



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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

**BOARD OF PESTICIDES CONTROL**

**April 1, 2022**

**9:00 AM Board Meeting**

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

Join on your computer or mobile app

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Or call in (audio only)

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

Phone Conference ID: 701 390 472#

**AGENDA**

1. Introductions of Board and Staff

2. Minutes of the February 25, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

3. Overview of Board Member Responsibilities

It is beneficial to periodically review the legal framework within which the Board operates, particularly for new Board members.

Presentation By: Mark Randlett, Assistant Attorney General

Action Needed: None, information only

4. Review and Potential Adoption of Proposed Amendments to Chapters 20 and 41

*(Note: No additional public comments may be accepted at this time.)*

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



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On December 22, 2021 a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20 and 41. A public hearing was held on January 14, 2022 by remote meeting on the Microsoft Teams platform and the written comment period closed at 8:00 AM on January 24, 2022. The Board reviewed the rulemaking record on February 25, 2021, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. The Board will now review the changes to the proposed amendments, the Response to Comments for Chapters 20 and 41. The Board will also review the Basis Statement and Statement of Impact on Small Business for Chapter 20. The Board will then determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation By: Megan Patterson, Director

Action Needed: Provide direction to the staff on further refinements or adopt the amendments

5. Consideration of a Consent Agreement with Caleb Bell, Senior of New Limerick, Maine

On June 3, 1998 the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involved an outdoor terrestrial broadcast application of pesticides within twenty-five feet from the high-water mark of a lake.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Amend and/or approve

6. Other Old and New Business

- a. LD 2019—An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances
- b. LD 2021—An Act To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public
- c. EPA Letter to Various Parties about Fluorinated Polyolefin Containers
- d. Variance Permit for CMR 01-026 Chapter 29, Vegetation Control Services, Inc.
- e. Other items?

7. Schedule of Future Meetings

May 6, 2022 and June 17, 2022, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

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

Adjustments and/or Additional Dates?

8. Adjourn

## NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org).
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
  - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the Board's office or [pesticides@maine.gov](mailto:pesticides@maine.gov). In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.

## BOARD OF PESTICIDES CONTROL

February 25, 2022

9:00 AM Board Meeting

### MINUTES

Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie, Waterman

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff: Boyd, Brown, Bryer, Connors, Couture, Nelson, Patterson, Pietroski, Tomlinson
- Adams thanked outgoing members Morrill, Flewelling, and Granger for their service and dedication.

2. Minutes of the January 14, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Bohlen/Waterman: Moved and seconded to accept minutes as amended**
- **In Favor: Unanimous**

3. Report on 2021 Work Accomplished and Request for Funds for Mosquito Monitoring from the Integrated Pest Management Program

The Integrated Pest Management Program is reporting work accomplished in 2021 and requesting funds to assist with ongoing efforts for mosquito surveillance, identification, and continued outreach around vector-borne diseases.

Presentation By: Hillary Peterson, DACF IPM Specialist

Action Needed: Discussion and determination if the Board wishes to fund this request

- Peterson gave the Board a review of the mosquito monitoring program, which began in 2000. She stated that DACF and Maine Medical Center Research Institute (MMCRI) were two of the major mosquito surveillance entities in Maine and spoke about the importance of surveying for Eastern Equine Encephalitis, Jamestown Canyon Virus, and West Nile Virus. Peterson stated that recently retired IPM Specialist, Kathy Murray, initiated the mapping project in 2015 with the goal to identify habitat characteristics, create a risk map and geodatabase. She told the Board that the habitat map was revised in 2019 to include new site coordinates and updated geospatial data. Peterson stated that they monitor about six sites per summer and that the mosquitoes were submitted to the Maine Health and Environmental Testing Laboratory (HETL) for testing. There were no positives for disease in 2021. She told the Board that it was important to keep doing this monitoring and was requesting \$11,182 for the 2022 season.
  - **Waterman/Jemison: Moved and seconded to fund mosquito monitoring program in the amount of \$11,182**
  - **In Favor: Unanimous**

4. Adaura, LLC Request for 24(c) Registration for GoalTender™ Herbicide

At the request of Maine Cooperative Extension and broccoli growers, Adaura, LLC supports the Special Local Need [24(c)] Registration ME-22000X and the sub-SLN registration for Nufarm INC ME-22000XB for the use of GoalTender™ herbicide (oxyfluorfen, EPA Reg. #62719-447 and EPA Reg. #62719-447-71368) for post-emergent weed control on broccoli. Where the number of herbicides available to manage weeds in broccoli is limited, this product remains the only alternative for post-emergence control of broadleaf weeds that escape preemergent herbicide treatment.

Presentation By: Mary Tomlinson, Pesticides Registrar/Water Quality Specialist  
Dr. Pam Bryer, Pesticides Toxicologist

Action Needed: Approve/disapprove 24(c) registration request

- Tomlinson gave an overview of the Special Local Need 24(c) process. She stated that under 24(c) of FIFRA states could register an additional use of a previously registered product for a special local need, and EPA reviewed and could approve or deny the request. She added that certain conditions must be met to apply for an SLN, which included the primary condition being an existing pest problem in the state where there is no other product to mitigate the pest. Tomlinson stated that the Board relies on UMaine Cooperative Extension to determine and request SLNs. She added that the staff toxicologist, water specialist, and registrar conducted reviews on human health and environmental impacts before the SLN was submitted to the EPA. If approved by EPA, the SLN became a federal registration. Tomlinson stated that the EPA requested that SLNs expire after five years, but a five-year approval was not required and the Board could establish the number of years the SLN would be effective or deny this request.
- Tomlinson stated that Mark Hutton, UMaine Extension vegetable specialist requested this SLN for use on broadleaf weed species for broccoli. She explained to the Board

that the product was currently registered in Maine but the master label only permitted pre-emergent use and this request was to allow for post-emergent use.

- Emily Smith, of Smith Farms was present to provide information to the Board regarding why the SLN was essential to them. Smith stated that this product had been used as an herbicide for broccoli and cauliflower since 2009 and that it was really their only option. She added that through the years they have been able to use less product and that they were also using these fields in four to five-year rotations.
- Jemison expressed concern that this product met the state's definition as a PFAS compound and asked Patterson how this would fit in with the proposed affidavit process regarding PFAS in pesticides.
- Patterson stated that the product would get flagged in the process because it met the one fully fluorinated carbon definition.
- Randlett told the Board that this particular pesticide was already registered in the state of Maine. He noted that the affidavits would come into play upon the next registration, and they could certainly take PFAS into consideration, but that current rulemaking did not come into play here.
- Waterman stated that he seconded Jemison's concerns that the product met Maine's definition of a PFAS. He added that the persistence in the soil seemed to be a matter of concern, as well as the carcinogenicity of this material. Waterman stated that he was skeptical of Bryer's argument because chronic intake over years and decades was not something we could know about in 2022. He concluded that it seemed too great of a risk for too little reward to the general public.
- Bohlen commented that since the product was already approved for use in Maine the Board was talking about a particular use not about whether the product could be used at all. He added that he was skeptical about lumping thousands of chemicals into one class and that this initially began as a few dozen and did not feel that he had enough information at this time to say the entire class was dangerous.
- Ianni stated that she seconded Waterman's comments regarding this product and was concerned about expanding its registration. She added that it may be registered but did not believe the Board should expand its use. Ianni stated that she was worried about aquatic toxicity, human health, and cumulative impacts over time from multiple chemicals. She stated she was balancing the risks against the benefits and wondered if this was absolutely necessary. Ianni stated that she was not sure if there may be alternative means for getting similar results or maybe we just live with weeds in broccoli.
- Lajoie commented that weeds were a huge problem across the country in farming in vegetable production. He stated that as farmers they were always looking to find the safest products they can, and new herbicides were far and few between. Lajoie said that this 24c request was very critical to broccoli and potato farmers and did not believe we had the data to say this chemical was too risky. He added that he was in favor of approving the SLN for five years.
- Carlton stated that he echoed what Lajoie said that he would support the five-year SLN extension for this product and that if additional information to change their minds was discovered within the five years they could always go back and revoke the SLN. He commented that this was for broccoli being produced locally and consumed in Maine and reduced the amount of broccoli coming from across the country where they may be using the same herbicide.
- Bryer stated that she saw the cancer risk as a more significant issue than the presence of PFAS. She stated that this was a similar type of PFAS to Prozac and isoflurane,

which were very common to a lot of our medicines. Bryer stated that there was a lot we were going to learn about these chemistries and that this active ingredient had been used for 30 years and the USDA had never found a single molecule of the product on broccoli. She said that the concentration a person was exposed to was where the risk lies. Bryer stated that this active ingredient was used extensively in other crops and this was more of a niche application.

- Jemison thanked Bryer for her perspective and asked Smith if there was anything available pre-emergence so the product would only be used post-emergence. He added that he appreciated their rotation practice and that weed resistance was not his concern in this case. Jemison also asked if this product was used in other states.
- Smith stated that they do not use Sencor because the broccoli will not grow and this product also helps them stretch rotation. She added that there were really only two herbicides labeled for pre-emergence for broccoli and cauliflower, and depending on soil temperature, moisture and crop rotation they can have worse or better control. Smith said that if they did not have this chemical they would really have to go back to the drawing board and figure out how they could mitigate this or maybe everyone would just eat broccoli from Mexico.
- Tomlinson stated that this SLN was approved in four or five other states for broccoli.
- Smith responded that they had seen good control with it in certain areas and they were also really trying to stretch rotations when they do see a problem. She added that USDA was out there testing product and she does receive results back from them regarding random testing and PFAS had not been found in broccoli or cauliflower.
- Adams stated that he believed they were in for years of discussion regarding PFAS. He added that the SLN was not asking to increase the amount of use, but to allow use at a different time and that it was in regard to the tiny quantity of two ounces per acre. Adams stated that this product was in the net that had been cast over PFAS chemistry but was certainly not on EPA's shortlist.
- Jemison stated that he would approve this because he voted to approve it in 2009 and the only real difference was the current concerns which Bryer had helped to decrease. He added that he was very appreciative of the agricultural industry and that this was an important part of the potato rotation.
  - **Lajoie/Jemison: Moved and seconded to approve the 24(c) registration request for five years**
  - **In Favor: Adams, Bohlen, Jemison, Lajoie**
  - **Against: Ianni, Waterman**

5. Workshop Session to Review the Rulemaking Record on the Proposed Amendments to Chapters 20 and 41

*(Note: No additional public comments may be accepted at this time.)*

On December 22, 2021 a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20 and 41. A public hearing was held on January 14, 2022 by remote meeting on the Microsoft Teams platform and the written comment period closed at 8:00 AM on January 24, 2022. Eight people spoke at the public hearing and eleven written comments were received by the close of the comment period. Three additional comments were received after the close of the

comment period. The Board will now review the rulemaking comments and determine how it wishes to proceed with the rulemaking proposals.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and determination on how the Board wishes to proceed with the rulemaking proposals

- Patterson reviewed steps that had been completed in the rulemaking process and directed the Board to the memo included in their packet that highlighted five points that needed additional attention and/or consideration. She noted that some changes may require pursuing rulemaking again. Patterson told the Board the first memo point discussed the proposed definition of ‘invasive invertebrate pests’ that was created after meetings with BPC staff, the state horticulturist, the state entomologist and others with expertise in invasive species management. She explained the changes in the definition:
  - the addition of the EPA term eco-region,
  - the inclusion of the comment from Grohoski regarding ‘species both known and unknown now but showing up at a later date’, and
  - the suggestion that only the three species listed in the bill be included.
- Bohlen commented that there was little space between the definition of a pest and what the proposed definition of invasive was, but that it was very hard to find a definition to draw a line between emerging species and any pest that was going to cause a problem. He added that he was concerned about creating a finite list and would much rather reserve use of these actives for species that were just arriving. He suggested possibly creating a list and an emergency procedure for editing it.
- Adams stated that he had read through the public comments and ultimately the goal was to protect pollinators. He added that the graph showed that use was almost all lawn and ornamental, which helped him understand the urgency of protection. Adams stated that he also understood the comments concerned about leaving it up to the applicator to decide if a pest was invasive or not. He said that might be something that was above some of the training levels of applicators in the field. Adams asked about attaching a permit process for the use of these neonicotinoids for invasive species.
- Patterson stated that staff could implement a permit process but mentioned the existing variance review process for use within 25 feet of water that staff currently review was quite extensive. She explained what was involved in the current variance review process. Patterson suggested that the Board could bring forth a policy similar to the one that they created for the variance review process. She mentioned that there could be a lot of applications for permits if the Board decided to go that way.
- Adams agreed that there could be and asked about the listed actives becoming restricted use once the rulemaking process was completed.
- Patterson stated that restriction of use would be established in Chapter 41 by making the sale of these products allowable only by restricted use pesticide dealers, and use would be prohibited on turf with the one exception for invasive species on ornamental plants.
- Adams commented that the community seeking permits would certainly be diminished because of the restricted use status. He explained that he was trying to find a way where it would not be up to the applicator to decide and that a permitting process would be a way to accomplish this.
- Patterson agreed that the number of individuals with the ability to seek a permit would be far less since it would be limited to only those who were licensed. She explained why



variances were initially delegated to the staff, which was largely due to the timeliness of the reviews. The Board usually met on a six-week schedule and there was a sense that the reviews would be accomplished in a timelier manner if staff handled them.

- Bohlen commented that he liked the idea of a permit and his interest in an avenue to get past a finite list was to be able to respond to a rapidly occurring circumstance. He added that a permit would be a fairly narrow band because it would only be for use for new pests in early emergence moments when the Board would not have time to respond quickly enough. Bohlen stated that this would only be for a situation when there was a small known population of a species that was found for the first time in the state. He suggested possibly incorporating a definition of when one of these products may be used for pests other than what was defined on the list. Bohlen said a permit would need to be delegated to staff because the Board meeting schedule would not allow for a quick enough response. He stressed that this was a risk balancing situation and they needed to decide under what circumstances using this set of chemistries was worth the risk and to him, it was when they had a chance of making a difference.
- Jemison agreed with Bohlen's idea and said that spotted lanternfly was a good example of when a fast process might be needed.
- Adams commented that it sounded like staff should go back again and work on the definition.
- Patterson asked if the Board would like to have established in rule something akin to a permitting process delegated to staff that would allow for rapid response for only novel, new species.
- Adams said he thought that would solve the problem of not having to set limits in rule that needed to be repeatedly rewritten.
- Randlett stated that some of these changes to Chapter 41 could be considered substantial because they were very different than what was generally proposed, and they could not be just made and adopted. He said that a new rule would need to be devised and sent out for rulemaking so that people would have time to comment. Randlett said if the Board made the determination to go forward with adoption only to the respect of chlorpyrifos and reject the portion on neonicotinoids they would need to explain in the basis statement why they were accepting part of the rule and rejecting part of the rule. He added that if they were changing the definition of invasive species to 'emerging invertebrate species' then there needed to be a corresponding change in section C.
- Adams noted that pressure was on to make this happen, but products were already on the shelf and in the warehouse and that it realistically was not a 2022 change at this point.
- Randlett commented that if this was not adopted with this rulemaking it would be pushed out even further, likely towards the end of 2022.
- Bohlen asked if the list needed to be located in rule or policy and felt that it would be likely to change pretty regularly. He stated that he liked the idea of a specified list and exemption of some sort.
- Patterson stated that a list in policy would not be enforceable and asked Randlett about referencing the list in rule.
- Randlett stated that the Board could reference a publicly available and easily accessible list in rule and that it would be enforceable. He added that he believed this had been done before with biological pesticides within 25 feet of water. Randlett proposed example language stating that applicators could only use these products for the uses specified except for the pests on a board-approved list.
- Adams and Jemison both noted their approval for that process.

- Randlett stated that it made sense if the rule established the list of pests and a permit process.
- Patterson told the Board that the next item on the memo had to do with the list of neonicotinoids prohibited for use. The Board had proposed publishing the list July 1, 2022, and then on March 15 for each subsequent year, and having the ban go into effect December 31, 2022. Patterson stated that the proposal in comments was that the list be published, and then the prohibition go into effect April 1, 2022, or sooner. Patterson asked the Board when they wanted the prohibition to go into effect.
- Adams stated that the Board had not received any comments from dealers or manufacturers voicing their concern about the prohibition. He suggested publishing the list at the next meeting and having the prohibition go into effect in December.
- Jemison stated that expediency was good and he really wanted this to happen quickly. He added that he was sympathetic about dealers but also wanted to be as equitable and protective as possible.
- Patterson responded that the issue was that April 1, 2022 would pass before the Board would be able to adopt the rules.
- Randlett stated that staff could come to the next meeting with what had been proposed. He said that he did not think the Board could split the rule up and adopt just the chlorpyrifos part and not the rest of the rule at that time. The Board would need to decide on both parts at the same time.
- Patterson asked if the Board needed to acknowledge a date or if the prohibition could just become effective upon adoption.
- Randlett said that a list could be published now and then the Board could adopt the rule and postpone its effective date but did not think they could develop a rule and say it was effective upon adoption because it would be anyway. He added that he needed to see if changing the dates generated a substantial change because if someone expected July 1<sup>st</sup>, 2022 as the publication date and found out it was going to be April, that would likely be a substantial change.
- Tomlinson voiced concern that publishing a list without adoption of the rule would create confusion and there was already confusion with the regulated community and registrants about whether these products could be sold. She suggested adding language in the header of the list stating that the products would be prohibited upon adoption of the rule.
- Bohlen stated that it seemed like there were two dates they were dealing with, one being the date of the release of the list and the other being the date of effectiveness of the rule. He asked if they could say the list would be released 30 days after the rule was adopted. He added that he did not want to push the date of implementation back any further.
- Patterson told the Board about public requests to publish a list of all affidavits received attesting to whether or not a product contained PFAS. She noted that this information is not protected so it could be published without being included in rule.
- There was no objection from the Board regarding publishing the affidavits.
- Patterson told the Board that some commenters also proposed collecting affidavits for products in all fluorinated containers, rather than just HDPE containers. The original LD 264 language only pointed to HDPE containers specifically. She said there was currently language being drafted by the ACF committee that would potentially put into statute a prohibition on the distribution of pesticides in any fluorinated container. She added that currently two-thirds of agricultural pesticides were distributed in HDPE containers. Patterson stated that other commenters also suggested that the Board should recommend to the legislature a prohibition of all pesticides containing PFAS. This was not directly

addressed in LD 264. She added that the ACF committee draft bill language already contained a distribution prohibition on all pesticides with intentionally added PFAS. Patterson stated that the committee was considering a definition of two fully fluorinated carbons, which was more in line with the EPA definition. This would be a difference between a few active ingredients or up to 160 active ingredients that may be impacted.

- Bohlen asked about the use of the phrase ‘confidential statement of formula’ in the proposed rule and asked if there needed to be a definition in rule explaining what that included.
- Patterson responded that it was referenced in statute but that maybe they should refer back to the statutory reference.
- Randlett said he would take a look at the statute and that something like that would probably not be a significant change.
- Ianni stated that she had read through Chapters 20 and 41 and saw that the Board was applying restrictions to residential property use but could not find a good definition for residential. She asked why commercial properties were not also being restricted since so many apply large amounts of product. She also made note of all the multi-use properties that were retail on one floor and residential on another floor. Ianni asked if there was a definition in rule for the term ‘residential’.
- Patterson replied that a definition of residential was in Chapter 10. She said she was not sure why the law was not expanded to more property types but that it was included in the bill.
- Bohlen stated that he would like to address the fluorination of all plastics in rule and asked staff to come back with language to review.

6. Consideration of a Consent Agreement with Green Shield Pest Solutions of Saco, Maine

On June 3, 1998 the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involved an unauthorized pesticide application and failure to positively identify the proper treatment site.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Amend and/or approve

- Connors stated that the owner of Green Shield Pest Solutions self-reported that an applicator had treated the wrong property. He went to the correct site on the job order, but there was an office error with the address. The owner wanted it known that the applicator did take steps to identify the site upon arrival and spoke to the adult daughter and husband of the house. The husband gave the go-ahead for the application and the wife of the residence signed the work order. Connors stated that the reason for the consent agreement was that regulations require that before an application is made to a property the owner has to give prior permission and that was not done. He added that the applicator also did not follow proper identification protocol. Connors told the Board that the business signed the consent agreement and are taking steps to adopt a system so this does not reoccur.

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

7. Election of Officers

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

Presentation By: Megan Patterson, Director  
 Action Needed: Nomination and election of officers

- **Lajoie/Jemison: Moved and seconded to nominate Adams as Chair and Bohlen as Vice-Chair**
- **In Favor: Unanimous**

8. Other Old and New Business

a. Summary of 2022 Ag Trades Show Activities—Pietroski

- Pietroski stated that there was a fabulous turnout at the 2022 Agricultural Trades Show and the BPC approved ten programs for credits and awarded a total of 1367 credits.

b. Executive Order 41 FY 20/21 Proposed Water Quality Project—Bryer

- Patterson stated that this was related to the aerial application of herbicides in forestry site prep and conifer release, and that staff was directed to propose a water quality project to be conducted in 2022. She told the Board that no funding was provided to support this and staff have already spent \$31,000 a related literature review and preliminary water quality project. Patterson said that given the lack of monetary support she wanted the Board to be aware that this proposed work was estimated to cost between \$80-90,000. She asked if the Board wanted to support this project.
- Adams stated that he thought the work was extremely important with the ongoing discussions around aerial application and that they needed to determine if the application work was being done safely and to police it at some level. He added that he was struggling a bit with how to get it funded.
- Carlton inquired about possible assistance from the Cooperative Forestry Research Unit.
- Patterson stated that staff had reached out but the CFRU expressed that they did not have time or resources to commit to the effort.
- Bryer explained that staff currently had cooperation with several property owners and were doing the mapping and planning needed to make sure everything was in order. She

told the Board that they had spread sites out from north to west using multiple companies' lands and had tentatively identified 20 different sites plus ten control sites.

c. Briefing on LD 519 (MAC and Herbicide Use on School Grounds) Report for the Legislature's ACF Committee—Scheduled for February 15, 2022

- Patterson stated that staff was asked to complete the proposed risk assessment and were considering contracting for services with Lebel Hicks for assistance on that work.

d. Briefing on LD 264 (PFAS) Report for the Legislature's ACF Committee—Scheduled for February 17, 2022

- Patterson told the Board that bill language was being drafted but was not yet published. She said that the stated purpose for LR 2641 was to regulate the registration of adjuvants in the state and would give the Board the authority to regulate spray adjuvants, prohibits the distribution of any pesticide containing an intentionally added PFAS or contaminated with PFAS, and any pesticide stored in an HDPE container. Patterson told the Board that the given that LR was draft, the language would likely change to some degree.

e. Briefing on LD 524 (Collection of Pesticide Use and Sales Information) Report for the Legislature's ACF Committee—Scheduled for February 24, 2022

9. Schedule of Future Meetings

April 1, 2022, May 6, 2022, and June 17, 2022 are the next tentative Board meeting dates.

10. Adjourn

- **Jemison/Bohlen: Moved and seconded to adjourn at 12:11 PM**
- **In Favor: Unanimous**

## SUMMARY OF BOARD COMMENTS TO STAFF—CHAPTER 20

## PUBLIC MEETING ON FEBRUARY 18, 2022

Board Comments Received	Staff Answers
Wondering if HDPE containers should be changed to all fluorinated containers	Provided 2 versions of the proposed rule; one with HDPE container information gathered and one with all fluorinated container information gathered.
Wanting to clarify if affidavits are public documents and how staff would execute this	Staff clarified that these documents could be published on a regular basis on the Board website.

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026, CHAPTER 31—CERTIFICATION AND LICENSING  
PROVISIONS/COMMERCIAL APPLICATORS**

**Basis Statement**

Three amendments to Chapter 20 were proposed by the Board:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.

Thirteen comments were received. Several people agreed with the Board’s definition of PFAS. Other comments included: making affidavits publicly available, including contaminant reporting with the confidential statement of formula, and inquired about expanding the container requirements to all fluorinated containers. The Board responded that affidavits will be publicly available, contamination of pesticides is handled at the federal level, and some members indicated that all fluorinated containers should be considered. Additionally, the Board also had comments about clarifying that affidavits were public and including all fluorinated containers in the rule.

**Impact on Small Business**

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

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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

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**Section 1. Registered Pesticides**

**A. Definitions**

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

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



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

## **Section 2. Right-of-Way**

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

## **Section 3. Pesticide Storage and Disposal**

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

## **Section 4. Aquatic Applications**

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

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**Section 5. Employer/Employee Requirements**

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

**Section 6. Authorization for Pesticide Applications**

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

3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.
- D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:
1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
  2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
  3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
    - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
    - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

#### **Section 7. Positive Identification of Proper Treatment Site**

- A. Commercial applicators making outdoor treatments to residential properties must implement a system, based on Board approved methods, to positively identify the property of their customers. The Board shall adopt a policy listing approved methods of positive identification of the proper treatment site.

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STATUTORY AUTHORITY: Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:  
July 6, 1979

AMENDMENT EFFECTIVE:  
April 1, 1985  
January 1, 1988

May 21, 1996

**EFFECTIVE DATE (ELECTRONIC CONVERSION):**

March 1, 1997

**AMENDED:**

May 7, 1997 - Section 5

**CONVERTED TO MS WORD:**

March 11, 2003

**CORRECTED HEADER CHAPTER NUMBER:**

January 10, 2005

**AMENDED:**

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

September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

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June 12, 2013 – Emergency major substantive filing 2013-134

**CORRECTIONS:**

February, 2014 – agency names, formatting

**AMENDED:**

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

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

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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

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**Section 1. Registered Pesticides**

**A. Definitions**

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  2. returned to the manufacturer or formulator for recycling, destruction, or disposal as appropriate, or
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  2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
  3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
    - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
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December 9, 2014 – Section 7 added, filing 2014-279

## **Rulemaking Statement of Impact on Small Business 5 MRSA §8052, sub-§5-A**

### **Agency**

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

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

CMR 01-026, Chapter 20—Special Provisions

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

Currently there are 2,809 pesticide registrants that register their products in Maine. They will all be affected by this amendment:

1. Registrants will be required to complete additional reporting requirements by answering several affidavits regarding fluorination in their products; and
2. Additional recordkeeping will also be required as registrants will now be required to submit the confidential statement of formula (CSF) in addition to answering affidavit questions.

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

No additional skills will be necessary for the reporting and recordkeeping required by this new rule, these will be additional steps added to the current pesticide product registration flow.

Required reporting includes:

1. Answering if products have ever been stored, distributed, or packaged in a fluorinated container;
2. Answering if products contain perfluoroalkyl or polyfluoroalkyl substances in the formulation; and
3. Providing the confidential statement of formula (CSF).

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

The amendments will result in a slight increase in product registration information submitted and would require registrants to check yes or no to affidavit questions.

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

If registrants do not submit these materials electronically as a part of the current registration flow, they will need to provide these materials in paper formats which could be more burdensome. Electronic submission is likely the least intrusive and least costly means of accomplishing this requirement.

Summary of Comments Received Regarding 130<sup>th</sup> Legislature, LD 264, Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

Board of Pesticides Control CMR26-01 Chapter 20

#	Name	Summary of Comments	Response
1	<p><b>Heather Spaulding</b> – Deputy Director &amp; Senior Policy Director for Maine Organic Farmers and Gardiners Association;</p> <p><b>Patricia Rubert-Nason</b> – Maine Sierra Club;</p> <p><b>Sarah Woodbury</b> – Director of Advocacy for Defend Our Health;</p> <p><b>Sharon Treat</b> – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> <li>All work done for Ch. 20 is appreciated.</li> <li>Agrees with the Board definition of PFAS, provides consistency with other state agencies.</li> </ul>	<ul style="list-style-type: none"> <li>The Board of Pesticides Control (BPC) appreciates the support.</li> <li>BPC plans to keep the current definition to remain consistent with other state agencies.</li> </ul>
2	<p><b>Patricia Rubert-Nason</b> – Maine Sierra Club;</p> <p><b>Sarah Woodbury</b> – Director of Advocacy for Defend Our Health;</p> <p><b>Sharon Treat</b> – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> <li>Required affidavits submitted by registrants should be publicly available.</li> </ul>	<ul style="list-style-type: none"> <li>All reports and affidavits produced by the BPC are already public documents.</li> </ul>
3	<p><b>Patricia Rubert-Nason</b> – Maine Sierra Club;</p> <p><b>Sarah Woodbury</b> – Director of Advocacy for Defend Our Health;</p> <p><b>Heather Spaulding</b> – Deputy Director &amp; Senior Policy Director for Maine Organic 4Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> <li>Concerned about and would like clarification regarding the Confidential Statement of Formula (CSF) and the need to include all inert ingredients, active ingredients, and contaminants in addition to the CSF.</li> </ul>	<ul style="list-style-type: none"> <li>Confidential Statement of Formula (CSF) includes the active and inert ingredients and are protected by federal law FIFRA §10(a) as confidential business information (CBI). Any material not identified as a part of the CSF is considered to be a contaminant. The CSF would not be included in any public documents due to their confidentiality. The Environmental Protection Agency (EPA) considers Perfluoroalkyl and Polyfluoroalkyl Substances</li> </ul>

			<p>(PFAS) to be potentially toxicologically significant contaminants and may trigger 159.179(b) in the Code of Federal Regulations (CFR). Under FIFRA Section 6(a)(2), pesticide registrants should report to EPA additional factual information on unreasonable adverse effects, including metabolites, degradates, and impurities (such as PFAS). EPA has identified a master list PFAS that is <a href="#">available on their website</a>. BPC staff have an inquiry into EPA and AAPCO (Association of American Pesticide Control Officials) regarding the process of requiring 6(a)(2) reporting.</p>
4	<p><b>Sarah Woodbury</b> – Director of Advocacy for Defend Our Health;  <b>Sharon Treat</b> – Senior Attorney for Institute for Agriculture and Trade Policy</p>	<ul style="list-style-type: none"> <li>Recognized that the resolution specifically responded to HDPE containers, but to expand the scope of containers from just HDPE containers to any fluorinated plastic containers.</li> </ul>	<ul style="list-style-type: none"> <li>BPC recognizes that many plastics – not just HDPE containers – are fluorinated. Identifying additional container types to be included in affidavits is beyond the scope of the current ask from LD 264. EPA has noted that there is no evidence that PFAS occur from containers other than HDPE. Additionally, LD 1503 will ultimately prohibit any intentionally fluorinated</li> </ul>

			products in the State of Maine by 2030.
5	<b>Patricia Rubert-Nason</b> – Maine Sierra Club; <b>Heather Spaulding</b> – Deputy Director & Senior Policy Director for Maine Organic Farmers and Gardiners Association	<ul style="list-style-type: none"> <li>• More should be done to eliminate PFAS in pesticides</li> </ul>	<ul style="list-style-type: none"> <li>• BPC agrees that long-chain PFAS resulting from the fluorination of pesticide product containers should not be allowed to continue to occur. BPC is working toward a greater understanding of the scope of PFAS in pesticides as more information becomes available in this rapidly evolving issue. BPC also acknowledges that any product that contains intentionally added PFAS will be prohibited under LD 1503 by the year 2030.</li> </ul>
6	<b>Sharon Treat</b> – Senior Attorney for Institute for Agriculture and Trade Policy	<ul style="list-style-type: none"> <li>• Full extent of legal authority that the Board has should be used against PFAS.</li> <li>• The full panel of PFAS chemicals should be excluded from pesticides.</li> <li>• Affidavits should not be withheld from the public, as the committee that led the implementation of LD 1503 voted to not keep documents and affidavits confidential.</li> <li>• Disclosure of CSF should include contamination.</li> <li>• Clarify that affidavits are public records, under Maine’s Freedom</li> </ul>	<ul style="list-style-type: none"> <li>• The BPC has reviewed its authority and has outlined it in their <a href="#">full report regarding LD 264</a> to the Maine Legislature.</li> <li>• The current definition proposed by BPC includes all PFAS chemicals identified by the EPA and is consistent with other state agencies.</li> <li>• The BPC recognizes that during the implementation of LD 1503 affidavits were not withheld and intends to make affidavits public records.</li> <li>• Contaminants in pesticides are required to be reported upon</li> </ul>

		<p>of Access Act (preferably on the website, not as a document that must be accessed through a formal freedom of access request).</p> <ul style="list-style-type: none"> <li>• It is not necessary to wait for further legislative direction or authority to include adjuvants as a part of the manufacturers' affidavit as to the presence or absence of PFAS. The Board has extensive authority to require information about the formulation and to require other information for registration of a product and should make clear that adjuvants are covered with other inert ingredients.</li> <li>• Board should make a point to prohibit registration of PFAS</li> </ul>	<p>federal registration with FIFRA §6(a)(2) incident reporting and would be available as a part of products' federal registration process. BPC has inquiries into EPA and AAPCO regarding additional requirements for 6(a)(2) reporting.</p> <ul style="list-style-type: none"> <li>• Affidavits will be public records.</li> <li>• If adjuvants are contained within a pesticide formulation, the CSF would disclose that information. Adjuvants that are added to pesticides separately are not considered to be pesticide products and the Board has included the avenues that need to be taken in order to regulate adjuvants or fluorinated adjuvants in the future in their <a href="#">full report regarding LD 264</a> to the legislature. Since this proposed action would require amendments to state statute, the BPC will wait for further legislative direction to address this issue.</li> <li>• The proposed resolve does not currently prohibit PFAS from pesticide products but does require BPC to identify if PFAS are in registered products. BPC</li> </ul>
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			acknowledges this concern and would like to note that all products that contain intentionally added PFAS will be prohibited by 2030 as outlined in LD 1503.
7	<b>Karen Reardon</b> – Vice President of Public Affairs for Responsible Industry for a Sound Environment	<ul style="list-style-type: none"> <li>• Definitions of PFAS should take data assessments into account.</li> <li>• The Board should consider reviewing the container leeching study that will be coming from US EPA in the first quarter of 2022.</li> <li>• The Board should not rush to complete rulemaking before they have a full finding of what is happening with HDPE containers.</li> </ul>	<ul style="list-style-type: none"> <li>• Initially, BPC was interested in referring to policy for a group of PFAS considered to be the “most concerning” by the EPA but ultimately decided to remain consistent with other state agencies in their definition. BPC will continue to review new data assessments as they are published.</li> <li>• The BPC will consider reviewing the container leeching study during its development of rulemaking regarding containers.</li> <li>• BPC staff have already entered into rulemaking guidelines, following A.P.A. procedures, and must meet deadlines for amendments, approval from Board members, and public comment. This process is not typically quickly implemented but must continue to comply with LD 264.</li> </ul>
8	<b>Sarah Woodbury</b> – Director of Advocacy for Defend Our Health	<ul style="list-style-type: none"> <li>• Chapter 20, Section 1 affidavit requirements requires clarification; should require</li> </ul>	<ul style="list-style-type: none"> <li>• Complete formulations from the CSF are protected under federal law FIFRA §6(a)(2) and</li> </ul>

		<p>complete formulation including active, inert, and contaminants.</p> <ul style="list-style-type: none"> <li>• There is no reasonable claim for the need to prohibit disclosure of the affidavits to protect confidential business information since no one could derive a formula simply based on the presence or absence of thousands of potential ingredients.</li> <li>• Maine should have a single definition of PFAS, and that definition should be the same one already in use in statute, which is now the one proposed in the draft rule as well.</li> <li>• Noted that contaminants should be added to the rule because Maine already has PFAS contamination and the cleanup will cost millions.</li> <li>• The rule should unequivocally state the affidavits are public and accessible records. While this may be the intent of the proposed language, ambiguity should be eliminated by separately listing the three required items or adding a sentence explicitly clarifying the public nature of the affidavits.</li> <li>• Stated that the Board should make a recommendation to the</li> </ul>	<p>cannot be included with affidavits as public records – however the affidavits will describe if a pesticide product contains PFAS.</p> <ul style="list-style-type: none"> <li>• Information in the CSF itself is confidential business information (CBI) under federal law FIFRA §10(a). Affidavits themselves will be public documents and will describe whether a PFAS known to the manufacturer is in the product or if it is stored in an HDPE container.</li> <li>• BPC recognizes the statements made and has incorporated a definition of PFAS that has been used across multiple state agencies.</li> <li>• Contaminants are addressed during federal registration FIFRA §6(a)(2). BPC currently has an inquiry in at EPA and AAPCO regarding 6(a)(2) reporting at the state level. BPC acknowledges that millions will be spent on remedial PFAS activities.</li> <li>• BPC acknowledges the concern regarding transparency of the affidavits. BPC will consider</li> </ul>
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		<p>legislature that the Board supports no use of pesticides containing PFAS or of pesticides stored in HDPE containers.</p>	<p>changing the rule to incorporate this sentiment.</p> <ul style="list-style-type: none"> <li>The BPC is working toward understanding the full scope of PFAS in pesticides and is implementing measures to better understand if PFAS are in pesticides registered in Maine through its registration process. The full scope of PFAS in pesticides, the Maine registration process, and all legal authorities that the BPC has to regulate these classes of chemicals is outlined in the <a href="#">full report to the Maine legislature regarding LD 246</a>.</li> </ul>
9	<p><b>Heather Spaulding</b> – Deputy Director &amp; Senior Policy Director for Maine Organic Farmers and Gardiners Association</p>	<ul style="list-style-type: none"> <li>Stated that new rules will help minimize reliance on pesticides. The original legislation was to stop PFAS contamination from aerial spraying and morphed into LD 264. Described the PFAS problem was being exacerbated by pesticides that contain PFAS and farmers were losing businesses, land, and health. Hoped this rule would help Maine turn off one of the PFAS taps by discovering the extent of PFAS in pesticides.</li> <li>CSF is confidential but affidavits can be made public.</li> </ul>	<ul style="list-style-type: none"> <li>It is the BPC’s policy title 22 M.R.S §1471-X to minimize reliance on pesticides and promote integrated pest management. BPC appreciates the sentiments made to reduce PFAS contamination in Maine’s environment. To BPC’s current understanding, most PFAS contamination in the environment in Maine is attributed to sludge and sludge-derived compost in agriculture rather than pesticides.</li> <li>BPC agrees that the CSF is confidential and that the</li> </ul>

		<ul style="list-style-type: none"> <li>The Board should exercise the broad authority it has to gather formula data in consideration of granting product registration. We hope that the system established for compiling the information would be streamlined so that it would not create an undue burden on the BPC staff. Manufacturers know whether PFAS is in their products and they must be responsible for reporting that in an online database that would minimize additional work for the staff.</li> </ul>	<p>affidavits will be public documents.</p> <ul style="list-style-type: none"> <li>BPC has researched and started the implementation of adding affidavits to its existing registration software, Maine Pesticide Registration and Licensing Software (MEPRLS). This would allow registrants to state whether or not they have PFAS in their product as they are conducting the registration process, reducing staff time and burden.</li> </ul>
10	Patricia Rubert-Nason – Maine Sierra Club	<ul style="list-style-type: none"> <li>Would like to thank the Board of Pesticides for their work on implementing LD 264. Urges the Board to ensure that all ingredients and known contaminants are included in the affidavits and that those affidavits are shared with the public.</li> </ul>	<ul style="list-style-type: none"> <li>The BPC appreciates the support and plans to use CSF to determine if PFAS are in pesticide formulations, which include active and inert ingredients. Contaminants known to manufacturers are required to be addressed during federal registration FIFRA §6(a)(2). However, BPC has inquired about 6(a)(2) forms to both EPA and AAPCO.</li> </ul>
11	Mariana Tupper – Yarmouth, ME	<ul style="list-style-type: none"> <li>Particularly concerned about the use of PFAs. As both our Environmental Protection Agency and the Food &amp; Drug Administration say, such substances are dangerous for</li> </ul>	<ul style="list-style-type: none"> <li>BPC appreciates the support and will continue to work on this issue as it relates to pesticides.</li> </ul>

		<p>human beings and other species on which we depend.  Please help the State of Maine stay a strong leader in sensible, smart, and safe agriculture.  Progress made in 2021 should be underscored, embellished, and celebrated.</p>	
12	<p><b>Lelania Avila</b> – Northeast Harbor, ME;  <b>Penelope Andrews</b> – Hermon, ME, Member of Sierra Club of Maine and Natural Resources Council of Maine;  <b>John Olsen</b> – Jefferson, Maine</p>	<ul style="list-style-type: none"> <li>• Urges Maine's Board of Pesticides Control to implement the pesticide laws passed in the last session of the Legislature. The laws will restrict and assess and address the problem of PFAS in pesticides.</li> <li>• Please ensure that any PFAS chemical added to the product as an "inert" ingredient will be included in the reporting. The same goes for PFAS contaminants known to the manufacturer.</li> </ul>	<ul style="list-style-type: none"> <li>• BPC will implement rules regarding PFAS from the Maine legislature.</li> <li>• Active and inert ingredients are included in the required affidavits and CSF. Contaminants that are known to the manufacturer are reported under FIFRA §6(a)(2) reporting during the federal registration process. BPC is reviewing its ability to also require 6(a)(2) reporting.</li> </ul>

**01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY****026 BOARD OF PESTICIDES CONTROL****Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE**

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

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**Section 1. ALDICARB (TEMIK®)**

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

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

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

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

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

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

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

**A.      Licenses Required**

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

**Section 4.      AQUATIC HERBICIDES**

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

**A.      Board Publication of List**

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

**B.      Licenses Required**

- I.      Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II.     No person shall:
  - a.      Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or
  - b.      Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.
- III.    Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

**C. Disclosure**

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

**D. Records and Reporting**

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

**E. Use of Best Management Practices**

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

**Section 5. PLANT-INCORPORATED PROTECTANTS**

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

**A. Definitions**

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

**B. License Required**

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

**C. Dealer Requirements**

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

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

**D. Grower Requirements**

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

**E. Product-Specific Requirements**

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

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

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

**F. Confidentiality**

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

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

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

**A. Definitions**



- I. “Invasive Invertebrate Pests” means any invertebrate species, including its eggs or other biological materials capable of propagating that species, that does or is likely to cause economic or environmental harm or harm to human health and meets one or more of the following criteria:
- a. ~~federally or state regulated;~~
  - b. ~~non native or not originating from this eco region;~~
  - c. ~~native or non native vectors of plant diseases;~~
  - d. native pests that have become highly destructive due to climate change or ecosystem factors

“Emerging Invasive Invertebrate Pests” means any invertebrate, including its eggs or other biological material capable of propagating that species that occurs outside of its eco-region and its introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health, to include:

- a. Species both known now and unknown now but showing up at a later date;
- b. Species that occur outside of their eco-region as defined by EPA; and
- c. The use of these products is for management of pests of ornamental plants specified on a board-approved list..

- II. “Ornamental Plants” means shrubs, trees and related vegetation excluding turf and lawn, in and around residences.

## **B. Board Publication of Product List**

The Board of Pesticides Control will publish by July 1, 2022, within 30 days of adoption and by March 15th of each year thereafter a list of insecticide products containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam registered in Maine for which the manufacturer has verified that there is an outdoor ornamental plant or turf use on the pesticide label. Based on available information, the Board may exempt from this list pesticides that it determines are not for use in the control of outdoor ornamental plants or turf. Pesticides labeled solely for use in preserving wood, managing indoor pests, managing structural pests within five (5) feet of a human dwelling, and treating pets are specifically exempt from this list.

## **C. Licenses Required**

- I. No person shall purchase, use, or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.
- II. Unless exempted under Chapter 41, Section 6 (C) (IV) no person shall purchase, use or supervise the use of any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam in outdoor residential landscapes to include ornamental plants and turf.

- III. No person shall distribute any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board.
- IV. Registered pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam and identified on the Board's annual listing are exempt from the prohibition of use described in Chapter 41, Section 6 (C) (II) where by:
- a. The applicator obtains a permit from the Board; or
  - b. The use of these products is for management of emerging invasive invertebrate pests on ornamental plants in outdoor residential landscapes.
- V. No person shall use any pesticides containing dinotefuran, clothianidin, imidacloprid, or thiamethoxam identified on the Board's annual listing for the purposes of managing turf and lawn in outdoor residential landscapes.

**D. Records and Reporting**

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

**E. Permits Required**

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

- I. The name, address and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate application date(s);
- VI. The type(s) of application equipment to be employed;
- VII. The approved pest species for which the application is being made as defined in policy or by the board; and
- VIII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of surrounding nontarget vegetation will be obtained.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such

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

~~This section becomes effective January 1, 2023.~~

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

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

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

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



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

EFFECTIVE DATE:  
March 8, 1981 (Captan)

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

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

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

CONVERTED TO MS WORD:  
March 11, 2003

AMENDED:  
May 12, 2003 - Section 4 added

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

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

CORRECTIONS:  
February, 2014 – agency names, formatting

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

# Proposed Administrative Consent Agreement

## Background Summary

5

**Subject:** Caleb C. Bell Senior  
9 Chipmunk Lane  
New Limerick, Maine 04761

**Date of Incident(s):** Multiple times in summer of 2018

### **Background Narrative:**

On August 20, 2018, the Maine Department of Environmental Protection (DEP) received a call and conveyed the call to the Board. The original caller reported Mr. Bell was seen on multiple occasions applying what appeared to be an herbicide near the shore of Drews Lake in New Limerick. A Board inspector interviewed Mr. Bell, checked the affected area near the lake, and also took a physical sample within 25 feet of the lake. The lab reported the sample was positive for glyphosate at 164 parts per billion and AMPA (a glyphosate metabolite) at 286 parts per billion.

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

CMR 01-026 Chapter 29 Section 6(A)(I) provides that no person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high-water mark of: Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State.

### **Rationale for Settlement:**

Compared the violation to similar past violations and penalties. Property owners have taken steps to prevent a recurrence.

**Attachments:** Proposed Consent Agreement

MAR 14 2022

CK # 7420  
Amt \$300.00  
Date 3-2-22

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

ADMINISTRATIVE CONSENT

Caleb C. Bell Senior )  
9 Chipmunk Lane )  
New Limerick, Maine 04761 )

AGREEMENT  
AND  
FINDINGS OF FACT

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

The parties to this Agreement agree as follows:

1. That the applicator was tasked with maintaining the grounds of a single-family dwelling on property located at 22 White Tail Deer Lane, on the North shore of Drews Lake in New Limerick, Maine (hereinafter called the "property").
2. That the property is periodically occupied by the owners for recreational purposes.
3. That the applicator is the father of the property owner.
4. That during the summer of 2018, the applicator was residing at his property located at 9 Chipmunk Lane in New Limerick.
5. That during the summer of 2018, the applicator, from time to time, conducted maintenance activity on the property described in paragraph one.
6. That the property has approximately 345 feet of water frontage on Drews Lake.
7. That of the 345 feet of water frontage, approximately 130 feet of frontage facing Southwest consists of a man-made soil embankment approximately 18 inches high and 6 feet wide. The remaining shoreline is on the same grade as the turf between the building and the shoreline.
8. That on August 20, 2018, an employee of the Maine Department of Environmental Protection was contacted by a concerned citizen stating that the applicator had been observed on four occasions applying what appeared to be an herbicide from a spray container along the shoreline of the property. The information included that the applicator was also observed filling the spray container in the lake, dipping it into the water.
9. That on August 20, 2018, the Maine Department of Environmental Protection employee contacted the BPC with the information described in paragraph eight.
10. That on August 30, 2018, a Board inspector traveled to the property and met with the applicator and his son to conduct a follow-up inspection at the site, the inspector noted that it appeared that an herbicide had been applied to a six-foot-wide strip of land along the shoreline, including both the embankment and adjacent flat area. The strip of land along the shoreline was barren of live vegetation except for a few new growth weeds. Dead vegetation in this area consisted of ground moss and grass. There was a well-defined margin between dead plants and healthy turf landward of the apparent application area. The inspector documented, with photos, the dead vegetation and the margin between living and dead turf.

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

26. That, in consideration for the release by the Board of the causes of action which the Board has or may have against the applicator resulting from the violation referenced in paragraph twenty-two, the applicator agrees to pay to the State of Maine the sum of \$300 (Please make checks payable to Treasurer, State of Maine).

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

CALEB BELL SENIOR

By: Caleb Bell Senior Date: 3-2-2022

Type or Print Name: CALEB BELL SENIOR

BOARD OF PESTICIDES CONTROL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Megan Patterson, Director

APPROVED

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





# 130th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2022

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Legislative Document

No. 2019

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H.P. 1501

House of Representatives, March 9, 2022

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

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Reported by Representative O'NEIL of Saco for the Joint Standing Committee on  
Agriculture, Conservation and Forestry pursuant to Resolve 2021, chapter 83, section 2.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and  
ordered printed pursuant to Joint Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT  
Clerk

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

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

3 **22-A. Perfluoroalkyl and polyfluoroalkyl substances or PFAS.** "Perfluoroalkyl  
4 and polyfluoroalkyl substances" or "PFAS" means substances that include any member of  
5 the class of fluorinated organic chemicals containing at least 2 fully fluorinated carbon  
6 atoms.

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

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

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

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

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

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

16 **31-A. Spray adjuvant.** "Spray adjuvant" means an ingredient added to a pesticide  
17 spray mixture to enhance the effectiveness of pesticide product ingredients or modify the  
18 actions of those pesticide product ingredients.

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

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

23 A. A pesticide that has not been registered pursuant to the provisions of this  
24 subchapter;

25 B. A pesticide if any of the claims made for it or any of the directions for its use or  
26 other labeling differs from the representations made in connection with its registration,  
27 or if the composition of a pesticide differs from its composition as represented in  
28 connection with its registration; a change in the labeling or formulation of a pesticide  
29 may be made within a registration period without requiring reregistration of the product  
30 if the registration is amended to reflect that change and if that change will not violate  
31 any provision of FIFRA or this subchapter;

32 C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate  
33 container and there is affixed to the container, and to the outside container or wrapper  
34 of the retail package, if there is one, through which the required information on the  
35 immediate container cannot be clearly read, a label bearing the information required in  
36 this subchapter and rules adopted under this subchapter;

37 D. A pesticide that has not been colored or discolored pursuant to section 610,  
38 subsection 1, paragraph D;

39 E. A pesticide that is adulterated or misbranded or any device that is misbranded;

40 F. A pesticide in containers that are unsafe due to damage; or

1 G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active  
2 ingredient;

3 H. A pesticide that has been contaminated by perfluoroalkyl and polyfluoroalkyl  
4 substances; or

5 I. Notwithstanding Title 38, section 1614, subsection 5, paragraph D, beginning  
6 January 1, 2030, a pesticide that contains intentionally added PFAS as defined in Title  
7 38, section 1614, subsection 1, paragraph D.

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

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

12 A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided  
13 for in this subchapter or rules adopted under this subchapter;

14 A-1. Add any substance to or take any substance from a pesticide in a manner that may  
15 defeat the purpose of this subchapter or rules adopted under this subchapter;

16 B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or  
17 with rules of the board, if those rules further restrict the uses provided on the labeling;

18 C. Use for that person's own advantage or reveal, other than to the board or proper  
19 officials or employees of the state or federal executive agencies, to the courts of this  
20 State or of the United States in response to a subpoena, to physicians, or in emergencies  
21 to pharmacists and other qualified persons for use in the preparation of antidotes, any  
22 information relative to formulas of products acquired by authority of section 607 or  
23 any information judged by the board to contain or relate to trade secrets or commercial  
24 or financial information obtained by authority of this subchapter and marked as  
25 privileged or confidential by the registrant;

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

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

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

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

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

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

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## SUMMARY

This bill is reported out by the Joint Standing Committee on Agriculture, Conservation and Forestry pursuant to Resolve 2021, chapter 83. The committee is reporting the bill out for the sole purpose of turning the proposal into a printed bill that can be referred to the committee for an appropriate public hearing and subsequent processing in the normal course. The committee has not taken a position on the substance of this bill and by reporting this bill out the committee is not suggesting and does not intend to suggest that it agrees or disagrees with any aspect of this bill.

9 The bill makes the following changes to the Maine Pesticide Control Act of 1975.

10 1. The bill adds "any substance or mixture of substances intended to be used as a spray  
11 adjuvant" to the definition of "pesticide" and defines "spray adjuvant."

12 2. The bill defines "perfluoroalkyl and polyfluoroalkyl substances" and prohibits a  
13 person from distributing a pesticide that has been contaminated by perfluoroalkyl and  
14 polyfluoroalkyl substances. It prohibits a person from distributing a pesticide that contains  
15 intentionally added perfluoroalkyl and polyfluoroalkyl substances beginning January 1,  
16 2030. Current law defines "distribute" in the Maine Pesticide Control Act of 1975 as "to  
17 offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and having so  
18 received, deliver or offer to deliver pesticides in this State."

19 3. The bill also prohibits a person from using any pesticide container inconsistent with  
20 rules for pesticide containers adopted by the Department of Agriculture, Conservation and  
21 Forestry, Board of Pesticides Control.



# 130th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2022

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Legislative Document

No. 2021

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S.P. 731

In Senate, March 9, 2022

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**An Act To Collect Pesticide Sales and Use Records for the Purpose  
of Providing Information to the Public**

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Reported by Senator DILL of Penobscot for the Joint Standing Committee on Agriculture, Conservation and Forestry pursuant to Resolve 2021, chapter 54, section 1.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

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

2 **Sec. 1. 7 MRSA §607, sub-§2, ¶B,** as enacted by PL 1975, c. 382, §3, is amended  
3 to read:

4 B. The name of the pesticide; and information about the pesticide available to the  
5 applicant at the time of registration, including, but not limited to:

6 (1) The pounds of active ingredients per gallon of liquid formulations of the  
7 pesticide;

8 (2) The type of pesticide;

9 (3) The expected type of use of the pesticide described in a manner specified by  
10 the board; and

11 (4) Information on the pesticide product label that describes the acute toxicity of  
12 the formulated pesticide product or other toxicity data specified by the board;

13 **Sec. 2. 22 MRSA §1471-C, sub-§4-A** is enacted to read:

14 **4-A. Commercial agricultural producer.** "Commercial agricultural producer"  
15 means a person who produces an agricultural commodity for commercial purposes.

16 **Sec. 3. 22 MRSA §1471-G, sub-§2,** as amended by PL 1983, c. 819, Pt. A, §50, is  
17 further amended to read:

18 **2. Applicators, agricultural producers and firms to maintain certain records.** All  
19 commercial applicators, commercial agricultural producers and spray contracting firms  
20 shall maintain, for a period of at least 2 years, records indicating the type and amount of  
21 pesticide used, the area of use and such other information as the board may require. ~~Said~~  
22 ~~applicators and firms~~ shall provide such information, notification and reports as the board,  
23 by ~~regulation~~ rule, may require.

24 **Sec. 4. 22 MRSA §1471-G, sub-§3** is enacted to read:

25 **3. Confidential information.** Information provided to the board by commercial  
26 agricultural producers to fulfill reporting requirements under this chapter is public unless  
27 designated as confidential by the board. A commercial agricultural producer to whom the  
28 information belongs or pertains may request that the information it has provided be  
29 designated as confidential and the board may designate the information as confidential if  
30 the board determines the information contains proprietary information. For the purposes  
31 of this subsection, "proprietary information" means information that is a trade secret or  
32 production, commercial or financial information the disclosure of which would impair the  
33 competitive position of the person submitting the information and would make available  
34 information not otherwise publicly available.

35 **Sec. 5. 22 MRSA §1471-W, sub-§3,** as repealed and replaced by PL 1997, c. 139,  
36 §1, is amended to read:

37 **3. Records; reporting.** Any person who distributes general use pesticides ~~to licensed~~  
38 ~~general use pesticide dealers~~ in the State shall keep and maintain records of these sales for  
39 annual reporting purposes. These annual reports must be submitted electronically and  
40 include the names of ~~all licensed general use pesticide dealers~~ any person to whom general  
41 use pesticides were distributed, the names of the pesticides, the United States

1 Environmental Protection Agency registration number and the quantity sold. These records  
2 must be kept for 2 years after the end of the calendar year. ~~For the purposes of this~~  
3 ~~subsection, "distributes" means sells, ships or delivers general use pesticides to a licensed~~  
4 ~~general use pesticide dealer engaged in retail sales.~~ The board may adopt rules to further  
5 clarify who is responsible for reporting under this subsection. Rules adopted pursuant to  
6 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter H-  
7 A 2-A.

8 **Sec. 6. Board of Pesticides Control; rules; record-keeping and reporting**  
9 **requirements.** The Department of Agriculture, Conservation and Forestry, Board of  
10 Pesticides Control shall amend its rule Chapter 50: Record Keeping and Reporting  
11 Requirements to:

- 12 1. Modify the commercial use summary report to require identification of pesticide  
13 applications on school grounds; and
- 14 2. Require electronic submission of commercial applicator use annual summary  
15 reports and restricted use pesticide dealer sales annual summary reports.

16 **Sec. 7. Board of Pesticides Control; stakeholder meetings.** The Department  
17 of Agriculture, Conservation and Forestry, Board of Pesticides Control shall convene a  
18 series of stakeholder meetings with parties required to submit sales and use reports to the  
19 board and entities interested in sales and use data to understand the types of questions to  
20 which the data might be applied. The board shall also consider data security issues for all  
21 collected information and identify ways by which sales and use data can be collected and  
22 protected. The board shall report findings and recommendations resulting from the  
23 stakeholder meetings, including suggested legislation, to the joint standing committee of  
24 the Legislature having jurisdiction over agriculture, conservation and forestry matters no  
25 later than March 1, 2023. The joint standing committee may submit a bill to the First  
26 Regular Session of the 131st Legislature relating to the subject matter of the report.

## 27 SUMMARY

28 This bill is reported out by the Joint Standing Committee on Agriculture, Conservation  
29 and Forestry pursuant to Resolve 2021, chapter 54. The committee is reporting the bill out  
30 for the sole purpose of turning the proposal into a printed bill that can be referred to the  
31 committee for an appropriate public hearing and subsequent processing in the normal  
32 course. The committee has not taken a position on the substance of this bill and by  
33 reporting this bill out the committee is not suggesting and does not intend to suggest that it  
34 agrees or disagrees with any aspect of this bill.

35 The bill requires an applicant for pesticide registration to include any information about  
36 the pesticide available to the applicant at the time of registration, including, but not limited  
37 to, pounds of active ingredients per gallon of liquid formulations of the pesticide; type of  
38 pesticide; the expected type of use of the pesticide; and information on the pesticide product  
39 label that describes the acute toxicity of the formulated pesticide product or other toxicity  
40 data specified by the Department of Agriculture, Conservation and Forestry, Board of  
41 Pesticides Control.

42 Current law requires all commercial applicators and spray contracting firms to maintain  
43 records indicating the type and amount of pesticide used, the area of use and other

1 information the board may require by rule. The bill requires commercial agricultural  
2 producers to also maintain records relating to pesticide sales and use.

3 The bill provides that information provided to the board by commercial agricultural  
4 producers to fulfill reporting requirements is public unless designated as confidential by  
5 the board. A commercial agricultural producer to whom the information belongs or  
6 pertains may request that the information it has provided be designated as confidential, and  
7 the board may designate the information as confidential if the board determines the  
8 information contains proprietary information.

9 Current law requires any person who distributes general use pesticides to licensed  
10 general use pesticide dealers in the State to keep and maintain records of sales for annual  
11 reporting purposes. The bill requires any person who distributes pesticides in the State to  
12 report the amount of sales regardless of to whom the sales are made. The bill requires any  
13 person who distributes general use pesticides to submit required annual reports  
14 electronically.

15 The bill requires the board to amend its rules relating to record-keeping and reporting  
16 requirements to:

17 1. Modify the commercial use summary report to require identification of pesticide  
18 applications on school grounds; and

19 2. Require electronic submission of commercial applicator use annual summary  
20 reports and restricted use pesticide dealer sales annual summary reports.

21 The bill directs the board to convene a series of stakeholder meetings with parties  
22 required to submit sales and use reports and entities interested in sales and use data to  
23 understand the types of questions to which the data might be applied. The board is also  
24 required to consider data security issues for all collected information and identify ways by  
25 which sales and use data can be collected and protected. The board is required to submit a  
26 report with findings and recommendations resulting from the stakeholder meetings,  
27 including suggested legislation, to the joint standing committee of the Legislature having  
28 jurisdiction over agriculture, conservation and forestry matters no later than March 1, 2023.

29 The joint standing committee is authorized to submit a bill to the First Regular Session of  
30 the 131st Legislature relating to the subject matter of the report.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

March 16, 2022

OFFICE OF CHEMICAL SAFETY AND  
POLLUTION PREVENTION

Dear Manufacturers, Processors, Distributors, Users, and Those that Dispose of Fluorinated Polyolefin Containers:

The U.S. Environmental Protection Agency (EPA) is directing this information to manufacturers (including importers), processors, distributors, users, and those that dispose of fluorinated high-density polyethylene (HDPE) containers and similar plastics (i.e., fluorinated polyolefins). EPA was made aware of and determined via testing that certain per- and polyfluoroalkyl substances (PFAS) have formed and migrated from these fluorinated polyolefins.<sup>1</sup> The contamination was first noted in HDPE containers used to store and transport a pesticide product.<sup>2</sup> As the Agency continues to determine the potential scope of the use of this fluorination process outside of its use for pesticide storage containers, EPA is issuing this letter to: (1) remind industry of this issue to help prevent unintended PFAS formation and contamination and (2) emphasize the requirement under the Toxic Substances Control Act (TSCA) as it relates to PFAS and fluorinated polyolefins. These efforts are in line with EPA's recently released PFAS Strategic Roadmap, which includes ambitious steps to further the science and research to restrict these PFAS from impacting human health and the environment.<sup>3</sup>

**Fluorinated Polyolefins Containers and PFAS Formation.** The process of fluorinating polyolefins involves the modification of certain types of polymers (plastics), using fluorine to create a high-performance barrier that is meant to mitigate permeation through container walls, as well as protect against environmental weathering and degradation of the plastic. Fluorination can occur before or after the shaping process of the HDPE containers or similar plastic and the fluorinated containers can be used to store and transport a variety of products.

It is during certain types of fluorination (e.g., the presence of oxygen) that the manufacture of PFAS has occurred. Manufacturers (including importers), processors, distributors, users, and those that dispose of fluorinated HDPE containers should be reminded of this potential for manufacturing PFAS and comply with any applicable regulations under TSCA, as described in the next section.

EPA is aware of alternative fluorination processes that use fluorine gas in the presence of gaseous inert (e.g., nitrogen) without the presence of oxygen that could reduce the potential for unintentional manufacture of PFAS. These alternative processes for fluorination of polyethylene are highlighted in the U.S. Food and Drug Administration's (FDA) August 2021 letter on this issue as it relates to food contact articles.<sup>4</sup>

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<sup>1</sup> U.S. EPA's Analytical Chemistry Branch PFAS Testing of Selected Fluorinated and Non-Fluorinated HDPE Containers, [https://www.epa.gov/sites/default/files/2021-03/documents/results-of-rinsates-samples\\_03042021.pdf](https://www.epa.gov/sites/default/files/2021-03/documents/results-of-rinsates-samples_03042021.pdf)

<sup>2</sup> <https://www.epa.gov/newsreleases/epa-takes-action-investigate-pfas-contamination>

<sup>3</sup> [https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap\\_final-508.pdf](https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf)

<sup>4</sup> U.S. Food and Drug Administration's August 2021 Letter: <https://www.fda.gov/media/151326/download>

**Requirements under TSCA PFAS Significant New Use Rules.** Certain PFAS, including long-chain PFAS as defined in EPA’s 2020 long-chain perfluoroalkyl carboxylate (LCPFAC) Significant New Use Rule (SNUR) (40 CFR § 721.10536), that are found to be present in or on fluorinated polyolefins may be subject to TSCA regulations and enforcement. EPA considers the manufacturing of certain PFAS from the fluorination of polyolefins to be a significant new use under TSCA. LCPFAC chemical substances present in polyolefins due to the fluorination process would be considered byproducts of the manufacturing process because they are produced during the manufacture of the fluorinated polyolefins and do not have a separate commercial intent (40 CFR 720.3(d)). LCPFAC chemical substances that are byproducts of the manufacturing process for fluorinated polyolefins do not meet the requirements of the byproducts exemption at 40 CFR § 721.45(e)<sup>5</sup> and are subject to significant new use notice requirements. Significant new use rules require industry to notify EPA at least 90 days before commencing the manufacture (including import) or processing of subject chemical substances for a significant new use. The required significant new use notification (SNUN) initiates EPA’s evaluation of the conditions of use associated with the significant new use. Entities may not commence manufacturing (including import) or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination. [Learn more about filing a SNUN.](#)

EPA encourages manufacturers to assess their processes to ensure they are complying with existing EPA regulations, as well as to review the full requirements in the EPA regulations at 40 CFR part 721.

If regulated entities have any questions concerning this subject, they are encouraged to contact the Existing Chemicals Risk Management Division in the Office of Pollution Prevention and Toxics at [TSCA\\_PFAS@epa.gov](mailto:TSCA_PFAS@epa.gov).

Sincerely,

Tala R. Henry, Ph.D.  
Deputy Director for Programs  
Office of Pollution Prevention & Toxics

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

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

March 24, 2022

Andrew Powers  
Vegetation Control Service, Inc  
3242 Maine St  
Athol, MA 01331

**RE: Variance permit for CMR 01-026 Chapter 29, Fort Williams Park**

Dear Mr. Powers,

The Board of Pesticides Control considered your application for a variance from Chapter 29. The variance is approved, with the condition that Escort XP (EPA #432-1549) and Capstone (EPA #62719-572), not be applied within 25 feet of water. Due to their high leachability eliminating the use of these active ingredients—aminopyralid and metsulfuron-methyl—within 25 feet of water greatly reduces the potential for negative effects on the aquatic communities. Aminopyralid also has moderate toxicity to crustaceans, and metsulfuron-methyl is considered moderately toxic to aquatic organisms, both a concern for this marine location. Those active ingredients are appropriate farther inland.

Cut stump applications rather than foliar applications are preferable and using only non-powered low-pressure applications within 25 feet of water is required by law. Both of these approaches to applications are reasonable steps to reducing the potential for off-target movement.

The map and photos provided demonstrate the presence of several athletic fields adjacent to the proposed treatment areas. A new regulation in Maine prohibits the application of glyphosate and dicamba within 75 feet of school grounds. Due to the definition of “school grounds,” the company to which this variance is issued needs to verify that no school organizations regularly use those fields for school activities before proceeding with applications of prohibited active ingredients. It is beyond the scope of this review to know the status of said athletic facilities.

The Board authorizes the issuance of three-year variances for Chapter 29; therefore, this variance is valid until December 31, 2023, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

Please remember that your variance is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request.

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
THINKFIRSTSPRAYLAST.ORG

At its April 1, 2022 meeting, I will alert the board that the variance permit has been issued. If you have any questions concerning this matter, please contact me at 287-2731.

Sincerely,

A handwritten signature in cursive script that reads "Megan L. Patterson". The signature is written in black ink and is positioned above the typed name.

Megan Patterson, Director