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GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER

Joint Standing Committee on State and Local Government
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

May 16, 2017

Dear Senator Davis, Representative Martin and members of the Joint Standing Committee on State and Local Government:

The Maine Board of Pesticides Control (Board) met on Friday, May 12, 2017 and reviewed LD 1505 An Act to Create Consistency in the Regulation of Pesticides as drafted as well as several potential amendments. The Board thanks the Committee for seeking its input, and recognizes the importance of this sensitive issue.

The Board recognizes Maine's longstanding history of home rule, and recognizes that there may be localized natural or economic resources that warrant special consideration. At the same time, the Board is keenly aware of the challenges and inefficiencies that municipal ordinances pose for companies and agencies with statewide or regional pest management responsibilities.

After a lengthy and spirited discussion, the Board approved, by a vote of 4 to 2, the attached draft language—intended as a conceptual framework for the Committee's consideration.

While there was a diversity of viewpoints on the overall merits of municipal pesticide ordinances, the Board agrees that there is a definite need to address this issue and found unanimous agreement on the following concepts:

- Inconsistency in municipal ordinances, and the potential of having 500 different ordinances presents significant difficulties for businesses that work statewide (highway, power line, railroad and gas-line right-of-way maintenance) and businesses that work in multiple towns (lawn care, home pest control, etc);
- The increased costs associated with complying with municipal ordinances will ultimately be passed on to rate payers and tax payers;
- The Board struggled to find the appropriate balance between the rights of the community and the rights of the individuals within the community;

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- The Board fully supports:
 - the concept of integrated pest management (IPM) as defined in current state law (7 M.R.S. § 2401; CMR 01 026 Chapter 10 Section 2-W; CMR 01 026 Chapter 26 Section 1-D; CMR 01 026 Chapter 27 Section 1-A);
 - enhanced educational efforts at the community level to help address concerns identified by municipal leaders;
 - increased outreach to the public on ways to minimize the public health and environmental risks of pesticide applications;
 - increased outreach to the public on ways to reduce reliance on pesticides through best management practices and IPM.

A majority of the Board supports educational efforts through grant funding, if additional revenue sources (*e.g.* product registration fees) can be identified and developed. Increasing registration fees will require changes to 7 M.R.S. Section 607 (6), which sets pesticide registration fees at \$160 per product per year. Registration fees were last raised in 2013 and are already high for a small population state, so careful consideration is warranted when contemplating the merits of fee increase.

Additionally, the Board would like the Committee to be aware that CMR 01 026 Chapter 60 Designation of Critical Pesticide Control Areas (statutory authority 5 M.R.S. § 8051 et seq. and 22 M.R.S. §§ 1471-F and M) is an existing Board rule which provides criteria under which groups or individuals can request that an area be designed as a Critical Pesticide Control Area, in which restrictions on pesticide use have the force of state law. The Board suggests that the criteria of Chapter 60 could be broadened to help address the specific needs of municipalities.

The Board looks forward to working collaboratively with the Committee on this sensitive and difficult issue.

Sincerely,

A handwritten signature in cursive script that reads "C. C. Taylor for Deven Morrill".

Deven Morrill
Chairman, Maine Board of Pesticides Control

Attachments:

Board concept language

CMR 01 026 Chapter 60 Designation of Critical Pesticide Control Areas

Existing IPM definitions:

7 M.R.S. § 2401

CMR 01 026 Chapter 10 Section 2-W

CMR 01 026 Chapter 26 Section 1-D

CMR 01 026 Chapter 27 Section 1-A

22 M.R.S. § 1471-X State Policy: Public and Private Initiatives to Minimize Reliance on Pesticides

Adopted by Maine Board of Pesticides Control, May 12, 2017 by a vote of 4 to 2.

Sec. 2. 30-A MRSA subsection 3007, sub-subsection 7 is enacted to read:

Prior to adoption of any ordinance that regulates the sale or use of pesticides a municipality must specify what steps it will take to educate its citizens on how to minimize reliance on pesticides through best management and Integrated pest management practices. The board may provide grants to municipalities to help offset the cost of developing compliant ordinances. Revenue to support such grants may be funded through a limited increase in the registration fee for all pesticide products sold in Maine.

In developing Board compliant ordinances, municipalities may ban or regulate any or all pesticide use on publicly owned land, publicly leased land, or land trust property, except for state sponsored public health protection efforts. A municipal ordinance may specifically apply to pesticides, including without limitation ordinances relating to pesticide use limitations, use notification, local distribution, and applicator training except the ordinance shall not be applicable to persons licensed or certified under 1471-D. Towns shall report instances of illegal use on private land to the board for enforcement action.

Municipal pesticide ordinances in force at the time this statute becomes effective must become compliant with it within two years.

Maine Revised Statutes
Title 7: AGRICULTURE AND ANIMALS
Chapter 413: INTEGRATED PEST MANAGEMENT

§2401. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 609, §2 (NEW).]

1. Integrated pest management. "Integrated pest management" means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:

- A. Understanding the system in which the pest exists; [1991, c. 609, §2 (NEW).]
- B. Establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control; [1991, c. 609, §2 (NEW).]
- C. Monitoring pests and natural enemies; [1991, c. 609, §2 (NEW).]
- D. When needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression; and [1991, c. 609, §2 (NEW).]
- E. Systematically evaluating the pest management approaches utilized. [1991, c. 609, §2 (NEW).]

[1991, c. 609, §2 (NEW) .]

SECTION HISTORY

1991, c. 609, §2 (NEW).

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

026 **BOARD OF PESTICIDES CONTROL**

Chapter 10: DEFINITIONS AND TERMS

SUMMARY: These definitions and terms are defined as they specifically relate to the use of pesticides, the certification and licensing of pesticide applicators and dealers, and other areas as regulated by the Board in succeeding chapters.

Section 2. Definitions

- W. "Integrated Pest Management" (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including: (1) understanding the system in which the pest exists, (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control, (3) monitoring pests and natural enemies, (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and (5) systematically evaluating the pest management approaches utilized.

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

026 **BOARD OF PESTICIDES CONTROL**

Chapter 26: **STANDARDS FOR INDOOR PESTICIDE APPLICATIONS AND**
 NOTIFICATION FOR ALL OCCUPIED BUILDINGS EXCEPT K - 12 SCHOOLS

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

Section 1. Definitions

- D. **Integrated Pest Management.** For the purposes of this regulation, Integrated Pest Management (IPM) is a process that utilizes regular monitoring to determine if and when a treatment is needed. It employs physical, mechanical, cultural, chemical, biological and educational programs to keep pest populations low enough to prevent intolerable damage or annoyance. Pesticides should be only one of many options considered for solving a pest problem, and when required, target-specific, low impact pesticides and application techniques should be employed. Furthermore, pesticide applications are not made according to a pre-determined schedule but are only made when and where monitoring, or a previous history of pest incidence has indicated that the pest will cause unacceptable economic, medical or aesthetic damage. The IPM program must as a result be environmentally, socially, and economically compatible to meet current public expectations.

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

026 **BOARD OF PESTICIDES CONTROL**

**Chapter 27: STANDARDS FOR PESTICIDE APPLICATIONS AND PUBLIC
NOTIFICATION IN SCHOOLS**

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

Section 1. Definitions

A. **Integrated Pest Management.** For the purposes of this rule, Integrated Pest Management (IPM) means the selection, integration and implementation of pest damage prevention and control based on predicted socioeconomic and ecological consequences, including:

- (1) understanding the system in which the pest exists,
- (2) establishing dynamic economic or aesthetic injury thresholds and determining whether the organism or organism complex warrants control,
- (3) monitoring pests and natural enemies,
- (4) when needed, selecting the appropriate system of cultural, mechanical, genetic, including resistant cultivars, biological or chemical prevention techniques or controls for desired suppression, and
- (5) systematically evaluating the pest management approaches utilized.

01 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

026 BOARD OF PESTICIDES CONTROL

Chapter 60: DESIGNATION OF CRITICAL PESTICIDE CONTROL AREAS

SUMMARY: These regulations establish criteria which the Board will use in deciding if an area should be designated as a critical pesticide control area. In addition, these regulations specify the procedures parties must follow in requesting such a designation. These regulations also define the locations that have been designated as critical areas by the Board.

1. Procedure

- A. The Board shall receive, consider and act upon petitions for designation of critical pesticide control areas in accordance with 5 M.R.S.A., Ch. 375, subchapter II. Citizen petitions shall be allowed in accordance with 5 M.R.S.A. §8055. A municipality or county may make such petition in accordance with 22 M.R.S.A. §1471-M, sub-§ 4. In addition, the Board's staff may initiate such a petition.
- B. The Board shall provide public notice and opportunity for public comment on any such petition in accordance with 5 M.R.S.A., Ch. 375, subchapter II.
- C. There shall be opportunity for local participation in Board decisions regarding the designation of critical areas, as provided by 22 M.R.S.A. §1471-V.

2. Information required in Petition

Any person or persons petitioning the Board to designate an area as a critical pesticide control area shall submit the following information in support of the petition:

- A. The name, address and telephone number of the petitioner(s) and a statement of the petitioner's interest in the proposed designation.
- B. The name of the pesticides or group of pesticides for which restrictions are sought. Petitioners may seek restrictions on specific formulations which have enhanced toxicity, rather than on all products containing the active ingredient. For purposes of this regulation, pesticides shall include both active and inert ingredients, and carriers used in any pesticide application.
- C. The name(s) and address(es) of the owner(s) of property within the proposed critical area.
- D. A map of the proposed critical area.
- E. A description of the purposes for which the pesticide(s) is or may be applied within the proposed area (if known).

- F. For petitions for designation under criteria of sections 3(A), 3(B) or 3(C), the name(s) of the species for which protection is sought and a summary of the data establishing adverse effects of pesticides upon the species.
- G. For petitions for designation under criteria of section 3(D), a copy of any applicable town ordinances, a summary of: evidence establishing that the pesticides may enter ground or surface water, hydrogeologic data which adequately defines the proposed critical area, and evidence establishing that the pesticide(s) may have an adverse effect upon the health of current or future users of the ground or surface water.
- H. For petitions for designation under criteria of section 3(E), a summary of medical and/or epidemiological evidence that exposure to the pesticide(s) causes serious and/or longstanding health effects to sensitive individuals or groups of individuals.
- I. For petitions for designation under criteria of sections 3(F) or 3(G), a copy of any management plan for the area or species.
- J. A description of the petitioner's proposed restrictions on the use of pesticide(s) within the proposed critical area.

3. Criteria for designation

The Board of Pesticides Control will use the following criteria to determine whether to designate a critical pesticide control area. Where the Board is persuaded by the evidence that any of these criteria are met, it may designate a critical pesticide control area and adopt additional pesticide use restrictions, prohibitions or management plans for that area as necessary to protect health, welfare and the environment.

- A. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of the habitat or range of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or
 - (3) is an invertebrate species ranked G1, G2 or S1 under the Natural Heritage Program of The Nature Conservancy and which is, in the Board's judgment, of natural significance.
- B. Areas where use of pesticide(s), without additional restrictions, is likely to negatively affect the mortality rate and/or reproductive capability of any animal or plant species that:
 - (1) is listed as endangered pursuant to state or federal law; or
 - (2) is listed as threatened pursuant to state or federal law; or

- (3) is an invertebrate species ranked G1, G2 or S1 under the Maine Natural Areas Program in the Department of Conservation and which is, in the Board's judgment, of natural significance.
- C. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of significant wildlife habitat. "Significant wildlife habitat" is as identified under the Natural Resources Protection Act, 38 M.R.S.A., Ch. 3, subchapter 1, Art. 5-A.
- D. Areas where use of pesticide(s), without additional restrictions, is likely to significantly risk the quality of surface or groundwater supplies used for human consumption.
- E. Areas where use of pesticide(s), without additional restrictions, is likely to cause serious and/or longstanding impairment of the health of sensitive individuals or groups of individuals who normally occupy such areas. The Board contemplates that this designation will require verified medical and/or epidemiological documentation of human sensitivity to one or more pesticides.
- F. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural or other resources owned or managed by a government agency, or is contrary to the duly adopted management plan for an area owned or managed by a government agency.
- G. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural resources within an area which is identified as an exemplary natural community or ecosystem of recognized exceptional qualities and has been designated for long-term ecological research and/or conservation purposes.

4. Designated Critical Pesticide Control Area

A. Dennys River Critical Pesticide Control Area

- (1) The above entitled matter having come up for public hearing on 7 March, 1978, at 2:00 p.m. before the Pesticides Control Board in Room 102 of the Science Building at the University of Maine in Machias; and the Board, having considered the evidence and arguments presented, and with a quorum present, has this day voted to declare a critical area under provisions of Title 22, Chapter 258-A, Sections 1471-F and 1471-M (2)(A), within which critical area no aerial application of pesticide is to be made without prior approval of the Board of Pesticides Control.
- (2) The critical area herein established is described as follows: Commencing at the dam at the foot of Meddybemps Lake and extending down the Dennys River to the Gilman Dam, so-called, the critical area shall include all land within one-half mile of either bank of the Dennys River; commencing at the Gilman Dam, so-called, and extending down the Dennys River to its entrance into Dennys Bay, so-called, the critical area shall include all land within one mile of either bank of the Dennys River.

FISCAL IMPACT: This rule will not impose any fiscal impact on counties or municipalities.

STATUTORY AUTHORITY: 5 M.R.S.A., § 8051 *et seq.* and 22 M.R.S.A., §§ 1471-F and M.

EFFECTIVE DATE:

July 6, 1979

AMENDED:

May 8, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998

July 12, 2000

MINOR CORRECTION:

November 23, 2000 - citation in § 4(C)(4)

AMENDED:

December 24, 2000 - repealed §4(C)

December 26, 2011 – filing 2011-475

CORRECTIONS:

February, 2014 – agency names, formatting

Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 258-A: BOARD OF PESTICIDES CONTROL

§1471-X. STATE POLICY; PUBLIC AND PRIVATE INITIATIVES TO MINIMIZE RELIANCE ON PESTICIDES

It is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application. The agencies of the State involved in the regulation or use of pesticides shall promote the principles and the implementation of integrated pest management and other science-based technology to minimize reliance on pesticides while recognizing that outbreaks of disease, insects and other pests will necessitate fluctuations in pesticide use. These agencies, in cooperation with private interest groups, shall work to educate pesticide users and the general public in the proper use of pesticides and to determine other actions needed to accomplish the state policy. [1997, c. 389, §2 (NEW).]

SECTION HISTORY

1997, c. 389, §2 (NEW).

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