

Summary of Comments Received Regarding Procedures and Penalties of Proper Identification of Treatment Sites

Board of Pesticides Control CMR26-01 Chapter 20

#	Name	Summary	Response
1	Deven Morrill – Regional Manager, Lucas Tree Experts Jesse O’Brien – Ornamental Horticulture Council	<ul style="list-style-type: none"> Instead of enforcement, the issue of applying pesticides to incorrect treatment sites requires education to companies to avoid future misapplications. 	<ul style="list-style-type: none"> The Board of Pesticides Control (BPC) is aware that considerable outreach is needed to educate applicators on BPC rules and BPMs in the industry. BPC currently educates applicators on rules, regulations, and enforcement activities through recertification credit courses, presentations and meetings, and through its monthly updates to applicators.
2	Mike Peaslee – Technical Director, Modern Pest Services Scott McLean – Sales & Service Coordinator, Davey Tree Expert Company	<ul style="list-style-type: none"> The proposed regulations are too harsh, severe, strict, or cause a burden on companies. 	<ul style="list-style-type: none"> BPC will consider the impact the proposed changes would have on companies and businesses.
3	Kyle Kent – Owner, North East Pest Solutions Greg England – Owner, Green Shield Pest Solutions	<ul style="list-style-type: none"> These proposed rules are a regulatory overreach by BPC that will have devastating effects on Maine. Rogue or disgruntled employees could use this as a tactic to shut down companies – by targeting the commercial master applicator license and spray contracting firm license penalties. If an applicator loses their license, then companies will fire them. Companies will not give applicators a second chance when the penalties include losing the Master Applicator’s licensure or the firm’s licensure. Disgruntled employees may take advantage of the proposed rules by violating the rule and leaving a “going- 	<ul style="list-style-type: none"> BPC has the authority to add these proposed changes under 22 M.R.S.A §1471-M. Disgruntled employees could always find ways to break rules and cause legal issues for companies. Penalties would be issued after an inspector investigation and consultation with the BPC’s Assistant Attorney General. The proposed language as written includes “may” which gives the Board discretion concerning suspensions. How companies choose to discipline

		away gift” that will be devastating to the company.	their employees is not something the Board can weigh in on.
4	<p>Scott McLean – Sales & Service Coordinator, Davey Tree Expert Company</p> <p>Gregory England – Owner, Green Shield Pest Solutions</p>	<ul style="list-style-type: none"> • These rules create a disadvantage to companies that self-report violations, increasing the incentives for companies to cover up accidents rather than admitting fault. • Companies will not self-report if it means shutting down their company. 	<ul style="list-style-type: none"> • BPC recognizes that companies could be negatively impacted when trying to self-report accidents and issues. The rule uses the language “may” which gives the Board discretion when making suspension decisions for violations of this rule. • Efforts made by companies to self-report will be weighed in any of the Board’s decisions for enforcement. After a claim is made, a Board inspector will visit the site of the incident, conduct interviews with all parties, and complete a case file that will be reviewed by staff to determine the appropriate enforcement actions.
5	<p>Mike Peaslee – Technical Director, Modern Pest Services</p>	<ul style="list-style-type: none"> • Most companies already have standard operating procedures (SOPs) that are sufficient. • Even if all procedures are followed, misapplications can still occur as accidents. • Technician should be at fault, not the company. • Companies cannot force their technicians to follow SOPs, but try to ensure that they are followed. 	<ul style="list-style-type: none"> • Companies that have SOPs wouldn’t need to establish new protocols but would need to provide their current SOPs to Board staff prior to March 1, 2024. • The purpose of the proposed rules is to reduce misapplications, whether accidental or intentional. • The BPC agrees that individual employees could be at fault. The BPC also acknowledges that companies are responsible for the technicians they

			<p>hire and proper training of BPC rules, regardless of the incident.</p> <ul style="list-style-type: none"> • Companies must require that their staff adhere to SOPs and provide the proper training to employees regarding the importance and reasoning for following SOPs.
	<p>Scott Conrad – VP Operations, Mosquito Squad</p>	<ul style="list-style-type: none"> • As outlined, the current rules do not specify if the multiple offense penalty must be made by the same applicator or if it pertains to any employee misidentifying property in the company. 	<ul style="list-style-type: none"> • The rules as proposed refer to any employee misidentifying property in the company.
	<p>Deven Morrill – Regional Manager, Lucas Tree Experts</p>	<ul style="list-style-type: none"> • Companies that do not have their own policy and are not following the Board’s policy will fail to follow these new guidelines. • These rules present more of a regulatory burden that takes too much of staff’s time. • All violations already follow statute. • Suspensions should be a max of 7 days and violations should only look back 2 years to keep with the reporting requirements. • Public education campaign for IPM was voted for by the Board and an RFP was drafted, but ultimately it was never implemented. An IPM education campaign would help reduce violations. 	<ul style="list-style-type: none"> • The Board agrees that companies will continue to violate this rule if they do not already follow BPC policies. However, the new rule makes these guidelines enforceable, which will make violations more impactful. • Staff agrees that the addition of these penalties will add require more resources to prepare and document these violations. • The Board will take the length of suspension and recordkeeping into consideration for this rule. Under statute, • The Board agrees that an IPM campaign should be a priority. However, given recent financial burdens, the BPC cannot commit to an IPM campaign until sufficient funds are found. <ul style="list-style-type: none"> ○ There has been development on regulation videos through a

			contractor tailored to applicators and homeowners that has IPM themes that will aid in the outreach effort.
Jesse O'Brien – Ornamental Horticulture Council	<ul style="list-style-type: none"> • Applicators are concerned by proposed regulations, BPC should enforce what they already have for regulations. • Reaching applicators that do not participate with the Board should be a priority. • Misapplications to treatment sites are expensive outliers in the industry. 	<ul style="list-style-type: none"> • The BPC is aware that there are some concerns about the proposed regulations and will consider all comments before making its final determination. • BPC agrees that outreach to applicators to get more of the industry engaged is essential. BPC reaches applicators through its website, presentations at meetings, and recertification credit courses. Additionally, BPC has implemented new monthly updates to all applicators, which summarize new regulations and proposed rules, IPM news, credit meeting schedules, and EPA updates. • BPC will take the frequency of these violations into account when it finalizes its rulemaking determination. These violations occur enough that the Board has collectively agreed additional enforcement actions are warranted. 	
Heather Spalding – Deputy Director, Maine Organic Farmers and Gardeners Association (MOFGA)	<ul style="list-style-type: none"> • MOFGA often works with growers that call about offsite spraying complaints and directs those calls to BPC. • A (5) is vague, and phrasing could be changed to include a waiver. • Section B is a good measure. Keeping licensure at risk will ensure compliance. 	<ul style="list-style-type: none"> • The BPC appreciates MOFGA's support in directing complaints to the Board. • The Board appreciates the feedback and will take this into consideration. 	
Kyle Kent – Owner, North East	<ul style="list-style-type: none"> • This could cause bargaining issues with the 	<ul style="list-style-type: none"> • The Board understands that licensure 	

<p>Pest Solutions</p>	<p>commercial master applicator and contractors.</p> <ul style="list-style-type: none"> • Most companies do not conduct an application if they cannot verify their treatment sites. 	<p>suspension could cause delays.</p> <ul style="list-style-type: none"> • The Board has seen violations where this is not the case. In some instances, there are similar properties adjacent to one another, an improper record of the house or meter number, no prior visits to the property, or GPS/Satellite information is not accurate or verified.
<p>Greg England – Owner, Green Shield Pest Solutions</p>	<ul style="list-style-type: none"> • Employee’s careers will be ended in an instant, which will have impacts on their families and the community. • Fewer employees entering this industry due to the harsh penalties will lead to longer lead times, higher prices, more layoffs, etc., unless the company is large enough to weather a 45-day shutdown, broken agreements, and potential legal costs. • One suggestion is to look at what other states have done, and if there is something to learn from the process in other states. • There is a better option, do not pass this proposed amendment. 	<ul style="list-style-type: none"> • BPC is aware that these rules could have effects throughout the industry and will consider economic impact. • The proposed changes as written include “may” which gives the Board discretion over penalties. The Board will consider company hardships as it moves forward with the rulemaking. • The Board is reaching out to state partners to identify if similar penalties exist. • The Board will consider public comment before making its final rulemaking determination.
<p>Gustave Nothstein – Statewide Vegetation Manager, Bureau of Maintenance & Operations, State of Maine Department of Transportation</p>	<ul style="list-style-type: none"> • Maine DOT has a set of policies that would cover the proposed rules. We have no spray zones, a list of buffer zones that go above regulations, and training programs. • We are using new techniques to create paper maps that show the voluntary no-spray zones where organic farms and landowners sign up and manage their own ROW. • We are also implementing Garmin GPS units that beep when near a zone and plan on implementing this technology next year. • Maine DOT has several questions regarding the 	<ul style="list-style-type: none"> • BPC appreciates that Maine DOT has proper SOPs in place. • BPC appreciates that Maine DOT is using new technologies and techniques to maintain their no-spray agreements. • All of these proper forms of identification can be submitted in accordance with the proposed rules which will give Maine DOT methods on file for how they identify treatment sites. • BPC has answers to DOTs questions

		<p>proposed rules:</p> <ul style="list-style-type: none"> ○ Do these rule changes to Chapter 20 have an effect on 6A applicators (Right-of-Way)? If not, please make exemptions clear. ○ If they do affect 6A licensure, how would this affect Maine Department of Transportation and its contractors? ○ Would a complaint of misapplication be a violation of the proposed rule? ○ How would the actions of malicious actors be overcome since we can cover hundreds of miles in a day with various crews? ● A person or group observes our crews go by, and does damage to an area with pesticides. Combine this with the a freedom of information request to find out what we were targeting, what chemicals we use, including rates, and the state could be shut down repeatedly. 	<p>regarding the proposed rules:</p> <ul style="list-style-type: none"> ○ As currently written, Chapter 20 does not have exemptions in place and would affect all applicators including 6A categories. ○ Maine Department of Transportation and its contractors would need to have proper identification of treatment sites methods on file and provide those methods to the Board by March 1, 2023. In the event that an improper site is treated with pesticides, the state and contractors would be subject to the penalties of Chapter 20, Section 7 (B). ○ Complaints would be investigated by inspectors to validate if there is evidence that an incorrect property was treated. ○ Investigations would look at all parties involved to determine if the application was on purpose, a mistake, or otherwise. ● BPC inspectors would investigate the incidents to determine if suspension is warranted or if there is reason to believe that the state is being targeted, as they would any investigation.
	<p>Scott McLean – Sales & Service</p>	<ul style="list-style-type: none"> ● The proposed language is detrimental to larger 	<ul style="list-style-type: none"> ● BPC understands that larger companies

<p>Coordinator, Davey Tree Expert Company</p>	<p>companies, given that more technicians give more opportunities for mistakes.</p> <ul style="list-style-type: none"> ○ We perform 8,000 pesticide applications per year, in 5 years we will complete 40,000 applications, our margin of error would need to be one hundredth of a percent to continue operating. ● Our company has a dedicated legal team, diagnostic lab, researcher, strict training programs, and approved protocols to ensure applicators are prepared. <ul style="list-style-type: none"> ○ Our company is a leader in the green industry, and often uses holistic pest management and low-risk control methods first. If our licenses are revoked, we will be unable to provide these resources to our clients. 	<p>may have more opportunities for violations given their employment size. The Board will take this into consideration moving forward.</p> <ul style="list-style-type: none"> ● We appreciate that some companies have large teams dedicated to ensuring pesticide applications are done properly. ● BPC supports IPM which utilizes mechanical, cultural, and biological tactics to tackle pest problems, which also reduce need for chemical pesticides. We appreciate when companies use these methods in their business practices. The Board also has a policy under 22 M.R.S.A. §1471-X whereby it is the policy of the state to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application.
<p>Patrick Vaillancourt – Owner, Northern Turf Management</p>	<ul style="list-style-type: none"> ● Treating the wrong address/property is not acceptable but is not common among all companies, only a select few repeat offenders. The penalty should be harsher on these companies and not all companies. ● When electronic systems are in place, such as GPS coordinates, screenshots of satellite measurements, property descriptors, etc. they are often available on electronic devices that require cell/WiFi service to be used. In the areas of Maine where cell/WiFi service is spotty, and technicians cannot access this information, it is 	<ul style="list-style-type: none"> ● BPC agrees that treating the wrong property is not acceptable. The proposed rules are designed to give harsher penalties to those that violate offenses more than once. In other portions of statute, penalties increases as violations are repeated by the same entity as outlined in 7 M.R.S.A §616-A. ● Electronic systems are a good tool for applicators to use but geographic distribution of penalties haven't shown trends in violations in areas that have

		<p>not fair to face them with stiff initial penalties for violations.</p> <ul style="list-style-type: none"> • Enforcement for these required methods does not seem feasible. Staff already have a heavy workload, and this addition will not be easy for staff to take on. There are also confidentiality concerns when it comes to verifying all applicator customer databases for positive ID methods. • There are several questions regarding the process of investigations: <ul style="list-style-type: none"> ○ What is the process for investigating alleged misapplications? ○ When does the 45-day suspension of licensure begin, after the investigation is completed or at the initial complaint? • Maine has a short turf/pest management season, and 45 days during the peak season could be devastating to both the company and the applicator who would be out of work. • These proposed regulations place a burden on large companies. • A licensure suspension penalty of 45 days is extreme for an honest or rogue mistake. • How would these new rules be reasonably enforced? 	<p>less access to cellular or WiFi access. Many applicators have used non-electronic methods prior to the availability of electronic systems with no violations. Applicators have the responsibility to confirm their records and properly identify treatment sites whether they have cellular/WiFi access or not.</p> <ul style="list-style-type: none"> • Workload for the enforcement of these methods is not expected to increase since it requires companies to provide BPC with their methods. The BPC is not looking at applicator or customer data, rather requiring that companies file their process for ensuring that proper treatment sites are identified, and BPC will be keeping that information on file, no confidential information should be included in the methods sent to the Board. • BPC has answers regarding questions: <ul style="list-style-type: none"> ○ The process for investigating alleged misapplications includes inspector interviews with all parties involved, collecting samples and potential testing of samples, BPC staff review of offenses to evaluate seriousness of those offenses, then cases or consent agreements are brought forward to the Board for review. Upon review by the
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			<p>Board, a suspension could be considered as outlined in the proposed rules.</p> <ul style="list-style-type: none">○ As outlined above, suspensions would be considered after investigations and the “may” language in the proposed rule leaves this decision up to Board enforcement discretion.● BPC is aware that this could cause additional burdens to companies and will take this into consideration. These proposed rules intend for applicators to put procedures in place to reduce mis-applications.● BPC will take the time of the suspension into consideration. The suspension language uses “may”, which gives the Board discretion for suspensions and suspension length.● Rules will be enforced as they have been, with improper identification of treatment sites added as an additional penalty during violation investigations. Prior to the proposed rule, the policy on proper identification of treatment sites was not an enforceable offense.
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Summary of Comments Received Regarding Certification and Licensing Provisions For Commercial Applicators

Board of Pesticides Control CMR26-01 Chapter 31

#	Name	Summary	Response
No public comments were received			

Summary of Comments Received Regarding Certification and Licensing Provisions For Private Applicators

Board of Pesticides Control CMR26-01 Chapter 32

#	Name	Summary	Response
1	Devin Morrill – Lucas Tree Experts	<ul style="list-style-type: none">• Maine should adopt the language that incorporates federally restricted use pesticides from the federal code.• This may be incorporated by policy, rulemaking efforts should only be used when needed for enforcement.	<ul style="list-style-type: none">• The proposed language relates to new EPA certification and training plan requirements. In Maine, this is under the Ag Basic licensure as it pertains to restricted use pesticides. If supervisors have private licensure, then non-certified applicators that meet requirements can apply restricted use pesticides as outlined in 40 CFR 171.201 (2023). Incorporating this language by reference ensures that future changes will be included in BPC's rules.• During Maine's amendments to its Certification and Training Plan, EPA indicated that policy would not be suitable for these changes as it is not enforceable, and the plan would not be accepted if requirements were not put into rule. Although this adds additional rulemaking efforts, it ensures that BPC will keep its agreement with EPA. Maine has received approval under the conditions that some additional rulemaking would need to be incorporated.

Summary of Comments Received Regarding Special Restrictions on Pesticide Use

Board of Pesticides Control CMR26-01 Chapter 41

#	Name	Summary	Response
	<p>Heather Spalding – Deputy Director, Maine Organic Farmer and Grower Association</p>	<ul style="list-style-type: none"> • MOFGA opposes the use of Genetically Modified Organisms (GMOs) and would like the term GMO used instead of Plant-incorporated protectants (PIPs). • The notification responsibilities should be on the plant-incorporated protectant grower instead of the neighbor. <ul style="list-style-type: none"> ○ Neighbors should not have to request notification from growers. • There are concerning implications for soil microorganisms when it comes to GMO plantings. 	<ul style="list-style-type: none"> • The proposed rules only address PIPs. PIPs are regulated by EPA as pesticides, and BPC has regulatory authority to regulate PIPs in Maine as BPC has been granted primacy over pesticides by EPA. • Notification requirements would not be subject to change as part of this proposed rulemaking. Notification requirements are outlined in rule (CMR01-26 Chapter 28). • BPC is unaware of negative effects of soil health with the use of PIPs.
1	<p>Pat Miller – Director, State Affairs, American Seed Trade Association (ASTA)</p>	<ul style="list-style-type: none"> • ASTA is one of the oldest trade organizations in the United States and represents all types of seed companies and technologies and represents every seed company that would be affected by this proposed rulemaking. • EPA has regulatory oversight authority over all plant incorporated protectants (PIPs), both through genetic engineering and conventional breeding. • Conventional breeding is exempt from almost all EPA pesticide requirements, 	<ul style="list-style-type: none"> • BPC appreciates that seed companies are giving comment on the proposed rulemaking. • PIPs are regulated by EPA as pesticides, and BPC has regulatory authority to regulate PIPs in Maine as BPC has been granted primacy over pesticides by EPA. • BPC agrees the proposed changes apply to PIPs that undergo EPA's registration requirements and as co-regulators, the BPC also has oversight of PIPs registered in Maine.

		<p>but PIPs are subject to several regulatory requirements including:</p> <ul style="list-style-type: none"> ○ Mandatory pre-market review and authorization ○ Post-market monitoring and resistance management compliance ○ EPA Pesticide Registration and periodic review of registration status <ul style="list-style-type: none"> ● There is no scientific justification for additional oversight of PIPs at the state level. These requirements are not justified by any risk assessment on the cost associated with implementation of these requirements, which also do not confer additional safety benefits to plants, animals, people, or the environment. ● The proposed language is too broad and will subject conventionally bred PIPs to these requirements. ● The proposed language presents legal and practical concerns and penalizes Maine farmers and consumers. 	<ul style="list-style-type: none"> ● The proposed rulemaking was initiated to modernize PIP requirements and reduce burdens that did not make sense given modern PIP technologies. ● The BPC has had regulatory oversight of PIPs since 2007. The rules that have existed since then ensure that growers are informed about PIPs and have historically had requirements for resistance management. ● The BPC did not add additional language to include conventionally bred PIPs and does not interpret the proposed language to include this group. The definition in rule remains: "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. ● The proposed change reduces the burden on farmers but does not deviate from language that has existed since the initial 2007 integration of PIP rules into this chapter.
	<p>Ben Gilman – Drummond Woodsum/Biotechnology</p>	<ul style="list-style-type: none"> ● Maine is the only state in the country with the requirements outlined in this 	<ul style="list-style-type: none"> ● Maine is proposing these changes to Chapter 41 to modernize the language to

<p>Innovation Organization (BIO) Gene Harrington – Senior Director, State and Government Affairs, Biotechnology Innovation Organization (BIO)</p>	<p>chapter for the planting of <i>Bt</i> corn. The planting of <i>Bt</i> corn has not adversely impacted public health and safety or the environment in Maine or any state.</p> <ul style="list-style-type: none"> • The Board initially implemented it's rule in 2007 and was the last in the US to do so. The rulemaking called for trainings, recordkeeping, and various stipulations regarding the planting of Bt corn. In 2011, the rule was amended to: <ul style="list-style-type: none"> ○ Extend the retaining interval to three years after determining there was not sufficient information to warrant retaining every two years ○ Changed the timing of the required training on the use of Bt corn from before a farmer purchased Bt corn seed to prior to planting the seed; and ○ Repealed the requirement that seed distributors verify training prior to selling affected products. • Under the proposed rulemaking, farmers will save time and travel costs as the trainings and certificate will be available on-line and eliminates the three year refresher course. BIO supports these changes. • BIO also supports a repeal to E. II, which requires dealers distributing plant 	<p>reflect planting practices and reduce burdens to growers.</p> <ul style="list-style-type: none"> • The Board appreciates the overview of its actions and has worked overtime to amend this language to reflect planting practices. • The Board appreciates BIOs comments and support on the proposed rulemaking. • The Board has considered minimum area required to plant and initially determined it would be wise to keep the one-acre requirement for resistance management. The Board will take these comments into consideration. • It is unclear how many small farms use PIPs, and the Board does not have evidence of requiring one acre negatively impacting farms. The Board will consider the amount of seed required at purchase.
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incorporated protectant sweet corn to sell the seed in quantities large enough to plant one acre or more.

- Refuge-in-a-bag greatly reduces potential resistance, we question the risk of impactful resistance with populations of insects in small plots that are less than one acre.
- Maine has had a resurgence in small diversified farms, which may plant less than one acre. We question whether it is sound or fair to prohibit these growers from accessing this technology and forcing them to rely only on chemical pesticides alone. We question the value, fairness, need for, and enforceability of this provision and hope the Board will see fit to strike it.

