



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**

**May 6, 2022**

**9:00 AM Board Meeting**

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

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

Phone Conference ID: 945 121 274#

**AGENDA**

1. Introductions of Board and Staff

2. Minutes of the April 1, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

3. Consideration of a Request for Variance from Chapter 29 from Davey Tree Expert Company—Railroad Division, to Treat Railroad Rights-of-way in Maine

Davey Tree Expert Company—Railroad Division, is seeking a variance from and Chapter 29, Section 6, Buffer Requirements, in order to treat the Canadian Pacific rail tracks rights-of-way in Maine. Board policy indicates that first-time variance requests must be considered by the Board. Policy further stipulates that railroad variance requests need to be consistent with the Maine Department of Transportation standards.

Presentation By: Megan Patterson, Director and Pam Bryer, Pesticide Toxicologist

Action Needed: Approve/disapprove the variance requests

4. Review and Potential Adoption of Proposed Amendments to Chapter 20 and Re-initiating Rulemaking for Chapter 41

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

On December 22, 2021 a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20 and 41. A public hearing was held on January 14, 2022 by remote meeting on the Microsoft Teams platform and the written comment period closed at 8:00 AM on January 24, 2022. The Board reviewed the rulemaking record on February 25, 2022 and again on April 1, 2022, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. The Board will now review the changes to the proposed amendments, the Response to Comments for Chapters 20 and 41. The Board will also review the Basis Statement and Statement of Impact on Small Business for Chapter 20. The Board will then determine whether it is prepared to adopt the proposed amendments to Chapter 20. Given the substantial changes to Chapter 41, the Board will also determine whether it is prepared to reinstate rulemaking for Chapter 41.

Presentation By: Megan Patterson, Director

Action Needed: Provide direction to the staff on the final adoption of Chapter 20 and reinitiating of rulemaking for Chapter 41

5. Chlorpyrifos Use Permit Policy for Applicators Intending to Use Existing Stocks of Chlorpyrifos, Purchased Before January 1, 2022, On Sites Other Than Crops Intended For Human Consumption

On June 8, 2021 LD 316 was signed into Maine law. This law prohibits, beginning January 1, 2022, the distribution of pesticides containing chlorpyrifos as an active ingredient. The law allows the Board to grant temporary permits from January 1, 2022 to December 31, 2022 authorizing licensed pesticide applicators to use pesticides containing chlorpyrifos, as long as the product was in the State and in the possession of the applicator before January 1, 2022. The law directs the Board to post on its website a list of the temporary permits issued. In 2021, the Board initiated rulemaking related to the use of chlorpyrifos. Proposed rules clarified statutory prohibitions on the distribution of chlorpyrifos and Board issuance of permits for use of existing stocks of chlorpyrifos purchased before January 1, 2022. Due to delays in the rulemaking process, applicators in possession of chlorpyrifos are seeking guidance on how to pursue a Board permit that will allow them to use up existing products during the 2022 growing season. The proposed policy incorporates the related proposed amendment to Chapter 41 and is suggested as a temporary response while rulemaking proceeds.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and approve/disapprove the proposed policy

6. Review of the Board Budget

In early 2017, the Board reviewed the budget with the goal of identifying potential resources that could be allocated to Board priorities. At that time the Board requested ongoing annual updates on the status of the Pesticide Control Fund.

Presentation By: Megan Patterson, Director

Action Needed: Provide guidance to the staff on Board budget priorities

7. Consideration of a Consent Agreement with Brownies Landscaping, Whitefield, Maine

On June 3, 1998 the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involved an unlicensed and unauthorized application of pesticides on public property as well as a failure to post the applications and a failure to follow label directions pertaining to application and personal protective equipment.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Amend and/or approve

8. Other Old and New Business

a. LD 2019—An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances

b. LD 2021—An Act To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public

c. Variance Permit for CMR 01-026 Chapter 29, Vegetation Control Services, Inc.—Robinson’s Wood, Cape Elizabeth

d. Variance Permit for CMR 01-026 Chapter 29, New England Spray Technologies—Marginal Way, Ogunquit

e. Update on risk assessment of herbicide use on school grounds and human health impacts as proposed by the Medical Advisory Committee

f. Other items?

9. Schedule of Future Meetings

June 17, 2022 is the next tentative Board meeting date. The Board will decide whether to change and/or add dates.

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

Adjustments and/or Additional Dates?

10. Adjourn

**NOTES**

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



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**BOARD OF PESTICIDES CONTROL**

**April 1, 2022**

**9:00 AM Board Meeting**

**MINUTES**

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Board: Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie, Waterman
- Staff: Boyd, Brown, Bryer, Connors, Couture, Patterson, Pietroski, Tomlinson

2. Minutes of the February 25, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Carlton: Moved and seconded to approve the minutes as amended**
- **In Favor: Unanimous**

3. Overview of Board Member Responsibilities

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

Presentation By: Mark Randlett, Assistant Attorney General

Action Needed: None, information only

- Randlett explained to Board members their responsibilities as a public board, which include ensuring that all members of the public had the right to be notified of meetings and an opportunity to hear and understand what decisions the Board was making. He noted that it would be inappropriate for members to discuss any agenda items outside of a formal meeting. Randlett stated that except for during an executive session everything the

Board did must occur in public. He described the process for rulemaking and the provision in the law that allowed for a judiciary proceeding to terminate a registration or revoke a license. Randlett also discussed how Board members should disclose any conflicts of interest in regard to specific agenda items and recuse themselves if need be. He concluded that he was always available to provide legal counsel to Board members or staff.

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

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

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

Presentation By: Megan Patterson, Director

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

- Patterson gave Board members a quick overview of where they were in the rulemaking process and noted that more information would be added to the basis statement. Patterson told the Board that in accordance with rulemaking deadlines they had until May 23 to either finally adopt the language presented at the May 6 meeting and stick with revisions that were made or make additional revisions which would require going through the rulemaking process again.
- Adams asked that Patterson go through the sections of rule that had been changed.
- Patterson began with Chapter 20 Section 1(A) and explained that it had been decided to use the definition of PFAS associated with one fully fluorinated carbon, which was pulled from existing state statutory language.
- Randlett stated that changing the PFAS definition would be considered a substantial change because it could significantly change the scope of products to which the rule would apply. He added that the Board could change this and go back for public comment without starting all over but that they would need to do so within 14 days after the end of public comment.
- Adams stated that leaving the PFAS definition as it was at this time would probably be best.
- Ianni asked which definition of PFAS was more inclusive and who was currently using the two-carbon definition.
- Patterson stated that the one-carbon definition was more inclusive, and EPA was using a definition very similar to the two-carbon definition.

- Bryer noted that she conducted a search on the PubMed database and there were roughly 6,250,000 compounds that contained one fully fluorinated carbon atom.
- Patterson explained that there was one difference between the two copies of Chapter 20 included in the Board packet and that was the inclusion and the exclusion of the term HDPE in relation to containers that pesticides are stored, distributed or packaged in.
- Jemison asked what percentages of HDPE plastic containers were fluorinated.
- Patterson responded that about 20% of all HDPE containers for agricultural chemicals (fertilizers, adjuvants and pesticides) were fluorinated, but that did not mean they were all introducing PFAS. She added that EPA was still studying the impact of container fluorination on PFAS in agrichemicals, but that there was some thought that the presence of PFAS might be related to how the container was fluorinated.
- Ianni added that in this state of not having all the information on which containers were producing PFAS she would rather air on the side of being more inclusive in rule.
- The Board came to the consensus to remove HDPE and keep all fluorinated containers.
- Patterson stated that EPA was expected to have a report on their fluorination study coming out next month which assessed a variety of container types.
- Randlett commented that a basis statement was a requirement under the Administrative Procedures Act and needed to state the policy reason for why the rules were being adopted. He added that it needed to explain that they were adopted pursuant to a legislative directive and staff may want to include other reasons for why this was important as a policy matter. Randlett added that it also needed to note that the term HDPE was removed and that the change was made because the Board agreed to include a wider variety of containers.
- Patterson noted that staff would add additional info to the basis statement.
- Patterson discussed Chapter 41 changes with the Board. She stated that the definition of emerging invasive invertebrate pest under section 6(A)(I) had been changed as requested from the last meeting. Patterson noted that there were several comments about this definition, including editing it to make it more specific. She noted that clause (a) came from bill sponsor Representative Grohowski's public comments, and clause (b) came from department staff conversations about how to delineate areas of emergence, which resulted in the term eco-region being included. Eco-region was a term used by the EPA and there were specific eco-regions with delineated areas. Patterson stated that clause (c) was changed to allow for the management of pests specified on a board-approved list that would be included in policy. This would allow the Board to be able to add or remove species from that list during regular Board meetings which occur approximately every six weeks.
- Bohlen commented that eco-region was a good basis to go on, but the challenge was it was hierarchical and possibly they should add the level they were referring to. He added that he tripped over language in clause (c) because it made him think it was referring to a list of ornamental plants.
- Jemison agreed with Bohlen on the confusion regarding clause (c)
- There was further Board discussion about the term eco-region.
- Patterson stated that there was a suggestion to go with level three ecoregion during discussions with the State horticulturist.
- Jemison asked if the Board chose to leave the term eco-region as it currently was if they could move forward with the rule.

- Randlett responded that it seemed to be a different definition than what was originally proposed. He added that it restricted the number of species significantly and was not sure if it would be a substantial change but it was ultimately up to the Board to decide.
- There was consensus among the Board regarding the main body of the definition.
- Patterson suggested they could change clause (c) to read ‘species specified on the board-approved list’ and that Asian long-horned beetle, hemlock wooly adelgid and emerald ash borer were already suggested for the list.
- Patterson told the Board the next part of rule with changes addressed dates for the Board publication of the two lists, a list of pest species exempted, and a list of the products prohibited. She explained that there had been discussion about avoiding delays, so the language had been changed from the proposed date to ‘within 30 days of adoption’ of the rule. She stated that regarding Section 6(C)(IV) staff proposed changes that pertained to pointing back to the list in 6(A)(I)(c).
- Adams asked if keeping the list and eliminating the permit process would be ok.
- Randlett responded that if the Board was striking the permit process he thought that could be important. He stated that he was not prepared to give an answer or guidance on it right now until after he had time to look at it.
- Adams commented that the instruction of the legislation was to be as prohibitive as possible.
- Patterson stated that she was not sure how a permit would be much more expedient than using the list and that the Board had the option to have an emergency meeting to change the list if that was needed.
- Bohlen commented that he was one of the people pushing for a permitting process because of concern about responding to a new invasive in a timely manner and when it was still a small population. He added that the specific permit language did not say it was for an ‘emergency’ so that may open staff up to other types of requests.
- Patterson stated that the initial date of adoption was January 1, 2023, but that language had been struck and the rule would become effective when it was finally adopted. Patterson explained to the Board that chlorpyrifos tolerances on all agricultural commodities grown in the U.S. and intended for human consumption had been canceled by the EPA.

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

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

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Amend and/or approve

- Connors stated that this complaint was initially reported to the Maine DEP, who then contacted BPC staff. He added that someone saw an individual making applications on four different occasions within 25 feet of the water. Connors stated that it appeared clear that an herbicide had been used for over 130 feet along the shoreline on a man-made

berm. He told the Board that a BPC inspector had collected samples that came back positive for glyphosate and its metabolite. Connors concluded that the \$300 consent agreement that has been signed.

- Waterman asked what the cost was to run the soil analysis.
- Connors responded that it could vary but was typically around \$300.
- Waterman questioned whether this fine really affected the expense and efforts that staff had gone through to prove this happened. Carlton seconded this same sentiment.
- Patterson told the Board that all payments from consent agreements go to the General Fund, from which the BPC does not receive any monies.
- There was discussion about the lapse in time from the report of the violation to the issuance of the consent agreement.
- Connors responded that there was some time lag and ideally closure would have occurred much quicker.
- Ianni asked if the Board weighed in on mitigating the erosion potential due to the barren soil that had now been created.
- Connors stated that DEP's shoreland zoning regulations stated not to remove trees, understory or groundcover and BPC staff would make it known to DEP what their findings were.
- Adams stated that he would be interested in taking a future look into the costs of BPC investigations and the parameters of consent agreement amounts. He added that he agreed with Ianni about the erosion problem that was caused.
- Bohlen commented that part of the problem was how to find routes to educate homeowners because we have a responsibility to do that.
- Adams stated that he wanted this particular issue to be discussed in a future meeting.
- Jemison suggested they might be able to use costs analysis towards settling consent agreements for enforcement actions to state that an individual or company willing to hire someone to correct the problem they created may face a lesser fine.

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

## 6. Other Old and New Business

a. LD 2019—An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances

- Patterson told the Board that hearings for LD 2019 took place on March 15 and the work session was held on March 16. She added that ultimately this and LD 2021 were both voted out of committee. Patterson stated that staff had been asked to provide estimates of fiscal impact to be used by the ACF Commissioner's Office in developing a fiscal note.

b. LD 2021—An Act To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public

c. EPA Letter to Various Parties about Fluorinated Polyolefin Containers

d. Variance Permit for CMR 01-026 Chapter 29, Vegetation Control Services, Inc.

- Patterson stated that the Board delegated the authority to review variances to staff for the management of invasive plants within 25 feet of water. Patterson reviewed the process that staff followed each time a variance application was received. She added that specific clauses were added to this variance, including the stipulation that two of the pesticides proposed for use were not to be used within 25 feet of water.

6. Schedule of Future Meetings

May 6, June 17, August 5, and September 16 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- There was discussion about whether meetings would continue to be held remotely. The Board decided to hold the next meeting remotely and discuss how the June 17 meeting would be held at that time.

8. Adjourn

- **Jemison/Bohlen: Moved and seconded to adjourn at 11:50 AM**
- **In Favor: Unanimous**

## **Recommendations for Herbicide Use in State of Maine Owned Railroad Rights-of-Way**

### **Introduction**

The State of Maine owns approximately half of all railroad rights-of-way in Maine. This represents about 600 miles of track and contains single track line, multiple track lines, sidings, bridges, signaled crossings, switching yards, and building structures. Historically, rail lines were constructed on gentle grades, many of which are adjacent to rivers and lakes. Rail lines also cross numerous streams and rivers, both permanent and intermittent, and run through or adjacent to a variety of wetland habitats. In some cases, rail may also run near or across surface water public drinking water supplies or near public drinking water wells. These locations adjacent to valued natural resources, as well as communities and businesses that rail passes through and serves, make the job of maintaining vegetation of critical importance not only to ensure safe operation but also in the choices associated with management of vegetation.

In the modern era, vegetation managers have moved toward the use of herbicides as a key component in the management of railroad rights-of-way. While the use of herbicides may be controversial for some, there is much evidence that proper use of herbicides has lower environmental impact than other methods for control of vegetation. Experiments have been conducted around the world in alternative methods for control of vegetation in railroad rights-of-way. They include the use of steam, infrared radiation, mechanical disturbance, hand labor, mechanical brush removal, controlled burn, open flame burning, hot water, weed barrier, vacuum clearing, freezing, electro-thermal, ultraviolet light, and establishment of monoculture crops such as low growing grass or clover. Many of these methods are classified as short term solutions. In some cases, methods may stimulate vegetative growth, making them counterproductive. These methods are always more expensive than herbicide application and most require multiple re-treatment within the same growing season.

Herbicides represent a reasonable, efficient, cost-effective alternative. Typically treatments need only be done once a year or once every other year to maintain an adequate level of control. The concern for vegetation managers is determining the type of vegetation, vegetative pressure, what products to use, at what rates, adverse weather conditions, when to apply, how to apply, properly identifying risk to workers and the environment, and how to engage the public with information that addresses concerns and informs about products, procedures, and schedule. In addition, managers and applicators must be informed about state and local pesticide regulations, environmental fate for products used, mobility, potential groundwater contamination, and potential harmful health effects, both short and long term. Products that demonstrate carcinogenicity or mutagenicity should be avoided, for example.

For these reasons, understanding the vegetation, the environment, and choice of chemistries, formulas, and methods of application are the central concern and a protocol for decision making needs to be in place. The recommendations that follow are intended to provide a format when making decisions and establishing protocol for the use of herbicides in State of Maine owned railroad rights-of-way managed by the Maine Department of Transportation.

## Choice of Chemistries

Decisions about which herbicide products to use should begin with an understanding of the vegetation that needs to be controlled and the amount of vegetation, often referred as stem density. Vegetation may include hardwood and softwood trees, grasses, and annual and perennial weeds. Railroad rights-of-way can be divided into three main components. They are the track and railroad ties, the ballast zone, and the area from the ballast zone to the edge of the right-of-way.

The track and railroad ties that track are attached to comprise an eight to ten foot width. This zone should be free of vegetation to allow for ease of inspection of the infrastructure. The Federal Transportation Board requires that the infrastructure be inspected on a regular schedule, typically once every two weeks regardless of whether the line is active or inactive. Any vegetation growing in and around the rail and ties makes inspection difficult. Breaks and cracks in the rail may go unnoticed, spikes used to attach the rail to the ties may be loose or missing, and couplings may break or loosen. Obscuring vegetation may make these defects more difficult to see. If these defects go unnoticed and unrepaired, the issues may cause trains to derail. Switches, electric boxes, crossing lights and gates may all become inoperable when defects cannot be detected due to obscuring vegetation. The consequences from improper inspection and timely repair can be dramatic and include derailment, car and train collisions, train and large animal collisions, and even loss of life. Vegetation in railroad rights-of-way may also catch on fire. Fire starts may spread beyond the right-of-way into high value properties with dramatic consequences.

The ballast zone typically includes the track and railroad ties and extends out to include the ballast that the track is constructed on. The width of the ballast zone is approximately 20 feet, 10 feet in either direction from the track centerline. The ballast zone provides a stable base for the track and ties and should be well drained material such as 1 to 2 inch sub angular stone. Historically, rail companies used spent coal as a base under the ballast. It was a by-product from burning coal to run steam locomotives. Fly ash may have also been deposited in track construction. This sub-base can be relatively impermeable and may help to prevent herbicides that may otherwise be mobile from percolating down through the soil profile in the ballast zone and potentially into groundwater. The 20 foot ballast zone should also be free of vegetation to allow for proper drainage.

The third zone from edge of ballast to edge of right-of-way presents different challenges for vegetation managers. Active trains, whether passenger or freight, cannot have trees capable of hitting the train. The third zone needs to be free of trees and tree branches that would interfere. State of Maine rail lines can be active or inactive. In either case, they should be treated as if trains would run on them and there should be no trees capable of hitting a train in the third zone. A typical railroad right of way is 66 feet wide, or 33 feet in either direction from the centerline of the track. The tree-free zone typically measures 50 feet, or 25 feet in either direction from centerline.

For simplicity we can call the 8 to 10 foot track and tie zone, Zone 1; the ballast zone, Zone 2; and the remaining portion of the right-of-way, Zone 3.

## Zone 1

It is important that Zone 1 be kept free of all vegetation. This includes trees, weeds, and grasses. Therefore, chemistries chosen for control of vegetation in Zone 1 may differ from the other two zones. Choice may include non-selective as well as selective herbicides. It is important to note that choice may also be influenced by how different selective and non-selective herbicides work in synergy with each other. Using a combination of herbicides that have different modes of action increases efficacy and allows individual herbicides in the combination to be used at lower rates than required if each herbicide is used alone.

Herbicides work by interrupting or reducing various metabolic functions in plants. They may affect cell growth by slowing down or speeding up cell division as is the case with metsulfuron methyl and triclopyr respectively, for example. Or, in the case of non-selective glyphosate, the herbicide shuts down a key process of amino acid synthesis essential to sustain life in the plant. Simply put, a given herbicide is designed to disrupt a process in the plant that may result in eventual death. Understanding the mode of action of herbicides is a good starting point to determine how to use them together to successfully kill the target plants in question.

Zone 1 may contain hardwood and softwood tree species as well as grasses and weeds. Any zone within railroad rights-of-way may also have unique invasive species that may require a different approach to control. It is useful to choose several different chemistries when trying to control the combination of trees, weeds, and grasses. Not only is mode of action important to consider, but the persistence and ability to be root absorbed may also enter into the decision.

Some products such as aminocyclopyrachlor, aminopyralid, diuron, metsulfuron methyl, sulfometuron methyl, clopyralid, dicamba, imazapyr, and picloram have some degree of persistence in soil and some may be absorbed through the roots of plants. This behavior is often referred to as being "soil active". While this is beneficial for controlling plants, it may also present risks. This list of products exhibits some degree of persistence, may have potential to leach through the soil profile over time, or may injure non-target plants through root uptake.

It is useful to choose from among this group of products to provide for residual control, however the length of time a product persists, how much is applied per unit, and how leachable it is must be weighed when deciding what product or products are suitable. For example, diuron is not a suitable choice since it may persist for more than a year in Maine soils and has shown up in groundwater sampling nationally. Repeat treatments year to year may result in an increase in the amount of product in the soil and may increase potential groundwater contamination. It should be noted that leaching potential increases with an increase in application rate.

In contrast, of the products mentioned above, the sulfonyleurea herbicides metsulfuron methyl and sulfometuron methyl have relatively short persistence in soils and a moderate to low risk of leaching when used at lower rates. This makes them a good choice when persistence and leaching are a concern.

It may be useful to use a non-selective herbicide as part of a combination of products to provide a wider range of control across species. For example, the presence of hardwood and softwood trees will require a product or combination of products that can provide control of them. Most sites will have weeds and grasses. Grasses can only be controlled with non-selective herbicide such as glyphosate, imazapyr, or higher rates of the sulfonyleurea's, while weeds are typically easily controlled with selective herbicides

such as triclopyr. When choosing a chemical combination for the control of trees, weeds, and grasses herbicides that can impact 2 or 3 of these plant types are preferred over herbicides that only impact a limited group of plants. Imazapyr, for example, is effective at lower rates of 8 to 16 ounces per acre and in combination with other products such as glyphosate, metsulfuron methyl and sulfometuron methyl when grasses and weeds are the target. However, when hardwood and softwood trees are present the rate of imazapyr may be more effective at 16 to 32 ounces per acre and in combination with other products.

In recent years there has been some interest in using aminocyclopyrachlor or aminopyralid as a substitute for imazapyr for selective control of weeds. Both products are soil active and aminocyclopyrachlor is especially harmful to pine and spruce when taken up through the roots. Even lower rates of aminocyclopyrachlor such as 6 ounces per acre may cause severe injury or death to non-target pine or spruce. Recent work by the Department in trials of aminocyclopyrachlor for guardrail application showed excellent control of broadleaf weeds at a rate of 4 ½ ounces per acre. Imprelis<sup>®</sup>, a product containing aminocyclopyrachlor, was removed from the market within several years of registration. It was registered for use on broadleaf weeds in turf at a rate of 4 ½ ounce per acre and proved to be highly injurious to non-target pine and spruce at that rate.

Since this new class of chemistry, the pyrimidine carboxylic acid group, can be highly mobile and injurious to non-target plants, use rates should be kept as low as possible. Experiments need to be conducted to see if this class of chemistry may be of benefit in combination with other products at rates lower than 4 ½ ounces per acre. The Department will conduct limited experiments with lower rates to determine if the product has use in rights-of-way application in Maine. For now, the Department will not experiment with aminocyclopyrachlor for railroad application.

The sulfonylurea's, metsulfuron methyl and sulfometuron methyl, have the qualities of selective herbicides when used at very low rates but display non-selective characteristics at higher rates. Glyphosate, considered non-selective, may not adequately control some tree species at lower rates of ½ to 2% solutions, but increased to 5 to 10% solutions will kill all species. Imazapyr has a unique mode of action, entering the plant and moving to meristematic growth points, and is effective at controlling new growth at low rates. It will also move into and store in the root system and move outward the following season. This impact may be seen over several seasons in trees and result in eventual death of the plant.

The first step in deciding what herbicides to use in Zone 1 is determining what vegetation requires control, and then deciding what concentrations will eliminate the vegetation. For example, if there are no trees in Zone 1 imazapyr does not need be part of the mix. Using a combination of glyphosate, metsulfuron methyl and sulfometuron methyl should control the weeds and grasses and provide a residual level of control for up to a month or more. Choose the lowest rates possible for the desired results. Active rail will require yearly applications in Zone 1, however inactive rail may not. Decisions should be made based on field observation.

## Zone 2

Zone 2 does not differ greatly from Zone 1 in the need to keep the zone free of vegetation. However, the reasons for a vegetation free Zone 2 are different from the reasons for a vegetation free Zone 1. No trees should be allowed to grow in Zone 2 and this is best accomplished with herbicide application before trees grow beyond the legal height limits for application as set forth in Maine pesticide regulation. Due to the height restrictions for foliar spraying of six feet for hardwood and three feet for softwood, applications should be scheduled every year or no more than every other year based on field

observation. Ballast material should be free draining; therefore controlling vegetation on a regular schedule will help prevent buildup of organic matter from plant decomposition. Using a combination of imazapyr, glyphosate, metsulfuron methyl and sulfometuron methyl should control trees, weeds and grasses and provide a residual level of control for up to a month or more. Choose the lowest rates possible for the desired results. Active rail will require yearly applications in Zone 2, however inactive rail may not. Decisions should be made based on field observation.

### Zone 3

Vegetation in Zone 3 may be allowed to grow, however trees may need to be removed periodically and some weeds and grasses may be problematic if they create flammable material. If large trees in Zone 3 begin to encroach into the area of operation they need to be removed mechanically. Untreated hardwood stumps will re-sprout. Spraying re-sprout may not prevent future re-sprouting, making re-treatment necessary.

Recent research by the Department shows that a combination of imazapyr and fosamine ammonium may be more effective at keeping a stump from re-sprouting than traditional. Fosamine ammonium moves to meristematic growth points (next year's leaf buds) and prevents leaf sprouting the season after treatment. Imazapyr stores in the roots and moves out to the same meristematic growth points the following season, but may also move through new shoots developed from epicormic or adventitious growth. A stump treatment of the cut surface and root flare within 24-48 hours after cutting would provide the best control of re-sprout, however this is impractical when mechanical removal of brush is done in railroad rights-of-way due to the large number of stumps over a large clearing area. The periodic cost of mechanical tree removal and follow-up herbicide treatments to control re-sprouting stumps needs to be weighed against the cost of a more rigorous approach to vegetation control using herbicides. Typically, regularly scheduled treatments of vegetation in Zone 3 with herbicides is dramatically less expensive than waiting until trees are larger and require mechanical removal.

Active rail demands a more cost effective approach to dealing with vegetation in Zone 3 than inactive rail. Vegetation in Zone 3 on active rail should be controlled with herbicides on a regular basis to prevent buildup of flammable material, prevent trees from growing beyond the point that herbicide can be applied legally, and to provide a safety clear zone for overall operation. Zone 3 may be less well managed on inactive rail, however budget may dictate that a schedule be established and maintained rather than letting this section grow out of control.

Another alternative for Zone 3 is side branch trimming with herbicide. The only product legally allowed in Maine for side branch trimming is fosamine ammonium. Any branch with foliage sprayed will die back. Fosamine ammonium only moves outward and therefore cannot negatively impact the tree but will kill branches that may interfere with rail operation. This product is prohibitively expensive, but may be considered as an alternative to mechanical removal.

### Other Considerations

Many of the herbicides in current use on rail in the United States and in Maine demonstrate some degree of mobility, both in lateral movement across the surface of the right-of-way and also for movement through the soil profile and potentially to groundwater. Manufacturers of pesticide products have long promoted the use of additives, also called adjuvants, which enhance performance by improving the spread of products across leaf surfaces or that increase absorption into leaf tissue. Non-ionic surfactants are among the typical adjuvants recommended for use. Many products sold commercially contain surfactant added by the manufacturer. Surfactants are useful, however they have

proven to cause issues in rail applications. Simply put, surfactants are soaps and experience has shown they increase the potential for herbicide products to move laterally and potentially through the soil profile. The Department has sought out alternatives and beginning in 2006 no longer use products containing surfactants and no longer use surfactants in spray formulas.

A better alternative is now being used that has proven to help keep herbicides in place for up to 3 to 4 weeks. The material is pinolene. Several manufacturers provide products with this active ingredient. It is considered a sticker-spreader-extender and helps to encapsulate pesticides, gluing them to plants, or to the ground. Typically these products make pesticide applications rain-fast within 30 minutes, reducing the potential for lateral movement and movement through the soil profile.

In the past, when rain occurred shortly after application and with surfactants in the mix, plant control was compromised and re-treatment was necessary to control vegetation. Not only was this wasting time and money but more products would be applied increasing the application rate in a given re-treated area. The use of a spreader extender has dramatically reduced movement, eliminated call backs, and improved control of vegetation.

Some herbicide products are volatile, transforming to a gaseous state after application when temperatures rise. Products that display volatile characteristics should be avoided. Volatile products may also have a significant objectionable odor. The gaseous portion is susceptible to moving off target, in some atmospheric conditions miles from the target. This gaseous portion can cause damage to crops, landscape plants, and other non-target vegetation creating potential liability.

### Conclusions

- Herbicides are a useful, cost effective, and environmentally friendly tool for managing vegetation in railroad rights-of-way when applied properly.
- Herbicide choice is important. Non-volatile, less persistent, non-carcinogenic, non-mutagenic products should be chosen.
- Products that have less risk of lateral movement or movement through soil profiles should be used.
- Understanding mode of action is a good first step in choosing products and should be understood when combining products to achieve a wider range of control across species.
- Using different products in combination, which have differing modes of action, provides a synergy not possible when using one product alone.
- This synergy allows for each product to be used at lower application rates than if used alone.
- Products used in combination should be used at the lowest possible rates that achieve the desired results.
- Application rate, not only the amount of material applied per acre but the amount of water used per acre, can impact efficacy. Low volume application is more effective than high volume application since more products will stay in place on the plant and on the ground.
- Surfactants and products containing surfactants should be avoided.
- Adjuvants containing pinolene are recommended to stick herbicides to plants and ground surfaces, reduce potential for movement, eliminate callbacks, and improve efficacy.



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

---

## MEMORANDUM

Date: April 15, 2015  
To: Board Members  
From: Henry Jennings  
Subject: Criteria for Issuing Variances from Chapter 29, Section 6 for Railroad Spraying

---

Companies spraying railroads need to obtain variances from Chapter 29, Section 6 if they wish to make broadcast applications of herbicides within 25 feet of surface water. Railroad companies have traditionally requested to apply herbicides up to 10 feet of water crossings.

Historically, the Board has granted variances for railroad spraying provided that the applicant adheres to the "MDOT model." At the May 16, 2014, meeting the Board granted a one-year variance from Chapter 29 to Asplundh Tree Expert Company—Railroad Division. However, concern was voiced at the meeting about the runoff potential for one of the herbicides listed on the application. Those present came to the realization that no one was completely sure what the "MDOT model" entailed. Consequently, the Board directed the staff to work with MDOT and other experts to develop guidelines/criteria for the issuance of railroad variances prior to next season. Robert Moosmann of MDOT has developed some draft guidelines (attached) and the staff has been researching the available railroad spraying guidelines and the products commonly used.

After considering the purpose of the requirement for which Chapter 29 variances are issued, contemplating the Board's directive, and reviewing related material, the staff came to the conclusion that the principal question relates to the inherent runoff risks related to the product choices. Based on this premise, it led the staff to two possible paths: 1) conduct comprehensive comparative aquatic risk assessments on each of the potential products, or 2) rely on EPA's assessment by way of the surface water advisory statements on the product labels. Given that the staff is currently engaged in a rather ambitious assessment of pesticide risks to marine invertebrates, the latter option appears to be the more prudent choice.

The staff has excerpted the surface water advisories (attached) from the products containing the active ingredients used on last year's projects. A rather wide diversity in the level of concern in the advisories is quickly apparent. The water quality advisories reveal there is relatively little concern for glyphosate and imazapyr products. The Dupont Oust Extra (sulfometuron methyl and metsulfuron methyl) label contains a 25 foot buffer to surface water for railroad applications thereby precluding the Board from issuing a variance for that product. Labels for products containing aminopyralid (e.g. Chaparral), aminocyclopyrachlor (e.g. Streamline) and indaziflam (e.g. Esplande) all include surface water advisories that raise concerns. The staff would like guidance from the Board on whether products with these advisories should qualify for a variance.

In addition to screening for appropriate products for variance consideration, Bob Moosmann has identified a series of criteria the Board may want to consider as requirements for issuing variances for spraying within 25 feet of surface water, such as:

- Requiring the use of products that do not contain surfactants
- Requiring inclusion of a sticker/extender (like pineolene) for which there is scientific data supporting the ability of the adjuvant to adhere the herbicides to the substrate.
- Prohibiting—consistent with some of the ground water advisories—applications when significant precipitation is forecast for the application area within 24 hours
- Considering the time of year when spraying will be conducted. MDOT discourages railroad applications in May or June as these have been very wet months in recent years.

**BOARD OF PESTICIDES CONTROL  
APPLICATION FOR VARIANCE PERMIT  
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Name: Douglas Kephart

Telephone Number: (814) 602-7032

Company Name: Davey Tree Expert Company | Railroad Division

Address: 1500 North Mantua Street, Kent, OH 44240

II. Master Applicator (if applicable): Douglas Kephart

License Number: CMA-6054

Address: Same as above.

III. **As part of your application, please send digital photos showing the target site and/or plants and the surrounding area, particularly showing proximity to wetlands and water bodies, to [pesticides@maine.gov](mailto:pesticides@maine.gov)**

IV. Area(s) where pesticide will be applied: Canadian Pacific rail tracks [“CPRR”; former Central Maine & Quebec]: 48-foot wide spray pattern [24 ft. from each side of center of tracks].

V. Pesticide(s) to be applied: Various combinations of:

- Esplanade 200 SC [EPA Reg. #432-1516], at 5 oz./acre;
- Method 240 SL [EPA Reg. #432-1565], at 12 oz./acre;
- Oust XP [EPA Reg. #432-1552], at 4 oz./acre;
- Roundup Custom [EPA Reg. #524-343], at 36 oz./acre.

VI. Purpose of pesticide application: According to federal laws, and regulations of the Federal Railroad Administration, the ballast, shoulder and areas adjacent to shoulder sections of railroad rights-of-way must be maintained to be free of weeds, grasses and brush free for many reasons, including to provide visibility at road crossings, to allow for proper inspection of tie fastenings, switches and rails, to maintain proper drainage, to allow for inspection of trains, to remove health and safety hazards, to improve working conditions, and to reduce fire hazards.

VII. Approximate dates of spray application: Approx. June 1 through Sept. 30, 2022.

VIII. Application Equipment: Hi-Rail Truck with 7-foot fixed boom mounted underneath the truck at 18 inches above the ground, with boomless nozzles to spray on both sides of the truck.

IX. Standard(s) to be varied from: Chapter 29, Section 6A, which does not allow terrestrial broadcast application of herbicides within 25 feet of the mean high water marks from surface waters including wetlands as defined in this section.

X. Method to ensure equivalent protection: CPRR personnel have track charts [“System Track Profiles”] which show the locations of culverts and bridges. CPRR personnel will be in a track vehicle running ahead of the Davey Tree herbicide spray vehicle, who will communicate by radio with the herbicide applicator when there are approaching culverts or bridges with running water underneath, or lakes, ponds, rivers, streams, estuarine or marine waters, wetlands, or other sensitive areas adjacent to the track.

Standard herbicide application methods throughout Davey Tree's service area in Maine will include using drift control agents, using nozzles that enlarge the droplet size to reduce drift, using low-volatility herbicides, monitoring weather conditions and cancelling operations when rainfall is predicted.

The Davey Tree applicator will provide 10-foot no-spray zones from lakes, rivers, streams and surface waters. Within these 10-foot no-spray zones, alternative vegetation control measures will be used.

The Davey Tree applicator will also only apply glyphosate-containing herbicides [in 2022, "Roundup Custom"] within 0.5 miles from a public water supply whose water source has been identified as surface water by the Maine Division of Environmental and Community Health [Maine Dept. HHS; Center for Disease Control & Prevention] and the Maine Dept. of Environmental Protection [GIS Unit; and Drinking Water Program] using their images via Google Earth.

Davey Tree will conduct the applications of herbicides in a manner which protects surface waters.

Signed:  Date: 4/21/2022

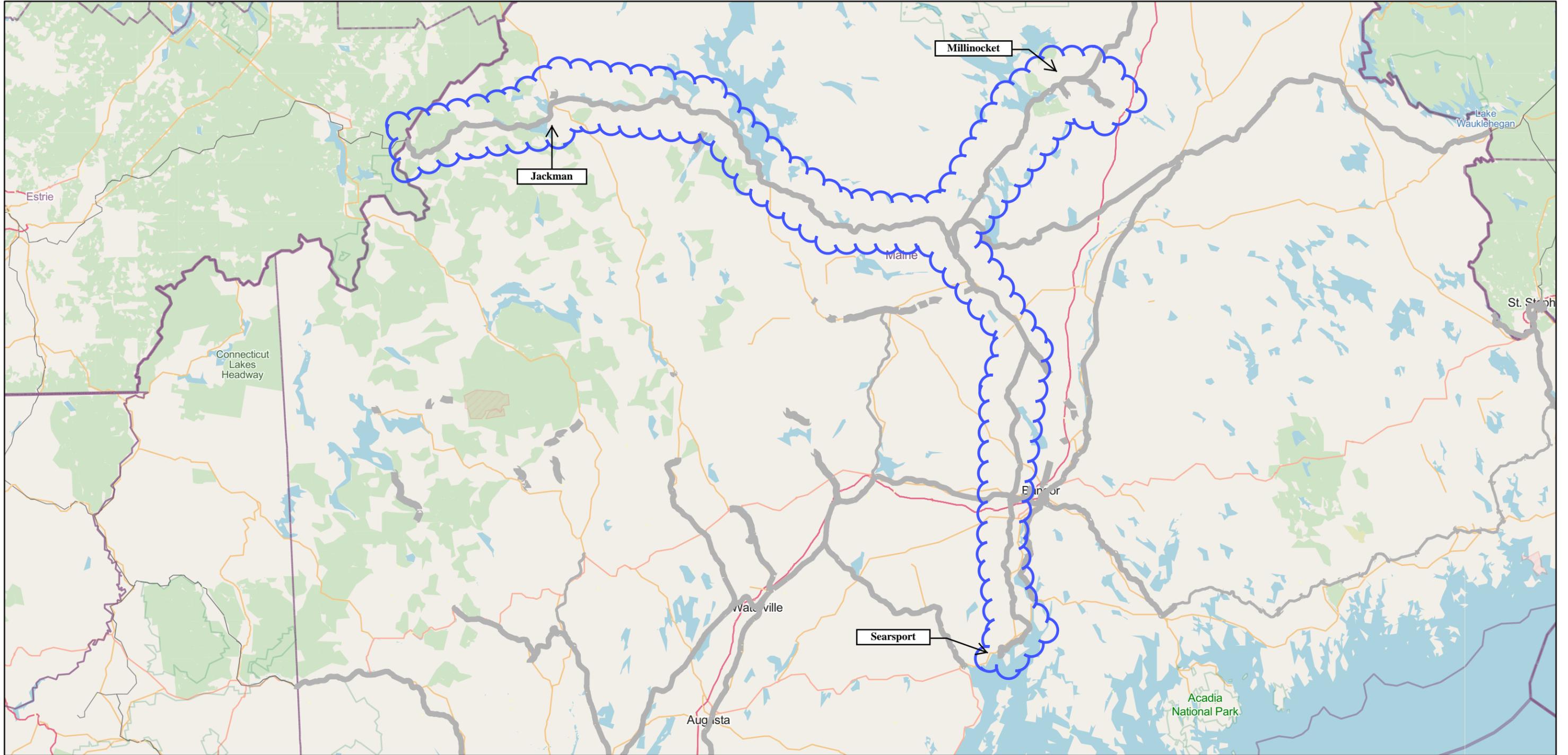
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Return completed form to:

**Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

**OR E-mail to: pesticides@maine.gov**

# Canadian Pacific RR



3/31/2022

MaineDOT - Railroads - Railroads

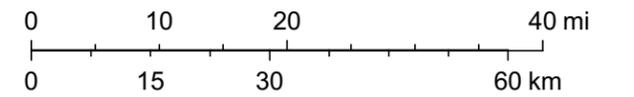
- Active
- Inactive, with track
- Abandoned, possibly no track.
- Track removed, Right of way repurposed.

Canadian Pacific RR Tracks  
in Maine

3/31/2022 WHEM

Burlington, VT.

1:1,280,220

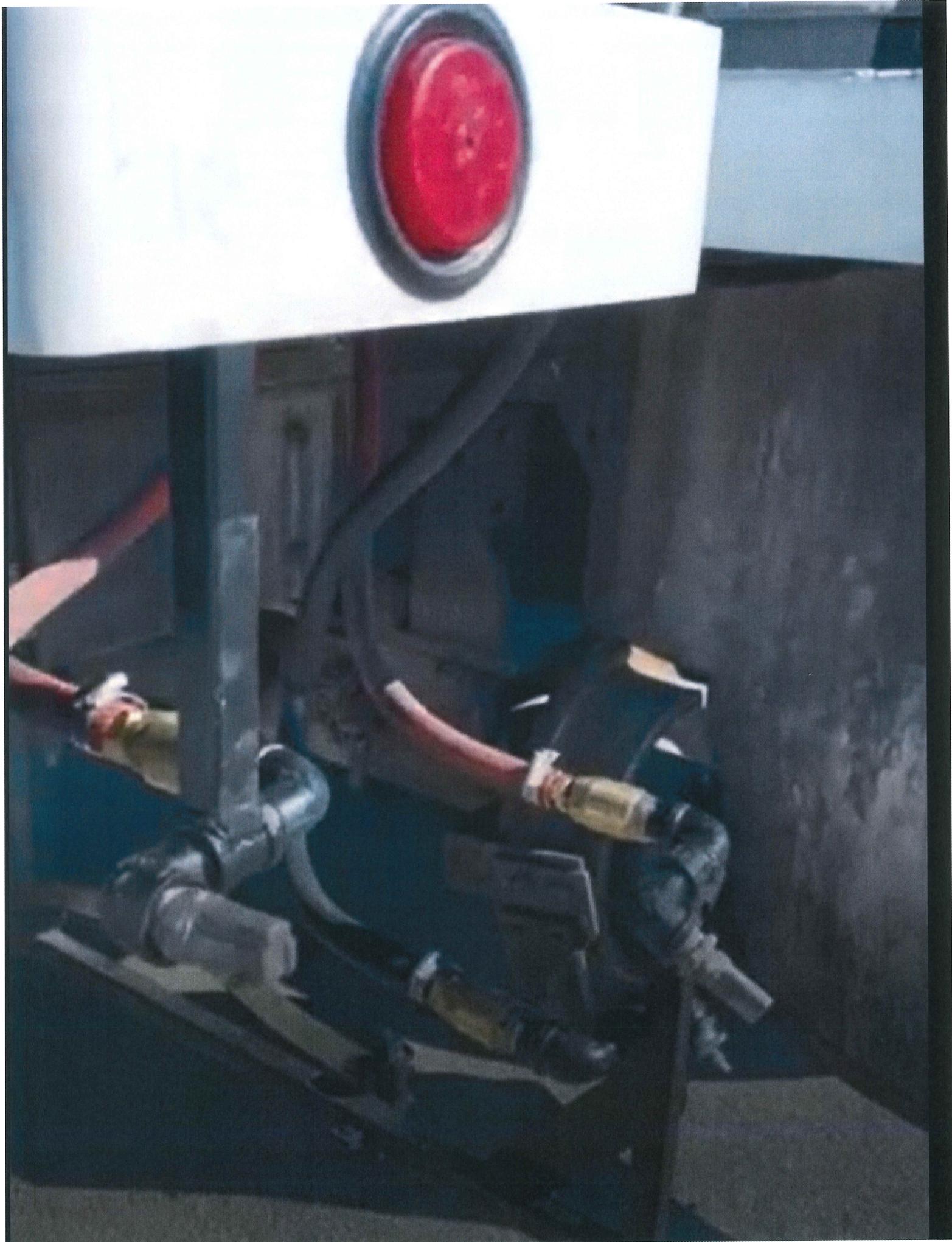


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**From:** [Craig Heindel](#)  
**To:** [Couture, Amanda](#)  
**Cc:** [Bryer, Pamela J](#); [wshellito](#)  
**Subject:** Re: Canadian Pacific RR: Application for Variance Permit for herbicide application [re: Ch. 29, Sect. 6]  
**Date:** Monday, April 25, 2022 8:55:29 AM

**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.**

Hi Amanda and Pamela: The manager of the railroad division of Davey Tree reports that their herbicide application truck is similar to the one in the video you sent, except that it's a newer model with better controls and newer technology on the spray mechanisms. I attached some photos they provided of Davey Tree's herbicide application truck. It is a hi-rail weed spray truck [2018 Kenworth T800], with a 3,250 gal capacity tank. The spray system consists of a Raven Viper 4 computerized system with (3) Raven side kick pro injection pumps which alleviate the need to tank mix the herbicides. The herbicides are directly injected into the spray mixture before leaving the nozzle. The system is GPS equipped and automatically documents the amount of product applied, where it was applied and when it was applied. The nozzles consist of a center 8' spray boom underneath the back of a truck with air induction low-drift flat spray nozzles ["air induction" is when air joins with the water molecule, it increases the droplet size and delivers more chemical to the leaf and reduces drift]. In addition, there are boomless Boom buster nozzles on the side of truck to spray the shoulder area of the railroad track bed. Photos are attached.

Regarding the detailed "system track profile" that I sent an example of earlier, the CPRR personnel report that the same communication procedures will be used this year as in previous years, and as explained in Section X of the 2022 variance application. The CPRR personnel in the lead truck are very familiar with the location of each crossing of flowing water. The lines on each system track profile identify the location of each culvert and bridge [for example, "CMP" means corrugated metal pipe; "T..." means a trestle bridge, etc. The line on the system track profile for each feature also includes its diameter or size, and length; and identifies the "track-mile" location to the nearest 0.01 mile. Both trucks have GPS locators and radio communications. So there is thorough knowledge of when they are approaching a crossing over flowing water.

Let us know if you have additional questions or concerns.

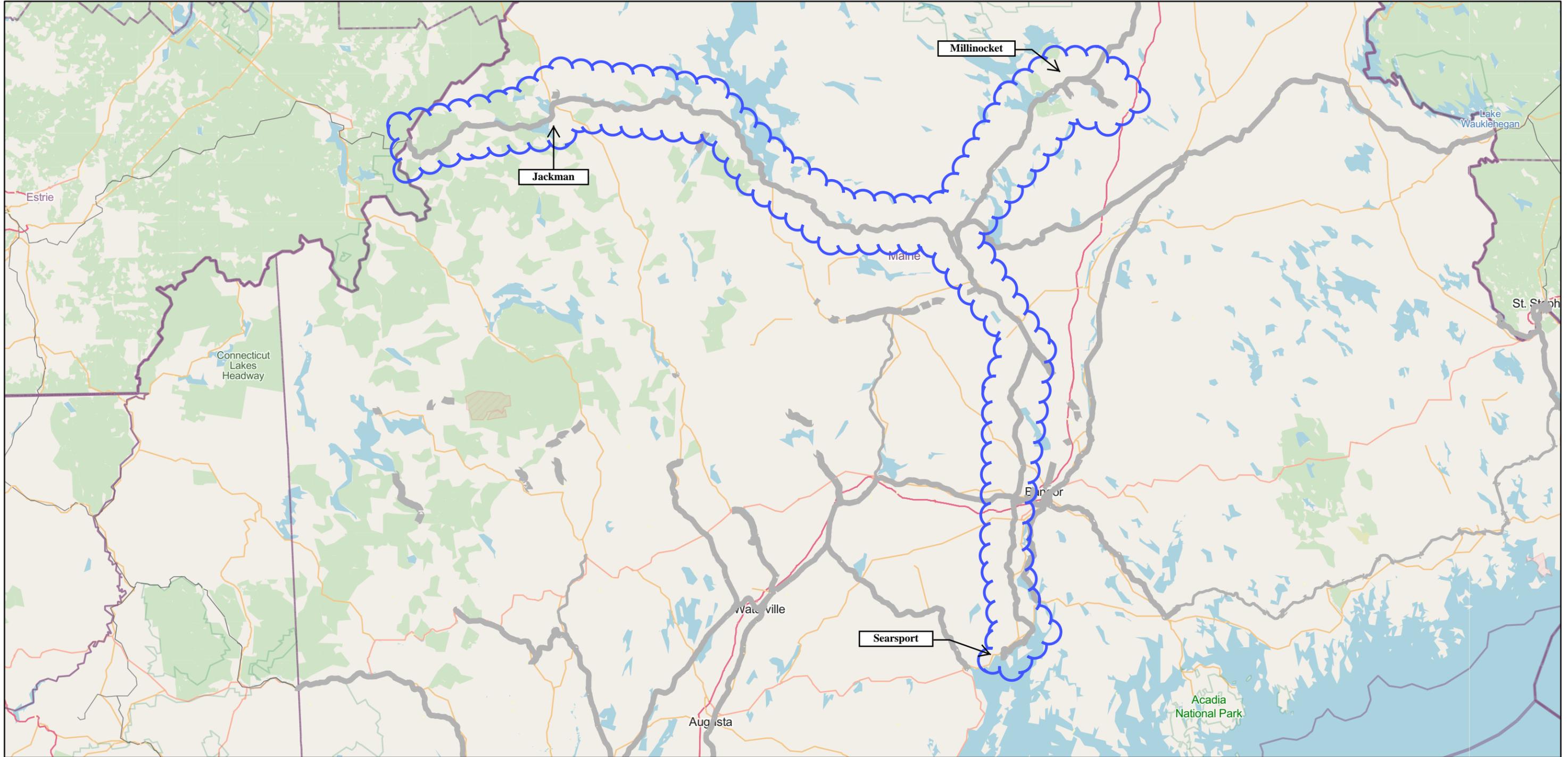
thanks,

+++++

Craig Heindel, C.P.G.  
Senior Hydrogeologist  
Waite-Heindel Environmental Management  
7 Kilburn St., Suite 301  
Burlington, VT 05401  
Tele: 802-860-9400 x102  
Tele [2]: 802-658-0820 x102  
Fax: 802-860-9440  
[www.waiteenv.com](http://www.waiteenv.com)

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# Canadian Pacific RR

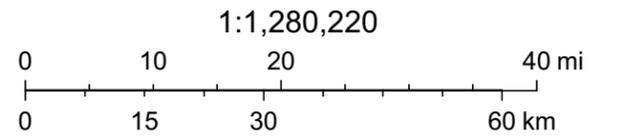


3/31/2022

MaineDOT - Railroads - Railroads

- Active
- Inactive, with track
- Abandoned, possibly no track.
- Track removed, Right of way repurposed.

Canadian Pacific RR Tracks  
in Maine  
3/31/2022 WHEM  
Burlington, VT.



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01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 20: SPECIAL PROVISIONS

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

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**Section 1. Registered Pesticides**

**A. Definitions**

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

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

F. In conducting review of registration or reregistration pursuant to 7 M.R.S.A §607-A, the Board shall require submission of the confidential statement of formula as defined in 7 M.R.S.A. §607 (5-A) and the following affidavits:

1. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide has or has never been stored, distributed, or packaged in a fluorinated container; and
2. a completed and signed form provided by the Board at the time of application for product registration review or reregistration which attests that the pesticide formulation does or does not contain perfluoroalkyl or polyfluoroalkyl substances as defined by the Board for this purpose of this section.

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

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

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

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

## **Section 4. Aquatic Applications**

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

## **Section 5. Employer/Employee Requirements**

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

**Section 6. Authorization for Pesticide Applications**

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

D. **General Provisions.** For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:

1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.
3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
  - i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
  - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

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

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

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

EFFECTIVE DATE:

July 6, 1979

AMENDMENT EFFECTIVE:

April 1, 1985

January 1, 1988

May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

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

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

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

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

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version

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

CORRECTIONS:

February, 2014 – agency names, formatting

AMENDED:

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

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

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

**Basis Statement**

Three amendments to Chapter 20 were proposed by the Board:

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

The amendments to the proposed rule are in response to Public Law Chapter 83 and recent legislation from the 130<sup>th</sup> Maine Legislature LD 264: Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State. This law directs the Board of Pesticides Control to amend rules to require affidavits that disclose if Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) are present in pesticide product formulations or containers at the time of product registration with the State of Maine. Many of these substances (PFAS) have been identified as substances that many break down very slowly and can build up in people, animals, and the environment over time. Amending these rules would allow the Board to identify these substances in pesticide products at the time of registration from the company.

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

**Impact on Small Business**

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

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

## **Agency**

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

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

CMR 01-026, Chapter 20—Special Provisions

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

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

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

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

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

Required reporting includes:

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

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

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

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

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

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

Board of Pesticides Control CMR26-01 Chapter 20

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

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

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

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

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

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

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

**SUMMARY OF BOARD COMMENTS TO STAFF—CHAPTER 20**

**PUBLIC MEETING ON FEBRUARY 18, 2022**

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

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 41: SPECIAL RESTRICTIONS ON PESTICIDE USE**

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

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**Section 1. ALDICARB (TEMIK®)**

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

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

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

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

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

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

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

**A.      Licenses Required**

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

**Section 4.      AQUATIC HERBICIDES**

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

**A.      Board Publication of List**

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

**B.      Licenses Required**

I.      Unless exempted under Chapter 41, Section 4 (B) (III), no person shall purchase, use or supervise the use of any aquatic herbicides identified on the Board's annual listing unless they have obtained a private or commercial pesticide applicator's license from the Board.

II.     No person shall:

a.      Distribute any aquatic herbicides identified on the Board's annual listing without a restricted use pesticide dealer's license from the Board; or

b.      Unless exempted under Chapter 41, Section 4 (B) (III), distribute any aquatic herbicides identified on the Board's annual listing to any person who is not licensed as a private or commercial applicator by the Board.

III.    Registered herbicides containing only the active ingredients erioglaucline (Acid Blue 9 or FD&C Number 1, CAS Registry No. 1934-21-0) and/or tartrazine (Acid Yellow 23 or FD&C Yellow Number 5, CAS Registry No. 2650-18-2 (trisodium salt) or 3844-45-9 (triammonium salt)) are exempt from the applicator licensing requirements described in Chapter 41, Section 4 (B) (I) and Chapter 41, Section 4 (B) (II) (b).

**C. Disclosure**

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

**D. Records and Reporting**

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

**E. Use of Best Management Practices**

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

**Section 5. PLANT-INCORPORATED PROTECTANTS**

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

**A. Definitions**

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

**B. License Required**

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

**C. Dealer Requirements**

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

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

**D. Grower Requirements**

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

**E. Product-Specific Requirements**

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

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

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

II. Dealers distributing Bt-sweet corn shall only sell the seed in quantities large enough to plant one acre or more.

F. **Confidentiality**

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

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

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

A. **Definitions**

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

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

- a. Species both known now and unknown now but showing up at a later date;
- b. Species that occur outside of their eco-region (level III) as defined by EPA; and
- c. Species on a Board approved list.

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

**B. Board Publication of Product List**

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

**C. Licenses Required**

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

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

**D. Records and Reporting**

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

**E. Emergencies**

The Board's staff may grant an emergency permit authorizing neonicotinoid use in compliance with Sections 6(C) of this chapter if the restrictions in this chapter prevent efficacious application of pesticide(s) and the staff determines that an emergency exists as outlined in Chapter 51(VII)(B)(1).

- I. No variance may be granted if the emergency is the result of an unjustifiable delay created by the person seeking the variance or the person requesting the pesticide application.
- II. 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".

**F. Emergency Use Permits**

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

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

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the application meets requirements of Section 6 (E). The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

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

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

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

- A. No person shall use or supervise the use of any pesticide containing the active ingredient chlorpyrifos unless they have obtained a private or commercial applicator's license from the Board, possess the pesticide in the State before January 1, 2022, and obtain a temporary use authorization permit from the Board.
- B. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
  - I. The name, address and telephone number of the applicant;

- II. The brand name of the pesticides to be applied;
- III. The date on which the pesticides were purchased;
- IV. The approximate quantity of the pesticides possessed;
- V. The purpose for which the pesticide application(s) will be made; and
- VI. The duration for which the applications will take place or until the product is gone.

C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if:

- I. The permit application is received prior to December 31, 2022;
- II. The applicant possesses a valid pesticide applicator license issued by the State;
- III. The pesticides proposed for use were purchased prior to January 1, 2022;

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

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

EFFECTIVE DATE:  
March 8, 1981 (Captan)

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

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

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

CONVERTED TO MS WORD:  
March 11, 2003

AMENDED:  
May 12, 2003 - Section 4 added

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

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

CORRECTIONS:  
February, 2014 – agency names, formatting

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



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

5

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

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**DRAFT**

**MAINE BOARD OF PESTICIDES CONTROL INTERIM POLICY RELATING TO  
CHLORPYRIFOS TEMPORARY PERMITS FOR USE BY APPLICATORS  
INTENDING TO USE EXISTING STOCKS OF CHLORPYRIFOS, PURCHASED  
BEFORE JANUARY 1, 2022**

**BACKGROUND**

On June 8, 2021 LD 316 was signed into Maine law. This law prohibits, beginning January 1, 2022, the distribution of pesticides containing chlorpyrifos as an active ingredient. The law allows the Board to grant temporary permits from January 1, 2022 to December 31, 2022 authorizing licensed pesticide applicators to use pesticides containing chlorpyrifos, as long as the product was in the State and in the possession of the applicator before January 1, 2022. The law directs the Board to post on its website a list of the temporary permits issued.

In 2021, the Board initiated rulemaking related to the use of chlorpyrifos. Proposed rules clarified statutory prohibitions on the distribution of chlorpyrifos and Board issuance of permits for use of existing stocks of chlorpyrifos purchased before January 1, 2022. Due to delays in the rulemaking process, applicators in possession of chlorpyrifos are seeking guidance on how to pursue a Board permit that will allow them to use up existing products.

Staff recommends the following interim policy which incorporates the related proposed amendment to Chapter 41:

**POLICY**

The Board delegates the authority to approve requests for temporary permits for use as established in Title 7 Section 4, authorizing a pesticides applicator licensed by the State to use or apply a pesticide containing chlorpyrifos as an active ingredient, as long as that licensed applicator possessed the pesticide in the State before January 1, 2022.

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
WWW.THINKFIRSTSPRAYLAST.ORG

The permit application must be submitted on forms provided by the Board and must include:

- The name, address and telephone number of the applicant;
- The brand name of the pesticides to be applied;
- The date on which the pesticides were purchased;
- The approximate quantity of the pesticides possessed;
- The purpose for which the pesticide application(s) will be made; and
- The duration for which the applications will take place or until the product is gone.

Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if:

- The permit application is received prior to December 31, 2022;
- The applicant possesses a valid pesticide applicator license issued by the State;
- The pesticides proposed for use were purchased prior to January 1, 2022;

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the conditions described in their request and all other applicable legal standards. Permits issued by the Board 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.

**BOARD OF PESTICIDES CONTROL - SUMMARY PROJECTION FOR FY22  
01A-01A-0287-01 CASH REPORT**

		CURRENT FISCAL YEAR 2022 (BY MONTH)											TOTAL	
		Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Proj Apr-22	Proj May-22		Proj Jun-22
<b>BALANCE FORWARD</b>		<b>1,927,322.00</b>	<b>1,880,408.93</b>	<b>1,723,924.58</b>	<b>1,641,142.93</b>	<b>1,525,900.98</b>	<b>2,135,381.85</b>	<b>2,780,963.63</b>	<b>2,852,160.39</b>	<b>2,736,298.18</b>	<b>2,600,234.08</b>	<b>2,450,050.32</b>	<b>2,106,714.95</b>	
<b>Revenues:</b>														
1407	REG INSECT & FUNGICIDES	17,440.00	14,400.00	33,440.00	33,600.00	822,400.00	856,640.00	192,000.00	29,120.00	89,600.00	19,200.00	30,520.00	25,000.00	2,163,360.00
1448	SPECIAL LICENSES & LEASES	7,185.00	5,865.25	3,130.10	10,470.00	3,460.00	19,355.00	19,480.00	5,615.00	13,155.00	7,240.00	9,050.00	8,960.00	112,965.35
2686	MISC-INCOME	-	-	-	-	-	5.63	-	-	-	-	-	-	5.63
2953	ADJ OF ALL OTHER BALANCE FWD	50,771.01	-	-	-	-	-	-	-	-	-	-	-	50,771.01
2968	REG TRANSFER UNALLOCATED	-	-	-	-	-	(50,000.00)	-	-	-	-	-	-	(50,000.00)
2978	DICAP TRANSFER	(17,231.22)	-	-	(57,131.21)	(14,551.37)	(28,741.94)	(20,684.07)	(17,031.90)	(19,020.80)	(22,017.24)	(22,800.28)	(23,622.58)	(242,832.61)
2981	LEGIS TRANSFER OF REVENUE	-	-	-	-	-	-	-	-	-	-	(200,000.00)	-	(200,000.00)
<b>TOTAL REVENUES</b>		<b>58,164.79</b>	<b>20,265.25</b>	<b>36,570.10</b>	<b>(13,061.21)</b>	<b>811,308.63</b>	<b>797,258.69</b>	<b>190,795.93</b>	<b>17,703.10</b>	<b>83,734.20</b>	<b>4,422.76</b>	<b>(183,230.28)</b>	<b>10,337.42</b>	<b>1,834,269.38</b>
<b>Expenditures:</b>														
3X	TOTAL SALARY & FRINGE BENEFITS	93,757.54	140,600.75	86,741.36	90,380.92	135,324.23	102,508.11	99,205.98	101,312.83	150,204.02	120,973.88	122,547.87	122,547.86	1,366,105.35
40	PROF. SERVICES, NOT BY STATE	3,985.88	2,331.77	8,631.87	5,228.43	39,975.53	3,610.30	2,726.90	9,429.50	6,227.56	7,500.00	10,000.00	5,000.00	104,647.74
42	TRAVEL EXPENSES, IN STATE	-	60.69	29.30	-	-	74.35	-	16.77	10.81	-	1,500.00	-	1,691.92
46	RENTS	555.00	2,531.71	1,536.69	355.00	2,563.60	-	-	2,081.30	1,710.11	2564	2,564.00	2,564.00	19,025.41
48	INSURANCE	-	-	3,355.78	-	-	-	-	-	159.00	-	-	-	3,514.78
49	GENERAL OPERATIONS	1,305.41	441.57	1,489.72	737.59	1,248.68	9,562.32	11,502.91	1,518.43	29,476.55	3,653.71	3,000.00	3,500.00	67,436.89
50	EMPLOYEE TRAINING	-	-	199.00	-	-	155.00	-	-	-	-	-	-	354.00
53	TECHNOLOGY	-	20,711.00	10,287.00	-	11,855.00	20,616.08	-	11,890.08	20,706.16	11,890.00	11,890.00	11,890.00	131,735.32
54	CLOTHING	-	-	321.90	-	-	-	-	-	-	-	-	-	321.90
55	EQUIPMENT AND TECHNOLOGY	117.82	326.14	43.60	307.25	487.96	501.95	110.24	304.81	501.07	200.00	500.00	300.00	3,700.84
56	OFFICE & OTHER SUPPLIES	38.06	800.31	674.92	-	157.88	865.69	-	251.59	(321.41)	-	-	500.00	2,967.04
64	GRANTS TO PUB AND PRIV ORGNS	-	-	-	-	-	6,432.00	-	-	-	-	-	11,182.00	17,614.00
85	TRANSFERS	5,318.15	8,945.66	6,040.61	5,171.55	10,214.88	7,351.11	6,053.14	6,760.00	11,124.43	7,824.93	8,103.22	8,395.46	91,303.14
<b>TOTAL EXPENDITURES</b>		<b>105,077.86</b>	<b>176,749.60</b>	<b>119,351.75</b>	<b>102,180.74</b>	<b>201,827.76</b>	<b>151,676.91</b>	<b>119,599.17</b>	<b>133,565.31</b>	<b>219,798.30</b>	<b>154,606.52</b>	<b>160,105.09</b>	<b>165,879.32</b>	<b>1,810,418.33</b>
<b>CURRENT CASH BALANCE</b>		<b>1,880,408.93</b>	<b>1,723,924.58</b>	<b>1,641,142.93</b>	<b>1,525,900.98</b>	<b>2,135,381.85</b>	<b>2,780,963.63</b>	<b>2,852,160.39</b>	<b>2,736,298.18</b>	<b>2,600,234.08</b>	<b>2,450,050.32</b>	<b>2,106,714.95</b>	<b>1,951,173.05</b>	<b>1,951,173.05</b>

**BOARD OF PESTICIDES CONTROL - SUMMARY**  
**014-01A-0287-01 CASH REPORT PROJECTION FOR FY2023 & FY2024**

<b>ESTIMATED BALANCE FORWARD</b>		<b>PROJECTED 2023</b>	<b>PROJECTED 2024</b>
		<b>1,951,173.05</b>	<b>1,124,627.05</b>
<b>Revenues:</b>			
<b>1407</b>	REG INSECT & FUNGICIDES	2,067,280.00	2,067,280.00
<b>1448</b>	SPECIAL LICENSES & LEASES	127,912.00	127,912.00
<b>1959</b>	REGISTRATION FEE	38.00	38.00
<b>2631</b>	REGISTRATION FEES	963.00	963.00
<b>2637</b>	MISC SERVICES & FEES	3,542.00	3,542.00
<b>2686</b>	MISC-INCOME	221.00	221.00
<b>2690</b>	RECOVERED COST	36.00	36.00
<b>2953</b>	ADJ OF ALL OTHER BALANCE FWD	12,616.00	12,616.00
<b>2968</b>	REG TRANSFER UNALLOCATED	(50,000.00)	(50,000.00)
<b>2978</b>	DICAP TRANSFER	(341,512.00)	(316,038.00)
<b>2981</b>	LEGIS TRANSFER OF REVENUE	(200,000.00)	(200,000.00)
<b>TOTAL REVENUES</b>		<b>1,621,096.00</b>	<b>1,646,570.00</b>
<b>Expenditures:</b>			
<b>3X</b>	TOTAL SALARY & FRINGE BENEFITS	1,580,122.00	1,667,229.00
<b>40</b>	PROF. SERVICES, NOT BY STATE	344,341.00	45,671.00
<b>42</b>	TRAVEL EXPENSES, IN STATE	2,509.00	2,584.00
<b>43</b>	TRAVEL EXPENSES, OUT OF STATE	4,382.00	4,513.00
<b>46</b>	RENTS	16,523.00	17,019.00
<b>48</b>	INSURANCE	2,998.00	3,088.00
<b>49</b>	GENERAL OPERATIONS	56,774.00	58,477.00
<b>50</b>	EMPLOYEE TRAINING	718.00	740.00
<b>51</b>	COMMODITIES - FOOD	273.00	281.00
<b>53</b>	TECHNOLOGY	261,000.00	300,000.00
<b>54</b>	CLOTHING	345.00	355.00
<b>55</b>	EQUIPMENT AND TECHNOLOGY	1,909.00	1,966.00
<b>56</b>	OFFICE & OTHER SUPPLIES	4,851.00	4,997.00
<b>63</b>	GRANTS TO CITIES AND TOWNS	6,438.00	6,631.00
<b>64</b>	GRANTS TO PUB AND PRIV ORGNS	43,086.00	44,043.00
<b>85</b>	TRANSFERS	121,373.00	112,320.00
<b>TOTAL EXPENDITURES</b>		<b>2,447,642.00</b>	<b>2,269,914.00</b>
<b>CURRENT CASH BALANCE</b>		<b>1,124,627.05</b>	<b>501,283.05</b>

*Income based on 4 year average (2019-Projected 2022)  
 Yearly salary projections provided by Service Center 4%  
 increase each year for Salary & 5% Increase each year for benefits  
 Other expenses based on 4 yr average with 3% increase  
 Technology increase of approximately estimated \$13K per month starting Sep  
 2022  
 \$300,000 for BPC IPM outreach campaign--October 1, 2022*

**NOT INCLUDED \$100,000 for MAC literature review and toxicology  
 analysis—November 1, 2022**

## Budget Synopsis for May 6, 2022 Board Meeting

Information included is for the state fiscal year with projected estimates for April-June 2022 (7/1/21-6/30/22)

### Revenues for FY 2022 primarily generated from:

- Applicator license fees--\$112K
- Product registration fees--\$2,163K
- EPA Cooperative Agreement Grant--\$347K
- EPA Multipurpose Grant for PFAS Regulation/Monitoring—\$27K
- EPA Multipurpose Grant for Pesticide Regulation Education—\$60K

A total of \$200K is transferred annually to the University of Maine. This funding is provided in the form of two legislative transfers of \$135K and \$65 are for IPM education and support of the manual writer/Pesticide Safety Education Professional (PSEP) respectively.

Dicap Transfer (Dept. Wide Indirect Cost Allocation Plan) (\$243K)—Percentage of what we spend each month is used to pay for Dept. administrative staff (accountants, human resources, etc.), technology needs (computers, etc.) and other expenses that benefit all programs within the Dept. The funding is administered through the Commissioner's office.

**Expenses for 2022 = \$1,834,269\*** Expenses are divided into two categories: Personnel Services and All Other.

#### Personnel Services

BPC funds ten permanent full-time positions and four full-time seasonal positions that work in the BPC program.

#### BPC Positions

(full-time permanent)

2 Office Associate II

1 Env. Specialist II

3 Env. Specialist III

2 Env. Specialist IV

1 Toxicologist

1 BPC Director

(full time seasonal)

4 Env. Specialist II

The BPC also funds five permanent full-time positions in the Plant Health Program. Non-dedicated BPC funds cover the salaries and some other expenses of the Plant Health positions.

Plant Health Positions

(full time permanent)

2 Asst. Horticulturist

1 State Horticulturist

2 Entomologist III (IPM Specialist and State Apiarist)

All Other

*Prof Services not by State* (line 40)—Contracts with consultants and speakers, but also temp agencies \$104K (hiring temp workers)

*Grants & Publications & Private Organizations* (line 64)—Maine Mobile Health, DACF Mosquito Monitoring, and CDC mosquito monitoring (\$18 K)\*

*Statewide Cost Allocation Plan (STACAP)* (line 85)—The State of Maine provides un-billed central services to State Programs that operate with Federal and/or special revenue funds. In order to recover the costs of providing these services, the State must prepare a Statewide Indirect Cost Allocation Plan or STACAP also known as SWCAP (\$91 K)

# Proposed Administrative Consent Agreement

## Background Summary

7

**Subject:** Brownies Landscaping  
39 Clark Lane  
Whitefield, ME 04353

**Date of Incident(s):** May 9, 2021

**Background Narrative:** On May 9, 2021, company owner Tim Brown made commercial pesticide applications at two separate sites in Augusta. Brown was not a licensed applicator at the time of the applications. Tree injection applications were made to City of Augusta trees at Buker Community Center and Williams Park to control brown tail moth infestations. Trees were drilled then injected with Vivid II Microinjection capsules. Although Brown discussed the brown tail moth infestation with city staff, city staff did not authorize Brown to make the pesticide applications.

Brown did not keep the required commercial pesticide application records for these applications and did not post the application sites as required by Board regulations.

Applicators need to follow label directions for the pesticides they apply. Under the Directions for Use section the Vivid II label, the following language is written “Microinjection units containing VIVID II may require up to several minutes or more to empty depending on the health of the treated tree and local weather conditions. Empty units must not be left on the tree. If the microinjection unit does not completely empty within a few hours then carefully remove the capsule”. The capsules were not removed from the trees until the evening of May 18, 2021.

Brown did not wear the label required chemical resistant gloves and protective eyewear when making the applications and did not post the treated ornamental trees.

### Summary of Violation(s):

- CMR 01-026 Chapter 20 Section 6(D) requires that no person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager, or legal occupant of that property.
- 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 remove the microinjection units within a few hours after the applications.
  - Did not wear all personal protective equipment required by the pesticide label.
- CMR 01-026 Chapter 28 Section 3(B)1(a) requires posting when commercial pesticide applications are made to outdoor ornamentals and CMR 01-026 Chapter 28 Section 3(B)2 prescribes those posting requirements.

**Rationale for Settlement:** The diverse types of violations indicated the operating practices of this company and its lack of adherence to pesticide regulations. The violations involving safety included potential pesticide exposure to both the applicator himself and the public. The sites treated were high traffic areas used by children.

**Attachments:** Proposed Consent Agreement

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

In the Matter of:	)	
Brownies Landscaping	)	ADMINISTRATIVE CONSENT AGREEMENT
38 Clark Lane	)	AND
Whitefield, Maine 04353	)	FINDINGS OF FACT

This Agreement by and between Brownies Landscaping (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 specializes in hazardous tree removal, pruning, crane-assisted tree removal, forestry mulching and plant healthcare.
2. That on May 18, 2021, Christopher Blodgett, the Parks Supervisor for the City of Augusta, called the Board and stated he noticed a number of capsules had been injected into two trees at Buker Community Center, located at 22 Armory Street, Augusta and into two trees at Williams Park, located at 59 Bangor Street, Augusta. Blodgett thought the capsules were placed there by Company owner Tim Brown, based on previous conversations he had with Brown and Christopher Chase, the Director of Parks and Recreation. Brown, who is an unlicensed applicator, proposed making tree injections under Blodgett's commercial master applicator's license to Blodgett and also at a separate meeting with Chase and Rich Wurpel, Augusta's horticulturalist.
3. That in response to Blodgett's contact with the Board described in paragraph two, a Board inspector met with Blodgett on May 18, 2021. Blodgett told the inspector Brown informed him that he did not have a pesticide applicator's license but that he could work under Blodgett's commercial master applicator license affiliated with the city of Augusta. Blodgett said he told Brown that he does not have the required category to treat ornamental trees and that Board regulations did not allow Brown to make pesticide applications under his license and that he would verify this with the Board.
4. That on May 18, 2021, the Board inspector documented the pesticide applications that were made at both the Buker Community Center and at Williams Park. At Buker Community Center 12 insecticide capsules were injected 25.75 inches from the ground into tree #1 which had a 67 ½ inch circumference, and 10 insecticide capsules were injected 21.75 inches from the ground into tree #2 which had a 60 ½ inch circumference. At Williams Park 10 insecticide capsules were injected 27 ½ inches from the ground into tree #1 which had a 52-inch circumference, and 10 insecticide capsules were injected 34 inches from the ground into tree #2 which had a 46-inch circumference. The inspector also took digital photos of the injected trees at both sites.
5. That based on the inspector's assessment of both application sites described in paragraph four, the number of pesticide capsules injected into the trees at Buker Community Center and Williams Park totaled 42 capsules.
6. That in response to the information received in paragraph two, a Board Inspector conducted a follow up inspection with Company owner Tim Brown on May 24, 2021.
7. That during the inspection described in paragraph six, Brown told the inspector he had met with Chase, and Wurpel. Brown further told the inspector brown tail moth treatment to city trees was discussed at that

meeting and that Brown informed them microinjections into the city's trees required a pesticide applicator license which he did not have. Brown told Chase and Wurpel that city employee Chris Blodgett had his commercial master applicator's license and that he could do the work under Blodgett's license.

8. That during the inspection described in paragraphs six, Brown completed a written statement. Brown wrote "I told them I didn't have an applicator license and that using the microinjections needed that license and would have to be done by an applicator. Chris Blodgett has his masters and discussed with Bruce that I could work under his license and be fine".
9. That during the inspection described in paragraph six, the inspector confirmed the pesticide injected into two trees on city property at Buker Community Center and two trees at Williams Park by Brown on May 9, 2021, was Vivid II, EPA Reg No. 64014-10.
10. That Brown then showed the inspector a sales order he placed dated March 24, 2021. The inspector documented the sales order Brown placed for two boxes of Vivid II Microinjection, 25-count per box for a total of 50 pesticide capsules. Brown confirmed this purchase was made with the intent of using this pesticide to treat for brown tail moth at a later date and that all 50 capsules were applied during his May 9, 2021, applications at the Buker and Williams sites described in paragraph nine.
11. That during the inspection described in paragraph six, the inspector documented that on May 17, 2021, Brown also placed an additional order of ten boxes of Vivid II Microinjection, 25-count per box for a total of 250 pesticide capsules. At the time of the inspection, Brown said he had not yet received the order.
12. That on June 2, 2021, a Board inspector contacted Wurpel by phone to discuss the meeting he, Chase, and Brown had described in paragraphs two, seven, and eight. During the phone conversation Wurpel said at the meeting, Brown offered to make the pesticide application to the trees at the Buker Community Center and Williams Park sites with the pesticide that he had already bought, and that Brown said he could legally work under Blodgett's license. Wurpel said that Chase told Brown to hold off on making the pesticide application until he could check with Blodgett to find out if it was legal and that Chase was surprised when he later learned that Brown then made the application anyway.
13. That Wurpel also said Chase offered to purchase the Vivid II capsules from Brown, if it was determined that Brown would be unable to conduct the pesticide application. Chase was willing to reimburse Brown for his purchase of the Vivid II capsules and to store them until Brown was licensed to apply them.
14. That CMR 01-026 Chapter 20 Section 6(D) requires that no person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager, or legal occupant of that property.
15. That Brown did not have authorization to make the pesticide applications on May 9, 2021, described in paragraphs nine and ten.
16. That the circumstances described in paragraphs two through twelve constitute a violation of CMR 01-026 Chapter 20 Section 6(D).
17. That the definition of a custom application in 22 M.R.S. § 1471-C(5)(A), includes an application made under contract or for which compensation is received or an application to a property open to use by the public.
18. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5)(A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III

19. That the applications described in paragraphs nine and ten were done with the understanding that compensation was to be received and were done to properties open to use by the public.
20. That at the time of Brown's applications described in paragraphs nine and ten, Brown was neither a certified applicator nor under the direct supervision of a certified applicator and the application was made to city property open to use by the public and for compensation.
21. That the circumstances described in paragraphs nine, ten, and seventeen through twenty constitute violations of 22 M.R.S. § 1471-D (1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.
22. That CMR 01-026 Chapter 50 Section 1(A) requires that commercial applicators maintain pesticide application records for a period of two years from the date of application. Such records shall be kept current by recording all the required information on the same day the application is performed. These records shall be maintained at the primary place of business and available for inspection by representatives of the Board at reasonable times, upon request.
23. That the date of the follow up inspection with Brown described in paragraph six, was sixteen days after the pesticide applications. Brown had yet to complete a pesticide application record for the pesticide applications described in paragraphs nine, and ten. Brown made assurances that the Board inspector would receive a copy of the invoice when the City of Augusta was billed for pesticide applications.
24. That the circumstances described in paragraphs nine, ten, twenty-two, and twenty-three constitute a violation of CMR 01-026 Chapter 50 Section 1(A).
25. That CMR 01-026 Chapter 28 Section 3(B)1(a) requires posting when commercial pesticide applications are made to outdoor ornamentals and CMR 01-026 Chapter 28 Section 3(B)2 prescribes those posting requirements.
26. That no posting was done for the commercial pesticide application made to the outdoor ornamental trees described in paragraphs nine and ten.
27. That the circumstances described in paragraphs nine, ten, twenty-five, and twenty-six constitute a violation of CMR 01-026 Chapter 28 Section 3(B)1(a) and CMR 01-026 Chapter 28 Section 3(B)2.
28. That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) require that pesticides be used consistent with their labels.
29. That under the Directions for Use section the Vivid II label described in paragraphs nine and ten, the following language is written "Microinjection units containing VIVID II may require up to several minutes or more to empty depending on the health of the treated tree and local weather conditions. Empty units must not be left on the tree. If the microinjection unit does not completely empty within a few hours then carefully remove the capsule".
30. That from the inspection described in paragraph six, the inspector determined that Brown injected the trees at the Buker and Williams sites on May 9, 2021, but did not remove the capsules from the trees until the evening of May 18, 2021.
31. That the circumstances in paragraphs six, and twenty-eight through thirty constitute a violation of violation U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471 D (8)(F).
32. That 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F) require that pesticides be used consistent with their labels.

33. That under the Personal Protective Equipment section of the Vivid II label described in paragraphs nine and ten it states, handlers must wear chemical resistant gloves and protective eyewear.
34. That during the inspection described in paragraph six, the Board inspector determined that Brown did not wear chemical resistant gloves and protective eyewear.
35. That the circumstances in paragraphs six, and thirty-two through thirty-four constitute a violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D(8)(F)
36. That the Board has regulatory authority over the activities described herein.
37. 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
38. That this Agreement shall not become effective unless and until the Board accepts it.
39. 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 sixteen, twenty-one, twenty-four, twenty-seven, thirty-one, and thirty-five the Company agrees to pay a penalty to the State of Maine in the sum of \$3,000 (Please make checks payable to Treasurer, State of Maine).

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

**BROWNIES LANDSCAPING**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

**BOARD OF PESTICIDES CONTROL**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Megan Patterson, Director

**APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mark Randlett, Assistant Attorney General

## STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-TWO

—  
H.P. 1501 - L.D. 2019

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

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

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

**22-A. Perfluoroalkyl and polyfluoroalkyl substances or PFAS.** "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS" has the same meaning as in Title 32, section 1732, subsection 5-A.

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

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

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

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

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

"Pesticide" includes a highly toxic pesticide.

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

**31-A. Spray adjuvant.** "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier or similar agent that is intended to be used with any other pesticide as an aid to the application or the effect of it and that is in a package or container separate from that of the other pesticide.

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

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

- A. A pesticide that has not been registered pursuant to the provisions of this subchapter;
- B. A pesticide if any of the claims made for it or any of the directions for its use or other labeling differs from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product if the registration is amended to reflect that change and if that change will not violate any provision of FIFRA or this subchapter;
- C. A pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to the container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this subchapter and rules adopted under this subchapter;
- D. A pesticide that has not been colored or discolored pursuant to section 610, subsection 1, paragraph D;
- E. A pesticide that is adulterated or misbranded or any device that is misbranded;
- F. A pesticide in containers that are unsafe due to damage; ~~or~~
- G. Beginning January 1, 2022, a pesticide containing chlorpyrifos as an active ingredient;
- H. A pesticide that has been contaminated by perfluoroalkyl and polyfluoroalkyl substances; or
- I. Beginning January 1, 2030, a pesticide that contains intentionally added PFAS that may not be sold or distributed pursuant to Title 38, section 1614, subsection 5, paragraph D.

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

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

- A. Detach, alter, deface or destroy, wholly or in part, any label or labeling provided for in this subchapter or rules adopted under this subchapter;
- A-1. Add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of this subchapter or rules adopted under this subchapter;
- B. Use or cause to be used any pesticide in a manner inconsistent with its labeling or with rules of the board, if those rules further restrict the uses provided on the labeling;
- C. Use for that person's own advantage or reveal, other than to the board or proper officials or employees of the state or federal executive agencies, to the courts of this State or of the United States in response to a subpoena, to physicians, or in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 607 or any information judged by the board to contain or relate to trade secrets or commercial

or financial information obtained by authority of this subchapter and marked as privileged or confidential by the registrant;

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

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

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

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

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

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

**Sec. 7. Appropriations and allocations.** The following appropriations and allocations are made.

**AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF  
Office of the Commissioner 0401**

Initiative: Provides allocations for position technology and STA-CAP costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
All Other	\$0	\$11,502
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$11,502</b>

**Pesticides Control - Board of 0287**

Initiative: Provides allocations for one Environmental Specialist III position, one part-time Environmental Specialist II position, one part-time Office Associate II position and associated All Other costs.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2021-22</b>	<b>2022-23</b>
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
POSITIONS - FTE COUNT	0.000	1.000
Personal Services	\$0	\$168,311
All Other	\$0	\$10,500
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$178,811</b>

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

	<b>2021-22</b>	<b>2022-23</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$0</b>	<b>\$190,313</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$0</b>	<b>\$190,313</b>



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

8c

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

May 6, 2022

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

**RE: Variance permit for CMR 01-026 Chapter 29, Robinson's Wood, Cape Elizabeth**

Dear Mr. Priestly,

The Board of Pesticides Control considered your application for a variance from Chapter 29. The variance is approved, with the condition that Escort XP (EPA #432-1549) not be applied within 25 feet of water. Due to its high leachability and moderate toxicity to aquatic organisms eliminating the use of metsulfuron-methyl within 25 feet of water greatly reduces the potential for negative effects on aquatic communities. This active ingredient is appropriate for use farther inland.

Mixing and loading activities must be completed at a distance greater than 50 feet from the mean high water line. Cut stump applications rather than foliar applications are preferable and using only non-powered low-pressure applications within 25 feet of water is required by law. Each of these approaches will aid in reducing the potential for off-target movement.

Please ensure compliance with all other regulations including public notification and posting near trails and sidewalks used by the public. Additional information about notification may be found in the BPC policy concerning 'Appropriate Methods for Notifying the Public About commercial Applications to Sidewalks and Trails' [[PDF](#)].

The Board of Pesticides Control does not manage the Shoreland Zone mentioned in the submitted variance application and suggests consulting with the local code enforcement officer to determine how related restrictions may pertain to the proposed application. Of note, many areas within this variance request are greater than 25 feet from the mean high-water line and may be managed without a variance.

The Board authorizes the issuance of three-year variances for Chapter 29; therefore, this variance is valid until December 31, 2024, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
THINKFIRSTSPRAYLAST.ORG

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

If you have any questions concerning this matter, please contact me at 287-2731.

Sincerely,

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

Megan Patterson, Director



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

28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333

8d

JANET T. MILLS  
GOVERNOR

AMANDA E. BEAL  
COMMISSIONER

May 6, 2022

Steven Brook  
New England Spray Technologies  
21 Ridley Rd  
Shapleigh, ME 04076

**RE: Variance permit for CMR 01-026 Chapter 29, Marginal Way, Ogunquit**

Dear Mr. Brook,

The Board of Pesticides Control considered your application for a variance from Chapter 29. The variance is approved, with the following conditions.

Mixing and loading activities must be completed at a distance greater than 50 feet from the mean high water line. Cut stump applications rather than foliar applications are preferable and using only non-powered low-pressure applications within 25 feet of water is required by law. These approaches will aid in reducing the potential for off-target movement.

Please ensure compliance with all other regulations including public notification and posting near trails and sidewalks used by the public. Additional information about notification may be found in the BPC policy concerning 'Appropriate Methods for Notifying the Public About commercial Applications to Sidewalks and Trails' [[PDF](#)].

The Board of Pesticides Control suggests discussing appropriate plantings for a revegetation plan with the Maine state horticulturist.

The issuance of three-year variances for Chapter 29 is authorized by the Board; therefore, this variance is valid until December 31, 2024, as long as applications are consistent with the information provided on the variance request. Please notify the Board in advance of changes, particularly if you plan to use a different product from those listed.

Please remember that your variance is based upon your company adhering to the precautions listed in Section X of your Chapter 29 variance request. Applications are required to be made with the applicator facing away from the water and when there is an onshore wind between 2-15 mph.

If you have any questions concerning this matter, please contact me at 287-2731.

MEGAN PATTERSON, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731  
THINKFIRSTSPRAYLAST.ORG

Sincerely,

A handwritten signature in cursive script that reads "Megan L. Patterson". The signature is fluid and includes a long, sweeping horizontal stroke at the end.

Megan Patterson, Director