carrying a credit, and refunds are very resource intensive.
- The current fee is \$10 per exam and \$70 for a two-year license.
- It was suggested that there be a single fee; Fish pointed out that this would require a change in rule.
- Fish reiterated that online licensing isn't currently feasible; InforMe is too expensive, the Administrative Licensing Management System software use by the Department of Professional and Financial Regulation is too rigid, BPC rules are somewhat complex and replete with exceptions.
- Morrill said the current system is convoluted: fill out an application and pay an exam fee; take exam; wait two days for results; fill out another application; send in money. Jennings suggested trying to combine applications.
- A discussion ensued about the merits of a combined application form. Commercial applicator companies favored having a combined form which included both the exam and license fees as an option. Fish agreed to investigate that option.
  
- Online testing was discussed next. Bohlen asked whether there was enough overlap in content so that we could work with other states. Fish replied that he is currently serving on a national committee addressing this issue: manuals, exams, finding ways to consolidate. Maine is significantly different from other states, especially in categories. Maine requires a commodity exam for private applicators, which most states do not. Eckert noted that 10 or so years ago some categories were eliminated and asked whether there would be any value to looking at simplifying categories and eliminating some exams and manuals. Fish said that the EPA has a framework for categories, but that Maine has gone way beyond that. Eckert noted that some people, especially in agriculture, don't want to know about potatoes if they're working with blueberries. Jennings said this is true in commercial also: if you're spraying stumps you don't want to know about bedbugs.
- Hicks pointed out that the oral exam for master applicants doesn't always align: if someone is working on mold remediation or biociding, they take the indoor version of the oral exam, but it has nothing to do with what they are doing for work.
- Fish noted that Maine is unusual in that it has two levels of commercial license: regular and master; most states do not.
  
- Video training was discussed. Fish noted that they have tried taping his presentation, but that people didn't get much out of it. Watching a talking head video isn't as good as a live class, and those are bad enough.
- Jemison noted that Steve Johnson has done some videos; not the most exciting, but informative enough. Fish said he did not know how much those cost to produce.
- Jemison asked if there was a plan with all the new licensees coming up. Fish said either more training or a professional DVD. Bohlen suggested talking to people at universities who are already doing a lot of online courses. That style of teaching is becoming more prevalent.
- Eckert suggested that slides are preferable to talking head.
- Eckert asked whether other states had material that we could use. Fish said there are many opportunities for continuing education; these are listed on our website. Also some for initial training; California has a good site, it isn't exactly the same as Maine's but it's a good opportunity to learn.
- Jennings pointed out that this is mostly a resource issue. There are definitely things that are possible, but being down one position, the staff is barely keeping its head above water. The university will

need to take a big role in this; hopefully the new position funded through registration fees can work more consistently on these issues.

#### 4. Review of Ideas for Improving How the Board Addresses Variance Requests

At the September 6, 2013, Planning Session, the Board discussed improving how it addresses variance requests, which had been identified as its second highest priority topic. Concerns have been voiced about turnaround time, consistency, whether applicators are applying the most up-to-date best management practices, sustainability and whether variances are the most efficient regulatory approach. The staff has reviewed some of the ideas from the Planning Session and is prepared to discuss them further with the Board.

Presentation by: Henry Jennings  
Director

Action Needed: Provide Guidance to the Staff about Potential Changes

- Jennings noted that there are different issues with variances. Variance requests for Chapter 22, the drift rule, are always for the same thing: eliminating the requirement to identify and map sensitive areas, because when applicators are working on a road or power line it is difficult to see 500 yards into the woods. The Board always approves with two requirements: (1) use of drift-reduction strategies, and (2) a public notice in the affected areas. If the Board is always issuing the same permit, it makes more sense to revise the rule to require what the permits require. This will require rulemaking, but is relatively minor.
- The Chapter 29 variances involve the 25-foot setback from certain water bodies. This requirement applies to everyone, including homeowners, who probably don't even know the standard exists. Therefore we are holding commercial applicators to a higher standard. The Board has already approved a policy to allow staff to issue variances for plants with a dermal toxicity issue. Recently there have been several requests for treatment of invasive plants: *Phragmites*, bittersweet, Japanese knotweed, buckthorn, and honeysuckle. Jennings said there seems to be a strong consensus to get people to use BMPs. Bohlen said there is a lot of information available, but it's not well organized. It would be nice to point people toward the best information. There is a huge split in literature between chemical and non-chemical strategies, but it is not based on IPM, it is based on what they believe in.
- Jennings said that if the Board wants to push people to BMPs there will need to be some time invested to reach consensus on them. Jemison asked whether it would make sense to see who could serve on a committee to draft BMPs. Eckert asked whether they would need to be species-specific; Bohlen replied that there are some broad generalities, but also some specifics. For instance, with purple loosestrife, small pieces can resprout so they have to be carefully bagged. There are basic principles and then some strategies that apply to certain species. When you get in the field, practitioners really need details, such as what tools you need.
- Flewelling asked how much responsibility the Board should take on determining BMPs for an individual; should the board manage someone's business or ensure that they do it legally? On his farm he wants advice, but he doesn't want Augusta telling him how to do it.
- Jemison noted that in this case the responsibility ends at 25 feet; the rule was drafted that way because that zone is such a critical area for water quality.
- Morrill said that the basic question is: do we continue to require variances if we're just going to rubberstamp them every year? Or should we change the process to eliminate paperwork, if their current practices are acceptable. Eckert suggested that it could be put in rule: if you follow certain BMPs you don't need a variance; for others, staff can approve.
- Bohlen remarked that there might be value in the Board seeing these variance requests even if they're rubberstamping them, so they can be aware of what's happening. Doesn't have to be every year, could be every three years. He appreciates Flewelling's point that we shouldn't be telling

people how to do things, but we don't want to be issuing a variance to spray year after year (for instance, a person spraying for poison ivy in front of their house) if they're not doing it right. There is a proper balance, but we need to find it.

- Morrill pointed out that the person he used as an example isn't getting a variance anyway, because homeowners generally don't.
- Hicks noted that all terrestrial pesticides have on the label to not get it into the water. Use of pesticides in the water would require a permit from DEP. We are the Board of Pesticides Control, we are not the BMPs manager for specific sites. If someone else put together a BMP manual for how to control invasive plants on these sites, we would be a part of it, but this is getting away from our charge. Jemison noted that we have done BMPs before.
- Hicks said if we are talking about control without chemicals, is it our place to tell them how to do it? Bohlen said that if you're thinking IPM, then both chemical and non-chemical means need to be discussed.
- Eckert noted that BMPs would be developed by a group, not just the Board. The value would be that we could say: if you follow these, the staff can issue variances.
- Bohlen suggested keeping it simple and straightforward: if you have a multiyear plan for following BMPs, we will issue a variance. We don't need a lot of details.
- Heather Spalding (MOFGA) pointed out that not using any chemicals to control pests helps support the Board's mandate of minimizing reliance on pesticides; therefore it is appropriate for the Board to be promoting this approach. She asked whether there are any places where invasives have been controlled without using chemicals. Fish said that the US Forest Service has eliminated purple loosestrife in places using manual and chemical means, but that it requires replacing the ground cover with competing vegetation.
- Discussion returned to Chapter 22 variances. Board members suggested use of multiple-year variances for linear ROWs. Hicks noted that it would be important for staff to review the variance if different chemicals were to be used.
  - **Bohlen/Flewelling: moved and seconded to allow staff to approve variances for linear projects for up to three years, with the condition that the Board be notified of any significant changes, including chemicals used.**
  - **In favor: unanimous**
  - **Consensus to discuss revising Chapter 22 next time rulemaking is considered**
- Bohlen suggested a policy to allow staff to issue variances for Chapter 29 provided the application includes a multiyear control strategy, a plan for revegetation of the site, and some evidence of knowledge of efficacy and appropriate practices, and long-term monitoring. For all the variances the Board has looked at, if those things were included, it was approved. Jennings questioned whether there should be a reference to BMPs. Bohlen replied that he was trying to avoid that; the Board should make information on BMPs available, but not sure it should be tied into policy.
- Fish noted that the current policy for dermal toxicity does not reference BMPs. In the background to the policy it says "... emphasis on BMPs..."
- Eckert suggested crafting a similar policy for invasive plants. When asked whether it should be a single policy she said no, because dermal toxicity is a health issue. Jemison noted that strategies would be very different.
- There was some discussion about whether policy should include a list of invasive plants. Eckert noted that any plant could be considered invasive by someone; Fish suggested consulting with Ann Gibbs, who serves on the National Invasive Board.
- Jemison asked whether homeowners would look at the Board site for information. How do we reach that population? Bohlen said that he is working with groups now who are dealing with invasives and will need variances occasionally: non-profits, municipalities, land trusts. Most of them are working



through the system and getting a master applicator. Fish noted that some are able to use pesticides without licensing by closing the area to the public for seven days.

- **Consensus was reached for the staff to bring a draft policy to the next meeting.**

5. Review of Ideas for Increasing the Availability of Online Continuing Education Options

At the September 6, 2013, Planning Session, the Board discussed increasing online continuing education options, which had been identified as its third highest priority topic. Current options and ideas for additional options were discussed. The staff has reviewed some of the ideas from the Planning Session and is prepared to discuss them further with the Board.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff about Potential Changes

- Fish explained that the Board has approved many online courses for continuing education credits. He checks the offerings and chooses those that apply to Maine. Does the Board want the staff to reach out to specialists and ask them to make presentations similar to Steve Johnson's, specific to Maine crops? People are always looking for credits at the last minute. Eventually we will have to decide whether applicators should be able to get all their credits online or whether there should be a requirement that some training be in person.
- Jemison asked whether there was testing included in Johnson's videos. He pointed out that people can attend a training in person and get nothing out of it. It would be helpful to know what areas are already covered, then the Board could contact experts in other areas; he offered to help with that.
- Jennings said there is nothing specific to Maine crops beyond Johnson's potato videos.
- Jemison said that his boss at Cooperative Extension has been encouraging them to do more online. The best are three to four minutes long; if you want a broader education component, testing at the end would require people to pay attention.
- Morrill noted that he would like to see more training for commercial applicators online; things they could do in the evening, rather than missing a whole day of work. Fish said there is a lot available for commercial applicators; Morrill said that most were not free. Fish said most online courses have a fee, even those for private applicators. Johnson's cost is \$10 per credit; the average is \$30 per credit; Cornell's are cheaper and they offer 25–30 courses. The challenge is that they have to be an hour in order to approve (or combine to make an hour).
- Jemison suggested 5–6 minutes videos, followed by a test, and combined to make an hour.
- Fish suggested the Board look at the School IPM initial training. Most people said it was easy enough to get through, but it is not fancy.

6. Review of the Board's Enforcement Protocol

At its September 6, 2013, meeting, concerns arose about the proposed fine imposed by a pending consent agreement. During the course of the discussion, there were questions about (1) whether the matter may have been more appropriately presented to the Board prior to negotiating a draft agreement, (2) the process by which the Board might alter an agreement, and (3) how the staff arrives at proposed penalties. Some of the questions relate to the Board's existing Enforcement Protocol. Consequently, the staff determined a review of the existing protocol may be a useful starting point.

Presentation By: Henry Jennings  
Director

Action Needed: None—Informational Only

- Jennings said that at the last meeting a consent agreement was discussed and the question arose about whether the issue should have been brought before the Board instead of being negotiated by staff. It's always a bit of a judgment call whether an issue falls under section 3A or 3B of the enforcement protocol. He explained that all violations used to come before the Board. This didn't work for a variety of reasons:
  - One, there was a lack of consistency;
  - Two, there wasn't a good understanding on the part of the Board of the required level of proof—these are all civil matters and the burden of proof is a preponderance of evidence; the Board was clearly trying to apply the “beyond a shadow of a doubt” standard. Also, applicators had a lot more at stake than the others involved, so they showed up at meetings to plead their case, while complainants did not, so there was a clear trend of erring on the side of the applicator. After one case involving a significant violation, the Attorney General wrote a letter to the Board saying that if you're not going to enforce your laws, then the Attorney General will.
  - Three, the Board spent a lot of time, sometimes hours, discussing each case.
- The current protocol is essentially a policy, and the Board can change it. Jennings said the staff would try to be more mindful of those cases that should come in front of the Board prior to negotiating a consent agreement.
- Jemison said that in 10 years he can only think of a couple of cases that he would have liked to have seen earlier, the marijuana case being one of them.
- Jennings said that another issue is how to determine a fine. Some states use a mathematical formula; Maine had a hard time with that because it ignores some of the less tangible things, such as: were they trying to do it right, or were they completely ignoring the law. There is a statutory list of considerations. The staff tries to look at consistency and fairness... If the Board wants to provide guidance in advance, they can try to do that.
- Eckert said she'd like to see the “very different” issues. Jennings said that's a difficult yardstick to apply.
- Granger said that his discomfort is that the fine has already been negotiated and the person has agreed to pay the fine, and the Board can only reject the entire agreement. What kind of option does the Board have to go back and say this fine should be higher or lower? Having to rubberstamp what the staff has done without hearing everything involved puts Board members in a difficult position. He's generally comfortable with the process, but once in a while, like when an \$18,000 fine comes up, it's a concern. Maybe the Board should see everything over \$10,000 before it gets agreed upon? If it's that egregious, the Board should have a chance to look at it before it's agreed on.
- Morrill agreed with Granger, that he didn't like seeing the issue for the first time after a fine has already been agreed upon.
- Jennings pointed out that if they don't approve any part of a consent agreement, it gets thrown out and they start from scratch.
- There was some discussion about whether the staff could give the Board some warning about big or unusual cases coming up. Jennings said that if it was to be discussed at all, notice would have to be given to the parties involved, so they could attend the meeting.
- There was some discussion about executive session and what could happen there. The statute appears to closely limit what can be discussed in executive session.
  - **Consensus was reached to revisit when the Assistant Attorney General was present.**

## 7. Consideration of a Consent Agreement with Lucas Tree Experts of Portland

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 and resolve the matter. This case involved an application of lawn care pesticides within 250 feet of a property listed on the Maine Pesticide Notification Registry. The registry participant did not receive advance notice.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Morrill recused himself from the discussion. Connors provided an overview of the case. Within the past four-year cycle, Lucas Tree had similar violations in 2010 and 2011. In addition to the assessed penalty, the company was asked to submit a policy to show what they have in place to prevent a recurrence. The mosquito/tick division had provided notification; the lawn care division had not. The policy submitted indicated that all three divisions need to comply and will be operating under the same standards.
- Eckert asked whether this was a clerical error and Connors replied in the affirmative.
  - **Flewelling/Eckert: moved and seconded to accept the consent agreement as written.**
  - **In favor: unanimous**
- Staff was directed to include copies of the executive session statute in next meeting packet.

#### 8. Other Old or New Business

- Kathy Murray presented a memo from the Maine IPM Council. She explained that they only meet twice a year and, over the past several years, have discussed promoting IPM through the pesticide licensing process. At the last meeting it seemed the Board would be open to tracking IPM credits as long as it was a voluntary program.
- Regarding the Board listening session proposed for the Agricultural Trades Show, Murray hasn't heard anyone saying that pesticide licensing is burdensome, but it is one more license on top of all the others. The session could be an opportunity to hear whether there are chances to streamline the processes. The Board agreed to participate in a listening session and suggested a Board Meeting from 3:00–5:00 followed by a one-hour listening session.

#### 9. Schedule of Future Meetings

December 13, 2013, January 7, 8 or 9, February 21, and March 28, 2014, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- May 9, 2014 and June 27, 2014 were added as meeting dates; the June meeting will be held in the Madison/Skowhegan area. Mary Tomlinson will contact Backyard Farms in Madison to arrange a tour. Staff will look at meeting venues.

#### 10. Adjourn

- **Flewelling/Granger: moved and seconded to adjourn at 12:03 PM**
- **In favor: unanimous**



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December 3, 2013

To: Board Members  
From: Gary Fish, Manager of Pesticide Programs  
Subject: Discuss potential rule changes to exempt Categories 7E & 6D from Chapter 22 sensitive area identification requirements

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In 1987–1988, when the Chapter 22 “Drift rules” were developed it became abundantly clear that requiring lawn and landscape applicators (Category 3A and 3B) to identify all sensitive areas within 500 feet in urban areas would be burdensome and that everything around them in a residential area is a sensitive area anyway. Since all areas around the applicator were assumed to be sensitive, the alternative solution was to require that applicator to pre-post a sign to warn the neighbors about an impending or already completed application.

Subsequently, in 1996, the Board added exterior applications done by applicators in Category 7A (Structural & General Pest Management) to this list, since they also did many residential applications.

More recently many companies have begun doing tick and mosquito control in urban settings and some of the cities and towns have applicators control sidewalk and median strip weeds on similar urban sites near residential areas.

One applicator that does all of these types of applications is Michael Legasse at Green Thumb Lawn Service. He has asked that the Board consider adding urban/residential applications in Categories 7E (Biting Flies & Other Arthropod Vectors) and 6B (Industrial/Commercial/Municipal Vegetation Management) to the list of categories which are allowed to pre-post a Board-approved sign in lieu of identifying all sensitive areas within 500 feet.

The staff agrees that urban/residential applications in these categories are similar to the existing category exemptions and requests your direction in regards to initiation of rulemaking to add this amendment.

- 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**

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. This requirement shall not apply to commercial application categories 3B (turf), 3A (ornamental tree and plant) or 7A (structural general pest control applications).

**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.



Maine Board of Pesticides Control  
28 State House Station  
90 Blossom Lane  
AMHI Campus Deering Building Room 333  
Augusta, ME 04333-0028  
Attn: Henry Jennings

Dear Henry Jennings,

As per our discussion on October 25, 2013 relating to specifically Chapter 22, Section 2 C, regarding identification of sensitive areas, my understanding is this section was last visited in 1987 when posting requirements were written into the regulations. I believe this needs to be reviewed as soon as possible, as applications such as mosquito treatments, flea and tick applications, driveway and walkway vegetation controls, and other miscellaneous applications should not have to identify sensitive areas within 500 feet of the application. I believe they should be treated as applications in categories 3 B (turf), 3 A (ornamental tree and plant), and 7 A. Drift is not the issue as it is in aerial and agricultural applications. Proper identification, prior inspection of the site, and posting of the area is, in my opinion, far more important.

This change would increase public safety and reduce unnecessary record keeping requirements for applicators. I don't believe the intent of the regulations in today's world was to identify all sensitive areas within 500 feet of the Round-up spray to a 20 foot brick walk in the fenced in back yard of a residence. Prior inspection and posting accomplishes much better means of public safety.

I am requesting that this issue be reviewed with staff and included at your next discussion with the Board of Pesticides Control about rule making. Thank you for your consideration.

Sincerely,

Michael J. Legasse  
Green Thumb Lawn Service  
MJL/at



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

HENRY JENNINGS  
DIRECTOR

October 10, 2013

To: Board Members  
From: Gary Fish, Manager of Pesticide Programs  
Subject: Streamlining the Licensing Process

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At the October meeting Board members asked the staff to research or develop the following:

- an online application and payment system so companies do not have to travel back and forth to accelerate the licensing process,
- combination exam/license application that can be used to apply for both the exams and license with one check, but the application would specifically state that all fees are NOT refundable, even if the examinee flunks the exams, and
- a receipt that doubles as a temporary license for companies that send someone with the application and fee directly to our office.

We continue to work with the Department to help us find an online payment and licensing database solution. Although the movement is slow it is all going in the right direction thus far. We may be able to help fund a solution using salary savings in our Federal grant account.

Henry also discovered that we may be able to begin taking credit cards using a system that Quality Assurance & Regulations has been working with for a while.

The staff has developed the combination exam/license application (see attached) and the temporary license/receipt is being worked on by our database specialist at OIT (tentative mock up attached).

Do you think the combination exam/license application will work for those companies that need it and does the temporary license/receipt seem useable?

# Application for Commercial Pesticide Applicator Exams and License

Please complete an application for each candidate by printing or typing the requested information and checking all the appropriate boxes. Mail the completed application to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

**This form is for applicants wishing to pre-pay the license fee at the same time as paying the exam fees. Licensee understands that if they do not pass the required exams within 12 months they will forfeit the license fees.**

Name		Social Security #	
Home Mailing Address		Home Phone #	
		Cell Phone #	
City State Zip		Business Phone #	
Company/Agency		E-mail Address	
Business Mailing Address			
City State Zip			
Federal ID # <i>Required</i>			
Signature of Licensee		Title	
Signature of Owner/Manager		Title	

## Type of Applicator

Industrial/Business	Governmental
<input type="checkbox"/> Custom Applicator (For Hire) <input type="checkbox"/> Not For Hire (Apply to Company Areas Only)	<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> University <input type="checkbox"/> Municipal

### Exams Desired:

- |  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> Master Oral<br><input type="checkbox"/> Master Regulation<br><input type="checkbox"/> Core<br><input type="checkbox"/> 1A-Agricultural Animal<br><input type="checkbox"/> 1B-Agricultural Plant<br><input type="checkbox"/> 1B1-Ltd. Comm. Blueberry<br><input type="checkbox"/> 1B2-Agricultural Chemigation<br><input type="checkbox"/> 1B3-Agricultural Fumigation<br><input type="checkbox"/> 1B4-Post Harvest Treatment<br><input type="checkbox"/> 2-Forest | <input type="checkbox"/> 3A-Outdoor Ornamentals<br><input type="checkbox"/> 3B-Turf<br><input type="checkbox"/> 3C-Indoor Ornamentals<br><input type="checkbox"/> 4-Seed Treatment<br><input type="checkbox"/> 5A-Aquatic<br><input type="checkbox"/> 5B-Sewer Root Control<br><input type="checkbox"/> 6A- R-O-W Vegetation Mgmt<br><input type="checkbox"/> 6B-Ind/Comm/Muni Veg Mgmt<br><input type="checkbox"/> 7A-Structural General<br><input type="checkbox"/> 7B-Structural Fumigation | <input type="checkbox"/> 7C1-Disinfectant & Biocide<br><input type="checkbox"/> 7C2-Swimming Pool & Spa<br><input type="checkbox"/> 7C3-Mold Remed/Water Dam*<br><input type="checkbox"/> 7D1-Pressure Treating<br><input type="checkbox"/> 7D2-Sapstain/Bluestain<br><input type="checkbox"/> 7D3-Remedial Treatment<br><input type="checkbox"/> 7D4-General Wood Treatment<br><input type="checkbox"/> 7E-Biting Fly & Tick<br><input type="checkbox"/> 7F-Termites<br><input type="checkbox"/> 8A-Public Health/Biting Fly** | <input type="checkbox"/> 8B-Public Health/Other**<br><input type="checkbox"/> 9-Regulatory**<br><input type="checkbox"/> 10-Demo & Research***<br><input type="checkbox"/> 11-Aerial*** |
|--|--|---|---|

- \* **These categories need only take one exam the core exam is not required.**
- \*\* **These categories are only for government officials.**
- \*\*\* **These categories are not stand-alone. Applicants must also apply for categories they plan to make applications under.**

### Exam Fees

Exam fees are \$10.00 per core or category exam. The Master oral and regulation exams are \$50.00 for the two combined. Failure to pass any exam requires a new application and fee to be submitted. Exam fees are not refundable. *Government officials are exempt from all fees.*

Number of core and/or category exams checked x \$10.00 = \$ \_\_\_\_\_  
 Master Exams = \$ 50.00

**Total Exam Fee \$ \_\_\_\_\_**



All Applicants must complete Sections 1-3

**Section 1**

Application for: *(Note: No fees for governmental applicators)*

- Initial License \$70.00 fee                       Replacement License \$5.00 fee  
 License Renewal \$70.00 fee                       Updated License (add/category/upgrade) \$5.00 fee

**Total License Fee \$** \_\_\_\_\_

**Section 2**

Qualification for: *(Note: Does not apply to Household Pet, Antifouling Paint, or Post Harvest Treatment applicators)*

- Operator     Master

**Section 3**

Type of License:

- Governmental                       Custom Applicator for Hire                       Custom Applicator Nor for Hire

Company/Agency owner, manager or master must complete Section 4

**Section 4a**

**Annual Summary Reports**

- Have been submitted  
 Are enclosed  
 None performed

**Section 4b**

**Insurance Affidavit**

- Affidavit enclosed  
 Previously submitted  
 Not required (not for hire)

“For hire” companies must complete Section 5

**Section 5a**

- Only apply pesticides on or within a premises which is company owned or leased  
*(This type of company need not apply for a firm license)*
- Sole Proprietor with NO employees that apply pesticides  
*(This type of company need not apply for a firm license)*
- Sole Proprietor WITH employees that apply pesticides
- Incorporated                       Partnership                       LLC  
*(This type of company need not apply for a firm license)*

**Fees  
Enclosed**

Please make checks payable to “Treasurer, State of Maine”

(from page 1) Total Exam Fee \$ \_\_\_\_\_  
(from top of page 2) Total License Fee \$ \_\_\_\_\_

**Total Enclosed \$** \_\_\_\_\_

**Licensee understands that if they do not pass the required exams within 12 months they will forfeit the license fees.**

<b>Exam Schedule</b>	Exam appointments are sent to all applicants after receipt of a complete application and appropriate fee. <b>Please allow 7 – 10 business days to receive confirmation of your appointment.</b> Most exams are offered weekly on Wednesday mornings. Master exam candidates may be scheduled on other days. Master candidates should indicate their time and date preferences below. We will do our best to accommodate your needs.
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- Prefer Morning                       Prefer Afternoon

Dates preferred: \_\_\_\_\_ Dates to avoid: \_\_\_\_\_

**If you are unable to appear at the scheduled time, please call (207)-287-2731 to request a new appointment. The Board's regulations require at least a 24 hour notice if you cannot make your appointment. Less than 24 hour notice or canceling two times in a row results in loss of the exam fees and an additional \$15.00 re-application fee above and beyond the regular exam fees.**

**Core and Category exam study materials are available from The University of Maine Pest Management Office at 1-800-287-0279. The Master regulation exam study guide is mailed from the BPC office upon receipt of your application.**

<b>Master Level Education/Experience History</b>	<b>Please list your current or expected pesticide management responsibilities.</b>
	<b>Please describe any previous pesticide management employment.</b>
	<b>Please list any post secondary school programs completed.</b>

**Comments/Notes:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**For Board Use Only**

**Required Fee: \$** \_\_\_\_\_

**Fee Paid: \$** \_\_\_\_\_

**Check Number** \_\_\_\_\_

**Check Date:** \_\_\_\_\_

**Check Amount: \$** \_\_\_\_\_

**Date Tested** \_\_\_\_\_

**Exam(s)** \_\_\_\_\_

\_\_\_\_\_

**License Number: C A** \_\_\_\_\_

**Certification Categories:** \_\_\_\_\_

\_\_\_\_\_

**Certification Expiration Date:** \_\_\_\_\_

**Extend Certification To:** \_\_\_\_\_

**Master Applied:** \_\_\_\_\_

**Company License #:** \_\_\_\_\_

**Insurance Affidavit** \_\_\_\_\_

**Spray Report** \_\_\_\_\_

**Date License Sent** \_\_\_\_\_

**Date License Issued** \_\_\_\_\_

**New Expiration Date** \_\_\_\_\_



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

HENRY JENNINGS  
DIRECTOR

# Temporary Commercial Pesticide Applicator License

Issue Date: xx/xx/xxx

This temporary license is void 30 days following the issue date shown above.

License number: CMA99999 3A,3B, 6D

John or Jane Doe  
Lovely Landscaping, LLC  
52 B Happy St.  
Funtown, USA 99999-1111

The license number and certification code(s) for the categories and subcategories the holder is licensed to perform applications under is shown below. If the second letter of the license number is M, the bearer is licensed at the master level. If the second letter is O, the bearer is licensed at the operator level. The certification categories are shown below.

## Certification Categories and Subcategories

- |                           |                            |                            |
|---------------------------|----------------------------|----------------------------|
| 1A1 Agricultural Animal   | 6A Right-Of-Way            | 8A Pub Health - Biting Fly |
| 1B Agricultural Plant     | 6B Ind/Comm/Munic Veg      | 8B Pub Health - Other      |
| 1B1 Commercial Blueberry  | 7A Structural General      | 9 Regulatory               |
| 1B2 Chemigation           | 7B Food Process & Fumi     | 10 Demo & Research Pest    |
| 1B3 Ag Fumigation         | 7C1 Disinfect and Microbia | 11 Aerial                  |
| 1B4 Post-Harvest Treat    | 7C2 Swimming Pools/Spas    |                            |
| 2 Forest                  | 7C3 Core/Mold/Water Dam    |                            |
| 3A Outdoor Ornamental     | 7D1 Wood Preserving        |                            |
| 3B Turf                   | 7D2 Sapstain/Blue Stain Tr |                            |
| 3C Indoor Ornamental      | 7D3 Remedial Treatment     |                            |
| 4 Seed Treatment          | 7D4 General Wood Treatm    |                            |
| 5a Aquatic                | 7E Biting Fly              |                            |
| 5b Sewer Line Root Contro | 7F Termites                |                            |

Fee paid: \$70.00  
Check number: 1234



PAUL R LEPAGE  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

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## MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY TO DELEGATE AUTHORITY TO THE STAFF TO APPROVE REQUESTS FOR VARIANCE FROM CMR 01-026 CHAPTER 29 FOR CONTROL OF INVASIVE PLANTS

Adopted December XX, 20XX

### BACKGROUND

In September 1995, the Board delegated the authority to approve repeated requests for variance from the sensitive area identification requirements of CMR 01-026 Chapter 22. Since that time, the Board delegated similar authority for certain variance requests for broadcast pesticide applications within the 25-foot untreated buffer zone required by CMR 01-026 Chapter 29.

On November 18, 2011, an interim policy was approved by the Board to permit staff to approve Chapter 29 requests for variances to control vegetation that pose a dermal toxicity hazard. However, no policy exempts applications to control invasive vegetation.

Several requests for variances to control invasive vegetation within twenty-five feet of surface water have recently been received and granted by the Board. Invasive plants are a common problem near surface water, involve an increasing variety of species, are difficult to eradicate, and easily re-establish. Because management is complex and requires a multi-year approach the Board directed the staff to develop a policy that allows the staff to approve multi-year variance requests provided that the request:

- includes specific pesticide use strategies designed to minimize contamination of surface water
- incorporates a long term control plan that includes re-vegetation of the site and consideration and incorporation of appropriate best management practices (BMPs) specific to the target invasive species.

For BMP information and fact sheets, applicants can be directed to the Board's *GotPests?* website, <http://www.maine.gov/dacf/php/gotpests/index.html>.

### POLICY

The Board delegates the authority to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of invasive plants. "Invasive plants" may include, but are not limited to: plants listed by the Invasive Plants Atlas of New England website, [http://www.eddmaps.org/ipane/ipanespecies/current\\_inv.htm](http://www.eddmaps.org/ipane/ipanespecies/current_inv.htm).

The request for a variance must include a detailed description of the area, photographs showing the area and relation to water, an agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland. The variance must also include a multi-year control strategy, a plan for re-vegetation of the site, and some evidence of knowledge of efficacy and appropriate practices. The variance may be granted for up to a three year period.



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

HENRY JENNINGS  
DIRECTOR

October 10, 2013

To: Board Members  
From: Gary Fish, Manager of Pesticide Programs  
Subject: Availability of Online Continuing Education Options

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At the October meeting, Board members asked the staff to research the availability of online training programs, number of credits offered in the different commodities (private applicators) and categories (commercial applicators), and how we might increase the “Maine” crop specific online course content.

We have discovered that the already approved online credit offerings are very robust. Ten different providers offer up to 178 credits and over 150 courses. Courses are available for every crop/commodity and for most commercial categories (see attached charts for the Cornell and PestNetnetwork.com courses). These courses range in cost from free to as much as \$25 per credit. The average cost is around \$10.00 - \$15.00 per credit.

I also have been conversing with Steve Johnson at the Presque Isle Extension office and he has another one-half hour online course almost complete and he is also willing to develop more offerings (one on organic pesticides) if he can get approval from the University administration.

I have suggested that additional courses be developed for blueberries and vegetables by the crop specialists in those areas, but have not heard back from them.

Finally, Anne and I have been working with colleagues in the Maine Forest Service to see how they have been using video equipment and creating webinars and other online training content. We have tentatively decided to start by recording the initial training session at the Ag Trades Show and Anne has been experimenting with PowerPoint as a tool to add narration to existing slide shows like the IPM Coordinator training module we have already posted.

It looks like we are firmly planted in the 21<sup>st</sup> century when it comes to online training opportunities; the only drawback I see is that most of the content is not Maine crop specific. We look forward to hearing your additional ideas on how that Maine specific content might be achieved.

Throughout the Year	<b>Food Industry Sanitation Auditors Seminars.</b> Locations all over the US. Information and registration details at: <a href="#">Food Industry Sanitation Auditors</a> or contact Paul Laughlin at 913-782-6399 or <a href="mailto:info@fisaconsulting.com">info@fisaconsulting.com</a> . <b>Many credits</b>	Food Processing & Fumigation
Throughout the Year	<a href="#">U-Mass Green School, Conferences and Workshop Calendar</a>	Turf, Outdoor & Indoor Ornamental
<b>OTHER CREDIT SOURCES</b>		
Home Study	<ul style="list-style-type: none"> <li>• <a href="#">University of Maine Cooperative Extension</a></li> <li>• <a href="#">PMEP Distance Learning Center at Cornell University</a></li> <li>• <a href="#">Purdue University Correspondence Courses for Pest Management Professionals</a></li> <li>• <a href="#">Principles of Turfgrass Management, University of Georgia</a></li> <li>• <a href="#">CTN Educational Services</a></li> <li>• <a href="#">Continuing Education University</a></li> <li>• <a href="#">All Star Training, Inc. On-Line Courses</a></li> <li>• <a href="#">Pestweb.com On-Line Courses*</a></li> <li>• <a href="#">Pestnetwork.com On-Line Courses</a></li> <li>• <a href="#">Pesteducation.com Courses on CD-Rom*</a></li> <li>• <a href="#">Penton Online Continuing Education Portal</a></li> <li>• <a href="#">InterNACHI Wood-Destroying Organism Inspection Course</a> (10 credits, suitable for Category 7A and 7B applicators)</li> </ul> <p>*May take up to 48 hours to register for the classes. Don't wait until the last minute!!!</p>	
Links to Meetings Approved in Other New England States (Also automatically approved for Maine credits)	<b>New Hampshire</b> <a href="http://nh.gov/agric/pesticide_control/documents/FLIPPINGFILE_019.pdf">http://nh.gov/agric/pesticide_control/documents/FLIPPINGFILE_019.pdf</a>	
	<b>Massachusetts</b> <a href="http://www.mass.gov/agr/pesticides/licensing/pace/pace_courses.htm">http://www.mass.gov/agr/pesticides/licensing/pace/pace_courses.htm</a>	
	<b>Vermont</b> <a href="http://www.vermontagriculture.com/ARMES/pestcreditschedule.htm">http://www.vermontagriculture.com/ARMES/pestcreditschedule.htm</a>	
	<b>Connecticut</b> <a href="http://www.ct.gov/dep/cwp/view.asp?a=2710&amp;q=324294">http://www.ct.gov/dep/cwp/view.asp?a=2710&amp;q=324294</a> <a href="http://www.ct.gov/dep/cwp/view.asp?a=2710&amp;q=324272">http://www.ct.gov/dep/cwp/view.asp?a=2710&amp;q=324272</a>	
	<b>Rhode Island</b> <a href="http://www.uri.edu/cels/ceoc/ceoc_programs_pat.html">http://www.uri.edu/cels/ceoc/ceoc_programs_pat.html</a>	

From Cornell

<b>COURSE NUMBER and NAME</b>	<b>SPONSOR</b>	<b>CREDITS</b>	<b>New York Categories</b>	<b>COST</b>
<a href="#">Module 4: Toxicity of Pesticides</a>	Cornell University	1	Core-all	\$25.00
<a href="#">Module 6: Ecology and Environment</a>	Cornell University	1	Core-all	\$25.00
<a href="#">Module 7: Safety Precautions with Pesticides</a>	Cornell University	1	Core-all	\$25.00
<a href="#">Module 8: Personal Protection</a>	Cornell University	1.25	Core-all	\$31.25
<a href="#">Module 20: Weatherwise Application</a>	Cornell University	0.5	Core-all	\$12.50
<a href="#">Module 21: Pesticide Disposal</a>	Cornell University	0.5	Core-all	\$12.50
<a href="#">Module 22: Pesticide Storage</a>	Cornell University	0.75	Core-all	\$18.75
<a href="#">Protecting Water from Pesticide Pollution</a>	Cornell University	1.5	Core-all	\$37.50
<a href="#">Swede Midge Biology and Management</a>	Cornell University	1	Commercial: Ag Plant, Demo/Research  Private: Vegetable	\$25.00
<a href="#">Insect Biocontrol</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Turf, Interior Plant, Regulatory, Demo/Research  Private: Field/Forage, Fruit, Vegetable, Greenhouse/Florist, Nursery/Ornamentals/Turf	\$25.00
<a href="#">Ecology of Weed Management</a>	Cornell University	1	Commercial: Ag Plant, Ornamentals/Shade Trees/Turf, Demo/Research  Private: Field/Forage, Fruit, Vegetable, Nursery/Ornamentals/Turf	\$25.00
<a href="#">Mechanical Weed Management</a>	Cornell University	1.25	Commercial: Ag Plant, Demo/Research  Private: Field/Forage, Fruit, Vegetable	\$31.25
<a href="#">Sweet Corn IPM</a>	Cornell University	1	Commercial: Ag Plant, Demo/Research  Private: Vegetable	\$25.00
<a href="#">Beating Phthophthora Blight</a>	Cornell University	1	Commercial: Ag Plant, Regulatory, Demo/Research  Private: Vegetable, Greenhouse/Florist	\$25.00



<a href="#">Scouting Basics – How’s and Why’s</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Regulatory, Demo/Research  Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist, Nursery/Ornamentals/Turf	\$25.00
<a href="#">Introduction to Developing IPM Strategies</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Regulatory, Demo/Research  Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist, Nursery/Ornamentals/Turf	\$25.00
<a href="#">Introduction to NEWA &amp; Its Use In IPM</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Regulatory, Demo/Research  Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist, Nursery/Ornamentals/Turf	\$25.00
<a href="#">Nozzle Selection &amp; Calibration in Orchard Canopy Sprayers</a>	Cornell University	1	Commercial: Ag Plant, Demo/Research  Private: Fruit	\$25.00
<a href="#">Nozzle Selection &amp; Calibration in Vineyard Canopy Sprayers</a>	Cornell University	1	Commercial: Ag Plant, Demo/Research  Private: Fruit	\$25.00
<a href="#">Detection &amp; Management of the Brown Marmorated Stink Bug</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Structural/Rodent Control, Regulatory, Demo/Research  Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist, Nursery/Ornamentals/Turf	\$25.00
<a href="#">Detection &amp; Management of the Emerald Ash Borer</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Rights-of-way, Regulatory, Demo/Research  Private: Nursery/Ornamentals/Turf	\$25.00
<a href="#">Weed Suppressive Groundcovers</a>	Cornell University	0.75	Commercial: Ag Plant, Ornamentals/Shade Trees/Turf, Turf, Rights-of-way, Regulatory  Private: Greenhouse/Florist, Nursery/Ornamentals/Turf	\$18.75
<a href="#">Bed Bugs Module 1 - Introduction to Bed Bugs and Their Behavior</a>	Cornell University	0.75	Commercial: Ag Animal, Structural/Rodent Control, Public Health, Demo/Research	\$18.75

<a href="#">Bed Bugs Part 2 - Inspection</a>	Cornell University	1	Commercial: Structural/Rodent Control, Public Health, Demo/Research	\$25.00
<a href="#">Effective Spraying with Backpack Sprayers</a>	Cornell University	1.5	Commercial: Ag Plant, Ornamentals/Shade Trees/Turf, Turf, Rights-of-way, Regulatory, Demo/Research Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist, Nursery/Ornamentals/Turf	\$37.50
<a href="#">Effective Spraying with Boom Sprayers</a>	Cornell University	1.5	Commercial: Ag Plant, Ornamentals/Shade Trees/Turf, Turf, Rights-of-way, Regulatory, Demo/Research Private: Fields/Forage, Fruit, Vegetable, Nursery/Ornamentals/Turf	\$37.50
<a href="#">Current Status of Herbicide Resistance in Weeds</a>	Cornell University	0.5	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Turf, Aquatic Veg, Rights-of-way, Regulatory, Demo/Research Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist Nursery/Ornamentals/Turf	\$12.50
<a href="#">How Herbicides Work</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Turf, Aquatic Veg, Rights-of-way, Regulatory, Demo/Research Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist Nursery/Ornamentals/Turf	\$25.00
<a href="#">What is Herbicide Resistance?</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Turf, Aquatic Veg, Rights-of-way, Regulatory, Demo/Research Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist Nursery/Ornamentals/Turf	\$25.00
<a href="#">Scouting After a Herbicide Application &amp; Confirming Herbicide</a>	Cornell University	1	Commercial: Ag Plant, Forest, Ornamentals/Shade Trees/Turf, Turf, Aquatic Veg, Rights-of-way, Regulatory, Demo/Research Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist Nursery/Ornamentals/Turf	\$25.00
<a href="#">Principles of Managing Herbicide</a>	Cornell University	1	Commercial: Ag Plant, Forest,	\$25.00

<a href="#">Resistance</a>			Ornamentals/Shade Trees/Turf, Turf, Aquatic Veg, Rights-of-way, Regulatory, Demo/Research  Private: Fields/Forage, Fruit, Vegetable, Greenhouse/Florist Nursery/Ornamentals/Turf	

<b>COMMERCIAL PESTICIDE CATEGORY</b>	<b>CATEGORY NAME-NEW YORK</b>	<b>NUMBER COURSES AVAILABLE</b>	<b>NUMBER CREDITS AVAILABLE</b>
	CORE-ALL CATEGORIES	8	7.5
1A	AGRICULTURAL PLANT	21	21.5
1B	AGRICULTURAL ANIMAL	1	.75
1C	COMPANION ANIMAL		
1D	FUMIGATION OF SOIL & AGRICULTURAL COMMODITIES		
2	FOREST PEST CONTROL	11	10.5
3A	ORNAMENTALS, SHADE TREES & TURF	15	15.25
3B	TURF	9	9.25
3C	INTERIOR PLANT MAINTENANCE		
4	SEED TREATMENT		
5A	AQUATIC VEGETATION CONTROL	5	4.5
5B	AQUATIC INSECT & MISC AQUATIC ORGANISMS CONTROL		
5C	AQUATIC FISH CONTROL		
5D	AQUATIC ANTIFOULING PAINTS		
5E	SEWER LINE ROOT CONTROL		
6A	RIGHTS-OF-WAY VEGETATION CONTROL	9	9.25
6B	RIGHTS-OF-WAY IN PLACE POLE TREATMENTS		
7A	STRUCTURAL & RODENT CONTROL	3	2.75
7B	FUMIGATION		
7C	TERMITE		
7D	LUMBER & WOOD PRODUCTS		
7F	FOOD PROCESSING		
7G	COOLING TOWERS, PULP & PAPER PROCESS		
8	PUBLIC HEALTH PEST CONTROL	2	1.75
9	REGULATORY PEST CONTROL	13	13.5
10	DEMONSTRATION & RESEARCH PEST CONTROL	23	22.25
11	AERIOL PILOT		
12	SALES (OF RESTRICTED USE PESTICIDES)		

<b>PRIVATE</b>	<b>CATEGORY NAME</b>	<b>NUMBER COURSES</b>	<b>NUMBER CREDITS</b>
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<b>PESTICIDE CATEGORY</b>		<b>AVAILABLE</b>	<b>AVAILABLE</b>
21	FIELD & FORAGE	14	14.75
22	FRUIT	16	16.75
23	VEGETABLE	17	17.75
24	GREENHOUSE & FLORIST	12	11.75
25	NURSERY, ORNAMENTALS & TURF	15	15.25
31	AGRICULTURAL ANIMAL PEST CONTROL		
41	AQUATIC PEST CONTROL		

PestNetwork.com courses

Life History & Habits of Carpenter Ants	Commercial: Structural, Termites
Principles of IPM in Field Crops	Commercial: Ag Plant, Demo/Research, Private: Forage, Potato, Vegetable
Facets of IPM in Field Crops	Commercial: Ag Plant, Demo/Research, Private: Blueberry, Forage, Small Fruit?, Potato?, Vegetable
Managing Pesticide Drift	all Outdoor
Environmental Protection Agency and its Role in Pesticide Application	all
Pesticide Applicator Safety	all
Pesticide Families	all
Sucking Pests of Ornamental Plants	Commercial: Outdoor Ornamentals, Indoor Ornamentals Private: Forest?, Greenhouse, Nursery
Principles of Pest Control in Lawn and Turf	Commercial: Turf
Identifying Cockroaches	
Eastern Subterranean Termite	Commercial: Structural, Termites
Beetles that will Reinfest	Commercial: Structural
Beetles that will not Reinfest	Commercial: Structural
FIFRA	all
Recognition and Control of Small Vertebrate Pests	Commercial: Ag Plant, Structural Private: Blueberry, Forage, Forestry, Potato, Small Fruit, Turf, Vegetable

PestNetwork.com courses

15 courses, each worth 1 credit

COMMERCIAL CATEGORY-MAINE	
All Categories	4
Ag Plant	4
Forest	1
Turf	3
Indoor Ornamentals	1
Seed Treatment	
Aquatic	
Sewer Root Control	
Right-of-Way	1
Industrial/Commercial/Municipal	1
Structural General	5
Structural Fumigation	
Disinfectant and Biocide	
Swimming Pool	
Mold Remediation	
Wood Preserving	
Biting Fly	1
Termites	2
Public Health – Biting Fly	1
Public Health –Other	1
Regulatory	
Demonstration/Research	
Aerial	

PRIVATE COMMODITY-MAINE	
All Commodities	4
Blueberry	2
Forage (silage corn)	4
Forestry (Christmas trees)	3
Greenhouse	1
Nursery	1
Orchard Fruit	2
Potato	4
Small Fruit	2
Turf	3
Vegetable	4

## BPC Consent Agreements 2009 - 2013

General Groupings	Issues	Penalty
<b>Drift</b>		
Hemingway Orchard	Drift 2 SALOS/ Drift 1 SALO repeated	AG or court to settle
Pulsifer Orchard	Drift from their orchard to abutting Orchard 2 separate occasions	\$300
North East Ag	Drift to SALO when spraying forage corn	\$250
JBI Helicopters	Herbicide drift outside forest block /still on client land/ paper co. self reported	\$300
JBI Helicopters	Herbicide drift outside forest block /damage to abutting property owner's trees/ paper co. self reported/impacted landowner expressed little concern/restitution for damage being negotiated by involved parties	\$300
<b>Multitude of Violations</b>		
Purely Organic	Failure to properly post treated turf/Transporting, handling, distributing pesticides in a careless, faulty, or negligent manner/Engaging in fraudulent business practices in the application and distribution of pesticides/ Failure to instruct employees and those working under company direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and to instruct such persons as to the proper steps to be taken to avoid such hazards/ Failure as an employer to provide and maintain, for the protection of employees and persons working under company direction, the necessary safety equipment as set forth on the label of the pesticide used/Producing pesticides in an unregistered pesticide producing establishment/Sale, distribution, and use of unregistered pesticides/Applying pesticides commercially outside of license category/Failure to maintain complete and up to date commercial pesticide application records/Submitting false and fraudulent Commercial Applicator Annual Summary Reports	\$18,000
<b>Notification</b>		
TruGreen Chemlawn	Failure to provide notification in 2 separate cases where it was requested. Previous notification violations - 2 in 2005, 1 in 2007 (one involved a registry member)	\$1,500
TruGreen Chemlawn	May 2, June 8, 2012 treated same customer twice w/o notification to registry member/ prior notification viol.for 2 people June 19, 20, and 26 of 2009	\$2,500
Lucas Tree Experts	Insufficient advance notification to registry member	\$500
Lucas Tree Experts	Insecticide to outdoor tree, no notification to registry member/ prior insufficient notification to registry member	\$500
The Lawn Dawg	Turf herbicide applied, no notification to registry member	\$500



## BPC Consent Agreements 2009 - 2013

Advantage Landscaping	Round up to lawn edges and side walk w/o license and no notification to registry member	\$500
<b>PPE</b>		
Sterling Insect-Lawn Control Inc.	Not wearing labeled required PPE. Warning letter for same violation issued 2 years earlier	\$200
<b>Posting</b>		
Old Marsh Country Club	Treated turf not posted, incomplete applicator records, lack of required PPE	\$300
<b>Purchase/Sales violations</b>		
Petro's Ace Hardware	No general use pesticide dealer (GPD) license 2008,2009,2010	\$160
J.L. Hayes & Co.Inc.-Agway	No general use pesticide dealer (GPD) license 2008,2009,2010	\$160
Kezar Falls Hardware	No general use pesticide dealer (GPD) license 2003-seven months into 2008	\$200
John E. Tibbetts	Purchase of a restricted use pesticide without a valid applicator license	\$100
Michael Rowell	Purchase of restricted use pesticides w/o an applicator license	\$100
<b>School IPM Related</b>		
Tripp Middle School	Not providing a copy of an MSDS to school staff upon request/Commercial pesticide application without a commercial pesticide applicator license/Use of a pesticide inconsistent with the pesticide label/Failure of the IPM Coordinator to maintain required record of pesticide application/Failure of the IPM Coordinator to make sure the notification of pesticide application requirement was met/Failure to follow IPM techniques, including not identifying the specific pest.	\$250
<b>Storage Violations</b>		
Northeast Ag Sales Inc.	Lack of design certification for a major pesticide storage facility/Lack of 1 hour fire rated doors to storage/Lack of panic hardware on door to storage area/Floor drains not sealed/No battery powered emergency lighting system/ No alarm system connected to a supervised central location/No automatic heat and smoke alarm system connected to a supervised central location/No emergency showers/Lack of "Danger- Pesticide Storage- Keep Out" signs posted at entrances/Lack of signs posted at entrances indicating no smoking/Lack of an eye wash station/Lack of spill response and clean-up equipment/Siting violations, storage within 250 feet of two residential buildings	\$15,000
<b>Unauthorized Application</b>		
Bruce Hunter	On another's property to open scenic vista	\$600
TruGreen Lawncare 7-20-12	Treated former customer/prior unauthorized application and notification violations	\$2,000
TruGreen Lawncare 8-2-12	Treated former customer/ prior violations of registry member and non-registry	\$2,000

## BPC Consent Agreements 2009 - 2013

The Lawn Dawg	Combined violations into same CA: treated wrong property 3-28-12 / 7-13-2012 notification registry violation	\$1,700
Atlantic Pest Solutions	Bought out smaller co and customer list. Customer of former co. treated w/o approval	\$400
Atlantic Turf Care	2 herbicides wrong house, no method of positive id of customer in place/exceeded wind limit	\$800
Scotts Lawn Service	2 herbicides wrong house, meter # on work sheet, but employee did not check meter at house. Applicator passed all test, but had not applied for lic.	\$900
Egbert's Lawn Care	Herbicide applied to mother's neighbor (as favor) w/o neighbor's permission	\$350
C&D Corporation	Velpar application to their own field, applicator inadvertently made same application to part of another property owner's abutting field.	\$1,000
C&D Corporation	2 herbicides to company blueberry block, did not stop at P. line, treated abutting owner's blueberry block. Did not report error, caused label issue when owner unknowingly made application to his already treated land	\$1,500
Mainely Grass	Insecticide and an herbicide applied to wrong site-applicator did not check meter # per co. policy, did not wear full PPE/ prior wrong site violation w/l 4 yrs.	\$1,200
Ralph Boynton	Roundup application to neighbor's field at same time he did his own.	\$150
Scotts Lawn Service	Applied pesticides on 2 consecutive days to wrong property. The wrong property was a company customer, but not the intended customer. Incident self reported. Label rates were exceeded.	\$600
Orkin Exterminating Co.	Wrong site treated insecticides indoors and out. Correct address not confirmed	\$1,000
<b>Unlabeled Use</b>		
Northeast Patients Group	Unlabeled use/use of unreg pesticide/use in careless, negligent, faulty manner w/potential harm to public	\$18,000
<b>Unlicensed Commercial Application For Hire</b>		
Firehouse Property Mgmt.	Herbicide crack and crevice parking lot	\$500
TRP Logging	Herbicide turf of Restaurant	\$350
Paul's Lawn Care, Inc.	Granular weed/feed to a town hall turf	\$250
Korhonen Land Care	Glyphosate application to infield public baseball field, denied application, test confirmed application made	\$600
Christian Bulleman III	Cleaner/disinfectant public building, mold remediation job	\$350 worth of public service work
Michael Mills Landscaping	Unsupervised herbicide application, lack of PPE, failure to keep applicator records	\$500
Magic Carpet Cleaner	Pesticide use for mold remediation work	\$350

## BPC Consent Agreements 2009 - 2013

Tailor Done Lawn Care	Glyphosate application to condominium complex, denied application, test confirmed application made	\$600
PuroClean	Unlicensed application of mold remediation pesticides	\$350
Spruce Bay Farm & Landscape	Granular Herbicide to ornamental plant beds at a commercial building	\$350
Commercial Properties Real Estate Mgmt. Company Inc.	Herbicides used as crack & crevice treatments on pavement of commercial accounts	\$500
DSS Lawn Care & Maintenance	Applicator said he used vinegar to do crack & crevice vegetation control on commercial parking lot job, denied chemical use. Lab results positive for glyphosate	\$450
<b>Unlicensed Commercial Application Not-For- Hire</b>		
Sea Urchin Cottage	Treated rented cottage	\$500
J&S Oil	Weed & Feed to turf of own gas stations	\$300
Woodford St. Apts	Insecticide application to rented apartment units two occasions/ exceeded max. label rate	\$700
Prospect Hill GC	Lic. applicator left course. Unlic applications made 8/2009 to 11/2011	\$350
Sullivan Property Mgmt.	Insecticide flea treatment inside apartments and hallways	\$500
The Bethel Inn & Country Club	No lic. for 2004,2005,2006,2007,2008,2009/ no application records/ no annual reports to BPC since 2004 despite repeated requests/ in 2004 co. was fine \$400 for making unlicensed applications in 2001,2002, and 2003.	\$3,000
Town of South Berwick	Herbicide crack and crevice sidewalks and curbs	\$500
Town of Randolph	Roundup herbicide application to town fire hydrants and cemeteries	\$400
Patterson Properties	Apartment owner made unlic application of 2 insecticides to a tenant's rental apt.	\$350
Sugarloaf Golf Course	Routine record check revealed that no licensed Master applicator at course from June 08-Sept 08, lic operator was employed at course during this time	\$250
<b>Water Related</b>		
Essex Power Services	Herbicide top of dam spillway	\$400
William Gurrisi	Lab results indicate 2,4-D in lake, Gurrisi was alleged applicator	\$250
David Charlesworth	Property owner denied making broadcast application of herbicide to vegetation along shoreline of tidal water. Lab results from foliage sample- positive for glyphosate	\$500
<b>Windy Weather</b>		

### BPC Consent Agreements 2009 - 2013

Scotts Lawn Service	CA combined 2 incidents of spraying in excessive wind and one incident of not posting treated turf until after the application was completed. Also prior violations w/i 4 yr. period.	\$400
<b>Worker Protection Standard (WPS)</b>		
Plants Unlimited	No WPS training of workers, central information display, no applicator records for 2007 and 2008. These same violations documented in a BPC 2003 letter to the company with corrective steps to take to be in compliance.	\$200

## Maine Board of Pesticides Control Enforcement Protocol

The Board adopts the following enforcement protocol to be utilized in routine enforcement matters arising under the Board's statutes and regulations.<sup>1</sup>

1. Persons wishing to report potential violations should refer such matters, as soon and in as much detail as possible, to the Board's staff. Where such reports are submitted by telephone, the Board requests that confirmation be made in writing. As a general rule, where requested by the individual making the report, the Board shall keep the identity of that person confidential, except as the Attorney General may advise in a particular case that such information is subject to public disclosure under the Maine Freedom of Access Law.
2. As soon as practicable after receipt of a report of a potential violation, the Board's staff shall investigate. The precise method and extent of investigation shall be at the discretion of the staff, considering the potential severity of the violation and its consequences, the potential the violation may have for damage to the environment or human health, and other matters which may place demands upon staff resources at the time.
3. Following staff investigation, if the staff determines that a violation has occurred of sufficient consequence to warrant further action, the Board's staff may proceed as follows:
  - a. In matters not involving substantial threats to the environment or public health, the Board's staff may discuss terms of resolution with the Attorney General's office and then with the violator without first reporting the matter to the Board. This procedure may only be used in cases in which there is no dispute of material facts or law, and the violator freely admits the violation(s) of law and acknowledges a willingness to pay a fine and resolve the matter. The terms of any negotiated proposed resolution shall be subject to the Board's subsequent review and approval, as provided in section 6b.
  - b. In matters involving substantial threats to the environment or the public health or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. The staff shall prepare a written report summarizing the details of the matter. Copies of the report shall be mailed to the alleged violator and any complainants so they may make comments. The report and any comments will then be distributed to the Board prior to their next available meeting. The staff will also notify the alleged violator and other involved parties about the date and location of the meeting at which the alleged violation will be considered by the Board.
4. At the Board meeting, the Board shall hear from its staff and, if requested, from the alleged violator(s) and/or their attorneys, as well as from other interested members of the public, to the extent reasonable under the circumstances and in a manner which the Board's chairman shall direct. Ordinarily, such a meeting will not be conducted as a formal adjudicatory hearing. Before making a decision regarding any action(s) which it may wish to take in response to an alleged violation, the Board may choose to go into executive session to discuss with its counsel the various enforcement options available to it and other related matters which are not subject to public disclosure under the Freedom of Access Law. However, all Board decisions shall be made on the public record and not in executive session.

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<sup>1</sup> In emergency or other unusual situations, the Board and/or its staff may depart from this protocol, in a manner consistent with State law, when necessary to the handling of particular enforcement actions.

5. Following receipt of the staff report and other information presented to it and completion of whatever further inquiry or deliberations the Board may wish to undertake, the Board shall make a decision regarding which course(s) of action, as described in Section 6, it deems appropriate in response to the alleged violation. Any such decision will ordinarily be based upon the Board's judgment as to whether a violation of its statutes or regulations appears to have occurred which is of sufficient consequence to warrant an enforcement action, but shall not require that the Board be satisfied to a legal certainty that the alleged violator is guilty of a particularly defined violation. In disputed matters, the ultimate decision as to whether a violation is factually and legally proven rests with the courts.
6. If the Board makes the determination that a violation appears to have occurred which warrants an enforcement action, the Board may choose among one or more of the following courses of action:
  - a. In matters involving substantial violations of law and/or matters resulting in substantial environmental degradation, the Board may refer the matter directly to the Attorney General for the initiation of enforcement proceedings deemed appropriate by the Attorney General. Also, with regard to more routine violations with respect to which the Board finds sufficient legal and/or factual dispute so that it is unlikely that an amicable administrative resolution can be reached, the Board may choose to refer the matter directly to the Attorney General.
  - b. On matters warranting enforcement action of a relatively routine nature, the Board may authorize and direct its staff to enter into negotiations with the alleged violator(s) with a view to arriving at an administrative consent agreement containing terms (including admissions, fines and/or other remedial actions) which are satisfactory to the Board, to the Attorney General and to the alleged violator(s). The Board will not ordinarily determine in the first instance the precise terms which should be required for settlement but may indicate to the staff its perception of the relative severity of the violation. In formulating a settlement proposal, the staff shall take into consideration all of the surrounding circumstances, including the relative severity of the violation, the violations record and other relevant history of the alleged violator(s), corrective actions volunteered by the alleged violator(s) and the potential impact upon the environment of the violation. The staff shall consult with the Attorney General's office before proposing terms of settlement to the alleged violator(s). Following successful negotiation of an administrative consent agreement with the alleged violator(s), the staff shall report back to the Board the terms of such agreement for the Board's review and, if it concurs, ratification. All administrative consent agreements shall become final only with the Board's and the Attorney General's approval.
  - c. In the event that an administrative consent agreement cannot be arrived at as provided in paragraph b., the staff shall report the matter back to the Board for further action by it. Such action may include referral to the Attorney General for appropriate action.
  - d. In addition, in appropriate cases, the Board may act to suspend the license of a certified applicator as provided in its statute, may act to refuse to renew the license of a certified applicator and/or may request that the Attorney General initiate proceedings in the Administrative Court to revoke or suspend the license of any such applicator. Where provided for by its statute, the Board shall give the licensee involved the opportunity for a hearing before the Board in connection with decisions by it to refuse to renew a license or to suspend such license.
7. Whereas the Board is establishing this protocol in order to clarify and facilitate its proceedings for the handling by it and its staff of enforcement matters, the Board recognizes that the Attorney General, as chief law enforcement officer of the State, may independently initiate or pursue enforcement matters as he deems in the best interests of the State and appropriate under the circumstances.

## 1 §405. EXECUTIVE SESSIONS

### 1 §405. EXECUTIVE SESSIONS

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [1975, c. 758, (NEW).]

**1. Not to defeat purposes of subchapter.** An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[ 2009, c. 240, §2 (AMD) .]

**2. Final approval of certain items prohibited.** An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[ 2009, c. 240, §2 (AMD) .]

**3. Procedure for calling of executive session.** An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[ 2009, c. 240, §2 (AMD) .]

**4. Motion contents.** A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[ 2003, c. 709, §1 (AMD) .]

**5. Matters not contained in motion prohibited.** Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[ 2009, c. 240, §2 (AMD) .]

**6. Permitted deliberation.** Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

- (1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
- (2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
- (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
- (4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [2009, c. 240, §2 (AMD).]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

(1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [2009, c. 240, §2 (AMD).]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [1987, c. 477, §3 (AMD).]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [1999, c. 144, §1 (RPR).]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [2009, c. 240, §2 (AMD).]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [1999, c. 180, §1 (AMD).]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [1999, c. 180, §2 (AMD).]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [1999, c. 180, §3 (NEW).]

[2009, c. 240, §2 (AMD).]

#### SECTION HISTORY

1975, c. 758, (RPR). 1979, c. 541, §A3 (AMD). 1987, c. 477, §§2,3 (AMD). 1987, c. 769, §A1 (AMD). 1999, c. 40, §§1,2 (AMD). 1999, c. 144, §1 (AMD). 1999, c. 180, §§1-3 (AMD). 2003, c. 709, §1 (AMD). 2009, c. 240, §2 (AMD).

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# Maine Department of Agriculture



Bernard W. Shaw, Commissioner

Board Of Pesticides Control  
State House Station No. 28  
Augusta, Maine 04333  
Telephone (207) 289-2731  
Facsimile (207) 289-7548

June 26, 1992

TO: Commercial Applicators Licensed in Maine Based on Another States' Certification Exams

FROM: *GF*  
Gary D. Fish, Certification and Licensing Specialist

SUBJECT: BPC Decision to No Longer Recognize Another States' Certification Exams

On June 12, 1992, members of the Maine Board of Pesticides Control (BPC) voted (effective immediately) to no longer recognize other states' certification standards for issuing Maine pesticide applicator licenses. This change in policy reflects the Board's view that Maine's environment and pesticide laws are unique. Therefore, all pesticide users, who must be licensed, shall be required to meet Maine's pesticide applicator certification standards by passing all the necessary exams in Maine.

The Board decided to honor licenses issued previous to June 12, until the end of the calendar year. Those wishing to renew their licenses in 1993 will have to successfully complete all the necessary exams prior to renewal.

To be certified and eligible for licensing in Maine in 1993, you must pass the core exam and all the category exams covering the types of applications you plan to do. If master level candidates have not already taken the master regulation exam and oral exam they must also complete both. Study materials are available for the specific Maine core and category exams from the University of Maine Cooperative Extension Pest Management, Office at 491 College Ave., Orono, ME 04473, (tel. 207-581-3880) for a small fee. The master regulation exam study guide is mailed from the BPC office after receiving an application for exams. There are no study materials for the master oral exam.

Commercial applicator exams may only be scheduled through the BPC by submitting an application for exams (one enclosed, please copy as needed). Because there are many out-of-state licensees who will need to take exams, I urge you to not delay in obtaining the study materials or sending in your application for exams.

If you have any questions, please call me at 207-287-2731.

Encl.

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** Barry Churchill  
291 Russell Road  
Fort Fairfield, Maine 04742

**Date of Incident(s):** June 8, 2012

**Background Narrative:** The Board received a call alleging that an unlicensed applicator was applying weed & feed to the turf of the IGA in Fort Fairfield. A follow up inspection confirmed that Barry Churchill, the owner/operator of a lawn care company applied Sta-Green Weed & Feed to the lawn area of the IGA on June 8, 2012. Neither Churchill nor anyone he employed was certified or licensed as a commercial applicator at the time of the commercial pesticide application to this public area.

**Summary of Violation(s):** Any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1) (A).

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board.

**Attachments:** Proposed Consent Agreement

Rec 10/22/13

NOV 04 2013

CR#1022

Date 10/17/13

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

Barry Churchill ) ADMINISTRATIVE CONSENT AGREEMENT  
291 Russell Road ) AND  
Fort Fairfield, Maine 04742 ) FINDINGS OF FACT

This Agreement, by and between Barry Churchill (hereinafter called the Applicant) and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

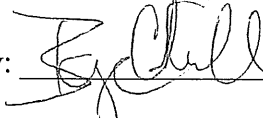
The parties to this Agreement agree as follows:

1. That the Applicant operates a lawn care business based in Fort Fairfield.
2. That the Board received a phone call in June of 2012, alleging that unlicensed weed & feed applications were being made, including to the lawn of the IGA store in Fort Fairfield. This site is open to use by the public.
3. That in response to the information the Board received in paragraph two, a Board inspector conducted a follow up inspection with both the Applicant and the owner of Hillside IGA in Fort Fairfield on August 3, 2012.
4. That from the inspection described in paragraph three, it was determined that the Applicant applied Sta-GreenWeed & Feed to the lawn at the Hillside IGA in Fort Fairfield on June 8, 2012.
5. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
6. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public.
7. That the pesticide application made to the IGA property as outlined in paragraph four, was a custom application under 22 M.R.S. § 1471-C(5-A) and, therefore, a commercial applicator's license was required for the application.
8. That neither the Applicant nor any one in his employ had a commercial pesticide applicator's license at the time of the pesticide application described in paragraph four.

9. That the circumstances described in paragraphs one through eight constitute a violation of 22 M.R.S. § 1471-D(1)(A) and CMR 01-026 Chapter 31 Section 1(A)III.
10. That the Board has regulatory authority over the activities described herein.
11. That the Applicator 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.
12. That this Agreement shall not become effective unless and until the Board accepts it.
13. That, in consideration for the release by the Board of the causes of action which the Board has against the Applicator resulting from the violation referred to in paragraph nine, the Applicator agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine.)

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

BARRY CHURCHILL

By:  Date: 10-30-13  
Type or Print Name: Barry Churchill

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Jennings, Director

APPROVED

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

Second Regular Session 126<sup>th</sup>

ACF Committee

**LR 2305 Representative Kumiega, III of Deer Isle**

An Act To Protect Maine's Lobster Fishery

Comment: This bill would prohibit the use of methoprene and resmethrin, 2 chemicals used for mosquito control, if the chemical would enter the waters of the Gulf of Maine.

**LR 2355 Representative Jones of Freedom**

An Act To Ban the Use of Neonicotinoid Pesticides for 2 Years

Comment: This bill would place a 2-year moratorium on the use of neonicotinoid pesticides.

**LR 2481 Senator Saviello of Franklin**

An Act To Further Ensure the Provision of Safe Medical Marijuana to Maine Patients

Comment: This bill would allow the use of certain materials or pesticides in the cultivation of marijuana for medical use.

# Canadian researchers use bees to drop pesticides on crops

## Bumblebees and honeybees distribute fungi, bacteria, viruses while pollinating

[CBC News](#) Posted: Oct 28, 2013 6:00 AM ET Last Updated: Oct 28, 2013 10:01 AM ET



[Bee Vectoring 7:39](#)



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- [What's killing Canadian honeybees?](#)
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The survival of the struggling bee population could soon be doubly important to agriculture.

While bees pollinate crops, Canadian researchers have found they can also be used to control pest insects and manage disease by dropping off pest control agents while they work.

“We thought we can give added value to the bees by having them deliver microbial control agents,” said Les Shipp, a federal senior research scientist based in Harrow, Ont., outside Windsor.

Shipp found that bees leaving their hives could be forced to walk through a tray of organic pest controls. The pest control sticks to the bee's legs and hair. Through pollination, the bees then deliver a fungus, bacterium or virus to its intended destination.

Both bumblebees and honeybees have successfully distributed the fungus *Beauveria bassiana* to greenhouse sweet peppers and field canola. The fungus kills pests like whiteflies, aphids and Lygus.

- [Windsor Morning host Tony Doucette will have full interview with Shipp at 7:15 a.m. Monday on 97.5 FM.](#)

According to Shipp, the *Beauveria bassiana* spores attach to the body of the pest, germinate and penetrate the body of the insect, eventually killing them.



Bees are forced to walk through a tray of organic pesticide when they leave the hive. (Courtesy of Agriculture and Agri-Food Canada)

"We've been able to use these to control pest and fungal diseases. We're able to reduce some diseases by 80 per cent," Shipp said.

The method is called "bee vectoring." Research was initiated at the University of Guelph years ago and continued in Harrow.

Bee vectoring of *Beauveria bassiana* received government approval in early 2013. Interest in the method is growing.

### **'Excitement' among greenhouse owners**

Leanne Wilson, science co-ordinator for the Ontario Greenhouse Vegetable Growers, said bee vectoring was emphasized at the Canadian Greenhouse Conference in Niagara Falls earlier this month.

"There was a lot of excitement about it. I think it's definitely a growing option," Wilson said.

She said greenhouse operators currently spray their peppers for pests. Bees already pollinate the greenhouse crops, so giving them double duty would save operators time and money..

"For larger greenhouses of, say, 50 acres, that's a lot of area to cover [with spray]," Wilson said.

Another advantage is that the bees deliver the pest control directly to the flower. Sprays on the other hand cover the entire plant, from flower to leaf to stem.

According to the Agriculture and Agri-Food Canada, the benefits of vectoring biological insecticides with bees include:

- Use of reduced-risk pest control products to control insects and diseases that are potentially devastating to greenhouse crops.



- Considerable savings in labour costs for greenhouse operators.
- Targeting of very small volumes of product precisely to where it is needed, so less product is used.
- Environment benefits, as the bio pesticide replaces older chemical pesticides.

## 'Hope it reduces spray'

"They're out there working seven days a week. You're getting continuous introduction of control agents," Shipp said. "If you sprayed, you're only spraying at one point in time, but the bees are there constantly delivering this.

"I wouldn't look at it as a silver bullet. It's another tool to control pests and diseases. We hope it drastically reduces sprays."

The cutting-edge research led to the creation Bee Vectoring Technology in Brampton, Ont. According to Bloomberg, Bee Vectoring Technology was purchased last month by CT Developers, a publicly traded company on the Toronto Stock Exchange.

Bee Vectoring Technology is actively working across Canada to produce and commercialize the new pest management technologies.

A call to Bee Vectoring Technology wasn't immediately returned.

Shipp said bee vectoring can be used on indoor and outdoor crops, including strawberries, sunflowers, blueberries, canola, peppers and tomatoes.

"There's work being done now on outdoor crops, and the potential there is huge," Shipp said.

**Is using bees to deliver organic pesticides to crops  
a good idea?**

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No

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## Dengue Fever Makes Inroads into the U.S.

The mosquito-borne infection is cropping up in Florida, but mysteriously not in similar regions in the nation

By Dina Fine Maron | Friday, November 15, 2013 | 2 comments

Most Americans lose little sleep over dengue fever. The mosquito-borne infection is a leading killer in the tropics and subtropics, but it's been a long-held belief that ubiquitous air-conditioning, few open windows and limited time outdoors protects us from dengue. And in fact, for the past century most U.S. cases (except those near the Texas–Mexico border) were isolated to immigrants or travelers. In recent years, however, locally acquired cases of the disease have started to appear in pockets of the U.S. Now, researchers fear dengue could be gaining a significant foothold here.

One geographic mystery in particular has forced some epidemiological detective work. Despite that fact that large populations of dengue-carrying mosquitoes are found in certain parts of the U.S., outbreaks have yet to be detected in some of those locations—and scientists are questioning these patterns. Answers could help avert future outbreaks. More than 2.5 billion people—almost 40 percent of the world's population—are now at risk from dengue, and the World Health Organization currently estimates there may be 50 million to 100 million dengue infections worldwide every year.

Tucson, Ariz., and Key West, Fla., each have had sustained populations of *Aedes aegypti*, a dengue-carrying mosquito, for some 20 years. And yet, whereas the virus rippled through southern Florida, documented cases in Tucson are still unknown. The interest is not just academic—answers could help avert future bouts of the virus. Right now, with no vaccine against the virus, the best defense available is reducing mosquito habitat in areas where dengue fever is common. New clues about why some communities appear dengue-hardened could yield better protective measures.

One research group is now scouring data for new insights. The team conducted door-to-door surveys in the summer of 2010 in Tucson and Key West, hunting for clues about what went wrong in the latter, which in 2009 to 2010 experienced the first dengue outbreak in the continental U.S. since the end of World War II (outside of the Texas–Mexico border). The answer: a big shrug. Both communities had similar figures for screens on windows and central air-conditioning usage, so it was unlikely different numbers of mosquitoes were entering their homes. In both communities similar numbers of people spent at least an hour outdoors most days and reported similar habits in applying mosquito repellent. The researchers talked to 400 households in Key West and 372 in Tucson and found that economic and behavioral factors were similar. So what gives?

A leading hypothesis, says study author Mary Hayden, a behavioral scientist at the National Center for Atmospheric Research in Boulder, Colo., is that in Tucson the climate may be too hot or dry for long-term mosquito survival. Although mosquitoes live to adulthood in both communities, those in Tucson might be dying before the virus can incubate in their bodies. Hayden's research team plans to test this thinking. "We have just finished our first season of collecting mosquitoes but they are still being processed in the lab," she says. Whereas public health officials in most cases track the number of reported dengue patients, there is typically no surveillance



Image: James Gathany/Wikimedia Commons/CDC

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of mosquitoes carrying the virus. And because it takes four to 10 days for an infected mosquito to be capable of transmitting the virus, Key West might provide more favorable climatic conditions for mosquitoes, she posits.

There may be other clues arising from the differences between the two locales. Dengue fever can be relatively mild (with flulike symptoms, headache, joint pain, fever), so it is possible that people in Tucson may have been less sickened but did not seek care as much as patients in Key West did—or the cases were not verified, Hayden says. Another issue could be health care access—perhaps people in Tucson did not have as many health services available or chose not to take advantage of them.

A similar geographical medical mystery is playing out in Mexico right now. In Nogales, Sonora, on the U.S.–Mexico border, dengue-laden mosquitoes are all-too-common but apparently there's no dengue present. There, too, the risk is heightened because there are fewer barriers to human contact. For example, people in Sonora are less likely to use air-conditioning than in areas of the U.S., Hayden says.

Overall, dengue is challenging to combat. Bed nets, for example, a key tool when it comes to malaria prevention, are relatively useless against dengue, even though in both cases the vector is mosquitoes. The difference is bite timing. Whereas malarial mosquitoes feed at night (when nets around sleeping space are useful), the dengue-carrying variety typically feed during the two post-dawn hours and the two hours before sunset, Hayden says. As for therapy, it's basically limited to painkillers. Physicians instruct patients to pop a couple Tylenols (not aspirin because that could exacerbate bleeding, a symptom of dengue).

The problem may soon become more challenging, however. There are four confirmed strains of the virus in the world, but this past year a research group presented findings that suggest the possible presence of a fifth strain in Malaysia. Understanding the absence of dengue in Tucson, especially with so few medical treatment tools currently at hand, would be quite an advance.

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# Oregon permanently restricts some pesticide applications to protect bees

Nov. 21, 2013 | 0 Comments

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Bees. / Statesman Journal file

Written by  
[Tracy Loew](#)  
Statesman Journal

Oregon will permanently ban certain pesticides from being used on linden trees after a massive bee die-off in Wilsonville last summer.

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In June, about 50,000 bumblebees were found dead and dying in a Target parking lot under linden trees that had been sprayed with dinotefuran, part of a class of pesticides called neonicotinoids.

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An investigation into the incident won't be completed until mid-December, Katy Coba, director of the Oregon Department of Agriculture, told a legislative committee this afternoon.

But ODA already has taken steps to protect bees from neonicotinoids, Coba said.

Immediately following the incident, ODA issued a temporary restriction on 18 pesticides containing dinotefuran . That ban expires Dec. 24.

And next year, products containing dinotefuran or imidacloprid sold or distributed in Oregon must have a label prohibiting their application on Tilia species, including linden and basswood.

“This is a fairly aggressive approach by the department,” Coba said.

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# White Paper Outlines New Approach to Endangered Species Act Pesticide Review

Written by Press Release Category: Environmental

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Washington, DC--(ENEWSPF)--November 19, 2013. Last week, the Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS) released a [white paper](#) identifying how they plan to reconfigure the pesticide review process to meet the pesticide approval requirements for the Endangered Species Act (ESA). The new approach outlined in the white paper incorporates suggestions from the National Academy of Sciences' Research Council (NRC) report released last May. The white paper is a step towards overhauling a deeply flawed process, though there will be several challenges to implementing this new approach for the agencies moving forward.

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), before a pesticide can be sold, distributed, or used in the U.S., EPA is required to determine that the pesticide does not cause unreasonable adverse effects on the environment. However, in the case of species listed as endangered or threatened under the ESA, all federal agencies, including EPA, are required to ensure that their actions will not jeopardize the continued existence of a listed species by diminishing the species' numbers and reproduction. To do this, in its pesticide registration process, EPA is required to consult with FWS and NMFS when a federal action may adversely affect a listed species or its habitat. Over the last decade, questions have been raised regarding the best approaches or methods for determining the risks pesticides pose to listed species and their habitats. EPA, FWS, and NMFS have developed different approaches to evaluating environmental risks because their legal mandates, responsibilities, institutional cultures, and expertise vary. As a result, [NRC was asked to examine the scientific and technical issues related to determining risks posed to listed species by pesticides.](#)

After reviewing the NRC's report, [Evaluating Risks That Pesticides Pose to Endangered, Threatened Species – New Report](#), the agencies worked together to develop a shared scientific approach that reflects the advice provided by the NRC. The interim approach, designed to guide the consultation process, uses a three step risk assessment process to determine whether a pesticide is likely to pose a threat to listed species. Each step assesses risk through problem formulation, exposure analysis, affect analysis, and risk characterization.

Step one of the proposed risk assessment process is to determine whether pesticide use "may affect" a listed species by determining if pesticide use and off-site transport areas overlap geographically with listed species ranges and their critical habitats. These use pattern sties will be mapped out by using the National USDA National Agricultural Statistics Service (NASS) Census of Agriculture data, The National Land Cover Database (NLCD), and The Cropland Data Layer (CDL). The Agricultural Dispersal Model (AGDISP), and the Variable Volume Pond Model will be used to evaluate off-site pesticide transport.

If it is determined through the first step that pesticides may affect listed species, the pesticide is then

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evaluated by step two. The purpose of step two is to determine if pesticide use is “likely to adversely affect” listed species or their designated critical habitats. This step examines if species are exposed to thresholds of the direct effects, indirect effects, and sub-lethal effects of pesticides. These determinations will utilize a weight-of-evidence approach that considers pesticide tank mixtures, formulations (including adjuvants, other active and inert ingredients), and environmental mixtures. The weight-of-evidence approach will also consider the [ECOTOXicology](#) database along with data submitted by pesticide registrations as a source for “best available” toxicity data.

If there is agreement between agencies that the pesticide is “likely to adversely affect” species or if there is disagreement between agencies the pesticides moves to step three of the interim risk assessment process. This step determines if pesticide labels for an active ingredient do not cause “jeopardy” to listed species and their designated critical habitat is not modified. This step builds off of steps one and two, and reconsiders the weight-of-evidence and population effects pesticides can have on species. If there is agreement between agencies that a pesticide causes jeopardy or adverse modification EPA must decide whether and under what conditions to register the pesticide so it complies with ESA.

The white paper acknowledges that there are several followup tasks, such as sharing information and developing a common approach to weight of evidence analyses, to define and improve techniques over time. A [presentation put together by the agencies](#) for a stake holder workshop, held last Friday, also outlines several challenges the agencies will face while implementing this interim plan. In terms of step one, some pesticide use sites are not well represented with existing data such as the use of pesticides on [right-of-ways](#). Another important challenge is how the agencies will incorporate formulations and mixtures in the weight-of-evidence. Currently, inert ingredients are minimally tested and the EPA does not test for [synergistic effects](#) of pesticide mixtures.

Though this proposed risk assessment process is an important step forward toward greater cooperation between agencies, EPA's risk assessment process does not function to protect the most vulnerable in biological systems, but institutes restrictions intended to mitigate risks. The mandated consultations with FWS and NMFS could present the opportunity to evaluate alternative practices that would avoid harm to listed species, but is largely limited to the risk management framework that has so long dominated EPA's approach to regulating pesticides.

## Background

Prior to 2004, EPA believed the extensive environmental risk assessments required in the registration process also would include impacts on listed species. However, represented by the public interest law group Earthjustice, several stakeholder organizations including the Northwest Coalition for Alternatives to Pesticides (NCAP) and the Pacific Coast Federation of Fishermen's Associations (PCFFA), filed suit in January 2001 to force EPA to fulfill the distinct ESA requirements. Specifically, the lawsuit challenged EPA's decision to register 54 pesticides without first consulting with federal fish biologists regarding the potential impact on protected salmon and steelhead species in the Northwest. The judge, in a [lawsuit initiated in 2002](#), called EPA's “wholesale non-compliance” with its ESA obligations “patently unlawful” and ordered the agency to consult with NMFS regarding adverse impacts on the Northwest runs. More recently, EPA's failure to consult with FWS on the impacts of hundreds of pesticides known to be harmful to more than 200 listed species prompted a [2011 lawsuit](#).

All unattributed positions and opinions in this piece are those of Beyond Pesticides

Sources: Politico, <http://www.beyondpesticides.org>



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