



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

To: Board Members
From: Henry Jennings, Director
Subject: Staff Observations on Rulemaking Comments
Date: September 12, 2014

The staff has discerned a few apparent themes in the rulemaking comment record that we believe merit careful Board consideration. They are as follows:

1. We identified (as did many commenters) an unintended consequence of the proposal to trade identification of sensitive areas for posting and/or public notification. Chapter 22—which contains the sensitive area identification requirement—only applies to powered equipment. Chapter 28—which contains the posting/notification requirements—applies to all outdoor application of pesticides. So in proposing the trade, we inadvertently created a new notification requirement for many non-powered applications conducted under category 6A (right-of-way) that did not exist before. This was not contemplated by the staff at the time the proposal was drafted.
2. Currently, applicators treating public rights-of-way with powered equipment apply for variances from Chapter 22. The Board's longstanding policy has been to grant variances, conditioned upon the requirement that applicants publish newspaper notification and implement a drift management plan. The Board delegated authority to the staff to renew variances that remain the same from year to year. Commenters, and the staff, are now questioning the efficacy of newspaper notices. So we'll be asking the Board whether a more flexible notification standard may make more sense.
3. Darin Hammond observes that the proposal suggests that implementation of a drift management plan will be a requirement for applications made under categories 6A and for certain applications under category 6B. The Board does not currently define drift management plans in rule. The Board has been requiring Chapter 22 variance applicants to list measures that will minimize pesticide drift as part of the variance permit applications. If the Chapter 22 amendments are adopted, the variance will no longer be required. Therefore, the Board needs to consider what its expectations will be relative drift management plans.