



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

January 15, 2020

Augusta Civic Center, 76 Community Drive, Kennebec/Penobscot Room, Augusta, Maine

1:00 - 1:30 PM Board Meeting
1:30 - 2:30 PM Public Forum On Notification
2:30 - 4:00 PM Board Meeting Continued

AGENDA

1. Introductions of Board and Staff
2. Minutes of the November 8, 2019 Board Meeting

Presentation By: Megan Patterson, Director
Action Needed: Amend and/or Approve
3. Request for Financial Support from the Maine Mobile Health Program and the Eastern Maine Development Corporation

Since 1995 the Board has supported a Migrant and Seasonal Farmworker Safety Education program. The Maine Mobile Health Program (MMHP) and Eastern Maine Development Corporation (EMDC provided training to 315 migrant agricultural workers during the 2019 season). Funding to support this effort in 2020 is being requested in the amount of \$5,360, which is the same amount the Board provided in 2019. The funding has been accounted for in the Board's FY20 budget.

Presentation By: Chris Huh, Program Manager, Farmworkers Jobs Program, Eastern Maine Development Corporation

Elizabeth Charles McGough, Director of Outreach, Maine Mobile Health Program

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

4. Request for Financial Support from the Maine State Apiarist for CLEAR Training

Maine State Apiarist, Jennifer Lund, has requested funding to attend the National Certified Investigator & Inspector Basic Training held in Raleigh, North Carolina in March 2020. This course is designed to provide training in the basics of case development. Funding to support this effort in 2020 is being requested in the amount of \$2,000.

Presentation By: Jennifer Lund, State Apiarist

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

5. Request to Review Board Notification Requirements

For the November 2019 meeting of the Board, Representative Pluecker provided a letter asking the Board to convene a meeting of stakeholders to discuss strengths and potential weaknesses of the Board's current notification rules. Representative Pluecker was unable to attend the November meeting and the Board chose to table the discussion until the January 15, 2020 meeting. The Board will now continue the discussion.

Presentation By: Megan Patterson, Director

Action Needed: None, Informational Only

6. Discussion of Board Approved Products for Control of Browntail Moth within 250 feet of Marine Waters

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates the use of insecticides used to control browntail moth within 250 feet of marine waters. Section 5 limits insecticide active ingredients to those approved by the Board. At its April 19, 2019 meeting the Board received inquiries about active ingredients for removal from and addition to the list. Subsequently, the staff was directed to update the list of approved active ingredients for browntail moth control. The Board will now consider the list.

Presentation By: Pam Bryer, Pesticide Toxicologist

Action Needed: Amend or Approve the List of Products for Browntail Moth Control

7. Request for Funding to Support an Americorps Steward

Staff are requesting funding to support the employment of an Americorps Steward. The individual in this position would help with editing pesticide applicator exam study manuals and reviewing applicator exams. This presents an opportunity to incorporate IPM scenarios and philosophy into these important educational tools. The applicant may also help with the

development of outreach materials that promote IPM and the proper and prudent use of pesticides. Funding to support this temporary position is being requested in the amount of \$11,000. The employment period for this position is April 20, 2020 to October 2, 2020.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

8. Consideration of Consent Agreement with Triest Ag Group, Greenville, North Carolina

The Board's Enforcement Protocol authorizes 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 involves licensing, storage, training, and applications.

Presentation By: Raymond Connors, Manager of Compliance

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

9. Consideration of Consent Agreement with TruGreen Lawncare, Westbrook

The Board's Enforcement Protocol authorizes 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 involves unauthorized applications, application in excessive winds, failure to post turf applications, no approved method for positive identification of the application site, failure to report applications to wrong properties, and failure to provide required notification to a registry member.

Presentation By: Raymond Connors, Manager of Compliance

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

10. Correspondence

a. Email and article from Jody Spear

11. Other Items of Interest

a. LD 1888

12. Schedule of Future Meetings

February 28, 2020; April 17, 2020; June 5, 2020; and July 24, 2020 are proposed meeting dates.

Adjustments and/or Additional Dates?

13. Adjourn

NOTES

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



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COMMISSIONER

BOARD OF PESTICIDES CONTROL

**November 8, 2019
9:00 AM**

Room 101 Deering Building
32 Blossom Lane, Augusta, Maine

MINUTES

Present: Adams, Bohlen, Curtis, Jemison, Flewelling, Granger, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves
- Staff Present: Brown, Bryer, Connors, Couture, Patterson, Pietroski, Saucier, Tomlinson

2. Minutes of the September 13, 2019 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

- Staff will edit the minutes, so they are titled correctly.
 - **Waterman/Flewelling: Moved and seconded to accept minutes**
 - **In Favor: Unanimous**

2. Program Overview for Maine State Apiary Program

The State Apiarist will provide a presentation on the apiary program responsibilities and associated activities. Highlights of program efforts from the last few years include expanded Varroa mite management and education, results from the hive survival and management

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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surveys, and an overall effort to provide pesticide literacy to beekeepers and pollinator literacy to pesticide applicators.

Presentation By: Jen Lund, Maine State Apiarist

Action Needed: None, Informational Only

- Patterson introduced the Board to Jen Lund, Maine State Apiarist.
- Lund thanked the Board for inviting her to the meeting. She added that this is her third-year anniversary as State Apiarist, and she is only the second person to hold the position full time since the creation of the position in 1983.
- Lund explained to the Board that her duties include inspecting migratory honey bee colonies, entering Maine for crop pollination and honey production, for the presence of regulated diseases, parasites, and undesirable genetic material. She added that she must also issue permits for all incoming hives, of which there were just over 50,000 in 2019. Lund stated that the number has gone down some in recent years due to the low wild blueberry prices and growers not paying for pollination.
- Out of those 50,000 incoming hives Lund inspected 2,658 hives. She stated there was one problem with virus and varroa mites, but that beekeeper likely will not be returning to Maine.
- Before hives arrive in Maine there needs to be a clean bill of health from the state of origin.
- Lund told the Board she also licenses all Maine beekeepers, and this is largely done for disease prevention so she can contact anyone in the area if a diseased hive is found. She added that there are currently 1,193 resident beekeepers owning 10,058 hives. This year Lund has visited 161 of these beekeepers and inspected 1,440 of the hives. She commented that beekeeping was very popular at this time. Lund stated that out of resident beekeepers almost 97% are hobby beekeepers, meaning they have less than 30 hives.
- Lund explained that much of her time in the winter is spent doing hive autopsies. The results show that about 70% were a result of varroa mites and viruses, 25% queen loss, starvation and/or poor winter, and 5% were everything else.
- Lund also sent 15 samples to the Beltsville Bee Diagnostic Lab and one case of American Foulbrood was discovered as a result of those submissions. There is no fee for submitting samples to this lab.
- Lund explained to the Board that she is the only employee of the Maine Apiary Program and besides her official duties she spends a great deal of time educating beekeepers and the general public about both beekeeping and non-managed bee species.
- Lund explained that she sends an online survey to all licensed beekeepers each year to obtain information on how they are managing their hives throughout the year and what their losses were. During 2018-19, losses were about 45.2% and they were mostly during winter. This was up just slightly from the previous year's average of 43.4%. Lund added that most losses

occur in more remote parts of the state, and there are fewer losses in places where there is a strong bee association near them. She stated that most bee losses are due to varroa mites and viruses, but that queen loss and failure are also relevant factors.

- Lund explained to the Board that varroa mites latch onto the abdomen and undersides and feed on the bees' fat bodies by digesting them and slurping them back out. Lund stated that fat bodies are vital to insects and serve the purpose of supplying extra energy in hard times, serve as an immune system against disease, and help with detoxification. She added that one bee can have four to five mites on them at one time.
- Lund said she finds that, as with most pests and diseases, integrated pest management is a really good approach to solving problems using a diversity of methods. Monitoring how the steps taken made an impact is also very important to know if it was successful. She added that monitoring is so important that she wrote a grant with Massachusetts Department of Agricultural Resources to obtain funds to distribute mite wash jars. To use the jars a half a cup of bees (about 300 bees) is put into the jar with alcohol and shaken. The jar is then dumped into a pan where the mites can be counted. The action threshold is nine mites per half cup of bees. Lund stated they have about 1500 jars for Maine. She presented the idea at a national bee conference this year and other states will be adopting a similar plan.
- Lund told the Board that the number of beekeepers using alcohol washes has increased to about 31%. She also discussed ways in which they are trying to prevent the establishment of varroa mites in hives by using bottom boards and brood disruption. If that is unsuccessful the next step is intervention with oxalic acid, formic acid, or another product labeled for bee hives. Lund stated that using prevention and intervention together is the way to go for better hive success.
- Lund told the Board that Maine also participates in the National Honeybee Health Survey, which is a USDA-APHIS program, that involves testing hives from different parts of the state for pests and disease. Lund told the Board that our pesticide levels in wax are compared to that of other states and look pretty good.
- Lund commented that there was one investigation this year into suspected hive death by pesticides, but it was found to be caused by starvation.
- Lund explained to the Board that she conducts outreach to many groups throughout the year, including for new beekeeper classes, UMaine Cooperative Extension, workshops, beekeeper club meetings, pesticide applicator trainings, conservation groups, land trusts, schools, libraries, Rotary clubs, and at state/national/international beekeeping meetings. She added that she spoke at this year's Region 1 PIRT meeting about basic bee biology and spoke with the Aroostook Band of Micmacs about non-managed bee pollinators. Lund also participated in two BPC and Cooperative Extension organized pesticide applicator trainings this spring.
- Lund is currently working in rural communities such as Greenville, Houlton, and Millinocket to set up beekeeping cooperatives.
- Lund stated that in March 2020 she would like to attend a national certified investigator and inspector training in Raleigh so she would be able to testify in court. She added that another hope was to be able to do more honey, pollen, and wax testing for the state because it is important to know what is really going on in the hives.

- Lund concluded her presentation by letting the Board know that, for the first time since 2003, Maine will be hosting the Eastern Apicultural Society Conference in 2020 in Orono. She explained that this is a large 5-day conference and event that usually receives attendance from 700-900 beekeepers from all over.
- Patterson and the Board thanked Lund for her excellent presentation. Patterson stated that Lund has been a great partner for staff, helping to provide training to enforcement staff on hive inspections.

4. Request to Review Board Notification Requirements

Representative Pluecker has asked the Board to convene a stakeholders meeting to discuss strengths and potential weaknesses of the Board's current notification rules.

Presentation By: Megan Patterson, Director

Action Needed: None, Informational Only

- Patterson told the Board that there was a request from Representative Bill Pluecker regarding notification and that he would like to open the discussion about notification we currently do. She added that Pluecker had since requested delaying this discussion until the January meeting so that he can attend.
- Patterson noted to the Board that Lauchlin Titus had, after noting that Lund would be providing a presentation on the apiary program, submitted information on a voluntary reporting system that he was prepared to talk about if the Board pleased.
- Titus stated that the program began in the Midwest to facilitate communication from farmer to farmer.
- Titus explained that he was at a meeting in Rhode Island a couple of weeks ago and heard a talk about FieldWatch, a program used in about 20 other states, developed by Purdue, and then privatized. He added that it is free to farmers and beekeepers to list locations and free to pesticide applicators to access that information. When planning to spray, pesticide applicators can determine in real time where bees are located. Titus stated that he did not know if we had an issue here or not but that he found the program intriguing. He added that there was an annual fee to administer the program.
- Patterson responded that the initial cost is \$24,500 and then \$5,500 annually. She added that FieldWatch does not do the groundwork to ensure people are reporting correctly and accurately. Patterson added that Hive Watch also exists and is separate from Field Watch. She stated that FieldWatch has numerous distinctions for specific datasets including representation of numerous specialty crops, certified organic and non-organic crops, and registered versus non-registered hives. Patterson commented that she was unsure if this would pertain to the request that was brought forward, but may be worth considering as a part of the conversation.
- Granger asked if owners of hives coming into state ask anyone within 500 feet to notify them if they are going to make an application and is 500 feet distant enough.
- Lund responded that that would depend on several factors.

- Morrill asked if people could contact the state to find out the location of hives that are licensed.
- Lund responded that interested parties can find out hive locations as long as the hives are registered and placed in the locations for which they were registered.
- Morrill suggested delaying the conversation until the Board had a clearer idea of the request because we are not exactly sure what is being asked. He added that he commended the representative for reaching out to us with a specific question in lieu of alternate paths and that he or any other Board member would be happy to speak with him. Morrill commented that he supported Patterson's suggestion to invite Representative Plueker back to speak about his specific concerns.
- Randlett stated that the Board always has a public forum at the Annual Agricultural Trades Show, and this would be a good conversation for that venue.
- Lund had to exit the Board meeting and Morrill commented that we should continue the discussion about FieldWatch and HiveWatch because it might be beneficial to beekeepers as well.
- Lund stated she would be happy to come to another meeting to discuss that. She added she has reached out to other state counterparts and they have had positive experiences with HiveWatch. One of the major benefits experienced has been with mosquito spraying in urban areas. Lund stated she could share information from counterparts in other states as well.
- Morrill asked Patterson to please invite Lund to come to the meeting after the January 15, 2020 meeting.

5. Presentation and Review of the Board of Pesticides Control, DACF, State of Maine Certification Plan

Board staff prepared the State Plan, in response to the EPA revision of 40 CFR 171, Certification of Pesticide Applicators, as outlined in the Federal Register, Vol. 82, No. 2, dated January 4, 2017. The final rule became effective March 6, 2017. This State Plan compares Maine's regulation and policies to the comparable CFR to identify actions that the State of Maine must take to comply with federal standards. These actions include revisions in regulations. The State Plan is due to EPA by March 4, 2020.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Approve/Disapprove the State Plan for Submission to EPA

- Pietroski told the Board that the BPC has had a state plan since the mid-1970s. He added that in 2017, the EPA revised FIFRA certification and training requirements which states must incorporate into their state plans. Pietroski said Patterson and EPA Region 1 took the task very seriously and began planning the changes.
- Pietroski stated that the plan is due March 4, 2020 to the EPA and then it will be reviewed and implemented two years after that date if it is found to comply.

- Patterson commented that Pietroski did a great job pulling this together and we should not have to do any additional rulemaking.
- Morrill asked when it would be adopted.
- Patterson responded that EPA will have two years to review this but the rules the BPC adopted will go into effect in January 2020. She added that most folks in Region 1 only needed to make minor changes, but that was not the case with other states.
- Morrill asked if we had training planned for commercial applicators.
- Pietroski responded that we are beginning to send out informational emails to applicators as well as speaking about the changes at two meetings next week. A press release about the changes will also be drafted and sent out.
 - **Adams/Jemison: Moved and seconded to approve state plan for submission to EPA**
 - **In Favor: Unanimous**

6. 2019 Obsolete Pesticides Collection Overview

Each October the BPC, in concert with Department of Environmental Protection (DEP), conducts a program to collect and properly dispose of banned and unusable pesticides from homeowners, farms, and greenhouses. A summary of this year's event, including the number of citizens who participated, and amount of product collected, will be provided.

Presentation By: Amanda Couture, Certification and Licensing Specialist

Action Needed: None, Informational Only

- Couture told the Board that we had 79 people participate in this year's obsolete pesticide collection and collected a total of 7,510 pounds—a considerable increase over the 4,680 pounds collected in 2018.
- Morrill asked about offering the program to commercial applicators, maybe for cost.
- Patterson stated the tricky part would be taking the payment.
- Morrill said what about offering it one time without a fee
- Patterson responded that doing so would likely exceed the program budget.
- Morrill asked if there would be a benefit to adding more money to the budget. He added that the goal of the program was to reduce risk and remove products from the environment and he did not feel there was a downside to offering it to another segment of the community.
- Patterson stated that the understanding was if we extend the program to commercial applicators and retailers there may be less impetus to purchase product responsibly—ordering only what was needed.
- There was discussion about the benefits and downsides of offering to the public and/or commercial entities.

- Morrill stated that his feeling was if this program is a success at this level, we could expand it to the commercial level whether we charge a fee or not.

7. Progress Report on Collaborative Efforts to Reevaluate the List of Pesticide Active Ingredients Allowed for Control of Browntail Moth Near Marine Waters

At its April 19, 2019 meeting, the board received public comment regarding the pesticide active ingredients allowed, by policy, for management of BTM within 250 of marine waters. The board directed staff to reevaluate the list and determine what active ingredients, if any, should be added or removed. Staff will provide an update on their efforts in response to the Board's request.

Presentation By: Pam Bryer, Pesticide Toxicologist

Action Needed: None, Informational Only

- Bryer told the Board she was going to provide a presentation on the methodology used in the risk assessment process and present the list for review in January. She added that DACF staff had a round table with applicators at which they discussed efficacious active ingredients. Bryer said she is currently working on risk assessments for the 42 pesticides labeled for ornamental plants and gypsy moths.
- Morrill asked what this means.
- Bryer responded that since staff do not recommend pesticide products, we worked with the Maine Forest Service and commercial applicators to develop a list. She added that she is only looking at actives and there are currently 44 products that have browntail moth on their label. For the purposes of this assessment, MFS identified gypsy moth as a closely comparable pest.
- Bohlen asked Bryer to bring the list back and requested that it be organized around modes of action.
- Adams stated he thought it also made sense to kick off some of the obvious actives, like mancozeb, which is a fungicide.
- Bohlen commented that it seemed last time they discussed this there were some actives that were not efficacious, and we need to make sure those are removed from the final list.
- Bryer responded that MFS has already removed one of the actives.
- Heather Spaulding, MOFGA, commented that MFS had reported some data on the pathogenic fungus as an alternative to attack this pest.
- Patterson replied that the fungus was a universal pathogen for a lepidopteran species and MFS said they did see that have some impact, but it is also weather dependent. She added the Dr. Ellie Groden is doing some research on the effects of weather on the efficacy of the fungus. Patterson said that because of the weather dependence it is difficult to know if the fungus will continue to impact browntail moth populations in future years.
- Spaulding asked if the fungus could be bottled.

- Patterson responded that it has been reported to be difficult to grow on inoculum. Apparently, infected individual caterpillars were previously utilized to spread the fungus. So yes, you can distribute this inoculum, but it is a laborious process and there's not a good way to grow it for increased distribution. The fungus is a generalist and would also affect lepidopteran species other than browntail moth.
- The Board will review the risk assessment and the proposed list at the January meeting.

8. General Discussion on the Fumigation Practices and Fumigation Regulation in Maine

The use of fumigation, particularly soil fumigation, is increasing in some agricultural sectors in Maine. By coincidence, the Board recently adopted rules on supplemental certification for private applicators using soil and/or non-soil fumigation application methods. These new rules will become effective January 1, 2020. Staff will facilitate a discussion about these new rules and current fumigation practices in Maine.

Presentation By: Megan Patterson, Director

Action Needed: None, Informational Only

- Patterson stated she received a call from Flewelling to put this on the agenda. She reminded the Board that they had created new soil and non-soil fumigation categories with rulemaking, and private applicators who want to make these types of applications will need to have these supplemental categories to be able to do this work.
- Flewelling stated he did not remember discussing the supplemental licensing. He asked if there will be any training since these are a little different from our traditional commodities for private licensing. Flewelling also asked if an exam had been created yet.
- Patterson responded that we do have plans to provide training and will be using the commercial soil fumigation test and the national soil fumigation manual.
- Flewelling asked if he could take the test at the Potato Meeting in January.
- Adams stated that EPA training is required for those in the buffer zone and asked if one license holder having the supplemental category would meet the requirement if others were in the buffer zone.
- Patterson responded that it would, but those individuals would have to be trained as handlers and follow all label directions.

9. Government Evaluation Act Program Evaluation Report

During the first regular session of the 129th Maine legislature Board staff received a request from the chairs of the Agriculture, Conservation and Forestry Committee to submit a GEA Program Evaluation Report by November 1, 2020.

Presentation By: Megan Patterson, Director

Action Needed: None, Informational Only

- Patterson stated that the BPC had not done a Program Evaluation Report for seven years.

10. Funding an Education Campaign Around IPM and Other Pesticide Related Topics

At the April 19, 2019 meeting, the Board discussed regarding education efforts to expand public awareness of the Board and its functions and services. Advertisement and the employ of an advertising firm were determined to be an effective and efficient method of providing education. Staff would like to discuss tentative funding for this proposed campaign.

Presentation By: Megan Patterson, Director

Action Needed: Approve or Disapprove Funding for an Education Campaign

- Patterson stated that we have discussed funding an education campaign around IPM and the reason she is bringing it back this time is to ask how much money the Board wants to approve for staff to begin this process.
- Patterson told the Board that she spoke with DACF staff about the Get Real Get Maine campaign budget for revising this promotion effort. The initial budget for this project was apparently \$300,000 for a three-year contract. She added that since then they have added money to it and are up to \$470,000. Patterson said that if approved, staff will develop a request for proposals (RFP) for obtaining a contractor to develop outreach content. She stated that it may be good to have someone from the Board sitting on the RFP review panel.
- There was discussion amongst Board members about what a good amount to settle on would be.
- Waterman asked how focused the target audience would be and if it would be geared towards the general public.
- Patterson responded that in this case she thought the Board was hoping to reach out to the general public and let them know that the BPC is here as a resource for enforcement, toxicology questions, and aiding people in understanding IPM, the foundation of our program, as a decision process.
- The Board, Patterson, and Randlett discussed the time commitment that would be required of the Board member who chose to sit on the RFP review panel.
 - **Jemison/Adams: Moved and seconded to authorize Board staff to expend up to \$300,000 to pursue an education campaign.**
 - **In Favor: Unanimous**
 - **Morrill/Adams: Moved and seconded for a Board member to to be a part of the RFP review panel**
 - **In Favor: Unanimous**

11. Other Items of Interest

- a. 129th Legislature Second Regular Session, Bill Requests for Screening, DACF Only

12. Schedule of Future Meetings

January 15, 2020 is the next proposed meeting date. The January meeting will be at the Agricultural Trades show and will include a Public Listening Session.

- The Board tentatively set the following dates for meetings in 2020: January 15, February 28, April 17, June 5, and July 24.

13. Adjourn

- **Granger/Flewelling: Moved and seconded to adjourn at 11:15am**
- **In Favor: Unanimous**



Improving the health status of Maine's seasonal workers and their families by providing culturally appropriate care and services.

December 12, 2019

Megan Patterson
 Maine Board of Pesticides Control
 28 State House Station
 Augusta, ME 04333-0028

Dear Ms. Patterson,

The Maine Mobile Health Program (MMHP) and Eastern Maine Development Corporation (EMDC) would like to provide an update to and a request for support from the Maine Board of Pesticides Control of a continued collaborative effort to deliver EPA Worker Protection Standard (WPS) education to Maine's farmworkers during the 2020 harvest season.

In 2019, through support of the Maine Board of Pesticides Control, MMHP and EMDC collaborated to hire 2 bilingual, part-time staff people to deliver WPS trainings. The Pesticide Safety Trainers offered WPS education to a total of 315 farmworkers across the state during the months of June – August, especially among broccoli and blueberry workers and at a variety of diversified farms. Beyond the WPS standard, trainings provided use curricula from the Association of Farmworker Opportunity Programs (AFOP) on occupational safety. The table below breaks down, by education topic, important outcomes in 2019 completed by this staff person.

FWs trained in Worker Protection Standard	315
FWs trained in Take Home Exposure	250
Heat Stress Trainings	315

For 2020, the Association of Farmworker Opportunity Programs (AFOP) has committed \$5,555 to EMDC and MMHP in support of WPS training. EMDC and MMHP plan to use these funds to support the staff time for multilingual WPS trainings services to farmworkers across the state. We request from the Maine Board of Pesticides Control a contribution of \$5,360 which we would leverage with the funds from AFOP. The funding from the Board of Pesticides Control will be used to fund the staffing of WPS trainings; including both the hourly wage and the travel required to reach farmworkers, growers and partners. We request that the funding be made directly to MMHP.



Improving the health status of Maine's seasonal workers and their families by providing culturally appropriate care and services.

We thank the Board for its past support and for considering this current proposal. To contact us about this request or our activities, please feel free to contact Liz Charles McGough (echarles@mainemobile.org, 207-441-1633) or Chris Huh (chuh@emdc.org, 207-610-1521). We look forward to meeting with the Board to discuss this opportunity.

Best Regards,

A handwritten signature in black ink, appearing to read "Elizabeth Charles McGough".

Elizabeth Charles McGough
Director of Outreach and Deputy Director
Maine Mobile Health Program

A handwritten signature in black ink, appearing to read "Chris Huh".

Christopher Huh, MPA
Program Manager
Farmworker Jobs Program
Eastern Maine Development Corporation

From: [Lund, Jennifer](#)
To: [Patterson, Megan L](#)
Subject: CLEAR TRAINING
Date: Thursday, January 02, 2020 3:58:01 PM

I am requesting funding for up to \$2,000 to attend the National Certified Investigator & Inspector Basic Training held in Raleigh NC in March. CLEAR's NCIT Basic program provides a three-day, hands-on training and certification program in investigation and inspection techniques and procedures. Topics covered include: Professional Conduct, Principles of Administrative Law & the Regulatory Process, Investigative Process, Evidence Collection, Tagging & Storage, Interviewing Techniques, Investigator Safety, Report Writing, and Testifying in Administrative/Criminal Proceedings.

This training will help me better support BPC inspectors during suspected bee kill incidents.

Training in investigation, evidence collecting, interviewing and report writing will help me learn how to properly handle incidents so that investigations remains uncompromised in case future legal action is needed. This will ultimately help the BPC in regulating pesticide use, protecting human health, and protecting the environment

Syllabus: <https://www.clearhq.org/page-1721526>

Budget Estimate

Travel: \$450 (airfare, mileage, tolls, parking, etc.)

Meals and Lodging: \$750

Registration: \$480

Total: \$1,600 - \$2,000

Thank you for your consideration.

Jen

Jennifer Lund (she/her/hers)
State Apiarist
Maine Department of Agriculture, Conservation and Forestry
28 State House Station
Augusta, ME 04333-0028
jennifer.lund@maine.gov
Office (207)287-7562
Mobile (207)441-5822

From: [Pluecker, Bill](#)
To: [Patterson, Megan L](#)
Cc: [McBrady, Nancy](#); [Horton, Emily K](#)
Subject: BPC Agenda item
Date: Wednesday, October 30, 2019 12:28:52 PM

Megan -

I am writing to request the Board of Pesticide Control to convene a stakeholders meeting in order to discuss potential improvements to outcomes of pesticide notification registry and regulations. I had a meeting with representatives of DACF this summer to discuss the current processes around the registry, how they are functioning, and ways to review the rules and regulations around it. As this falls under the purview of the BPC, it would seem a natural vehicle for calling together stakeholders affected by the registry to discuss potential areas of improvement.

Thanks for your help in this matter -
Bill Pluecker

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Representative Bill Pluecker
1133 Finntown Rd.
Warren, ME 04864
273-3044

Please be aware that all communication with this email address is potentially subject to a FOAA request.

Notification for Outdoor Pesticide Applications

Chapter 28, *Notification Provisions for Outdoor Pesticide Applications*. These regulations establish procedures and standards for informing interested members of the public about outdoor pesticide applications in their vicinity. Everyone has the right to use pesticides, but with that right comes the responsibility to follow the pesticide application laws, including reading and following label directions, and notifying nearby neighbors who request it. Maine law assures the right to know about neighboring pesticide applications. For outdoor applications, there are two methods available to a neighbor:

1. request for notification, which applies to all types of outdoor pesticide applications, including agricultural: and
2. the notification registry, which applies only to non-agricultural applications.

Request for notification

Anyone who lives or works within 500 feet of any outdoor site treated with pesticides from the ground or within 1000 feet of any outdoor site aerially treated with pesticides, including agricultural land, is entitled to be notified of impending applications. This law exists to enable neighbors to obtain basic information from the applicator such as when and what pesticides are applied before an application occurs.

Neighbors must ask for notification. That request may be made in any fashion so long as the applicator is given a name, address, phone number and the interest in being notified. The request should be made to the person responsible for management of the land on which a pesticide application takes place. Once the applicator, land manager or land owner receives a request for notification, notification must be given before applications. The timing of this notification must be agreed to by both parties.

Notification Registry

The *Notification Registry* is a list of Maine residents who wish to be contacted by commercial applicators and their neighbors prior to the non-agricultural use of pesticides by either a commercial applicator or a neighbor. The registry best serves urban and suburban residents who want a more formal means of knowing in advance when pesticides are applied on neighboring lawns, in landscapes or around structures.

For an annual fee of \$20, residents' names, addresses and contact details and the addresses for all neighbors within 250 feet are distributed to licensed commercial

applicators. Once on the list, residents can expect applicators to provide pretreatment notification via telephone, personal contact or mail. This communication must occur between six hours and fourteen days ahead of pesticide use within 250 feet of a registrant's property. Neighbors who treat their own property are required to notify registrants as well. Pesticides used in agriculture or on rights-of-way are exempt from registry notification. The registry is updated annually. To be listed, contact the BPC.

Other forms of required notification

Posting signs

Chapter 28 requires posting for applications to:

- turf,
- ornamentals,
- outdoor areas around structures,
- outdoor areas for control of biting flies, mosquitoes and ticks
- some vegetation management under Category 6B

Notification signs should be located to inform people at points of ingress and egress, in common areas, and places obvious to abutters. The posting must be made before spraying starts, and must remain at least two days after spraying ends. The notification signs must alert people to the fact that pesticide spraying has occurred or is about to occur. The sign must be sturdy, weather resistant, and able to last at least forty-eight hours in outdoor conditions. It must be at least five inches wide and four inches high, light-colored with dark, bold letters. The word **CAUTION** must be written in seventy-two-point type and the words **PESTICIDE APPLICATION** must be written in thirty-point type or larger. The sign must bear the BPC's designated symbol ("keep children/pets-off-the-grass" logo) as well as the name and phone number of the company making the pesticide application. The bottom of the sign, when in place, must be at least one foot above the surface of the turf. The sign must also include the date and time of pesticide application, the phone number of the applicator, date and time to remove the sign (forty-eight hours after application), and any reentry precautions as listed on the label. If no reentry precautions are on the label the sign must say, "Keep Off Until Dry" or "Keep Off Until Watered In" or some other appropriate warning.

Applications for vegetation management to sidewalks and trails (Category 6B) require notice per Board policy. This policy is intended to be easily amended and therefore should be consulted regularly. Accepted notice may include signs where practical, notices on kiosks, web alerts or other forms of communication the Board

finds effective.

Notice of aerial pesticide applications

Chapter 51, Notice of Aerial Pesticide Applications includes special notification requirements when making aerial applications to control forest, ornamental, right-of-way, biting fly and public health pests.

For applications to forest or right-of-way sites, the applicator or landowner must provide notice through newspaper articles/advertisements and provide details about the planned spray activity to the BPC and the Maine Poison Center. In some situations, notice to landowners within five-hundred feet of the target site must be given. Application areas must be posted before treatment begins, with signs remaining in place forty-eight hours after treatment ceases.

For applications to control ornamental, biting fly or public health pests the applicator or landowner must provide notice through newspaper articles/advertisements, notify all landowners within 500 feet of the target site and provide details about the planned application activity to the BPC and Maine Poison Center. The notice requirements are waived under certain public health emergency situations.

Notification for Indoor Pesticide Applications

Chapter 26, Standards for Indoor Pesticide Applications and Notification. Chapter 26 applies to indoor application of pesticides to licensed childcare facilities and nursery schools; governmental, commercial, and institutional buildings; condominiums; and rented residential buildings. Below is a general overview of the requirements.

- Application of pesticides with a higher potential for human exposure is discouraged.
- Applicators treating inside buildings must employ appropriate elements of Integrated Pest Management (IPM) to control pests and utilize measures that minimize exposure and risks to occupants.
- Application may not be made to a residence if the tenant objects, unless a public health or code enforcement official has determined a need for immediate pest management.
- Board-approved written notice (see below) is required prior to liquid or aerosol pesticide applications (except for crack and crevice applications). This notice must be posted at agencies, businesses, and institutions.

- Residents of rented residential buildings and parents or guardians of children in licensed child care facilities and nursery schools must be given the written notice (see below) individually.

Notice of Pesticide Application	
Pesticides May Be Applied in this Building as Part of an Integrated Pest Management Program on (date) _____	
To request information about the use of pesticides in this building contact:	
Company: _____	
Phone/E-mail: _____	
<i>This sign must remain posted for at least 48 hours after the application is completed.</i>	
Date Posted or Provided: _____ Person Providing Notice: _____ Date/Time Completed: _____ Remove sign on: _____	For general information on pesticides and regulations contact: Maine Board of Pesticides Control 287-2731, or visit www.thinkfirstspraylast.org
	

Notification for Applications at Schools and on School Grounds

Chapter 27, Standards for Pesticide Application and Public Notification in Schools. Chapter 27 applies to indoor applications to school buildings and outdoor applications on school grounds. It establishes requirements for School IPM Coordinators whose responsibilities consist of, in part, authorization of pesticide applications and ensuring compliance with notification regulations. Below is a general overview of the requirements:

- The school's policy manual or handbook must include:
 - notice of the school's IPM policy and its availability for review,
 - notice that pesticides may periodically be applied in school buildings and on school grounds and that application notification will occur according to requirements in CMR 01-026 Chapter 27,
 - contact information for the school's IPM Coordinator,
 - notice of the availability for review of the school's Pest Management Activity Log, which includes pesticide application information.

- When school is in session and pesticide applications of non-exempted pesticide products are performed inside a school building or on school grounds, the school must:
 - Provide notice, at least five days prior to the planned application, to all school staff, parents/guardians and students and the notice must consist of:
 - (a) the trade name and EPA Registration number of the pesticide to be applied
 - (b) the approximate date and time of the application
 - (c) the location of the application
 - (d) the reasons for the application
 - (e) the name and phone number of the person to whom further inquiry regarding the application may be made
 - Post the application at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least 48 hours following the application.
- When school is not in session and pesticide applications of non-exempted pesticide products are performed inside a school building or on school grounds, the school must:
 - Post the application at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least 48 hours following the application.

Outdoor Posting

Outdoor notification signs should be located at each point of access to the treated area and in a common area of the school. The posting must be made at least two days before spraying starts, and must remain at least two days after spraying ends. The notification signs must alert people to the fact that pesticide spraying has occurred or is about to occur. The sign must be sturdy, weather resistant, and able to last at least ninety-six hours in outdoor conditions. It must be at least five inches wide and four inches high, light-colored with dark, bold letters. The word **CAUTION** must be written in seventy-two-point type and the words **PESTICIDE APPLICATION** must be written in thirty-point type or larger. The sign must bear the BPC's designated symbol ("keep children/pets-off-the-grass" logo) as well as the name and phone number to whom further inquiry regarding the application be made. The bottom of the sign, when in place, must be at least one foot above the

surface of the turf. The sign must also include the date and time of pesticide application, the phone number of the company/applicator, date and time to remove the sign (forty-eight hours after application), and any reentry precautions as listed on the label. If no re-entry precautions are on the label the sign must say, “Keep Off Until Dry” or “Keep Off Until Watered In” or some other appropriate warning.

Indoor Posting

Indoor notification signs should be located at each point of access to the treated area and in a common area of the school. The posting must be made at least two days before spraying starts and must remain at least two days after spraying ends. The notification signs must alert people to the fact that pesticide spraying has occurred or is about to occur. It must be at least 8.5 inches wide and eleven inches high, light-colored with dark, bold letters. The word **CAUTION** must be written in seventy-two-point type and the words **PESTICIDE APPLICATION** must be written in thirty-point type or larger. The sign must bear the name and phone number to whom further inquiry regarding the application be made. The sign must also include the date and time of pesticide application, the phone number of the company/applicator, any reentry precautions as listed on the label, the trade name and EPA Registration number(s) of the pesticide(s) to be applied, the location of the application, the reason(s) for the application. If no re-entry precautions are on the label the sign must say, “Keep Off Until Dry” or some other appropriate warning.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 26: STANDARDS FOR INDOOR PESTICIDE APPLICATIONS AND NOTIFICATION FOR ALL OCCUPIED BUILDINGS EXCEPT K - 12 SCHOOLS**

SUMMARY: These regulations establish procedures and standards for applicators applying pesticides inside occupied private and public buildings other than K - 12 schools that are covered by Chapter 27. This chapter also sets forth the requirements for notification about pending pesticide applications to residents of rented space, employees of agencies, businesses and institutions, and parents or guardians of children in licensed child care facilities and nursery schools.

Section 1. Definitions

- A. **Applicator.** For the purposes of this regulation, Applicator means a commercial applicator or other persons who apply pesticides to occupied buildings.
- B. **Client.** For the purposes of this regulation, Client is the person who either owns or manages the Occupied Building and who contracts with a commercial applicator to monitor and/or control pests.
- C. **Crack and Crevice Treatment.** For the purposes of this regulation, Crack and Crevice Treatment means using an injector tip and placing the tip inside an opening to apply small amounts of pesticides into cracks and crevices in which pests hide or through which they may enter a building. Such openings commonly occur at expansion joints, between elements of construction, and between equipment and floors. These openings may lead to voids such as hollow walls, equipment legs and bases, conduits, motor housings, and junction or switch boxes. This does not include spraying a band covering the baseboards or mopboards or spraying above the baseboards or mopboards.
- D. **Integrated Pest Management.** For the purposes of this regulation, Integrated Pest Management (IPM) is a process that utilizes regular monitoring to determine if and when a treatment is needed. It employs physical, mechanical, cultural, chemical, biological and educational programs to keep pest populations low enough to prevent intolerable damage or annoyance. Pesticides should be only one of many options considered for solving a pest problem, and when required, target-specific, low impact pesticides and application techniques should be employed. Furthermore, pesticide applications are not made according to a pre-determined schedule but are only made when and where monitoring, or a previous history of pest incidence has indicated that the pest will cause unacceptable economic, medical or aesthetic damage. The IPM program must as a result be environmentally, socially, and economically compatible to meet current public expectations.
- E. **Occupied Building.** For the purposes of this regulation, Occupied Building means any public, private, commercial or institutional structure used or occupied by persons on a regular, long-term basis as a residence or for occupations. These include but are not

limited to rented residential buildings, condominiums, licensed childcare facilities and nursery schools, and governmental, commercial and institutional buildings.

Section 2. Exemptions

- A. The following pesticide uses are exempt from the requirements of this Chapter:
1. application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of any person;
 2. application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures;
 3. application of paints, stains or wood preservatives that are classified as general use pesticides;
 4. application of pesticides by a resident to his or her own residential unit;
 5. commercial application of pesticides where the resident has contracted for application to his or her own personal residential unit; and
 6. indoor applications of pesticides injected into closed systems for control of nuisance microbial organisms.
- B. The use of baits, gels, pastes, dusts and granular materials placed in areas not readily accessible to residents, employees or children is exempt from the requirements of Sections 3(A), 3(B) and 3(C) of this Chapter.
- C. The use of crack and crevice treatments placed in areas not readily accessible to residents, employees or children and done in a manner that minimizes exposure to vapors and/or aerosolized materials is exempt from the requirements in Sections 3(A), 3(B) and 3(C) of this Chapter.

Section 3. Notification

A. Notice to Residents

1. At least 24 hours and no more than seven days in advance of a pesticide application not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice (see Appendix A) to the resident or residents of an apartment unit, condominium unit or other rented residential unit to be treated, where the residents of that unit did not request the impending pesticide application. The notice may be mailed or provided directly to the residents and shall explain that pesticides may be used in their residential unit and that they have the right to ask for and receive more specific information described

in Section 3(D) of this regulation. If the resident asks for further information specified in Section 3(D), the applicator must provide it.

2. If an application not exempted by Section 2 will be made to common areas of these rental residential buildings, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) at least 24 hours in advance and no more than seven days in advance of the planned application informing the residents of that building that pesticides will be used in the common areas and that they have the right to ask for and receive more specific information as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application.
3. The applicator may fulfill the requirements of subsections 3(A)(1) and 3(A)(2) by providing the Board approved notice and instructing the landlord or building manager to distribute the notice to the residents as described in subsection 3(A)(1) or to post the notice as described in subsection 3(A)(2) as appropriate. The applicator must confirm with the landlord or building manager that the requirements of subsections 3(A)(1) and 3(A)(2) have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

B. Notice to Employees of Agencies, Businesses and Institutions

At least 24 hours and no more than seven days in advance of a pesticide application in a building housing an agency, business or institution that is not exempted under Section 2, the applicator must post or cause to be posted a Board approved written notice (see Appendix A) in a conspicuous place or places where notices to employees are customarily posted. The notice must inform employees of the planned application and about their right to ask for and receive more specific information, as described in Section 3(D). The Board approved written notice must remain posted for at least 48 hours following the application. If an employee asks for further information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(B) by providing the Board approved notice and instructing the building manager, the person requesting the application or another responsible individual to post the notice as described in this subsection. The applicator must confirm with the building manager, the person requesting the application or another responsible individual that the requirements of this section have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

C. Notice to Parents and Guardians of Children in Licensed Childcare Facilities or Nursery Schools

At least 24 hours and no more than seven days in advance of a pesticide application in a licensed child care facility or nursery school that is not exempted by Section 2, the applicator must provide or cause to be provided a Board approved written notice of the planned application (see Appendix A) to parents or guardians of currently enrolled children. The notice must inform parents or guardians that pesticides will be used in the building and that they have the right to ask for and receive more specific information, as

described in Section 3D. If a parent or guardian asks for information specified in Section 3(D), the applicator must provide it. The applicator may fulfill the requirements of subsection 3(C) by providing the Board approved notice and instructing the manager of the daycare or nursery or another responsible individual to distribute the notice to parents or guardians as described in this subsection. The applicator must confirm with the manager or responsible individual of the daycare or nursery that the requirements of this subsection have been met before making any application not exempt under Section 2 of this Chapter. The person who carries out the notification and confirms that the requirements have been fulfilled is responsible for that notification.

- D. If residents, employees, parents or guardians ask for information about a pesticide application, the applicator shall provide the information requested, including as applicable: (a) the trade name and EPA Registration number of the pesticide(s) intended to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the re-entry interval listed on the product label; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. If requested, the applicator shall also provide a copy of the pesticide product label and Material Safety Data Sheet, and shall make reasonable efforts to fulfill any other requests for pesticide information. However, such requests for additional information will not delay nor prohibit the applicator from performing the pesticide application as scheduled.

Section 4. Integrated Pest Management Techniques

- A. Applicators must undertake pest management activities using appropriate elements of integrated pest management. In all cases, any application shall be conducted in a manner to minimize exposure and human risk to the maximum extent practicable using currently available technology.
- B. Applicators must identify conditions conducive to the development of pest problems. Commercial applicators must provide to the client a written evaluation of pest conducive conditions and must provide specific recommendations for practical non-pesticide control measures.
- C. Prior to any pesticide application, applicators must identify the pest specifically and evaluate the infestation severity and any associated damage except as provided in Section 4(C)(1) and (2) below.
1. Where there is a history of pest infestation and conditions are conducive to pest infestations, baits, gels, pastes or granular materials placed in areas not readily accessible to residents, employees, patients, or children and crack and crevice treatments designed to control commonly occurring pests in these areas may be used without specific evidence that a significant population is currently present.
 2. For specific public health pests designated by Board policy, baits, gels, pastes, granular materials or crack and crevice treatments placed in areas not readily accessible to residents, employees or customers may be used without specific evidence of an infestation.

Section 5. Risk Minimization

- A. Prior to pesticide application, applicators must take into account the toxicity of recommended product(s) and choose low risk product(s) based on efficacy, volatility, the potential for exposure, the signal word on the pesticide label, the material safety data sheet and any label language imposing a ventilation requirement.
- B. Unless prohibited by the label, only baits, gels, pastes or granular materials and crack and crevice treatments may be used when residents, patients, children, customers and unconsenting employees are in the same room.
- C. Prior to making an application, applicators must also consider the following:
 - 1. The principal uses for the room to be treated including if it is primarily occupied by sensitive individuals such as children, older adults or persons with chronic illnesses.
 - 2. The type of treatment being made and the likelihood that people or pets will come into contact with the treated area following the application.
 - 3. The volatility of the product being applied and the practical need to ventilate the treated room(s) prior to re-entry. In all cases, label statements relative to ventilation or re-entry shall be minimum requirements.
 - 4. The type of ventilation system, if present, including whether it serves only the treated room(s) or the entire building, and whether it can and should be shut off while the treatment is performed.

Section 6. Tenant's Consent

Except in cases where a public health or code enforcement official with jurisdiction has determined a need for immediate pest management, application to a tenant's residential unit is prohibited if the tenant is opposed to such treatment. A pesticide application may not be made until such time as alternative control measures have been tried and documented as to their failure to control a pest problem, which poses health risks, threatens significant property damage or threatens to infest other parts of the building.

Section 7. Other Requirements

These regulations do not affect pesticide label instructions, which may be more restrictive in certain cases. Under federal and state law, wherever particular label instructions impose standards that are more restrictive than these regulations, such label instructions must be followed. Similarly, these regulations do not affect more restrictive regulations or guidelines applicable to particular types of pesticide applications.

Section 8. Transition

This regulation will become effective on January 1, 2007.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

January 1, 2007 – filing 2006-204

AMENDED:

May 1, 2008 – filing 2008-153 (Final Adoption, major substantive)

CORRECTIONS:

February, 2014 – agency names, formatting

Notice of Pesticide Application

Pesticides May Be Applied in this Building as Part of an Integrated Pest Management Program on (date) _____

To request information about the use of pesticides in this building contact:

Company: _____

Phone/E-mail: _____

This sign must remain posted for at least 48 hours after the application is completed.

Date Posted or Provided: _____

Person Providing Notice: _____

Date/Time Completed: _____

Remove sign on: _____

For general information on pesticides and regulations contact:

Maine Board of Pesticides Control

287-2731, or visit

www.thinkfirstspraylast.org



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 27: STANDARDS FOR PESTICIDE APPLICATIONS AND PUBLIC NOTIFICATION IN SCHOOLS**

SUMMARY: This rule establishes procedures and standards for applying pesticides in school buildings and on school grounds. This rule also sets forth the requirements for notifying school staff, students, visitors, parents and guardians about pending pesticide applications.

Section 1. Definitions

- A. **Integrated Pest Management.** For the purposes of this rule, Integrated Pest Management (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:
- (1) understanding the system in which the pest exists,
 - (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control,
 - (3) monitoring pests and natural enemies,
 - (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and
 - (5) systematically evaluating the pest management approaches utilized.
- B. **School.** For the purposes of this rule, School means any public, private or tribally funded:
- (1) elementary school,
 - (2) secondary school,
 - (3) kindergarten or
 - (4) nursery school that is part of an elementary or secondary school.
- C. **School Building.** For the purposes of this rule, School Building means any structure used or occupied by students or staff of any school.

- D. **School Grounds.** For the purposes of this rule, School Grounds means:
- (1) land associated with a school building including playgrounds, athletic fields and agricultural fields used by students or staff of a school, and
 - (2) any other outdoor area used by students or staff including property owned by a municipality or a private entity that is regularly utilized for school activities by students and staff. School grounds do not include land utilized primarily for non-school activities, such as golf courses and museums.
- E. **Integrated Pest Management Coordinator.** An employee of the school system or school who is knowledgeable about integrated pest management and is designated by each school to implement the school pest management policy.
- F. **School Session.** For the purposes of this rule, school is considered to be in session during the school year including weekends. School is not considered to be in session during any vacation of at least one week.

Section 2. Requirements for All Schools

- A. All public and private schools in the State of Maine shall adopt and implement a written policy for the application of Integrated Pest Management techniques in school buildings and on school grounds.
- B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:
- (1) complete Board-approved IPM Coordinator overview training within one month of his/her first appointment as an IPM Coordinator and obtain Board documentation thereof;
 - (2) complete Board-approved IPM Coordinator comprehensive training within one year of his/her first appointment as an IPM Coordinator and obtain Board documentation thereof;
 - (3) obtain at least one hour of Board-approved continuing education annually;
 - (4) maintain and make available to parents, guardians and staff upon request:
 - a. the school's IPM Policy,
 - b. a copy of this rule (CMR 01-026 Chapter 27),
 - c. a "Pest Management Activity Log," which must be kept current. Pest management information must be kept for a minimum of two years from date of entry, and must include:

- i. the specific name of the pest and the IPM steps taken, as described under Section 5C of this rule; and
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.
- (5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and
- (6) ensure that any applicable notification provisions required under this rule are implemented as specified.
- C. By September 1, every school shall inform the Board of the identity and the contact information for the IPM Coordinator. This requirement can be fulfilled through a Board approved reporting system.

Section 3. Exemptions

- A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:
 - (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,
 - (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
 - (3) application of paints, stains or wood preservatives that are classified as general use pesticides.
- B. The following pesticide uses are exempt from the requirements of Section 4 of this rule:
 - (1) pesticides injected into cracks, crevices or wall voids,
 - (2) bait blocks, gels, pastes, granular and pelletized materials placed in areas inaccessible to students,
 - (3) indoor application of a pesticide with no re-entry or restricted entry interval specified on its label but entry to the treated area is restricted for at least 24 hours.

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).
- D. School education facilities utilized for agricultural or horticultural education, and not normally used by the general school population, such as, but not limited to, greenhouses, nursery plots or agricultural fields, are exempt from the application limitations contained in Section 5E and notification provisions contained in Section 4B(1) provided that parents, staff and students are informed about the potential for pesticide applications in such areas. The posting requirements contained in Section 4B(2) must be complied with. In addition, students entering treated areas must be trained as agricultural workers, as defined by the federal Worker Protection Standard.

Section 4. Notification

- A. A notice shall be included in the school's policy manual or handbook describing the school's IPM program including that a school integrated pest management policy exists and where it may be reviewed, that pesticides may periodically be applied in school buildings and on school grounds and that applications will be noticed in accordance with Section 4B hereof. This notice shall describe how to contact the IPM Coordinator and shall also state that the school's IPM Policy, a copy of the *Standards for Pesticide Applications and Public Notification in Schools* rule (CMR 01-026 Chapter 27), and the Pest Management Activity Log, are available for review.
- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
 - (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.
 - (2) In addition to the notice provisions above, whenever pesticide applications not exempted by Section 3 are performed in a school building or on school grounds, a sign shall be posted at each point of access to the treated area and in a common area of the school at least two working days prior to the application and for at least forty-eight hours following the application. Posting of the notification signs as required by this rule satisfies the posting requirements of Chapter 28 of the Board's rules (CMR 01-026 Chapter 28).

- a. The signs shall:
 - i. be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue, red or green).
 - ii. bear the word CAUTION in 72 point type,
 - iii. bear the words PESTICIDE APPLICATION NOTICE in 30 point type or larger,
 - iv. state any reentry precautions from the pesticide labeling in at least 12 point type,
 - v. state the approximate date and time of the application in at least 12 point type, and
 - vi. state the name of the company or licensed applicator making the pesticide application and a contact telephone number in at least 12 point type,
- b. The signs for indoor applications must:
 - i. be at least 8.5 inches wide by 11 inches tall,
 - ii. state the trade name and EPA Registration number(s) of the pesticide(s) to be applied in at least 12 point type,
 - iii. state the location of the application in at least 12 point type, and
 - iv. state the reason(s) for the application in at least 12 point type.
- c. The signs for outdoor applications must:
 - i. be at least 5 inches wide by 4 inches tall,
 - ii. be made of rigid, weather-resistant material that will last at least ninety-six (96) hours when placed outdoors,
 - iii. bear the Board designated symbol (see appendix A), and
 - iv. state a date and/or time to remove the sign.

Section 5. Integrated Pest Management Techniques

- A. All pest management activities shall be undertaken with the recognition that 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. In all cases, applications should be conducted in a manner to minimize human risk to the maximum extent practicable using currently available technology.

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- B. All pest management activities should be conducted using appropriate elements of integrated pest management as described in the latest Cooperative Extension or Department of Agriculture training manuals for pest management in and/or on school property. Pest management activities should also be conducted in accordance with the Best Management Practices for Athletic Fields & School Grounds, or other applicable Best Management Practices approved by the Board.
- C. Prior to any pesticide application the following steps must be taken and recorded:
- (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.
- D. When a pesticide application is deemed necessary, the applicator must comply with all the requirements of CMR 01-026 Chapter 31–Certification and Licensing Provisions/Commercial Applicator. The applicator must also take into account the toxicity of recommended products and choose lowest risk products based on efficacy, the potential for exposure, the signal word on the pesticide label, the material safety data sheet, other toxicology data and any other label language indicating special problems such as toxicity to wildlife or likelihood of contaminating surface or ground water.
- E. Indoor pesticide use must be limited to placement of baits and wall void or crack and crevice and pool and spa disinfectant treatments unless the pest threatens the health and safety of persons in the buildings as determined by the school's integrated pest management coordinator.
- F. Pesticide applications must not be conducted when people are in the same room to be treated except that applicators may set out bait blocks, pastes or gels when only informed staff members are present. When space, spot, surface or fumigation applications are conducted the ventilation and air conditioning systems in the area must be shut off or the entire building must be evacuated. Applications should be planned to occur on weekends or vacations to allow maximum time for sprays to dry and vapors to dissipate.
- G. Outdoor applications should be scheduled so as to allow the maximum time for sprays to dry and vapors to dissipate and shall not occur when unprotected persons are in the target area or in such proximity as to likely result in unconsenting exposure to pesticides. Applications must also be conducted in accordance with all other applicable Board rules designed for minimizing pesticide drift and posting of treated sites. Spot treatments should be considered in lieu of broadcast applications.

Section 6. Requirements for Commercial Pesticide Applicators Making Applications in School Buildings or on School Grounds

- A. Prior to conducting a pesticide application not exempted in Section 3 in a school building or on school grounds, commercial pesticide applicators shall obtain written authorization from the IPM Coordinator. Authorization must be specific to each application and given no more than 10 days prior to the planned application.
 - B. Commercial pesticide applicators shall, within one business day of each pesticide application, provide the IPM Coordinator with a written record of the application including the date, time, location, trade name of the product applied, EPA Registration number and the name of the licensed applicator. If the product has no EPA Registration number then the applicator will provide a copy of the label.
 - C. Commercial pesticide applicators shall inform the IPM Coordinator about any pest monitoring activity and results. If it is acceptable to the IPM Coordinator, this may be achieved by recording them in the Pest Management Activity Log.
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STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X

EFFECTIVE DATE:

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AMENDED:

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March 4, 2007 – Section 3(C), filing 2007-67

August 29, 2013 – filing 2013-188 (Final adoption, major substantive)

Appendix A

Board Designated Symbol for Posting Outdoor Pesticide Applications to School Grounds



01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**026 BOARD OF PESTICIDES CONTROL****Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS**

SUMMARY: These regulations establish procedures and standards for informing interested members of the public about outdoor pesticide applications in their vicinity. This chapter sets forth the requirements for requesting notification about pesticide applications, for posting property on which certain commercial pesticide applications have occurred and also establishes the *Maine Pesticide Notification Registry* structure and fees.

Section 1. Requesting Notification About Outdoor Pesticide Applications

The purpose of the following notification requirement is to enable individuals an opportunity to obtain information regarding outdoor pesticide application activities in their vicinity.

A. Requests for Notification; How Made

The owner, lessee or other legal occupant of a sensitive area may make a request to be notified about any outdoor pesticide application(s) which may occur within 500 feet of that sensitive area and any aerial application(s) which may occur within 1,000 feet of the sensitive area.

1. The request may be made in any fashion, so long as it is effective in informing the person receiving the request of the name, address, telephone number, and interest in receiving notification of the person making the request.
2. The request for notification should be made to the person responsible for management of the land on which the pesticide application will take place. If the person making the request for notification is uncertain as to the identity of the person to whom the request should be made, he/she may make the request for notification to the person who owns the land involved, as such ownership is ascertainable from the tax records of the municipality. That landowner shall then be responsible for assuring compliance with provisions of this section.

B. Procedure of Notification

Once a request for notification has been made as provided in Section 1(A), the person receiving the request shall cause notification to be given as follows:

1. General notification of intent to apply pesticides out-of-doors shall be given to the person making the request for notification. Such general notification may be given in any fashion, provided that it is effective in informing the person receiving the notice of the following:

- a. the approximate date(s) when pesticide(s) may be applied;
- b. the pesticide(s) which may be applied;
- c. in general terms, the manner of application; and
- d. the name, address and telephone number of a person responsible for the pesticide application from whom additional information may be obtained.
- e. If requested, the person responsible for managing the land shall make reasonable efforts to supply a copy of the MSDS(s) and/or the pesticide label(s). However such requests for additional information will not delay nor prohibit the intended pesticide application.

Where feasible, such general notification shall be given within one week after the request for notification is received and at least one day before any pesticide application is to occur. Such notification may cover outdoor pesticide applications which are planned over a period of up to one growing season.

2. If, following receipt of the general notification as provided by Section 1(B)(1) above, the person seeking notification believes there is a need for additional or updated information regarding impending pesticide application activities, he/she may make a further request for additional information from the person identified in the general notification. This request for additional information must specify the type of information needed, including, for example, more specific information regarding the date or dates on which pesticides will be applied when known. The person responsible for the notification shall make reasonable efforts to comply with such request for additional information.
3. If any person is dissatisfied with the efforts made by any other person at complying with these notification provisions, a complaint may be filed with the Board. The Board shall then make efforts to attempt to reach a reasonable and fair resolution between the parties.

Section 2. *Maine Pesticide Notification Registry for Non-Agricultural Pesticide Applications*

The Board shall maintain a list of individuals who must be notified of outdoor, non-agricultural pesticide applications in their vicinity. This list shall be referred to as the *Maine Pesticide Notification Registry*.

A. *Individuals to be Included on the Registry*

1. Individuals requesting to be listed on the *Maine Pesticide Notification Registry* shall pay all appropriate fees and provide the following information on forms supplied by the Board:

- a. Name;
 - b. Mailing address;
 - c. Listed registry residence, including street or road address and city;
 - d. Daytime and evening telephone number(s), one of which is designated as the primary contact number; and
 - e. The names and addresses of all landowners or lessees within 250 feet of the boundary of the listed registry residence.
2. Individuals may register more than one residence by completing additional forms and paying all appropriate fees.
 3. The effective period of the registry will be from March 1 to February 28 of the following year. Individuals must submit their request for inclusion on the next effective registry by December 31. All submissions received after that date will be included on the following registry. Individuals may notify the Board at any time of changes in their listed registry residence, however, changes will not take effect until the following registry. An individual will not be considered officially included on the *Maine Pesticide Notification Registry* unless their name appears on the current effective registry.
 4. The Board shall mail renewal notices to individuals listed on the *Maine Pesticide Notification Registry* on or before November 1 of each year. An individual must re-apply and pay all appropriate fees annually to remain on the registry for the next twelve month period.

B. Alerting Neighbors to the Presence of an Individual on the Registry

1. All individuals on the *Maine Pesticide Notification Registry* shall annually provide a letter to all landowners and lessees within 250 feet of their property boundary from whom they want to receive notification.
2. This letter, approved and supplied by the Board, must inform neighbors of the existence of the *Maine Pesticide Notification Registry*, the individual's request to be notified in the event of an outdoor pesticide application, the distance from the property boundary which shall cause notification to be given for non-agricultural pesticide applications, and the notification requirements of this chapter.
3. The individual on the registry requesting notification bears the burden of proof for demonstrating that this provision has been met.
4. Failure to distribute the letter will not prohibit an individual from being added to or remaining on the registry.

C. Registry Provided to Commercial Applicators

The *Maine Pesticide Notification Registry* shall be printed and distributed annually to affected licensed Commercial Master Applicators on or before its effective date of March 1. Newly licensed Commercial Master Applicators will be provided a copy of the current effective registry upon licensing.

D. Notification to Individuals on the *Maine Pesticide Notification Registry*

1. Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet of the property boundary of the listed registry residence.
2. A person who receives a letter in accordance with Section 2(B) and who performs any outdoor, non-agricultural pesticide application within 250 feet to the property boundary of the listed registry residence shall notify the individual from whom the letter was given or sent.
3. Notification must consist of providing the following information to the individual on the registry:
 - a. The location of the outdoor pesticide application;
 - b. The date and approximate start time of the pesticide application (within a 24 hour time period) and, in the event of inclement weather, an alternative date or dates on which the application may occur;
 - c. The brand name and EPA registration number of the pesticide product(s) which will be used; and
 - d. The name and telephone number of the person or company making the pesticide application.
4. An individual on the registry who receives notification may request a copy of the pesticide product label or Material Safety Data Sheet. The person or company performing the pesticide application shall make reasonable efforts to comply with such request for additional information. However, such requests for additional information will not delay nor prohibit the person or company from performing the pesticide application as scheduled.
5. Notification must be received between 6 hours and 14 days prior to the pesticide application.
6. Notification must be made by telephone, personal contact or mail.
 - a. In cases where personal contact with the individual listed on the registry is not achieved, notification requirements are met via telephone if:

- i. the information is placed on a telephone answering device activated by calling the individual's primary contact telephone number; or
 - ii. the information is given to a member of the household or workplace contacted by dialing the primary contact telephone number.
 - b. If notification cannot be made after at least two telephone contact attempts and personal contact is not feasible, notification may be made by securely affixing the notification information in written form on the principal entry of the listed registry location.
7. The person or company performing the pesticide application bears the burden of proof for demonstrating that they have complied with this section.

E. Exceptions

1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
2. The following types of pesticide applications do not require notification under this section:
 - a. The application of pesticides indoors;
 - b. Agricultural pesticide applications;
 - c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing category 6A (rights-of-way vegetation management);
 - d. The outdoor commercial application of pesticides in certification and licensing category 7A (structural general pest control) within five (5) feet of a human dwelling, office building, institution such as a school or hospital, store, restaurant or other occupied industrial, commercial or residential structure which is the intended target site;
 - e. The application of general use pesticides by hand or with non-powered equipment to control stinging insects;
 - f. The placement of pesticidal baits;
 - g. The injection of pesticides into trees or utility poles;
 - h. The placement of pesticide-impregnated devices on animals, such as ear tags and flea collars;

- i. The application of pesticidal pet supplies, such as shampoos and dusts;
- j. The application of disinfectants, germicides, bactericides and virucides, such as bleach. The use of disinfectants in the pressure-washing of the exterior of buildings is not exempt under this section;
- k. The application of insect repellents to the human body;
- l. The application of swimming pool products;
- m. The application of general use paints, stains, and wood preservatives and sealants applied with non-powered equipment or by hand or within an enclosure which effectively prevents the escape of spray droplets of the product being applied; and
- n. The injection of pesticides into wall voids.

F. Exemption from this section

If an individual on the current effective registry and a person or company performing pesticide applications subject to this rule can reach an agreement on notification provisions acceptable to both parties other than those described herein, then the requirements as described in this section may be waived. For such an exemption to be in effect, the details of the notification agreement must be placed in writing and signed by both parties. Either party may terminate the notification agreement with a 14-day, written notice.

G. Fee

The annual application fee for an individual requesting to be on the registry will be \$20.00. The Board may waive the fee for individuals who demonstrate an inability to pay, or where other extenuating circumstances exist which justify granting a waiver. Evidence of an individual's inability to pay shall include, but not be limited to, the individual's participation in any of the following programs:

1. Food Stamps
2. Temporary Assistance for Needy Families (TANF)
3. Supplemental Security Income (SSI)
4. Social Security Disability (SSD)
5. Maine Care (Medicaid)

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

Section 3. Public Notice and Posting Requirements for Certain Pesticide Applications**A. Sidewalks and Trails**

Public notice must be provided consistent with Board policy for the outdoor commercial application of pesticides within category 6B to sidewalks and trails.

B. Posting**1. Categories Requiring Posting**

- a. 3A (outdoor ornamentals)
- b. 3B (turf)
- c. 6B (industrial/commercial/municipal vegetation management), except applications to sidewalks, trails, railroad sidings, and power substations
- d. 7A (general pest control)
- e. 7E (biting fly & other arthropod vectors)

2. Posting Requirements

Areas treated under the categories listed in Section 3B(1) shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted before application activities commence and shall remain in place at least two days following the completion of the application. The sign shall be sufficient if it meets the following minimum specifications:

- a. The sign must be at least five (5) inches wide and four (4) inches high;
- b. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- c. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- d. The sign must bear:
 - i. the word CAUTION in 72 point type;
 - ii. the words PESTICIDE APPLICATION in 30 point type or larger;
 - iii. the Board designated symbol;

- iv. any reentry precautions from the pesticide labeling;
- v. the name of the company making the pesticide application and its telephone number;
- vi. the date and time of the application; and
- vii. a date and/or time to remove the sign.

C. Exemption from this section

- 1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 - 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-M(2)D

EFFECTIVE DATE:

September 22, 1998

AMENDED:

April 27, 1999

June 26, 2000

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December 26, 2011 – filing 2011-473

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

May 24, 2015 – filing 2015-076 (Final adoption, major substantive)

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS

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

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

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

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

Section II. Forest Insect Applications

A. Responsible Parties

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

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

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

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

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

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

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

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

Section III. Ornamental Plant Applications

A. Responsible Parties

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

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

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

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

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

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

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

A. Responsible Parties

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

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

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

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

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

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

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

Section V. Biting Fly and Public Health Pest Applications

A. Responsible Parties

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

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

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

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

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

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

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

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

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

1. **Written notice to the Board**

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

2. **Written notice to the Maine Poison Control Center**

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

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

Section VII. Emergencies

A. Disease Vectors

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

B. Other Emergencies

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

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

- ii. a change in plant growth or development caused by unusual environmental conditions where such change can be rectified by the use of a pesticide(s).
 2. Any emergency variance granted by the staff under this section shall include provisions demonstrating the applicant will furnish substantially equivalent notification as provided by this chapter and shall include:
 - a. Documented notification of person(s) owning property or using commercial or institutional buildings within 500 feet of the intended target site prior to the pesticide application and where appropriate;
 - b. Radio or television announcements or,
 - c. Prominently positioned poster.
 3. No variance may be granted if the emergency situation is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
 4. If the staff does not grant the variance, the applicator or the person requesting the pesticide application may petition the Board for exemption following the requirements set forth in 22 M.R.S.A. §1471-T, "Exemption".
-

STATUTORY AUTHORITY: 22 M.R.S.A. §1471-G, M, R and T

EFFECTIVE DATE:

August 12, 1985

AMENDED:

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

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

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

CORRECTIONS:

February, 2014 - agency names, formatting

AMENDED:

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



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

6a

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

Memorandum

To: Board of Pesticides Control

From: Pamela J. Bryer, PhD, Toxicologist

Subject: Pesticides allowed for treatment of browntail moth near marine waters

Date: January 6, 2020

Introduction

At the April 19, 2019 meeting, the board agreed that the toxicologist should pursue updates to the list of current allowable active ingredients for treatment of browntail moth in the 50' to 250' marine shore zone.

There are several reasons to revisit the browntail moth allowable active ingredients list:

- Newer actives may appear in the marketplace and may be effective against browntail moth while also presenting a low risk profile.
- Risk assessment methodologies are constantly being refined and improved.
- Periodic reviews of the currently allowable active ingredients labeled for the management of browntail moth help to ensure implementation of appropriate protective efforts for Gulf of Maine marine organisms.

Process

Risk assessment is a multipart process and many of those components are herein summarized. Additional information may be obtained by contacting Pam Bryer.

This risk assessment evaluates the potential for harm to aquatic organisms living in the Gulf of Maine from the management of browntail moth infestations on coastal properties. Maine Forest Service provided BPC with information on their recommendations for selecting pesticides to be used to treatment for browntail moth. BPC then conducted a database search for pesticides matching those criteria and

collected the physical and chemical data on those pesticides. Using the labeled rates for the appropriate sites (ornamental, pome trees, etc) the expected concentration in the water was calculated. This predicted water concentration was then compared to estuarine and marine organisms' ability to tolerate those specific pesticides. Standard formulas and benchmarks for acceptable risk were used to establish a new list of potential chemicals for use in treating for browntail moth.

This document provides clarification of the risk assessment process in five sections:

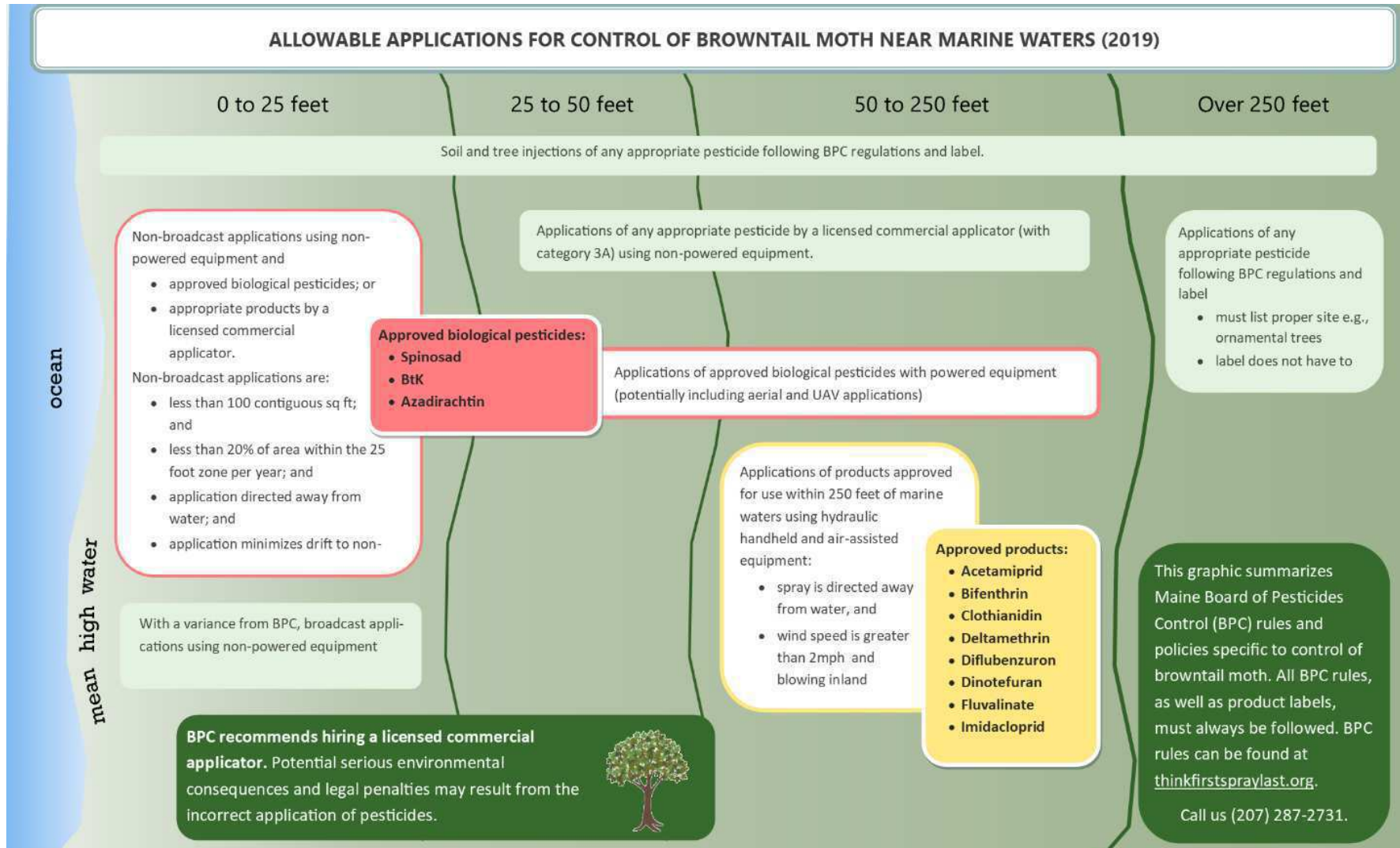
1. Describes the formation of the initial list
2. Explains how the predicted water concentration is derived and how chemical data are selected
3. Covers the Risk Quotient calculation and how the toxicity data were selected
4. Describes how the EPA Level of Concern works
5. Describes the proposed list of active ingredients and other relevant information on those actives

Summary

- None of the previously approved active ingredients for the management of browntail moth between 50 to 250 feet from the marine highwater mark were included on the new list allowed for broadcast applications.
- Those pyrethroid insecticides assessed were deemed to have unacceptable risk, including some that were previously on the list of allowable pesticides.
- The proposed list contains six active ingredients for use with powered equipment in the area between 50 and 250 feet from the mean high-water mark. Pesticides applied by tree injection demonstrated consistently low risk profiles and represent the overall best method for avoiding off-target movement.

This ecological risk assessment only covers the potential effects on aquatic organisms (fish and invertebrates) that live in the estuarine/marine environment. Biological pesticides were not evaluated with this risk assessment.

Previous browntail moth guidance with list of approved products in the 50' to 250' zone.



Section 1 Initial List Development

The BPC does not make pesticide recommendations and relied on the Maine Forest Service to provide guidance on selecting active ingredients to consider for this risk assessment. There is little data available on efficacy and use of pesticides for the treatment of browntail moth. Relatively few pesticide labels indicate use on browntail moths.

The Maine pesticide registration database (NPIRS) was queried for all currently registered pesticides stating “gypsy moth” on their label. The list was further refined by restricting database returns by the year 2019, and the following sites: ornamental, fruit trees, forestry, cherry, and oak. Maine Forest Service suggested gypsy moth as a starting point for identifying potential pesticides to be used for browntail moth control because gypsy moths share several life history traits with browntail moths making them a good surrogate species. Maine Forest Service previously objected to the use of imidacloprid for browntail moth control (imidacloprid is not expected to be effective) so that chemical was eliminated from the potential list.

On October 10, 2019 Maine Forest Service and BPC participated in a Browntail Moth Roundtable Meeting. A goal of the roundtable was to provide an opportunity for status updates, as well as, to receive feedback and suggestions from applicators on the proposed list of allowed pesticides. Additionally,

applicators were surveyed by Maine Forest Service prior to the meeting to determine the most commonly used pesticides and which pesticides are considered effective.

The pesticide products database results were reduced to a list of active ingredients associated with products claiming efficacy against gypsy moths. After removing imidacloprid, as per Maine Forest Service, the list was reviewed and additional changes made. The following items were considered in shaping this initial list:

- Pesticides that are not insecticides were removed from the list.
- Pesticides that are not primarily used on ornamentals or on agricultural commodities were removed from the list. These were products that listed gypsy moth on the label but were not labeled for typical browntail moth applications, like agricultural fumigants.
 - For example, the methyl bromide label containing a gypsy moth usage listed farm equipment as the site for application.
- Pesticides that did not include the proper sites were removed from the list. Several pesticides, although labeled for gypsy moths did not include any of the following sites: outdoor ornamental; oaks; pome, stone, nut trees or cherries. This removal was practical because there was no way to calculate an Expected Environmental Concentration (EEC) without a label rate as the basis.

Label Review

For each remaining active ingredient, the label was reviewed to find the site-specific application rate and/or the site-specific maximum application rate.

This risk assessment is based on the scenario of a residential yard treatment with infested oaks. The assumption was for treatment to take place during a narrow window in early spring. When the label omitted ornamentals but included pome/stone/nut tree rates those rates were used.

When the label contained a maximum annual usage rate statement that rate was modeled. Frequently, that corresponded to the scenario of a single application. Additional usage rates were modeled when the maximum annual rate included many more applications than could be expected for a browntail moth treatment in spring. When there was no annual maximum usage statement and there were no restrictions on repeated applications one treatment a week for a month was modeled unless the label required a longer span between treatments.

The goal with selecting these rates was to push the modeled concentration to the maximum legal amount possible within the given scenario. The maximum legal amount possible exceeds the browntail moth treatment application rate most of the time.

**Initial List of Considered Active Ingredients for
Treatment of Browntail Moth Near Marine Waters (EPA
Chem Code)**

Abamectin (122804)
Acephate (103301)
Acetamiprid (99050)
Bifenthrin (128825)
Carbaryl (56801)
Chlorantraniliprole (90100)
Chlorpyrifos (59101)
Clothianidin (44309)
Cyantraniliprole (90098)
Cyfluthrin (128831)
Cyfluthrin-beta (118831)
Cyhalothrin-lambda (128897)
Cypermethrin (109702)
Cypermethrin-zeta (129064)
Deltamethrin (97805)
Diflubenzuron (108201)
Dinotefuran (44312)
Emamectin benzoate (122806)
Esfenvalerate (109303)
Fenpropathrin (127901)
Fluvalinate (109302)
Indoxacarb (67710)
Malathion (57701)
Methoxyfenozide (121027)
Naled (34401)
Novaluron (124002)
Oxydemeton-methyl (58702)
Permethrin (109701)
Phosmet (59201)
Piperonyl butoxide (67501)
Pyrethrins (69001)
Spinetoram (110008)
Tebufenozide (129026)

Section 2 EEC Calculation

Expected Environmental Concentration (EEC)

The primary driver of a risk assessment is the modeled concentration predicted to occur in the environment. How much of a hazardous compound that is found off-target, in the environment, underlies the potential for harm. In ecological risk assessments, the amount of active ingredient predicted/modeled to occur in the environment is called the Expected Environmental Concentration or EEC.

EEC was calculated via the EPA's Pesticide in Water Calculator version 1.52. This newer model from EPA combines two different models (PRZM5 & VVWM) into one and improves the graphical user interface. The Pesticide in Water Calculator replaces the Surface Water Concentration Calculator.

The Pesticide in Water Calculator bases EEC on 1) pesticide specific chemical parameters; 2) a weather file representing local weather; 3) a standard commodity scenario; and 4) adjustable application variables including timing, frequency, boom height, application type, etc.

For this ecological risk assessment, the Pesticide in Water Calculator was set to run the "Standard EPA Pond" scenario. In this scenario, 100% of a 10-hectare plot is treated and all of the potential drift and runoff are directed to a 1-hectare pond. The model uses the local weather data with the pesticide application and chemical data to run 30 years of variable Expected Environmental Concentrations. The maximum or peak concentration produced by the model becomes the basis of the acute exposure Risk Quotient calculation. The model also calculates a 21-day average and a 60-day average, these averages become the basis for the

chronic exposure Risk Quotient calculations for invertebrates and fish respectively.

Model Input Selection

The chemical data needed for modeling are not always available so multiple sources were used. The source for each data point entered into the Pesticide in Water Calculator model for each active ingredient was recorded and is available upon request.

Preference was given to collecting data from EPA's pesticide registration risk assessment documents. For risk assessments done recently by EPA, data reported for the Pesticide in Water Calculator models used in registration documents were used directly. However, some of the older risk assessments were not modeled the same way and those cases data were not available in the most recent EPA registration risk assessment documents.

When EPA registration documents were not available, the next sources of chemical data searched were (in this order) PubChem, EPA's CompTox, University of Hertfordshire's Pesticide Properties Database (PPDB); links to these sites are in the table below.

Database Name	URL
EPA Pesticide Chemical Search	https://iaspub.epa.gov/apex/pesticides/f?p=CHEMICALSEARCH:1:0::NO:1::
PubChem	https://pubchem.ncbi.nlm.nih.gov/
CompTox	https://comptox.epa.gov/dashboard
PPDB	https://sitem.herts.ac.uk/aeru/ppdb/en/atoz.htm

Resolving Input Data Conflicts When Necessary

In an attempt to make this risk assessment as protective as possible, every chance for a conservative interpretation was taken. With chemical data this translates into resolving conflicting inputs with whichever value would allow the chemical to escape into and last the longest in the environment. For example, soil half-life is variable by nature, if a chemical's half-life data were reported as 10-14 days, 14 days would be the value chosen for use in the Pesticide in Water Calculator.

This practice of using the most conservative values is valuable in ecological risk assessments because of differences in how uncertainty is accounted for. In human health risk assessments, the risk equation is influenced by degrees of uncertainty that reflect the acknowledgement that there are missing or incomplete data (for example, studies that are done on rats will not always predict what will happen in people). Uncertainty and modifying factors are not used in ecological risk assessments, however, by selecting the most protective or conservative values possible the ecological risk assessment process attempts to ensure maximum protection.

Section 3 RQ Calculation & Toxicity Data

Risk Quotient (RQ)

$$\text{Acute RQ} = \text{EEC} / \text{LD}_{50}$$

$$\text{Chronic RQ} = \text{EEC} / \text{NOAEL}$$

The risk assessment equation compares the Expected Environmental Concentration to the lowest concentration that causes an effect in toxicity studies. The Risk Quotient, or RQ, is the variable produced and used for ecological risk characterizations. For acute studies, the toxicity study is an 'LD₅₀' study where the lethal dose to kill half of the study group is determined. For chronic studies, the toxicity study is typically a 'NOAEL' study where the highest administered concentration that causes no effect is found; NOAEL stands for No Observed Adverse Effect Level.

Toxicity Input Study Source

Where possible the toxicity data used for RQ calculations were taken from the pesticide registration documents published by the Office of Pesticide Programs at EPA. However, ideal data does not always exist and alternative data sources were required. The source of each toxicity value used was documented and those data are available upon request.

The focus of the browntail moth regulations is the protection of coastal habitats to conserve lobsters and other important marine organisms. No lobster-specific data were used in this study because there are very few published studies on lobster ecotoxicology. Toxicity data from marine and estuarine species were used, with a few exceptions when no marine or estuarine data could be located and freshwater toxicity studies were substituted. The table in Section 2 contains URLs to the data sources used for finding toxicity data.

Lowest Toxicity Value Selected

For the Risk Quotient (RQ) calculations, the lowest toxicity values were selected. The lowest value represents the highest concentration in a toxicity study where the organisms showed no effects to the pesticide, this ensures the most sensitive study organisms will be included. Unlike the simplistic acute studies and their LD₅₀s, NOAEL studies cover a broad range of toxic effects. Effects studied include growth, development, reproductive or fecundity effects, birth defects and morphology, endocrine disruption, nervous system effects, immune system factors and a suite of assays to understand the potential for cancer.

The lowest toxicity values were selected for the RQ calculation and were taken from either a fish or an invertebrate species. Although invertebrates and fish are quite different, by selecting one of two the most sensitive responses to the active ingredients under consideration the RQ calculation is made as conservative and protective as possible for the habitat as a whole. The chronic RQ calculation differs between invertebrates (21-d NOAEL study) and fish (60-d NOAEL study) to reflect the different lifespans of these organisms; and was taken into account for these calculations.

Calculated Acute & Chronic Risk Quotient (RQ) Values

Compound	Peak EEC (ppb)	21-day EEC (ppb)	60-day EEC (ppb)	Acute Aquatic LD50 (ppb)	Chronic Aquatic NOAEC (ppb)	Acute RQ	Chronic RQ
Abamectin	0	0	0	0.02	0.0029	0	0
Acephate Foliar	18.7	10.5	4.76	7300	580	0.003	0.018
Acephate Injection	0	0	0	7300	580	0	0
Acetamiprid Pome/Stone	5.14	4.64	4.08	66	2.5	0.078	1.86
Acetamiprid Nut Tree	6.17	5.56	4.89	66	2.5	0.094	2.22
Bifenthrin EPA RA	0.935	0.06.6	0.0626	0.004	0.004	233.75	16.5
Bifenthrin Ornamental Gypsy	0.374	0.0264	0.0225	0.004	0.004	93.5	6.6
Bifenthrin Ornamental Other	3.4	0.24	0.227	0.004	0.004	850	60
Carbaryl	77.4	30.3	11.8	5.7	1.5	13.58	20.2
Chlorantraniliprole	0.922	0.646	0.437	1150	695	0.001	0.001
Chlorpyrifos Apple	3.98	1.8	1.13	0.035	0.0046	113.71	391.30
Chlorpyrifos Ornamental	1.99	0.902	0.565	0.035	0.0046	56.86	196.09
Clothianidin	4.49	4.38	4.14	53	5.1	0.085	0.859
Cyantraniliprole	3.03	1.75	0.863	1200	386	0.003	0.005
Cyfluthrin	0.224	0.0161	0.0099	0.0024	0.00017	93.33	94.71
Cyfluthrin EPA RA	0.313	0.0223	0.014	0.0024	0.00017	130.42	132.94
Cyfluthrin-β	0.0028	0.0002	0.0001	0.0022	0.00007	1.272	2.871
Cyfluthrin-β a 4X Appl	0.215	0.0192	0.00993	0.0022	0.00007	97.73	274.29
Cyhalothrin-λ Pome	0.281	0.0663	0.0586	0.00491	0.0002	57.23	313.5
Cyhalothrin-λ Seed Orchard	0.704	0.157	0.147	0.00491	0.0002	143.38	785
Cyhalothrin-λ Ornamental	0.507	0.113	0.106	0.00491	0.0002	103.26	565
Cypermethrin	0.986	0.0603	0.0366	0.0054	0.000781	182.59	77.21
Cypermethrin EPA RA	0.448	0.0274	0.0166	0.0054	0.000781	82.96	35.08
Cypermethrin-zeta	0.348	0.0213	0.0129	0.04	0.01	8.7	1.29
Deltamethrin Low	0.111	0.0110	0.009	0.0037	0.024	30	0.458
Deltamethrin Mid	0.273	0.0272	0.0221	0.0037	0.024	73.78	1.134
Deltamethrin High	0.302	0.03	0.0244	0.0037	0.024	81.62	1.25
Dicrotophos	0	0	0	77	3.09	0	0
Diflubenzuron	0.126	0.0696	0.0410	0.64	0.045	0.197	1.547
Dinotefuran	0	0	0	790	6360	0	0
Emamectin benzoate	0	0	0	0.04	0.00017	0	0
Esfenvalerate	1.08	0.173	0.126	0.00466	0.012	231.76	1017.65
Fenpropathrin	2.68	0.515	0.426	0.021	16.9	127.62	42.92
Indoxacarb	0.793	0.416	0.257	54.2	25	0.015	0.025
Methoxyfenozide	5.98	5.48	5.22	1200	6.9	0.005	0.219
Naled	24.7	1.3	0.456	8.8	0.06	2.807	0.188
Novaluron	0.451	0.0535	0.0263	0.12	46	3.758	0.892
Oxydemeton-methyl	5.17	2.32	0.949	3	0.0024	1.723	0.050
Permethrin	5	0.629	0.464	0.018	0.69	277.78	262.08
Phosmet	3.79	0.0858	0.0304	2	2.1	1.895	0.124
Piperonyl butoxide	0.523	0.238	0.176	490	0.25	0.001	0.113
Pyrethrins	0.126	0.0310	0.0181	1.4	0.25	0.09	0.124
Spinetoram	0.399	0.119	0.098	2.05	38	0.195	0.003
Spinetoram Do Not Exceed	1.59	0.475	0.386	2.05	38	0.776	0.013
Tebufenozide	1.84	1.5	1.23	500	22	0.004	0.068

Section 4 Level of Concern

EPA's Level of Concern (LOC) Table

Table 2.3. Agency Risk Quotient (RQ) Metrics and Levels of Concern (LOC) Per Risk Class.

Risk Class	Risk Description	RQ	LOC
Aquatic Animals (fish and invertebrates)			
Acute	Potential for effects to non-listed animals from acute exposures	Peak EEC/LC ₅₀ ¹	0.5
Acute Restricted Use	Potential for effects to animals from acute exposures Risks may be mitigated through restricted use classification	Peak EEC/LC ₅₀ ¹	0.1
Acute Listed Species	Listed species may be potentially affected by acute exposures	Peak EEC/LC ₅₀ ¹	0.05
Chronic	Potential for effects to non-listed and listed animals from chronic exposures	60-day EEC/NOAEC (fish)	1
		21-day EEC/NOAEC (invertebrates)	
Aquatic Plants			
Non-Listed	Potential for effects to non-listed plants from exposures	Peak EEC/LC ₅₀ ¹	1
Listed	Potential for effects to listed plants from exposures	Peak EEC/NOAEC	1
Terrestrial Animals (mammals and birds)²			
Acute	Potential for effects to non-listed animals from acute exposures	EEC/LC ₅₀ (Dietary)	0.5
		EEC/LD ₅₀ (Dose)	
Acute Restricted Use	Potential for effects to animals from acute exposures Risks may be mitigated through restricted use classification	EEC/LC ₅₀ (Dietary)	0.2
		EEC/LD ₅₀ (Dose)	
Acute Listed Species	Listed species may be potentially affected by acute exposures	EEC/LC ₅₀ (Dietary)	0.1
		EEC/LD ₅₀ (Dose)	
Chronic	Potential for effects to non-listed and listed animals from chronic exposures	EEC/NOAEC	1
Terrestrial and Semi-Aquatic Plants			
Non-Listed	Potential for effects to nontarget, non-listed plants from exposures	EEC/ EC ₂₅	1
Listed Plant	Potential for effects to nontarget, listed plants from exposures	EEC/ NOAEC	1
		EEC/ EC ₀₅	

¹ LC₅₀ or EC₅₀.

² EEC based on upper bound Kenaga nomogram values for foliar exposure.

When the calculated Risk Quotient (RQ) is higher than the established Level of Concern (LOC) there is unacceptable risk, and conversely when the RQ is lower than the LOC value, risk is deemed acceptable.

 Risk Quotient > Level Of Concern --> Unacceptable Risk
 Risk Quotient < Level Of Concern --> Acceptable Risk

For example, imagine a modeled application produced the following:

A 21-day average Expected Environmental Concentration, EEC, of 20 ppm -and we know that-

The 14 speckled sand shrimp shows a toxicity response, NOAEL, (say, fewer than normal number of babies) when exposed to 7 ppm but not to 5 ppm. -then we calculate-

RQ = EEC/NOAEL --> RQ = 20 ppm /5 ppm --> RQ = 4

We would compare this RQ = 4 to the LOC that is appropriate (LOC = 1) from the EPA LOC Table, as below.

Table 2.3. Agency Risk Quotient (RQ) Metrics and Levels of Concern (LOC) Per Risk Class.

Risk Class	Risk Description	RQ	LOC
Aquatic Animals (fish and invertebrates)			
Acute	Potential for effects to non-listed animals from acute exposures	Peak EEC/LC ₅₀ ¹	0.5
Acute Restricted Use	Potential for effects to animals from acute exposures Risks may be mitigated through restricted use classification	Peak EEC/LC ₅₀ ¹	0.1
Acute Listed Species	Listed species may be potentially affected by acute exposures	Peak EEC/LC ₅₀ ¹	0.05
Chronic	Potential for effects to non-listed and listed animals from chronic exposures	60-day EEC/NOAEC (fish) 21-day EEC/NOAEC (invertebrates)	1

In this scenario, we would say this active ingredient use poses unacceptable risk to the environment because RQ of 4 is greater than LOC of 1.

Higher RQ values indicate how many more times toxic the environment is over what is known to cause effects in the most sensitive organism. In the example here, the shrimp show toxic effects starting at 5 ppm. The environmental concentration is 4 times greater than that (20 ppm) and would very likely cause effects.

Selection of Listed Species Criteria

Under the acute exposure scenario EPA has established three risk classes: acute, acute restricted use, and acute listed species. With each level the acceptable risk threshold is lowered. In this risk assessment, only the 'Acute Listed Species' value was used.

The 'Listed Species' risk class was selected not because lobsters and shellfish are currently federally or state listed but as a means to make this risk assessment as

conservative as possible to protect this unique habitat. Very little toxicity testing has taken place on lobsters or other species of shellfish important to the Gulf of Maine ecosystem. Ecological risk assessments do not include uncertainty or modifying factors, like those used in human health risk assessments, to account for unknown variables in the available data so accepting the listed status level can help account for unknown species differences.

Table 2.3. Agency Risk Quotient (RQ) Metrics and Levels of Concern (LOC)

Risk Class	Risk Description
Aquatic Animals (fish and invertebrates)	
Acute	Potential for effects to non-listed animals from acute exposures
Acute Restricted Use	Potential for effects to animals from acute exposures Risks may be mitigated through restricted use classification
Acute Listed Species	Listed species may be potentially affected by acute exposures
Chronic	Potential for effects to non-listed and listed animals from chronic exposures

Acceptable Risk Indicated with Green Highlighting

Compound	Peak	21-day	60-day	Acute Aquatic	Chronic Aquatic	Acute RQ	Chronic RQ
	EEC (ppb)	EEC (ppb)	EEC (ppb)	LD ₅₀ (ppb)	NOAEC (ppb)	(LOC<0.05)	(LOC<1)
Abamectin	0	0	0	0.02	0.0029	0	0
Acephate Foliar	18.7	10.5	4.76	7300	580	0.003	0.018
Acephate Injection	0	0	0	7300	580	0	0
Acetamiprid Pome/Stone	5.14	4.64	4.08	66	2.5	0.078	1.86
Acetamiprid Nut Tree	6.17	5.56	4.89	66	2.5	0.094	2.22
Bifenthrin EPA RA	0.935	0.06.6	0.0626	0.004	0.004	233.75	16.5
Bifenthrin Ornamental Gypsy	0.374	0.0264	0.0225	0.004	0.004	93.5	6.6
Bifenthrin Ornamental Other	3.4	0.24	0.227	0.004	0.004	850	60
Carbaryl	77.4	30.3	11.8	5.7	1.5	13.58	20.2
Chlorantraniliprole	0.922	0.646	0.437	1150	695	0.001	0.001
Chlorpyrifos Apple	3.98	1.8	1.13	0.035	0.0046	113.71	391.30
Chlorpyrifos Ornamental	1.99	0.902	0.565	0.035	0.0046	56.86	196.09
Clothianidin	4.49	4.38	4.14	53	5.1	0.085	0.859
Cyantraniliprole	3.03	1.75	0.863	1200	386	0.003	0.005
Cyfluthrin	0.224	0.0161	0.0099	0.0024	0.00017	93.33	94.71
Cyfluthrin EPA RA	0.313	0.0223	0.014	0.0024	0.00017	130.42	132.94
Cyfluthrin-β	0.0028	0.0002	0.0001	0.0022	0.00007	1.272	2.871
Cyfluthrin-β a 4X Appl	0.215	0.0192	0.00993	0.0022	0.00007	97.73	274.29
Cyhalothrin-λ Pome	0.281	0.0663	0.0586	0.00491	0.0002	57.23	313.5
Cyhalothrin- λ Seed Orchard	0.704	0.157	0.147	0.00491	0.0002	143.38	785
Cyhalothrin- λ Ornamental	0.507	0.113	0.106	0.00491	0.0002	103.26	565
Cypermethrin	0.986	0.0603	0.0366	0.0054	0.000781	182.59	77.21
Cypermethrin EPA RA	0.448	0.0274	0.0166	0.0054	0.000781	82.96	35.08
Cypermethrin-zeta	0.348	0.0213	0.0129	0.04	0.01	8.7	1.29
Deltamethrin Low	0.111	0.0110	0.009	0.0037	0.024	30	0.458
Deltamethrin Mid	0.273	0.0272	0.0221	0.0037	0.024	73.78	1.134
Deltamethrin High	0.302	0.03	0.0244	0.0037	0.024	81.62	1.25
Dicrotophos	0	0	0	77	3.09	0	0
Diflubenzuron	0.126	0.0696	0.0410	0.64	0.045	0.197	1.547
Dinotefuran	0	0	0	790	6360	0	0
Emamectin benzoate	0	0	0	0.04	0.00017	0	0
Esfenvalerate	1.08	0.173	0.126	0.00466	0.012	231.76	1017.65
Fenpropathrin	2.68	0.515	0.426	0.021	16.9	127.62	42.92
Indoxacarb	0.793	0.416	0.257	54.2	25	0.015	0.025
Methoxyfenozide	5.98	5.48	5.22	1200	6.9	0.005	0.219
Naled	24.7	1.3	0.456	8.8	0.06	2.807	0.188
Novaluron	0.451	0.0535	0.0263	0.12	46	3.758	0.892
Oxydemeton-methyl	5.17	2.32	0.949	3	0.0024	1.723	0.050
Permethrin	5	0.629	0.464	0.018	0.69	277.78	262.08
Phosmet	3.79	0.0858	0.0304	2	2.1	1.895	0.124
Piperonyl butoxide	0.523	0.238	0.176	490	0.25	0.001	0.113
Pyrethrins	0.126	0.0310	0.0181	1.4	0.25	0.09	0.124
Spinetoram	0.399	0.119	0.098	2.05	38	0.195	0.003
Spinetoram Do Not Exceed	1.59	0.475	0.386	2.05	38	0.776	0.013
Tebufenozide	1.84	1.5	1.23	500	22	0.004	0.068

Section 5 List of Potential Pesticides

Proposed List of Active Ingredients Allowed for the Treatment of Browntail Moth Near Marine Waters*

Acephate

Chlorantraniliprole

Cyantraniliprole

Indoxacarb

Piperonyl butoxide

Tebufenozide

*within the 50' to 250' zone from the marine water edge using
powered application equipment

Major Changes from Previous List

This proposed list represents a major change from the previous list. None of the chemicals available on the previous list are represented on this newer list for powered broadcast application. This change is likely a consequence of changing the assessment scenario and incorporating chronic exposures into the assessment framework. The scenario basis for the previous assessment originated from the

‘worst case’ scenario of a chemical spill into a pond. The current assessment is based on maximum legal use, as intended at the relevant sites, for both acute and chronic exposure levels.

The current method of determining Expected Environmental Concentration allows for the chemical specific details to be incorporated into the scenario. As an example, bifenthrin is a pyrethroid insecticide that has a relatively short half-life on the plant while exposed to sunlight, however, this changes once bifenthrin reaches the sediment. In sediment, the half-life of bifenthrin is roughly 18 times longer than the foliar half-life. Incorporation of more chemical-specific parameters into the environmental modelling allow us to better predict expected effects of the products as used.

After all active ingredient concentrations were modeled with the Pesticides in Water Calculator, the Expected Environmental Concentration was compared to a sensitive marker of toxicity and a Risk Quotient was established. Risk Quotients were compared to Level of Concern values to assess whether or not the potential risk is at acceptable levels. As a secondary check to this, the Expected Environmental Concentrations were compared to EPA’s Aquatic Life Criteria. Specifically, the peak concentration was compared to the Aquatic Life Criteria. If the modeled concentration exceeded the Aquatic Life Criteria the pesticide was removed from the list of acceptable active ingredients. One active ingredient, methoxyfenozide, was removed from the list because of the Aquatic Life Criteria. Due to the work taken to establish Aquatic Life Criteria thresholds, if the Expected Environmental Concentration exceeds that threshold there is good reason to suspect there is a potential for unacceptable risk. It is not clear why there is this difference, though, methoxyfenozide is a newer chemistry and there were still outlying needs for additional data during registration review.

Biological Pesticides have not been included in this review. They will be reviewed for the next review cycle. The current list of allowed biologicals should remain the same until the next review.

A Note About Tree Injection Pesticides

The label search turned up 33 active ingredients that were evaluated for acceptable risk in the near marine zone. All 33 active ingredients were included in the risk assessment, however, some of the labels only allowed for tree injection. The risk assessment on these labels proceeded because of the information that could be learned from including them in the risk assessment.

There is no restriction on tree injection and as such these pesticides did not need to be included in this risk assessment.

As expected, all active ingredients used via tree injection were modeled to have acceptable risk in this risk assessment. Drift and surface runoff contribute to the majority of off-target movement of pesticides.

List of Tree-Injection Pesticides Included in Current Risk Assessment

Abamectin

Acephate

Dicrotophos

Dinotefuran

Emamectin benzoate

No Current Uses

There were a number of active ingredients that appeared during the initial pesticide database search but were not included in the risk assessment. The initial review searched for any pesticide that contained 'gypsy moth' on the label. Below is a table listing those chemistries that were not included in this risk assessment. The most common reason why they were not included is these pesticide products did not have the appropriate site listed to make their inclusion appropriate.

List of 'Gypsy Moth' Pesticides Not Included in Current Risk Assessment
d-Allethrin
Fluvalinate
Malathion
Mancozeb
Methyl bromide
Pyraclostrobin
Pyridalyl
Tetramethrin
Thiamethoxam

Additional aspects of consideration

Additional summary information for the assessed chemicals follows and includes carcinogenic potential, bioconcentration potential, mechanism of action, Aquatic Life Criteria concentrations, and groundwater concentrations over time are listed.

EPA Cancer Classification
(organized from highest hazard to lowest)

Likely To Be Carcinogenic To Humans.

-none-

Group B--Probable Human Carcinogen.

-none-

Group C--Possible Human Carcinogen.

Acephate

Piperonyl butoxide

Group D--Not Classifiable As To Human Carcinogenicity.

-none-

Suggestive Evidence Of Carcinogenicity, But Not Sufficient To Assess Human Carcinogenic Potential.

Dicrotophos

Not Likely To Be Carcinogenic To Humans: At Doses That Do Not Cause A Mitogenic Response In The Liver.

-none-

Not Likely To Be Carcinogenic To Humans.

Chlorantraniliprole

Cyantraniliprole

Dinotefuran

Emamectin benzoate

Indoxacarb

Methoxyfenozone

Group E--Evidence Of Non-Carcinogenicity For Humans.

Abamectin

Tebufenozide

Potential for Bioconcentration

Compound	Bioconcentration Factor	Potential for Bioconcentration¹
Abamectin	18.9	Low
Acephate	8.55	Low
Chlorantraniliprole	166	Threshold for concern
Cyantraniliprole	251	Threshold for concern
Dicrotophos	3	Low
Dinotefuran	2	Low
Emamectin benzoate	71	Low
Indoxacarb	449,000	High
Methoxyfenozide	124	Threshold for concern
Piperonyl butoxide	249	Threshold for concern
Tebufenozide	277	Threshold for concern

¹ Rule of thumb used by EPA

General Chemistry and Mechanism of Action

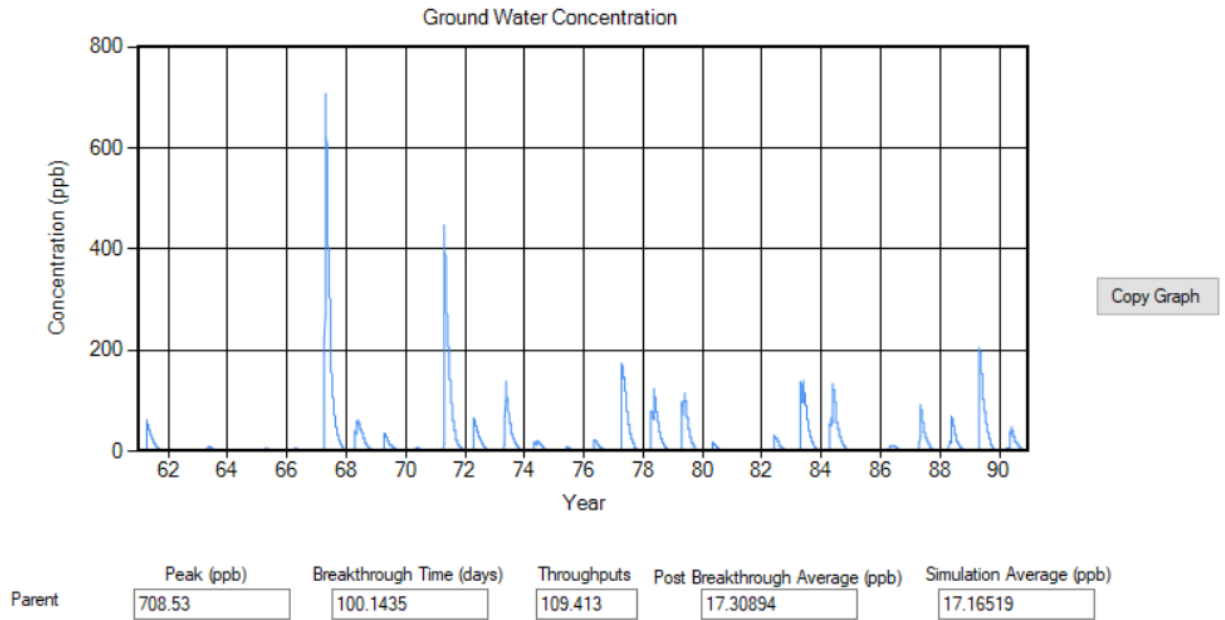
Compound	Specific BTM Efficacy	General Chemistry	Mechanism of Action
Abamectin	Yes	Mectins	Chloride channel activators
Acephate	Yes / On label	Organophosphate	Cholinesterase inhibition
Chlorantraniliprole	Unknown	Other	Ryanodine receptor modulators
Cyantraniliprole	Unknown	Other	Ryanodine receptor modulators
Dicrotophos	Unknown	Organophosphate	Cholinesterase inhibition
Dinotefuran	Yes	Neonicotinoid	nAChR activators
Emamectin benzoate	Yes	Mectins	Chloride channel activators
Indoxacarb	Unknown	Other	Sodium channel blocker
Methoxyfenozide	On label	IGR	Ecdysone agonist
Piperonyl butoxide	On label	Synergist	Modulates liver detox enzymes

EPA Aquatic Life Criteria Compared to Modeled Expected Environmental Concentrations (EEC)

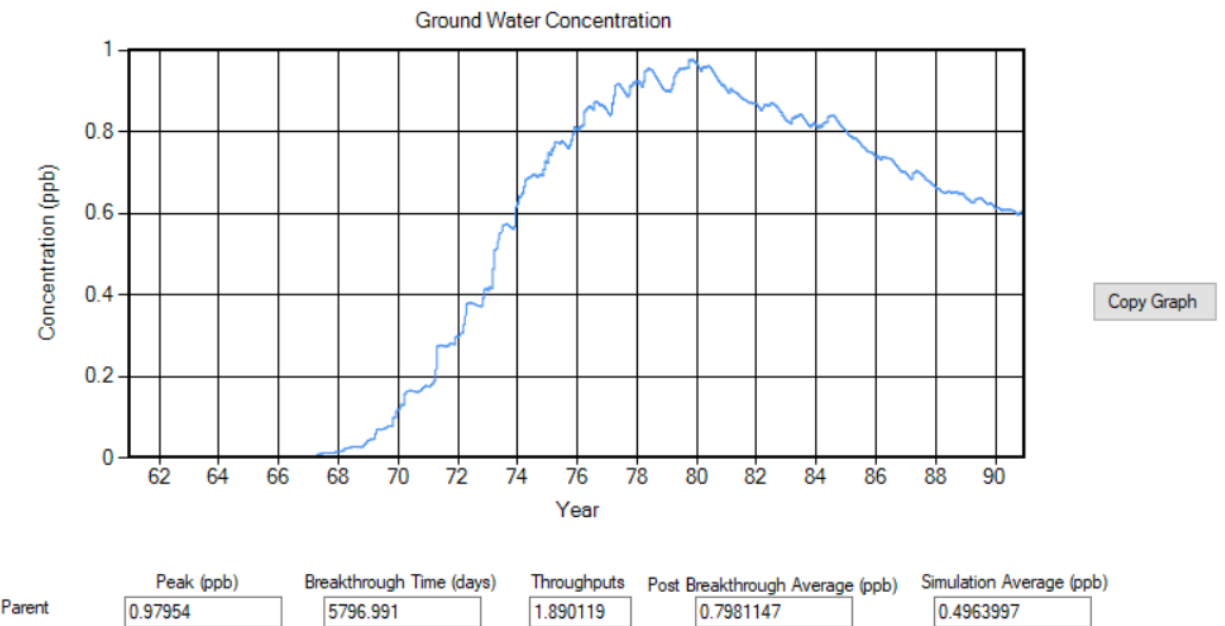
	Fish		Invertebrates		Nonvascular Plants	Vascular Plants	Peak EEC	21-day EEC	60-day EEC
	Acute	Chronic	Acute	Chronic	Acute	Acute			
<i>all units ug/L (ppb)</i>							<i>all units ug/L (ppb)</i>		
Abamectin	1.6	0.52	0.17		> 100,000	3,900	0	0	0
Acephate	416,000	5,760	550	150	> 50,000		18.7	10.5	4.76
Chlorantraniliprole	> 6,900	110	5.8	4.47	1,780	> 2,000	0.922	0.646	0.437
Cyantraniliprole	> 5,000	10,700	10.2	6.56	> 10,000	> 12,100	3.03	1.75	0.863
Dicrotophos	2,850	9,880	6.3	1.7	> 118,000	> 117,000	0	0	0
Dinotefuran	> 49,550	6,360	> 484,150	> 95,300	> 97,600	> 110,000	0	0	0
Emamectin benzoate							0	0	0
Indoxacarb	145	150	300	75	> 110	> 84	0.793	0.416	0.257
Methoxyfenozide	> 2,100	530	28.5	3.1	> 3,400		5.98	5.48	5.22
Piperonyl butoxide	950	40	255	30			0.523	0.238	0.176
Tebufenozide	1,500	51.1	1,900	29	> 740	> 940	1.84	1.5	1.23

Groundwater concentration profiles for the proposed allowable active ingredients.

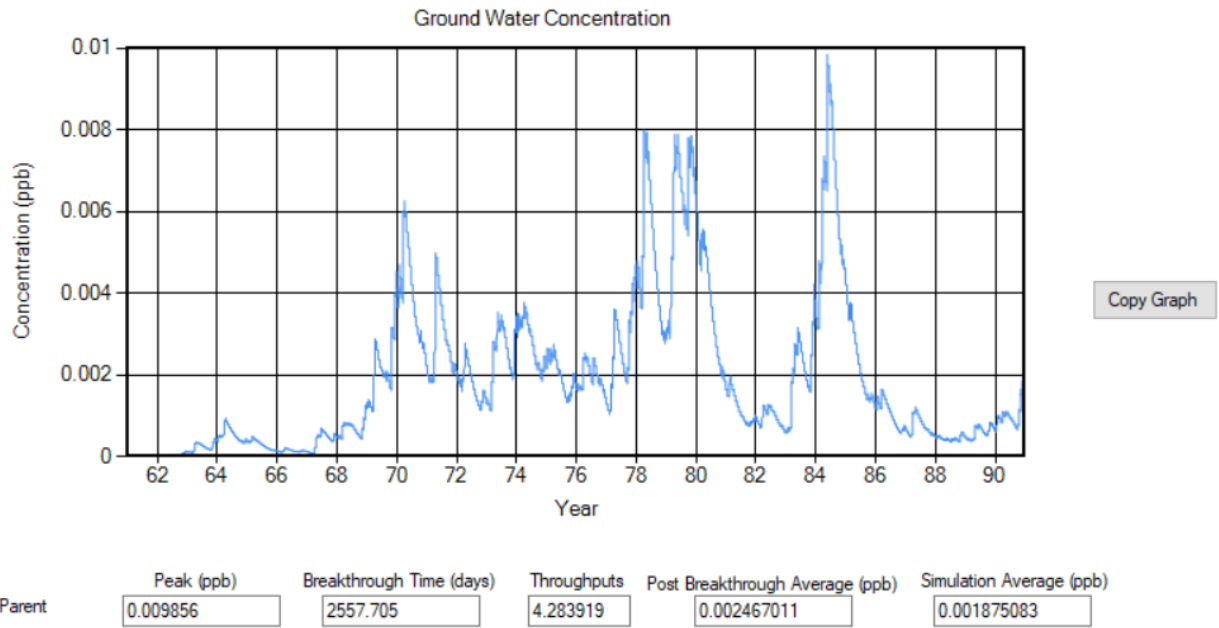
Acephate:



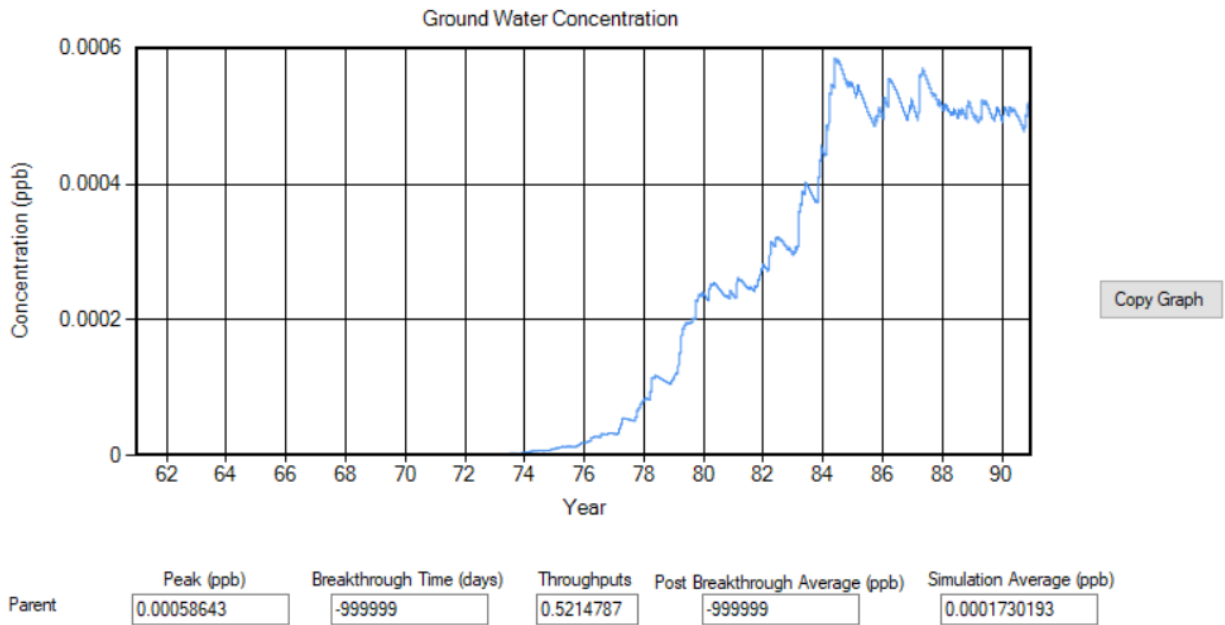
Chlorantraniliprole:



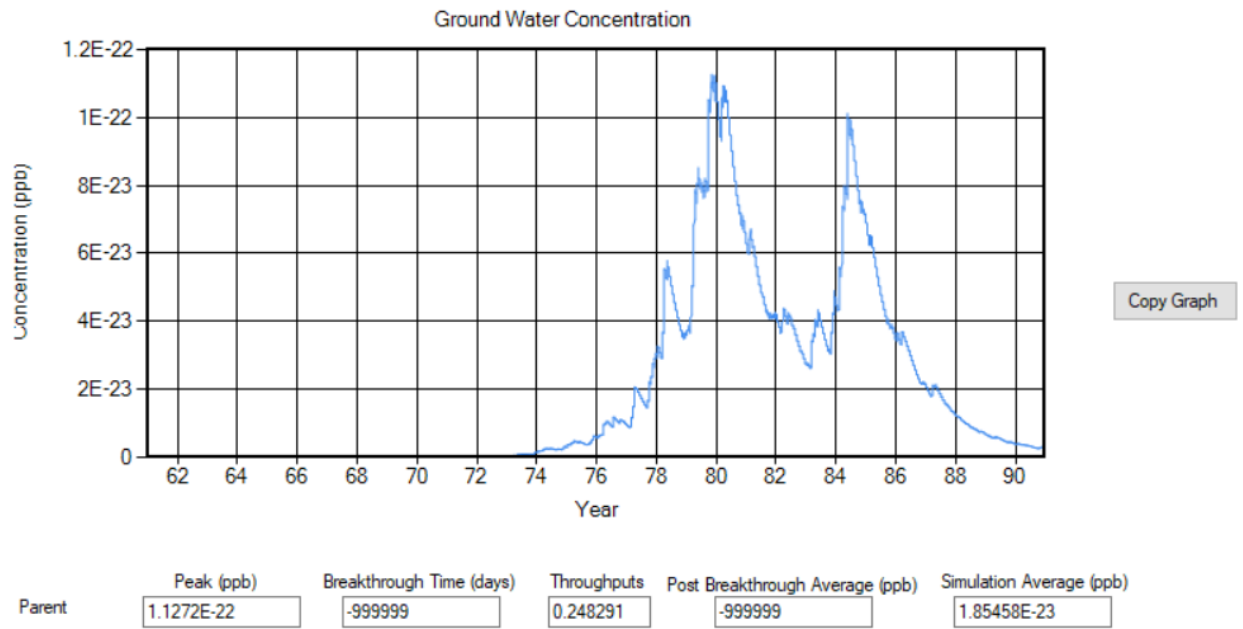
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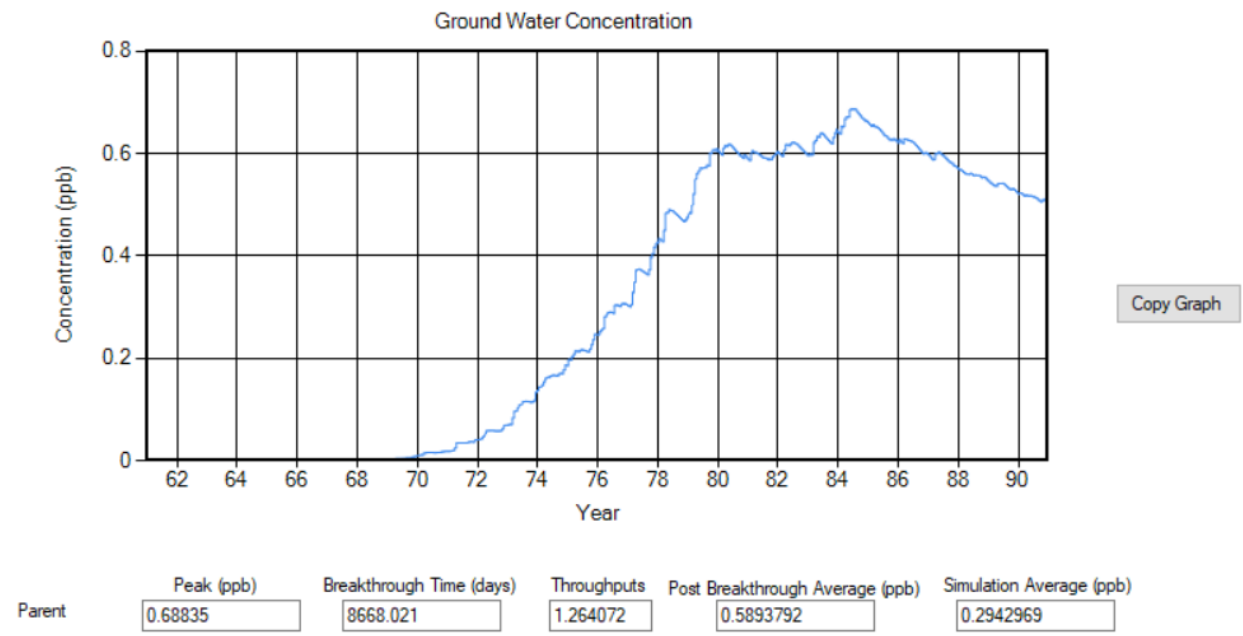
Indoxacarb:



Piperonyl butoxide:

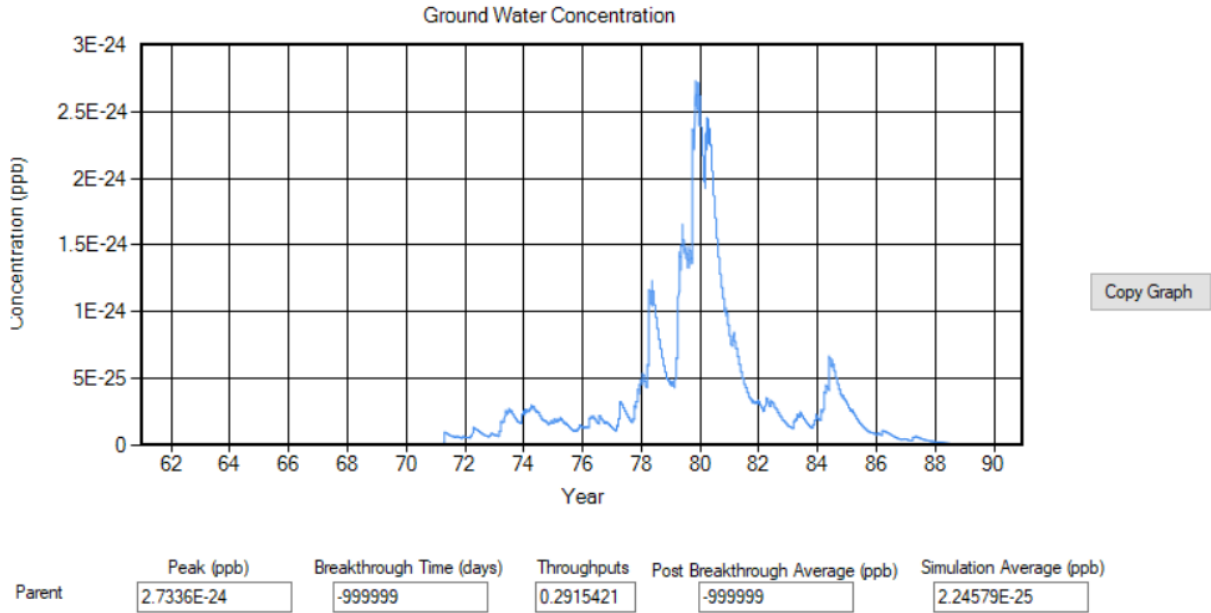


Tebufenozide:

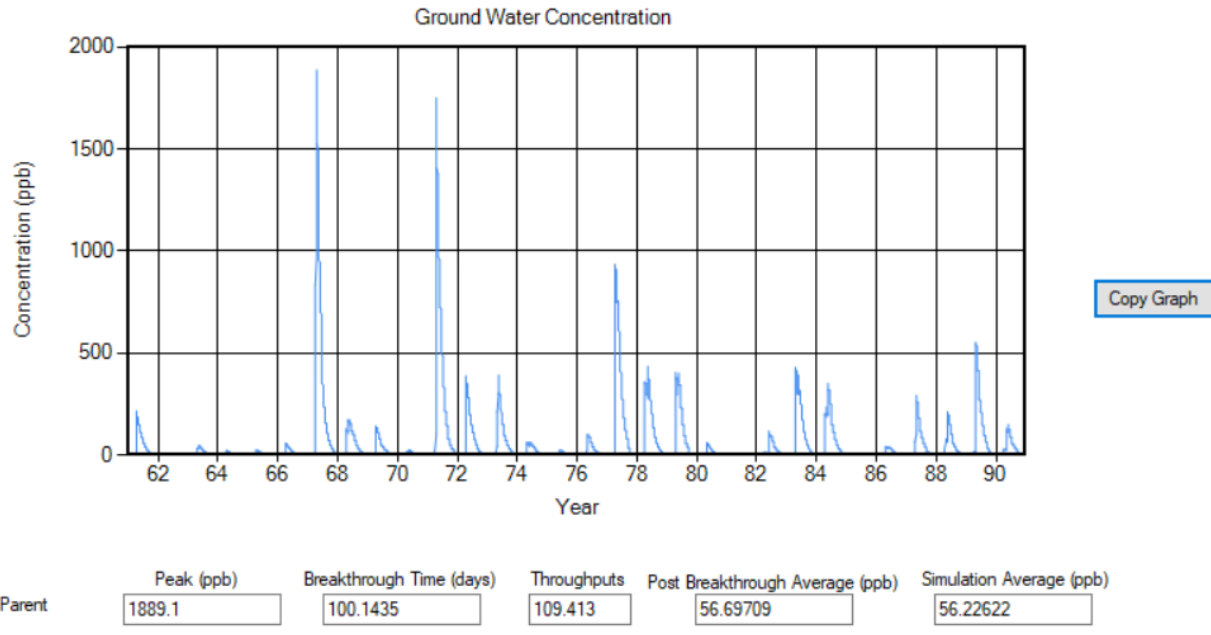


Groundwater concentration profiles for several tree-injection active ingredients.

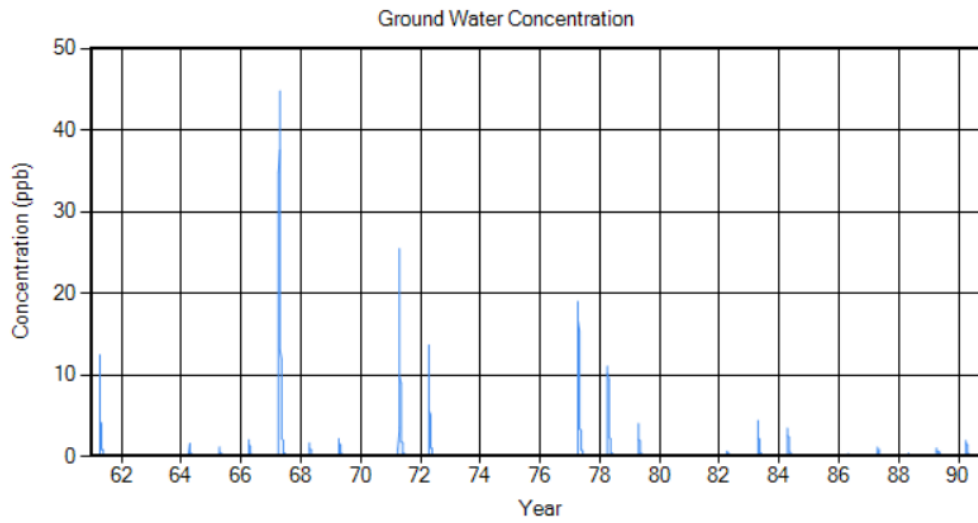
Abamectin:



Acephate:



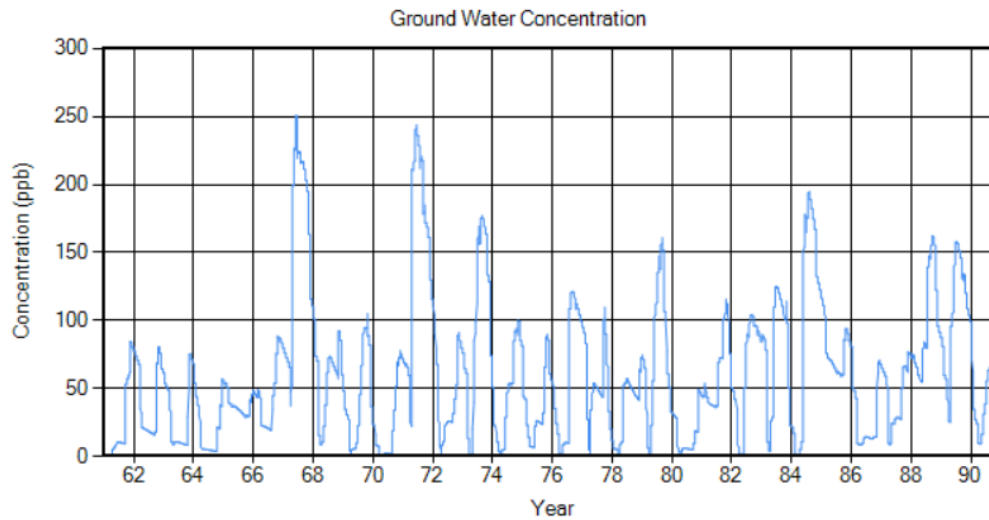
Dicrotophos:



Copy Graph

Parent	Peak (ppb)	Breakthrough Time (days)	Throughputs	Post Breakthrough Average (ppb)	Simulation Average (ppb)
	44.846	90.86891	120.5803	0.2321686	0.2302615

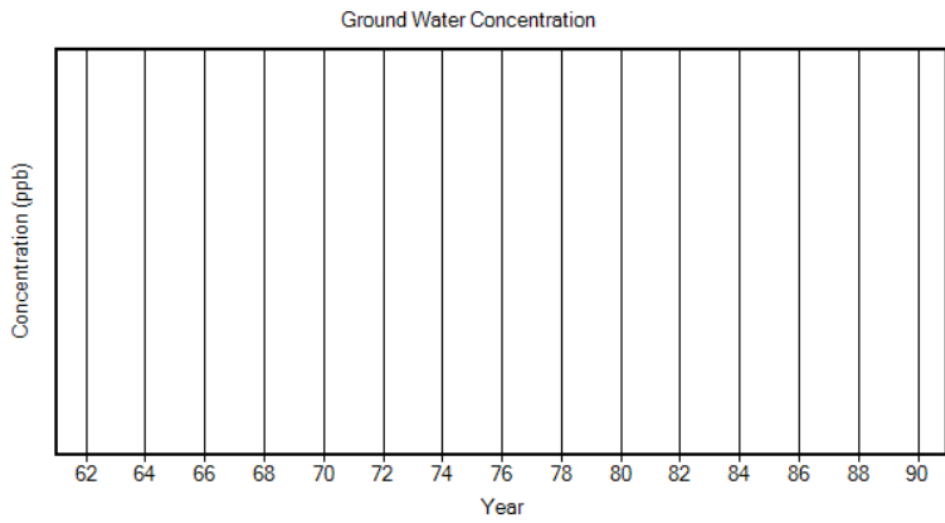
Dinotefuran:



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Parent	Peak (ppb)	Breakthrough Time (days)	Throughputs	Post Breakthrough Average (ppb)	Simulation Average (ppb)
	250.8	164.0427	66.79359	61.2508	60.66385

Emamectin benzoate:



Copy Graph

	Peak (ppb)	Breakthrough Time (days)	Throughputs	Post Breakthrough Average (ppb)	Simulation Average (ppb)
Parent	0	-999999	0.006047101	-999999	0



PAUL R. LEPAGE
GOVERNOR

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

6b

WALTER E. WHITCOMB
COMMISSIONER

**MAINE BOARD OF PESTICIDES CONTROL POLICY ON ALLOWABLE
PESTICIDES FOR THE CONTROL OF BROWNTAIL MOTH WITHIN 250
FEET OF MARINE WATERS**

Adopted January 11, 2017

BACKGROUND

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates the use of insecticides used to control browntail moth within 250 feet of marine waters. Section 5 limits insecticide active ingredients to those approved by the Board. Since that time, a number of newer chemistries have been registered for use and far more data is available on the efficacy of many products. On November 4, 2016 and December 16, 2016 the Board discussed the browntail moth populations and the available products. On January 11, 2017, the Board approved the following active ingredients for control of browntail moth in coastal areas located between 50 and 250 feet from the mean high water mark in accordance with CMR 01-026 Chapter 29: Standards for Water Quality Protection.

Acetamiprid
Bifenthrin
Clothianidin
Deltamethrin
Diiflubenzuron
Dinotefuran
Fluvalinate
Imidacloprid
Spinosad

HENRY JENNINGS, DIRECTOR
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01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 29: STANDARDS FOR WATER QUALITY PROTECTION

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

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

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

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

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

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

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

Section 4. Exemptions

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

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

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

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

A. Exemptions

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

B. Prohibitions and Restrictions

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

Section 6. Buffer Requirement

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

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

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

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 601-625 and 22 M.R.S.A. §§ 1471-A-X.

EFFECTIVE DATE:

April 14, 1999

AMENDED:

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

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

CORRECTIONS:

February, 2014 – agency names, formatting



Corporation for
NATIONAL &
COMMUNITY
SERVICE



MAINE CONSERVATION CORPS HOST SITE APPLICATION

MAINE CONSERVATION CORPS ENVIRONMENTAL STEWARDS

Forward completed application
and any supporting documentation to deidrah.stanchfield@maine.gov

DUE MONDAY, SEPTEMBER 23, 2019 FOR 1700 HOUR POSITIONS STARTING IN JANUARY
DUE MONDAY, DECEMBER 9, 2019 FOR 900 HOUR POSITIONS STARTING IN MARCH
DUE MONDAY, JANUARY 13, 2020 FOR 900 HOUR POSITIONS STARTING IN APRIL
DUE MONDAY, MARCH 16, 2020 FOR 900 HOUR POSITIONS STARTING IN JUNE

Host Organization:	Maine Board of Pesticides Control	Date:	01/06/2020
Contact Name:	John Pietroski	Contact phone:	287-7543
Contact Address:	90 Blossom Lane, Augusta ME 04333	Contact e-mail:	John.t.pietroski@maine.gov
Website:	www.thinkfirstspraylast.org		

(If you are applying for more than one Environmental Steward (ES), please fill out a separate application for each.)

Term in Hours	MCC Position Title	Initial Training Requirement	Start/End Dates	CASH Contribution Amount	# Positions Available
<input type="checkbox"/> 1700	Environmental Steward	1 week	1/6/2020-11/14/2020	\$15,500	10
<input type="checkbox"/> 900	Environmental Steward	1 week	3/9/2020-8/21/2020	\$11,000	Up to 20
<input checked="" type="checkbox"/> 900	Environmental Steward	1 week	4/20/2020-10/2/2020	\$11,000	Up to 20
<input type="checkbox"/> 900	Environmental Steward	1 week	6/1/2020-11/13/2020	\$11,000	Up to 20
There are 20 total 900 hour positions; please designate your preferred start and end date.					



Corporation for
NATIONAL & COMMUNITY SERVICE



MAINE CONSERVATION CORPS HOST SITE APPLICATION



Please select the additional training options you would like your ES to receive						
<input type="checkbox"/>	1700 or 900	Chainsaw Safety Training (This is required for an ES to operate a chainsaw)	1 week, includes housing and meals.	TBD (April and June only)	\$0	N/A
<input type="checkbox"/>	1700 only	Wilderness First Responder Training	2 weeks, includes housing and meals	TBD (March)	\$500-\$700, dependent on contract	N/A
<input type="checkbox"/>	1700 only	Mental Health First Aid	1 Day	TBD (sometime in April)	\$0	N/A

Section	Housing	
1A	Host Sites that provide housing are more attractive to potential members, yielding a greater applicant pool. Can you provide housing? If so, please describe the accommodations.	No housing can be provided.

Section	Funding	
2A	Indicate here if the funding for the position is secure, or if your organization is waiting for notice of funding. Describe the funding source and/or circumstances if	The funding source is secure; money for this position comes directly from our budget.



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COMMUNITY
SERVICE



MAINE CONSERVATION CORPS

HOST SITE APPLICATION



	you are waiting for availability.	
--	--	--

Section	Host Site Needs and Position Description Components	
3A	Provide a brief description of your organization, including type (State, Municipal, Non-Profit etc.)	State entity responsible for the regulation of pesticides and certification of pesticide applicators.
3B	In 2 or 3 sentences, summarize the scope of projects in which the member will be involved.	An Americorp Steward would help with researching, reviewing and editing manuals utilized for applicator certification training. The applicant would also review exams associated with each manual. Staff have recognized the need to globally update our manuals and exams, this presents an opportunity to better incorporate IPM scenarios and philosophy into these important tools by which we educate applicators. The steward would be responsible for developing outreach materials that promote proper and prudent use of pesticides. The focus will be on implementing Integrated Pest Management (IPM) to potentially reduce pesticide reliance. The Maine community values the wild and pristine nature of Maine and we are one of the state entities that help maintain this status. This position is a combination of computer-based work, travel throughout the state, and interacting with the public.
3C	Describe the need for this project. How was the need determined?	New pesticide products, innovations with applications, developments with IPM and improvements in technology required the Board of Pesticides Control to provide manuals that meet these new challenges. The applicant will aid in developing new manuals and test questions. In addition, outreach to the public on the role of IPM and pesticide use is important, and we are currently limited by staff time. We are in need of educational staff that can quickly come up to speed and contribute their skills to our mission. This is a good opportunity for us to generate a body of educational materials that we can use in the future.
3D	Describe the purpose of this position, including an overview	This position would allow us to get IPM out and into the public dialogue. The applicant would be helping the public understand



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MAINE CONSERVATION CORPS

HOST SITE APPLICATION



	<p>of the objectives and skills the member will develop</p>	<p>IPM and the many non-pesticide approaches involved with proper pest management. The applicant will be synthesizing scientific literature and policy to create engaging and meaningful learning opportunities across all media types. By researching new manuals for applicator certification, the steward will gain knowledge how the different active ingredients work along with the affects these chemicals could have in our environment if not used properly.</p>
<p>3E</p>	<p>Provide a bulleted list of the duties this ES will be expected to complete throughout their term. This should be comprehensive, and will be inserted into the position description.</p>	<ul style="list-style-type: none"> • Synthesize complex, technical, and controversial topics • Contribute to Maine’s IPM community • Edit & proofread technical and general outreach publications • Produce novel written content for the pesticide applicator community and general audiences • Data entry • Develop exam questions that will test an applicators knowledge base. • Create outreach materials geared toward the general public and pesticide applicators • Create attractive web resources (web pages, videos, infographics, etc) • Present throughout the state at our outreach events • Survey our audiences to determine future outreach directions
<p>3F</p>	<p>Provide a bulleted list of skills, knowledge, abilities and attributes that the ES will need to complete the duties described above</p>	<ul style="list-style-type: none"> • Ability to communicate clearly • Computer skills and ability to learn new software quickly • Knowledge of common software (we use the Windows 10 platform, and Microsoft’s PowerPoint, Publisher, & Word) • Knowledge of common graphic design elements and open source software • Willingness to travel within Maine • Aptitude for public engagement via appealing presentations • Comprehension of approaches to public engagement



Corporation for
NATIONAL & COMMUNITY SERVICE



MAINE CONSERVATION CORPS

HOST SITE APPLICATION



3G	<p>Are there some functions that you would like your ES to be able to complete, but are not necessary to fulfill the goals and objectives of the position?</p>	<p>The ES will be part of a close, hard working group. There are times when staff members need help to complete tasks that have a short window to complete. For example, we do water quality testing which may need help in gathering samples around the state.</p>	
3H	<p>What kind of conditions will the ES be serving in? What can they expect from the landscape or service environment?</p>	<p>This is a desk and occasional day-travel job based here in Augusta. We will provide cubicle space and the applicant will be considered a peer among our staff. There are continuous training opportunities as it is understood that pesticides as a topic have a steep learning curve.</p>	
3I	<p>Provide a timeline for the tasks the member will be expected to complete.</p>	<p>Because of the depth of learning that needs to take place, the steward will be researching and reviewing manuals developed from Universities and Extension offices around the country. For IPM projects, we anticipate that the member will initially observe our current presentations while working on simpler updating and editing. Then as they come up to speed they will be developing material with less direct oversight and greater complexity. For example, many people are concerned about pollinators -let's imagine outreach surrounding IPM for protecting backyard pollinators, initially the member would review our current pollinator handouts and web content and update it as needed. Building on that knowledge the member could glean through our previous repository of presentations and update materials or create new ones, depending on the needs.</p>	
3J	<p>How will the placement of an AmeriCorps member enhance your organizations ability to meet long-term goals and build capacity?</p>	<p>Our department is experiencing additional demands without the ability to add to our staff. Timely publications with up-to-date materials are integral to our mission. An AmeriCorp member would be a great opportunity for us to do the work we value.</p>	
3K	<p>Prioritize three skills, qualifications or attributes an ES will need accomplish the tasks</p>	1.	<p>Computer aptitude (comfort and ability to create multimedia outreach materials)</p>
		2.	<p>Good understanding of communicating to the public</p>



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MAINE CONSERVATION CORPS

HOST SITE APPLICATION



	identified.	3.	
		Provide further skills and comments below:	

Section	AmeriCorps Member Experience	
4A	Please describe the member's potential interaction with children, the elderly, and people who have disabilities. Ex: Do you host school groups for interpretive programs? Is there a scheduled walk on an ADA trail that targets an older population?	There is little potential of interactions with children, the elderly, and people who have disabilities.
4B	Explain how an AmeriCorps member will develop professionally from this placement. Please consider the level of training and mentorship you will provide. (Training/experience they will acquire under your guidance.)	This is an excellent opportunity to learn about how government works. Our office directly works with the public, we get direction from a public-member board, the legislature, and appointed officials but our primary role is to execute enforcement of federal pesticide program. Because this position will end up performing a number of different skills (from public interactions to database entry) the member's resume will reflect an individual with the ability to perform regardless of the task. The multiple documents produced will also likely build a portfolio. Training opportunities continually present themselves and are encouraged among all staff.
4C	Identify the staff member(s) in your organization who will be responsible for day-to-day supervision and mentorship, including an estimate of staff time that will be devoted.	John Pietroski, Manager of Pesticide Programs will be the primary point person (51%) and Pam Bryer, Pesticides Toxicologist, will also provide a substantial amount of input (49%). Our office is small, and we all work co-operatively to make sure our program works well. Additional staff will also be crucial, at times, for the development of the AmeriCorp member.



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MAINE CONSERVATION CORPS

HOST SITE APPLICATION



4D	Explain the identified staff member's supervisory and mentorship experience.	Pam has supervised student laboratory workers and mentored numerous students, both undergraduate and graduate in biological sciences programs. John has 30+ years of management experience in the work force, as well as, years of experience in Big Brothers Big Sisters, and youth sport coaching.
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Section	Operations	
5A	<p>Members will need their own adequate workspace, equipment and supplies. Site will be responsible for providing:</p> <ul style="list-style-type: none"> • Desk/workspace • Computer with standard Windows Office Suite programs and access to online platforms such as Schoology, the platform MCC uses to teach job readiness skills • Phone • Email access • Access to: printer and fax machine <p>NOTE: These resources can be shared</p> <p><input checked="" type="checkbox"/> Please check this box to indicate you can provide these things</p>	<p>Describe the transportation and housing available. (Please check all that apply. Double click box to check it off.)</p> <p><input checked="" type="checkbox"/> A State of Maine vehicle may be driven by the member</p> <p><input type="checkbox"/> A Host Site's vehicle may be driven by the member</p> <p><input type="checkbox"/> Personal vehicle may be necessary; site partner can reimburse mileage</p> <p><input type="checkbox"/> Personal vehicle may be necessary; site partner <i>cannot</i> reimburse mileage</p> <p><input type="checkbox"/> Member's service will not require much, if any travel</p> <p><input type="checkbox"/> Housing is provided by the Host Site at no additional charge</p> <p><input type="checkbox"/> Housing may be provided for a reasonable rate</p> <p><input checked="" type="checkbox"/> Housing is not available on site, the member is responsible for finding their own.</p>

5B	<p>Describe any other type of support, supplies and/or equipment that your site expects to provide the corps member.</p> <p>(Consider anticipated field gear needs, specialized tools, etc.)</p>	Any supplies or gear required to perform these tasks will be provided.
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SERVICE



MAINE CONSERVATION CORPS HOST SITE APPLICATION



5C	Is there any specialized equipment the member will need for this position?	No.
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Section	Host Site Roles and Responsibilities		
6A	Please check the boxes to indicate if the Host Site Supervisor will be able to complete these requirements.	Provide orientation to the site and projects during the MCC member's first weeks?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6B		Provide mentoring and weekly meetings (minimum 1 hour) with the MCC member?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6C		Provide daily supervision and guidance for the MCC member?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6D		Attend Site Supervisor Training in the Augusta area on October 30, 2019, February 12, 2020 or April 8, 2020. The date chosen needs to be prior to the member's start date.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6E		Complete all required reports on time and maintain contact with MCC?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6F		Assist MCC in complying with requests from the Corporation for National and Community Service, The Corps Network, and the Maine Commission for Community Service as requested when necessary?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No



Corporation for
NATIONAL & COMMUNITY SERVICE



MAINE CONSERVATION CORPS



HOST SITE APPLICATION

6G		I agree to work within the guidelines of the AmeriCorps Prohibited Activities List. I have read the Host Site Supervisor Roles and Responsibilities, and acknowledge the requirements listed. I understand the objectives of the MCC AmeriCorps Environmental Steward component, and will ensure that the project aligns with this description.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6H		MCC has required trainings and service events throughout the year. Are you willing to allow the members to attend all mandatory trainings and events? Examples include the AmeriCorps member conference, First Aid/CPR, Volunteer Reception Center Training, 9/11 Day of Service, MLK Day etc.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Signature:	
Authorized requestor's name:	
Title:	
Date:	



Corporation for
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MAINE CONSERVATION CORPS HOST SITE APPLICATION



DUE MONDAY, SEPTEMBER 23, 2019 FOR 1700 HOUR POSITIONS STARTING IN JANUARY
DUE MONDAY, DECEMBER 9, 2019 FOR 900 HOUR POSITIONS STARTING IN MARCH
DUE MONDAY, JANUARY 13, 2020 FOR 900 HOUR POSITIONS STARTING IN APRIL
DUE MONDAY, MARCH 16, 2020 FOR 900 HOUR POSITIONS STARTING IN JUNE

Please submit one copy of the completed project proposal to:

MAILING ADDRESS

Maine Conservation Corps
124 State House Station
Augusta, Maine 04333-0124

HAND DELIVERY LOCATION

Maine Conservation Corps
54 Independence Drive
Augusta, ME 04330

FACSIMILE TRANSMISSION

Fax: (207) 287-3342

E-MAIL SUBMISSION (Preferred)

deidrah.stanchfield@maine.gov

Proposed Administrative Consent Agreement

Background Summary

8

Subject: Triest Ag Group
PO Box 448
Greenville, NC 27883

Date of Incident(s): September 19, 20, 21 of 2015/ September 18, 2017/ September of 2018 to June 3, 2019

Background Narrative: On September 19-21, 2015, two Triest employees made three restricted use fumigation applications in Aroostook County. They were not licensed applicators at the time of the applications.

On September 18, 2017, three Triest employees made a fumigation application to a field on the Caribou Lake Road in Washburn. At the time of that application, two of the three employees had not completed the required fumigation training cited on the label. That application resulted in off-target movement of the fumigant that entered the open windows of a family home across the street. All family members, parents and two children were affected by the fumigant.

In the fall of 2018, Triest Ag Group placed a total forty-six, 1,265 lb. fumigant cylinders in three separate locations in Aroostook County. Eighteen cylinders were in one Washburn location, eight in a separate Washburn location and twenty in Easton. At each of these sites, the cylinders were out in the open, unlocked, and unprotected from the elements. On June 4, 2019, a Board inspector confirmed the last of the cylinders were loaded and shipped to North Carolina

Summary of Violation(s):

- 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III. Any commercial applicator must be a certified commercial applicator or under the direct supervision of a certified applicator.
- 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F). Using a pesticide inconsistent with its label directions.
 - Did not have label required fumigation training
 - Insufficient preparation of field before making fumigant application
 - Did not meet pesticide storage requirements specified on the pesticide label
- CMR 01-026 Chapter 31 Section 1(E). Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator.
- CMR 01-026 Chapter 20 Section 3(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.
- 22 M.R.S. § 1471-D (3) Requires that pesticide dealers be licensed by the Board to distribute any restricted use pesticides.

Rationale for Settlement: The scope of the violations in this case was extensive involving licensing, storage, training, and applications. Because of the violations there was both potential and actual damage in this case. The consent agreement is intended to match the gravity of the violations.

Attachments: Proposed Consent Agreement

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

CK Amt \$ 16500.00
Date: 12-30-19
CK# 10858

Triest Ag Group) ADMINISTRATIVE CONSENT AGREEMENT
1101 Industrial Blvd.) AND
Greenville, NC 27834) FINDINGS OF FACT

8

This Agreement, by and between Triest Ag Group (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company, located in Greenville, NC is a commercial spray contracting firm.
2. That on September 19-21, 2015, Company employees Aaron Perreault and Phillip Crumpacker supervised three fumigant applications in the following Aroostook County towns: Presque Isle (Paul Langerstrom's farm, Strike 85CP and Strike 100), Crouseville (Matt Porter's farm, Strike 85CP and Strike 100), and Limestone (Brent Edgecomb's farm, Strike 85CP).
3. That pursuant to 22 M.R.S. § 1471-D(1), no commercial applicator may use or supervise the use of any pesticide within the State without prior certification from the board.
4. That pursuant to 22 M.R.S. § 1471-C(5) "commercial applicator" includes any person, who uses or supervises the use of any limited or restricted-use pesticides. 22 M.R.S. § 1471-C(5) contains a limited exception for private applicators using a restricted use pesticide on their own land to grow agricultural commodities. This exception does not, however, apply to persons supervising the use of those pesticides on someone else's land.
5. That Strike 85CP and Strike 100 fumigants are classified as restricted use pesticides by the U.S Environmental Protection Agency and CMR 01-026 Chapter 40 Section 1(A) of Board rules.
6. That the circumstances described in paragraphs one through five constitute commercial pesticide applications by the Company in accordance with 22 M.R.S. § 1471-D(1)A.
7. That no one from the Company had a commercial pesticide applicator's license at the time of the applications described in paragraph two.
8. That the circumstances described in paragraphs one through seven constitute violations of 22 M.R.S. § 1471-D (1) (A).
9. That CMR 01-026 Chapter 31 Section 1(E) states that each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator.
10. That at the time of the applications described in paragraph two, the Company did not employ a master applicator.
11. That the circumstances described in paragraphs one through ten constitute violations of CMR 01-026 Chapter 31 Section 1(E).

12. That on Monday, September 18, 2017, at 9:38 PM Board staff received an email from a Washburn resident on the Caribou Lake Road. The resident reported that a company fumigated a field across the street from the residents' home earlier in the evening with the fumigant Strike 85CP.
13. The resident reported that his family experienced coughing that would not stop, watery eyes, runny nose, and burning skin along the neck line and folds of the skin. The caller likened it to a gas chamber experience he went through in basic training. These symptoms lasted for 1-2 hours.
14. On September 19, 2017, and again on April 5, 2018, a Board inspector met with the resident and on September 19, 2017, and again on April 23, 2018, a Board inspector conducted follow up inspections with Perreault.
15. That from the inspections described in paragraph fourteen, it was determined that on September 18, 2017, from 6:30 AM to 2 PM Company supervisor Perreault, and company employees Phillip Upchurch, and Crumpacker made an application of Strike 85CP fumigant. The application was made to 20.8 acres of a potato field at the Will-Turn farm located at 206 Caribou Lake Road in Washburn.
16. That the Strike 85CP fumigant label requires that "Any certified applicator supervising a soil fumigant application must have successfully completed one of the soil fumigant training programs listed on the following EPA website www.epa.gov/fumiganttraining for the active ingredient(s) in this product. The training must be completed in the time frames listed on the website. The FMP must document the date and location where the soil fumigant training program was completed".
17. That Company supervisor Perreault and handler Crumpacker had not completed the required soil fumigant training programs listed on the EPA website at the time of the application described in paragraph fifteen.
18. That the circumstances described in paragraphs two and twelve through seventeen constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
19. That the mandatory good agricultural practices section of the Strike 85CP fumigant label requires in part, that the soil surface be properly prepared and that the surface is generally free of large clods and that little or no crop residue be present on the soil surface. "Removing the crop residue prior to the start of the application is important to limit the natural chimneys that occur in the soil when crop residue is present. These "chimneys" allow the soil fumigants to move through the soil quickly and escape into the atmosphere. This may create potentially harmful conditions for workers and bystanders and limit the efficacy of the fumigant".
20. That photos taken by the Board inspector on September 19, 2017, show both large clods and crop residue in the field of the soil fumigant application the company made on September 18, 2017, as described in paragraph fifteen.
21. That the circumstances described in paragraphs fifteen, nineteen, and twenty constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
22. That on Saturday May 18, 2019, a Maine Department of Environmental Protection (DEP) agency employee became aware that there were eighteen 1,265 lb. tanks of chloropicrin, stored outdoors at a farm on Hines Street in Washburn. The same day a different DEP employee from the response division and a Board inspector went to the site to investigate.
23. That based on the investigation described in paragraph twenty-two, it was determined that the eighteen chloropicrin tanks at this site contained Strike 85CP fumigant. All tanks were outdoors in a turf area between a storage building

owned by the farmer and two private residences. The pesticide label on the tanks included the following language “Store in a cool, dry, well ventilated area under lock and key. Post as a pesticide storage area”.

24. That on May 22, 2019, Sam Delano, an agronomic sales representative with McCain Fertilizer called a Board staff member to discuss the eighteen chloropicrin cylinders that were stored as described in paragraphs twenty-two and twenty-three. Delano explained that the cylinders were delivered by the Company and stored at that location in September of 2018 for a fall application of that year. Due to unfavorable weather in the fall, the applications did not take place. The cylinders owned by the Company are not expected to be applied until August or September of 2019. It was also learned that a total of 46 of these cylinders were stored in Aroostook County.
25. That based on what was learned from the discussion described in paragraphs twenty-two through twenty-four, a Board inspector conducted a follow up inspection on May 22, 2019, with Aaron Perreault, the Northeast Account Manager for Triest Ag Group.
26. That from the inspection described in paragraph twenty-five, the Board inspector determined there were two additional sites where the Company’s Strike 85CP fumigant in 1,265 lb. tanks were stored outdoors and unprotected since the fall of 2018. Eight 1,265 lb. cylinders were stored at Will-Turn Farms in Washburn, and twenty cylinders were stored at Porter Farm in Easton. The Board inspector went to these sites to document how the cylinders were stored.
27. That Board staff contacted Hope Johnson, a product manager for EPA on May 31, 2019, and described how the Strike 85CP fumigant in 1,265 lb. tanks were stored, provided a label for the product, and a picture of the observed in field storage.
28. That Johnson responded the storage practices of chloropicrin detailed in the photo provided were not in line with the storage directions for use on the product label under the heading of Storage and Disposal. She went on to say a lock and key is required, some covered area to protect from outside conditions (heat, rain/etc.) is also needed.
29. That pesticides must be stored according to label directions.
30. That the circumstances described in paragraphs twenty-two through twenty-nine constitute use of a pesticide inconsistent with the product labeling and in violation on U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
31. That CMR 01-026 Chapter 20 Section 3(A) requires that 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.
32. That paragraphs twenty-two through twenty-nine indicate the fumigant cylinders were not kept in a secure enclosure.
33. That the circumstances described in paragraphs twenty-two through twenty-eight constitute multiple violations of CMR 01-026 Chapter 20 Section 3(A).

34. The Company distributed the restricted use fumigants described in paragraph two to a licensed Maine pesticide dealer.
35. That CMR 01-026 Chapter 10 Section 2(NN) defines "Pesticide dealer" to mean: any person who distributes limited or restricted use pesticides, including but not limited to sales personnel in an outlet, field salesmen, and manufacturers' representatives selling pesticides directly to the consumer or who accept orders for pesticides.
36. That CMR 01-026 Chapter 10 Section 2(Q) defines "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver pesticides in this state.
37. That 22 M.R.S. § 1471-D (3) requires that pesticide dealers be licensed by the Board to distribute any restricted use pesticides.
38. That no one from the Company was licensed as a pesticide dealer when the Company distributed the restricted use pesticides described in paragraph two into Maine.
39. The circumstances described in paragraphs thirty-four through thirty-eight constitute a violation of 22 M.R.S. § 1471-D (3)
40. That the Company expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
41. That this Agreement shall not become effective unless and until the Board accepts it.
42. That, in consideration for the release by the Board of the causes of action which the Board has against Triest Ag Group resulting from the violations referred to in paragraphs eight, eleven, eighteen, twenty-one, thirty, and thirty-three and thirty-nine. Triest Ag Group agrees to pay to the State of Maine the sum of \$16,500 (Please make checks payable to Treasurer, State of Maine).

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

TRIEST AG GROUP

By: Charles Smith Date: 12-30-2019

Type or Print Name: Charles Smith

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
Megan Patterson, Director

APPROVED

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

Proposed Administrative Consent Agreement

Background Summary

Subject: TruGreen Lawncare
2 Delta Drive
Westbrook, Maine 04092

Date of Incident(s): August 22, 2017/ April 5, 2018/ May 6, 2019/ July 30, 2019

Background Narrative: On August 22, 2017, A TruGreen applicator applied Turflon Ester Ultra Herbicide and Quinclorac 75DF Select Herbicide to a residence at 254 Foreside Road in Cumberland Foreside. The resident told TruGreen on multiple prior occasions he did not want their services. The application was made anyways.

On April 5, 2018, a TruGreen applicator applied Barricade 4L herbicide to a customer on Jacob Avenue in Scarborough. The applicator recorded the wind and direction as 2.5 mph, from the W/SW at 9:18 AM. Official weather records at the Portland Jetport (3.47 miles from application site) for that date, before and after the application time, recorded the wind speed and direction as 21 mph with gusts to 30 mph from W/NW and 20 mph with gusts to 31 mph from W/NW. It is a violation to spray when winds exceed 15 mph.

On May 6, 2019, a TruGreen applicator applied two herbicides, Escalade 2 and Fertilizer with 0.29% Barricade to a complex of 24 condominiums and an additional 3 single homes in Windham. These applications were made to the wrong sites and were not TruGreen customers. TruGreen did not have a system in place to positively identify customer properties. Some of the treated properties were not posted. The company was aware pesticides were applied to the wrong properties but did not report these incidents to the Board.

On July 30, 2019, a TruGreen applicator applied Quinclorac 75 DF herbicide and Vista XRT herbicide to a property in Cape Elizabeth. That property was listed on the 2019 Maine Pesticide Notification Registry as an abutter to a registry member. The company did not provide notification to the registry member.

Summary of Violation(s):

- CMR 01-026 Chapter 20 Section 6(D)2 requires prior authorization from the property owner before a person can apply pesticides to their property.
- CMR 01-026 Chapter 22 Section 2(B)III requires “Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.”
- CMR 01-026 Chapter 20 Section 7(A) requires that 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.

- CMR 01-026 Chapter 28, Section 3 requires that pesticide applications to turf areas must be posted in a manner and at locations designed to reasonably assure that persons entering such areas will see the notice.
- CMR 01-026 Chapter 50, Section 2(C) requires commercial applicators to telephone spray incident reports into the Board.
- CMR 01-026 Chapter 28, Section 2 (D) requires that commercial applicators notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registrant' s listed property.

Rationale for Settlement: There were multiple violations in this case. They included unauthorized applications, application in excessive winds, failure to post turf applications, no approved system in place to identify customer properties, failure to report applications to wrong properties, and failure to provide the required notification to a registry member. The Company entered into an Administrative Consent Agreement with the Board for a registry notification violation occurring on April 29, 2016. Consequently, the violations described above are subsequent violations pursuant to 7 M.R.S. § 616-A (2)(B).

Attachments: Proposed Consent Agreement

Rec: DEC 18 2019
CK# 60347468
Amt \$21,500 -
CK Date 12-17-19

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

In the Matter of:)
TruGreen Lawncare) ADMINISTRATIVE CONSENT AGREEMENT 9
2 Delta Drive) AND
Westbrook, Maine 04092) FINDINGS OF FACT

This Agreement by and between TruGreen Lawncare (hereinafter called the "the Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 1800 issued by the Board pursuant to 22 M.R.S. § 1471-D(1)(B).
2. That on August 24, 2017, Daniel Crewe, a resident at 254 Foreside Road in Cumberland Foreside emailed Board staff to report that the Company made an unauthorized pesticide application to his lawn on August 22, 2017. Crewe informed the Company in 2016 he did not want their services. The Company provided a service to his lawn in May of 2017 and Crewe immediately told the Company again he did not want their services. However, in June of 2017, he was home when a Company employee again tried to apply material to his lawn. Crewe informed the Company employee he did not want service to his property, the employee said he would inform his office.
3. That in response to the email described in paragraph two, a Board inspector contacted Crewe on August 25, 2017, and collected photocopies of Company service documents for applications on August 22, 2017. The August application included two herbicides, Quinclorac SPC 75DF and Turflon Ester Ultra.
4. That on August 25, 2017, a Board inspector conducted an inspection with Company Manager Chris Murphy.
5. That from the inspection described in paragraph four, the inspector documented that on August 22, 2017, Company applicator John Trip applied Turflon Ester Ultra Herbicide and Quinclorac 75DF Select Herbicide to Dan Crewe's lawn at 254 Foreside Road in Cumberland Foreside.
6. That CMR 01-026 Chapter 20 Section 6(D)2 requires prior authorization from the property owner before a person can apply pesticides to their property.
7. That the Company did not have Crewe's authorization for the August 22, 2017, application of pesticides to his property.
8. That the circumstances described in paragraphs one through seven constitute a violation of CMR 01-026 Chapter 20 Section 6(D)2.
9. That on April 5, 2018, the Board received a call alleging that a Company applicator was making a pesticide application to turf on Jacob Avenue in Scarborough at approximately 9 AM in high winds.

10. That the day of the complaint, a Board inspector conducted an inspection with Robert Fraser, the Company applicator for the Jacob Avenue application.
11. That from that the inspection described in paragraph ten, it was determined Fraser applied Barricade 4L herbicide to the lawn at 420 Jacob Avenue in Scarborough on April 5, 2018, at 9:18. Fraser recorded the wind as 2.5 mph from the W/SW.
12. That a Board inspector checked official wind speed records for the Portland Jet Port for the date of the 420 Jacob Avenue application before and after the 9:18 AM application. This jet port is 3.47 miles from the application site as measured on Google Earth. The wind at 8:51 AM was from the WNW measured at 21 mph with wind gusts to 30 mph and at 9:51 AM it was from the WNW measured at 20 mph with wind gusts to 31 mph.
13. That CMR 01-026 Chapter 22 Section 2(B)III requires “Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.”
14. That the circumstances described in paragraphs nine through thirteen constitute a violation of CMR 01-026 Chapter 22 Section 2(B)III.
15. That on May 10, 2019, the Board received a complaint from Windham resident Jon Jamieson who stated on May 6, 2019, he found Company signs posted on his lawn indicating a pesticide application had been made that day. He is not a Company customer.
16. That during the phone call described in paragraph fifteen, Jamieson said the Company also made unauthorized pesticide applications to neighbors Terry Burn’s lawn at 24 Corner Brook Drive and Adam Potter’s lawn at 49 Provost Drive.
17. That in response to the complaint call described in paragraphs fifteen and sixteen, two Board staff members conducted follow up inspections on May 13, 2019, with Jon Jamieson, the resident at 50 Provost Drive and Adam Potter. Jamieson completed a written statement about the unauthorized pesticide application the Company made to his lawn on May 6, 2019, and Board staff collected the Company sign used to post that application. Potter completed a written statement that included in part, that when he checked his outdoor video feed, it recorded the Company making an unauthorized application to his lawn. The Company did not post their pesticide application to Potter’s lawn.
18. That on May 13, 2019, Board staff also conducted a follow up inspection with Jacob Harvey, the Company General Manager at the Company’s 2 Delta Drive Westbrook office.
19. That during the inspection described in paragraph eighteen, Harvey provided the work order listing customer information as Wildwood Properties Inc., Provost Drive, Windham. Areas on the work order were listed as “entire area” and square feet as 200,000. There were no electric meter numbers or other approved methods to positively identify the treatment properties on the work order provided to John Sullivan, the Company applicator who made the application.
20. That CMR 01-026 Chapter 20 Section 7(A) requires that 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.

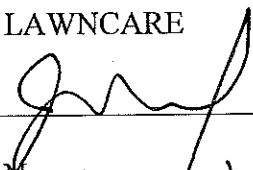
21. That during the inspection described in paragraphs eighteen and nineteen, Board staff asked Harvey what method the Company used to positively identify outdoor pesticide applications. Harvey was not familiar with this requirement and could not provide evidence the Company implemented a system based on Board approved methods, to positively identify the property of their customers.
22. That on May 13, 2019, Board staff conducted a follow up interview with Company applicator John Sullivan. From that interview it was determined that the Company provided insufficient information to Sullivan for him to know what properties to treat as described in paragraph nineteen.
23. That on May 20, 2019, a Board inspector met and interviewed Terrance Burns who resides at 24 Corner Brook Circle. Burns completed a written statement in which he wrote that on May 6, 2019, he noticed tracks on his front lawn and a pesticide flag on his neighbor's lawn. Burn's narrative included that Company General Manager Harvey went to Burn's home to assess the impact of the unauthorized herbicide application and proposed an offer to resolve the issue. Burns noted that no pesticide application sign was posted on his treated lawn.
24. That the Company was supposed to apply herbicides to the turf at the Corner Brook II condominiums on May 6, 2019, but mistakenly applied Escalade 2 and Fertilizer with 0.29% Barricade Herbicide to the turf of the Corner Brook I condominiums. Another licensed spray contracting firm, the Cutter's Edge had one contract for the condominiums in Corner Brook I. The Company made an unauthorized pesticide application to the Corner Brook I condominiums. Three additional single-family homes that received unauthorized pesticide applications: Jamison's, Potter's, and Burns' bring the total to 4 unauthorized applications for the Windham applications made on May 6, 2019.
25. That the circumstance described in paragraphs fifteen through twenty-four constitute a violation of CMR 01-026 Chapter 20 Section 7(A).
26. That the circumstances in paragraphs six, fifteen, seventeen, twenty-three and twenty-four constitute four violations of CMR 01-026 Chapter 20 Section 6(D)2.
27. That commercial pesticide applications to turf areas must be posted in a manner and at locations designed to reasonably assure that persons entering such areas will see the notice pursuant to CMR 01-026 Chapter 28, Section 3.
28. That the Company did not post the pesticide turf applications as described in paragraphs seventeen and twenty-three.
29. That the circumstances described in paragraphs sixteen, seventeen, twenty- three, twenty -seven and twenty-eight constitute two violations of CMR 01-026 Chapter 28, Section 3.
30. That CMR 01-026 Chapter 50, Section 2(C) requires commercial applicators to telephone spray incident reports into the Board. A reportable spray incident is any significant misapplication or accidental discharge of a pesticide. Such incidents include accidentally applying pesticides to the wrong site or places of human habitation.
31. That the Company did not report the spray incident of accidentally applying pesticides to the wrong sites as described in paragraphs fifteen, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four, and thirty.

32. That the circumstances described in paragraphs fifteen, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four, thirty, and thirty-one, constitute a violation of CMR 01-026 Chapter 50, Section 2(C).
33. That on August 13, 2019, a Maine Pesticide Notification Registry member, who resides in Cape Elizabeth, called the Board to report that the Company made a nearby turf application without providing her the necessary notification. The registry member's windows were open, and she did not have time to cover her fruit trees. She has two children, a five-year-old and a baby.
34. That on August 14, 2019, a Board inspector met with Sarvi Maisak, the registry member who resides at 24 Wood Road in Cape Elizabeth who is listed as a registry member on Maine's 2019 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. Peggy Anderson, who resides at 28 Wood Road in Cape Elizabeth, is listed on the 2019 registry as an abutter within 250 feet of Maisak's property.
35. That on August 14, 2019, a Board inspector also conducted an inspection with Jacob Harvey. From the inspection it was determined that on July 30, 2019, Company applicator Earl Richards applied Quinclorac 75 DF herbicide and Vista XRT herbicide, to Peggy Anderson's lawn at 28 Wood Road in Cape Elizabeth.
36. That during the inspection described in paragraph thirty-five, the Board inspector asked Harvey about the Company's notification practices for the pesticide application made to Anderson's lawn on July 30, 2019. Harvey stated that the Company's corporate office in Manchester, NH is tasked with providing notification to Maine registry members and Maisak was not contacted about the July 30, 2019, pesticide application and no record of attempted notification was found.
37. That commercial applicators are required by CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registrant's listed property.
38. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2 (D). No notification was provided to Maisak prior to making the application described in paragraph thirty-five.
39. That the actions described in paragraphs thirty-three through thirty-eight constitute a violation of CMR 01-026 Chapter 28, Section 2(D).
40. That the Company entered into Administrative Consent Agreements with the Board for a registry notification violation occurring on April 29, 2016. Consequently, the violations described in paragraphs eight, fourteen, twenty-five, twenty-six, twenty-nine, thirty-two and thirty-nine are subsequent violations pursuant to 7 M.R.S. § 616-A (2)(B).
41. That the Board has regulatory authority over the activities described herein.
42. That the Company expressly waives:
 - A. Notice of or opportunity for hearing;
 - B. Any and all further procedural steps before the Board; and
 - C. The making of any further findings of fact before the Board.

43. That this Agreement shall not become effective unless and until the Board accepts it.
44. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violations referred to in paragraphs eight, fourteen, twenty-five, twenty-six, twenty-nine, thirty-two and thirty-nine, the Company agrees to pay a penalty to the State of Maine in the sum of \$26,500, of which \$5,000 shall be suspended pending compliance with the condition outlined in paragraph 45 below. The unsuspended portion of the penalty (\$21,500) must be paid immediately. (Please make checks payable to Treasurer, State of Maine).
45. Prior to the start of the Company's 2020 pesticide application season, the Company shall provide mandatory training for all licensed applicators it employs. Such training shall be paid for by the Company and must be planned and presented by the Company staff. The training must focus on the violations in this consent agreement and be a minimum of one hour long. A Board staff member will be present at the training to monitor the presentation and collect a signature list of Company attendees. Attendees will not receive credit towards their certification for attendance at this training. The Company will also develop a method to provide equivalent training to Company employees hired after the 2020 preseason group training. The Company must inform the Board in writing, how they will implement this requirement. Upon completion of the preseason training and submission of the Company's written policy on new employee equivalent training, the suspended portion of the penalty will be discharged.
46. If the Company fails to provide mandatory training to all licensed applicators in its employ before the start of the 2020 pesticide application season as required by paragraph 45, or to develop a method to provide equivalent training to Company employees hired after the 2020 preseason group training as required by paragraph 45, the suspended penalty (\$5,000) shall then be immediately due and payable.
47. In addition to payment of the penalty amount required in paragraph forty-four, at the time of returning the signed consent agreement, the Company shall submit a written policy to the Board containing procedures to ensure that persons on the Pesticide Notification Registry are given notice in accordance with CMR 01-026 Chapter 28, Section 2 (D). Also, at the same time, the Company shall submit its written policy for the Board approved method it has implemented to positively identify the property of their customers when commercial applicators are making outdoor treatments to residential properties in accordance with CMR 01-026 Chapter 20 Section 7(A).

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

TRUGREEN LAWCARE

By:  Date: 12/16/19
 Type or Print Name: Jacob Harvey

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Megan Patterson, Director

APPROVED:

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

From: [jody_spear](#)
To: [Patterson, Megan L](#)
Subject: corrected and resubmitted letter re: chlorothalonil
Date: Wednesday, November 20, 2019 3:56:46 PM

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

Megan,

The "newer chemistries" on the UMCE list for potato fungal control include cyazofamid, cymoxanil, dimethomorph, fluazinam, mandipropamid, difenoconazole, mefenoxam, oxathiapiprolin, propamocarb, and zoxamide -- all rated toxic. I'll be looking for reasons the board would defend the use of these chemicals in place of chlorothalonil, as opposed to organic protocols.

As I said in my letter of 9 Nov., Steven Johnson has not been helpful. He ignored my repeated requests for recommendations, following up the BDN story (linked below), until my state rep interceded on my behalf, and even then all he did was throw out to me the aforementioned UMCE fact sheet including chlorothalonil, which he now says should be discontinued. I hope the board will confer with him and get back to me with answers.

Thanks,

Jody

<https://bangordailynews.com/2019/09/19/news/aroostook/the-pesticide-maine-potato-farmers-use-to-control-disease-is-being-banned-around-the-world/>

r

Aroostook

The pesticide Maine potato farmers use to control disease is being banned around the world



Anthony Brino | Star-Herald

Sprayer tracks are seen in a Presque Isle potato field waiting to be harvested on Sept. 18, 2019.

By **Anthony Brino**, BDN Staff • September 19, 2019 6:00 am

PRESQUE ISLE, Maine — University of Maine Cooperative Extension crops specialist Steven Johnson is letting the region's potato growers

know that they might consider changing the ways they control the disease late blight in the coming years.

Johnson, who has worked with Cooperative Extension for more than 30 years and runs the late blight forecast, said there have been recent national and international changes in the regulation of the fungicide chlorothalonil, and that growers may want to start transitioning to using newer chemicals.

“I’m trying to give a heads up,” Johnson said. “Potatoes are a tough competitive business. People get to the point where they get done growing potatoes because the regulations are too much. I’ve seen that. People say, ‘it’s time for me to hang it up,’ and we are an aging business.”

Chlorothalonil has been widely used since the early 1970s to control fungal diseases in a range of crops, including apples and potatoes. While it remains effective, the chemical has come under government scrutiny and limitations in recent decades. It is considered a “likely human carcinogen” by the U.S. Environmental Protection Agency, can leach into groundwater and is highly toxic to fish and aquatic species. It’s also been implicated in damage to honeybees and native pollinators.

In March, the European Union banned chlorothalonil, while Canada has sharply reduced the amount and number of applications allowed in a growing season. The U.S. EPA has also reduced the amount and applications allowed and will be reviewing the chemical’s registration in 2020.

The russet potato varieties that comprise much of Aroostook County's processing potato crop are often susceptible to late blight, the quasi-fungal disease that causes rots and led to the Irish potato famine. As northern Maine's potato industry shifted to russet varieties for processing since the 1970s, chlorothalonil became the main fungicide used to control late blight, with 15 to 20 applications made in a season, depending on the conditions, Johnson said.

Today, Maine growers typically use fewer than 12-15 applications of chlorothalonil in a season, but future government-mandated reductions may be likely and the current amounts may also limit export opportunities, Johnson said.

“There've been some years that we've shipped a lot of potatoes to Europe when there's a crop issue there. That might present challenges with regard to how Europe allows imports.”

Johnson said he has been researching new alternatives to chlorothalonil. They're often just as effective, used in smaller concentrations and less frequently, but may be unfamiliar to longtime farmers who are comfortable with what they know. Johnson shares his findings and outlook with growers at meetings, field days and in newsletters.

“I've been working on this for the last 10 years,” Johnson said. “We have a lot better and newer chemistries that have better and longer efficacy. Newer fungicides are used at a much lower rate and generally speaking are less toxic to people, aquatic life and non-target organisms.”

While chlorothalonil might need to be sprayed weekly to maintain “protective coverage,” newer ones can be applied twice a month.

“Some of the new materials have been embraced and work well and people are happy with them,” Johnson said. “They fit the farming schedule. Some of them might take a vacation.”

Adopting these newer chemicals would be a “paradigm shift” for some growers, though they fit well into the strategy of integrated pest management where pesticides are used only in response to an economic threat, Johnson said.

“Fungicides don't increase the yield; they protect the yield,” Johnson said. “When a yield isn't threatened, they don't need to be used for controlling the pathogen. It keeps money in people's pockets.”

This story originally appeared on The County.

RECOMMENDED FOR YOU

Have feedback? Want to know more? Send us ideas for follow-up stories.

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11a

129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 1888

H.P. 1354

House of Representatives, December 24, 2019

An Act To Protect Children from Toxic Chemicals

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 20, 2019. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GRAMLICH of Old Orchard Beach.
Cosponsored by Senator CARSON of Cumberland and
Representatives: BLUME of York, FARNSWORTH of Portland, FAY of Raymond,
GATTINE of Westbrook, INGWERSEN of Arundel, McDONALD of Stonington,
PEBWORTH of Blue Hill, Senator: CHENETTE of York.

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

2 **Sec. 1. 7 MRSA §606, sub-§3** is enacted to read:

3 **3. Unlawful use.** A person may not apply herbicides as defined by Title 22, section
4 1471-C, subsection 13 that are nonselective, including, but not limited to, glyphosate,
5 within 75 feet of:

6 A. School grounds;

7 B. A playground into which the public is invited or allowed; and

8 C. A child care center as defined by Title 22, section 8301-A, subsection 1-A,
9 paragraph A.

10 For purposes of this subsection, "school grounds" means a school building, property on
11 which a school building or facility is located and property that is owned, leased or used
12 by a school for a school-sponsored activity, function, program, instruction or training.

13 **SUMMARY**

14 This bill bans the use of nonselective herbicides, including, but not limited to,
15 glyphosate, within 75 feet of school grounds, public playgrounds and child care centers.