



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
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

**BOARD OF PESTICIDES CONTROL**

**May 24, 2013**

**AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine**

**AGENDA**

**8:30 AM**

1. Introductions of Board and Staff
2. Minutes of the March 1 and April 12, 2013, Board Meetings

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

3. Gowan Company, Inc., Request for FIFRA Section 24(c) Registration for Malathion 8 Flowable on Cane Berries

Gowan Company, Inc., is requesting a Special Local Need [24(c)] Application to increase the number of allowable applications of Malathion 8 Flowable agricultural insecticide to control spotted wing drosophila (SWD) on cane berries. This request is supported by University of Maine Blueberry Extension Specialist David Handley. Research indicates that Gowan Malathion 8 Flowable is highly effective against the SWD and the extra application will be critical to controlling this invasive pest. In addition, Gowan Malathion 8 Flowable offers growers the advantage of very short preharvest and reentry intervals. Available data indicate that residues are expected to be below the established tolerance.

Presentation By: Mary Tomlinson  
Pesticides Registrar/Water Quality Specialist

Action Needed: Approve or disapprove the request

4. Adoption of the Proposed Amendments to Chapters 20, 22, and 51

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

On February 13, 2013, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, and 51. A public hearing was held on March 1, 2013, at the AMHI Complex, Deering Building, in Augusta, and the written comment period closed at 5:00 PM on March 15, 2013. Four people spoke at the public

hearing and 88 written comments were received by the close of the comment period. The Board reviewed the comments at its April 12, 2013, meeting and directed the staff to make some minor revisions. It will now determine whether to adopt the proposed amendments.

Presentation by: Henry Jennings  
Director

Action Needed: Decision on whether to adopt the proposed amendments and their respective response to comments, basis statement, and statement of impact on small business

5. Consideration of a Consent Agreement with TruGreen Lawncare of Westbrook

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 in 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 and resolve the matter. This case involved an unauthorized pesticide application.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

6. Other Old or New Business

- a. Legislative Update—H. Jennings
- b. GMO Memo—L. Hicks
- c. Dubois Contracting Variance—H. Jennings
- d. Department of Transportation Variance—H. Jennings
- e. Funding for Mosquito Monitoring—H. Jennings
- f. Other?

7. Schedule of Future Meetings

June 21, July 26, September 6, October 18, and December 6, 2013, are tentative Board meeting dates. The September 6 meeting is tentatively slated to include a planning session. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

8. 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 attention of Anne Bills, at the Board's office or [anne.bills@maine.gov](mailto:anne.bills@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**

**March 1, 2013**

**AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine**

**MINUTES**

Present: Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson and Bohlen

1. Introductions of Board and Staff
  - The Board, Assistant Attorney General Randlett and staff introduced themselves.
  - Staff present: Jennings, Connors, Hicks, Schlein, Tomlinson, Bills
2. Public Hearing on the Proposed Amendments to Chapters 20, 22, and 51

The Board will hear testimony on the following proposed amendments to three rules:

- **Chapter 20—Special Provisions:** The amendments to Chapter 20 would relax the requirement for government entities to obtain the permission of each individual landowner prior to conducting public-health, vector-control programs. The amendments would require public notice before any program is conducted. Landowners or occupants would be able opt out of ground-based control programs and certain sensitive sites would be excluded from aerial programs.
- **Chapter 22—Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition:** The proposed amendment would exempt government-sponsored, public-health, vector-control programs from this chapter when the Maine Center for Disease Control and Prevention (Maine CDC) recommends control of disease vectors, since many of the requirements of this chapter would be impractical.
- **Chapter 51—Notice of Aerial Pesticide Applications:** The proposed amendment would exempt government-sponsored, public-health, vector-control programs from this chapter when the Maine CDC recommends control of disease vectors, since public notice requirements under this circumstance would be dictated under Chapter 20.

Katy Green (MOFGA) (also submitted written testimony)

- Questions the efficacy of spraying mosquitoes to prevent disease
- Would like the Board to do more outreach on how people can protect themselves
- Any person should be able to opt out for any reason

- Government-sponsored spray programs should not be exempted from entire chapter e.g., in Chapter 22: monitoring of wind speeds, positive identification of sites
- Hope protection of organic farms will be included in rule; prefer anyone be able to opt out, but if not, then at least organic farms
- MOFGA has been working on mapping organic farms; it's unclear how the mapping will be managed and who will maintain the maps
- Would like Board policy to be available for review and comment soon
- Concerned that Maine does not have enough data about mosquitoes and virus presence and we are putting the spraying ahead of monitoring

Jody Spear (also submitted written testimony)

- Spray programs are ineffective
- Pesticides are dangerous for the environment, especially for pollinators
- Organic farmers should be able to opt out of aerial spraying
- Maine should not “come into line” with other states, but should lead the way by having a policy that is less damaging to the environment
- Granger asked if there is any way to conduct a spray program and protect the pollinators and Spear replied that there is not

Dave Bell, Maine Blueberry Commission (also submitted written testimony)

- Concerned about potential residue on fruit, making it unacceptable to overseas customers
  - Would like organic farms to be named as sensitive sites to be avoided
  - Looked at cranberry study done in Massachusetts, but because the samples were taken 3–5 days after spraying, can't be sure there would be no detect the day after spraying. Would like research on the materials most likely to be used.
  - Concerned that the way the rule is currently written it would require only a “reasonable effort” for ground-based spraying. Needs a stronger requirement to avoid application to commercial fruits, especially near suburban interfaces.
  - For aerial spraying the “extent feasible” is not adequate to provide protection. Section should be strengthened.
  - Wild blueberries are only sensitive near harvest. Would like to see research on the timing. If the materials biodegrade in 24 hours then they could postpone harvest for one or two days, but if it takes longer, couldn't postpone for five days, would lose harvest.
  - Shouldn't be exempt from standards in Chapter 22: equipment, weather, identification and recording of sensitive sites; some sections would have to be modified, but most should not be exempted.
  - Also shouldn't be exempt from standards that protect sensitive sites.
- Jemison remarked that with the products made for this purpose, and with the small amount being used, that it seems unlikely there would be any residue. He suggested the companies must have already done studies on the breakdown. Hicks said that there are studies on residues and on breakdown, but that the residue standards are different for the U.S. than for other customers. Bell said that the international clients prescribe what can be used and what can't be used. If a material is on the product it will be rejected.
  - Eckert asked if there are any biological products available. Hicks replied that there are for larvacides, but not for adulticides. Larvacides are specific to species of mosquito.

- Bohlen pointed out that any adulticide spraying will be done in late summer/early fall, which is key harvest time for many things. Hicks said that there are tolerations for most commodities for most of the products likely to be used and that the rates used for mosquito control are much lower than those used in agriculture. Bell said the issue for international customers is not a tolerance, but any detect.
- Granger asked if there is any confidence that the buffers set for agriculture aerial spraying are enough to protect crops. If the idea is to use small droplets, is there a chance they will come down off target? Bell said rather than going the traditional buffer route they'd rather know how long it takes for the products to biodegrade; if growers could be assured that there wouldn't be any detectible residue, it wouldn't be ideal, but it would be manageable. Doug Bowers of Maine Helicopters said that there is a lot of research on residues, for instance on Washington cherries. There are a lot of mosquito-control programs which include aerial spray programs over large areas. The intention is for the product to not reach the ground; if it does then it's not doing its job. He suggested the Board look into some of the studies that have been done.

May Linda Rapelye (also submitted written testimony)

- Would like organic to be able to opt out
- Wonders what happens to the pesticide when it kills mosquitoes in the air; do the mosquitoes, along with the pesticide, drop into the water?
- Thinks treating larvae with Bti is more effective and would like to see it made possible
- Hicks said that there is a longstanding discussion with DEP about this. There is a general permit for municipalities but individuals can't get a permit unless they can prove their wetland doesn't empty into Waters of the State.
- Eckert suggested that a group of organic farmers might make a presentation to the Maine Vector-borne Disease Working Group.
- A Board discussion ensued about the evolution of the emergency clauses in Chapters 22 and 51. The Board recognized that when those clauses were adopted, the primary concerns were about severe pest damage, as opposed to vector-borne diseases. Similarly, when Section 6 of Chapter 20 was written, the Board did not contemplate the prospect of wide-area public health spraying, and how state laws generally affect such projects. Dave Bell pointed out that the Clean Water Act conflict is still looming as a significant impediment to wide-area spray programs, especially aerial programs. A bill is pending before the Legislature that will allow DEP to write a General Pesticide Permit.

### 3. Minutes of the January 18, 2013, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

- **Eckert/Granger: Moved and seconded approval of the minutes as amended to include Jemison's revisions to comments made during the discussion of *Bt* corn.**
- **In favor: Unanimous**

4. Presentation about the Maine Integrated Pest Management Council and Discussion about Possible Collaboration

Public Law 2001, Chapter 497, established Maine's Integrated Pest Management (IPM) Council which, by statute, must contain 11 members representing a diverse range of pest management and public interests. The Council has two coordinators, one from the Department of Agriculture, Conservation and Forestry, and one from the University of Maine Cooperative Extension. The Council is charged with facilitating, promoting, expanding, and enhancing IPM adoption in all sectors of pesticide use and pest management. Ronald Lemin, the Council Chair, will provide an overview of the Council's activities and discuss areas in which the Board and Council might work together to promote IPM.

Presentation by: Ronald Lemin  
Chair, Maine IPM Council

Action Needed: Determine whether there are opportunities for collaboration

- Ron Lemin gave an overview of the Integrated Pest Management Council (see March Board meeting packet). There followed a discussion about IPM certification for applicators. Jemison asked about a separate category for IPM. Lemin pointed out that the Maine BPC does not allocate credits to categories. He said that Massachusetts has an IPM exam in addition to the core exam and one has to pass both in order to be licensed.
- Bohlen asked how the Council managed with no budget for support. Lemin said it was all done by volunteers; when they get a grant, such as the one from the BPC, they use it for things like the website (Got Pests?). They man booths at shows and hand out brochures.
- Flewelling asked if they were affiliated with Cooperative Extension and Lemin explained that it was established in statute as an independent body with the mission of promoting IPM. Kathy Murray from the DACF and Jim Dill, from UMCE are the co-chairs and the other members have to be jointly appointed by DACF and UMCE.
- Bohlen said that there needs to be more discussion and suggested it be scheduled as a topic at a Board retreat.

5. Section 18 Emergency Registration Renewal Request for HopGuard to Control *Varroa* Mites in Managed Honey and Commercial Bee Colonies

The Division of Animal and Plant Health in the Maine Department of Agriculture, Conservation and Forestry is requesting that the Board petition EPA for a FIFRA Section 18 specific exemption for use of HopGuard (potassium salt of hop beta acids) to control *Varroa* mites in managed bee colonies. State Apiarist Tony Jadcak is seeking approval for use of this product, which provided consistent control against *Varroa* mites during the last season, and is an important alternative in resistance management and organic honey production. He points out that a healthy bee keeping industry is needed to support Maine agriculture and that this product is essential to honey production and commercial bee operators. The request is supported by the registrant, BetaTec Hop Products, a wholly owned subsidiary of John I. Haas, Inc. Executive President Lloyd Schantz stated the company is in the process of pursuing a full FIFRA Section 3 registration with EPA.

Presentation By: Mary Tomlinson  
Pesticides Registrar

Action Needed: Approve/deny request to petition EPA for a Section 18 Specific Exemption registration for HopGuard for use with bees.

- Tomlinson explained that this is a renewal of the registration that was approved last year. The staff had to include an amendment to show what has changed: the number of colonies to be treated and amount to be used.
- Tony Jadcak, State Apiarist, said that the only difference is that they will start earlier this year, so they will do six applications instead of three like last year. He said that he did see some adverse effects on the bees and that has been brought to the attention of the manufacturer; they said no one else had reported anything. Jadcak said he thought the issue was that when the bees are clustered really close together because of cold they may get a toxic dose. The strips have a bad smell, which is good because it makes beekeepers aware; when things have a smell, people respect it a little more. Jadcak evaluated close to 1,600 hives and found good efficacy. They are reformulating the strip; the old one works two to three days, so required repeat applications; new formulation will hopefully last 10 to 14 days. The strip is cardboard, so if the beekeeper doesn't remove the strip the bees do it for him. He said it works really well, and is a really good price.
- Eckert asked if the company was moving toward full registration. Jadcak said they are working on it, but the scientist at Rutgers is overworked, so it is not moving as fast as the company would like.
- Morrill questioned why the label states that exposure may cause eye irritation, but the only PPE requirement is for gloves. Jadcak replied that the beekeepers are wearing veils anyway. In hot weather there will be volatilization, so he mentions in lectures that applicators need to be careful of that.
  - **Granger/Eckert: moved and seconded to approve the registration**
  - **In favor: Unanimous**

6. Section 18 Emergency Registration Request for Apivar (Amitraz) to Control *Varroa* Mites in Managed Honey and Commercial Bee Colonies

The Division of Animal and Plant Health in the Maine Department of Agriculture, Conservation and Forestry is requesting that the Board petition EPA for a FIFRA Section 18 specific exemption for use of Apivar (Amitraz) to control *Varroa* mites in managed bee colonies. State Apiarist Tony Jadcak is seeking approval for use of this product with its different mode of action to aid growers in controlling this pest. The request is supported by the registrant, Arysta LifeScience America, Inc.

Presentation By: Mary Tomlinson  
Pesticides Registrar

Action Needed: Approve/deny request to petition EPA for a Section 18 Specific Exemption registration for Apivar for use with bees.

- Tomlinson gave an overview of the request which is a new Section 18 for registration.



- Tony Jadcak, State Apiarist, explained that this product is a synthetic and has a different mode of action than HopGuard (see item 5). It was registered from 1987 to 1992 in a 10-percent formulation and has been used globally for decades. The two synthetics currently being used don't work anymore, and this material doesn't seem to develop the same resistance. It works at a 3- percent formulation, and hopefully registering this will reduce the use of unregistered products. Because it was pulled off the market in 1992, there is no tolerance, but one needs to be established because the U.S. is importing honey from around the world where it is in use.
- Hicks said she thought a tolerance is forthcoming from EPA. Jadcak said it is not allowed to be used during honey production. It is being phased out on some animals, still being used on dogs. Primary use was tick control on hogs and cattle.
- Bohlen asked why the label contained a precautionary statement about surface water but there was no mention of that concern on the MSDS. Hicks said that was standard language on all new products, but she will look at aquatic data. Jadcak said it breaks down very quickly.
- Jadcak explained that it was pulled from the market because there was a class-action lawsuit; it had nothing to do with adverse effects, but rather because it was the early days of *Varroa* mites and once a hive reached a certain point it was going to crash no matter what you did. Lots of keepers treated their hives and the hives still crashed, so they initiated a class-action suit; the company pulled rather than fight.
- Bohlen asked about resistance management. Jadcak said it has been used in Japan since the early 1980s and there are some reports of resistance, but so far none in France or South America.
  - **Eckert/Flewelling: Moved and seconded to approve registration**
  - **In favor: Unanimous**

7. Consideration of a Chapter 29 Variance Permit Request from Southern Maine Forestry Services, Inc., to Control Invasive Plants in Scarborough, above the High-Water Mark Adjacent to the Ocean

Chapter 29 allows the Board to grant variances from the 25-foot setback required from surface water under Section 6 of Chapter 29. This request is to control areas of honeysuckle and Asiatic bittersweet above the high-water mark next to the ocean in Scarborough. The target areas are larger than Board policy allows for spot treatment. The applicator proposes to use a motorized backpack mist blower and a hand-powered backpack which allows foliar treatments that minimize herbicide drip. The Board will now consider this request.

Presentation By: Anne Bills  
Pesticide Safety Educator

Action Needed: Approve/disapprove the variance request

- Bills gave an overview of the request and explained the Board needed to review it because this is the first request for a variance for this purpose.
- Morrill asked if there was also a request for a variance from Chapter 22 (drift). Jennings said that that would only come into play if they haven't mapped the sensitive areas, and in this case they have mapped them.
- Eckert asked for some clarification on the map: how long is zone one?

- Eric Grove, the applicator who requested the variance, replied that the area is 700–800 feet long, but only about 200 feet needs intensive treatment. Back away from the ocean there is a substantial volume of invasive plants to be controlled. Eckert asked how much is marshland. Grove said that there's a small section, but that there are no invasives there. In the back part of the property there is some wetland and they might treat at some point, but not part of the current contract.
- Jemison asked about the choice of Garlon 3A; it seems like a formulation designed for wetlands, but it might be more mobile; it has aquatic uses. Hicks said that it is one of the herbicides reviewed for control of invasive plants in lakes for DEP and that it is a product for which they would give a general permit. Ron Lemin said the other option would be Garlon 4, which has oils and other ingredients that should be kept out of the water. Garlon 3 pretty much stays, not much leaching. Jennings said he had the same question, seems that if Garlon 4 gets in the water it will head right to the sediment. Grove said the other reason for choosing Garlon 3 over Garlon 4 is that the homeowner wants to avoid killing native plants. There is a very early season application window for making a single treatment when honeysuckle is the only plant leafed out. This approach can result in very selective control. Then there would be a follow-up application in late May/early June when bittersweet is leafed out, but in a smaller area. They want to be able to use a motorized mist blower so can they cover the area in a short time frame when the weather is appropriate.
- Morrill said he is very familiar with this property and there is nothing there but honeysuckle and bittersweet; he asked what the homeowners' goals are. Grove said once you get away from the shore it is predominantly native winter berry and juniper. He said he has not met the homeowners but that the stated goal is to make it more natural, improve for native fauna.
- Morrill said he was concerned about the vast amount of vegetation being removed; it is rocky, then a cliff, then barberry, at 25 feet back it's all honeysuckle. Bohlen said that 30 to 40 percent of the shoreland in Casco Bay is like that. They're getting a lot of inquiries about how to control invasives on islands; there is so much that trees have been killed; there is a huge volume of plant material to be removed. What does IPM look like on something like this?
- Grove said the homeowner had thought about cutting and chipping, but there's a good chance the volume per acre of material would exceed label rates doing cut-stump treatments.
- Morrill said that he applauds Grove for submitting a variance request and the amount of thought that went into it. He asked about erosion, given the amount of material to be removed. Grove said they decided to leave the dead material there to prevent erosion. He said there is only a small area where it is just invasives and everything needs to be killed, and one is the mowed meadow. Most of the area has some amount of native plants that will grow in.
- Stevenson asked whether Grove thought he would be back in a year or two to request another variance because the invasives had grown back. Grove said there are two small places where he would expect that, and he believes it will be necessary to do more broadcast treatments down the line. He would inspect every year and treat when plants are big enough, but have not gone to seed. The problem, he explained, is that there is a huge amount of seed sitting in the soil.
- Granger said he would like to see some experimentation be a condition of approval. If this is a widespread problem and we're going to see a lot of requests for variances, maybe we could find some ways to attack the problems on a more widespread basis. Grove said that the landowner would very much like to use this site for research and documentation, and if the Board or anyone else would like to do some outreach or credit workshops, they are interested in that.
- Bohlen said that a lot of land trusts are concerned about this issue; many people have tried physical control, but it doesn't work completely; seed pools are the problem. He would like to figure out how to get some knowledge on how to do this.

- Morrill expressed concern about using a mist blower after the first application, close to the ocean. Grove asked if he would be okay in the mowed meadow that goes right down to the ocean; bittersweet is the primary issue there. Morrill said that using the backpack sprayer in the spring is a great idea because the window of opportunity is so short and the area large. After that he would prefer that a hand pump be used; he noted that there are apt to be inversions near the ocean.
- Bohlen remarked that the worst thing that could happen is for there to be a major spray event and then have it not be effective because there wasn't follow-up. He thanked Grove for presenting a thorough package.
  - **Morrill/Bohlen: Moved and seconded to grant the variance with the condition that the mist blower be used only for the first application in the spring.**
  - **In favor: Unanimous**

8. Consideration of a Consent Agreement with Essex Power Services, Inc., of Boston, Massachusetts

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 in 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 and resolve the matter. This case involved the application of an herbicide to the spillway planks at the outlet dam on Messalonskee Lake, which resulted in a direct discharge to Messalonskee Stream.

Presentation By:       Raymond Connors  
                                  Manager of Compliance

Action Needed:        Approve/disapprove the consent agreement negotiated by staff

- Connors gave an overview of the case. He explained that the person didn't finish the job because a citizen noticed right as he was beginning. The applicator told the Board inspector he was treating poison ivy.
- Flewelling asked if he would have been able to spray the dam if he had the proper permits. Connor said it was unlikely because, with the method of application being employed, it was likely that some material went into the water.
- Flewelling asked if there are herbicides for water. Connors said that a permit from DEP is required, and it is unlikely they would give it for this purpose. He explained that this was not a terrestrial application, but on the dam structure.
- Morrill said that he did not think a dam had been defined as not being a terrestrial application. Jennings said that it was actually the spillway boards with water going through them.
- Connors said that the property was gated with no public access, so a license wasn't needed. He couldn't be sure that it was poison ivy because it had all been pulled before the inspector arrived. Hicks pointed out that the product being used was labeled for residential, not industrial, use.
  - **Flewelling/Morrill: Moved and seconded to accept consent agreement**
  - **In favor: Unanimous**

## 9. Consideration of a Consent Agreement with J & S Oil Company of Manchester

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 in 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 and resolve the matter. This case involved an unlicensed application of a “weed and feed” product to the turf areas around the Farmingdale store.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors gave a summary of the case and explained that although this was on their own property, unlike the previous case, it was open to the public, so an applicator’s license was required.
- Flewelling asked if they were following the label and Connors replied that they were following the label and the rate was correct.
- Granger asked how it is determined whether an area is open to the public. Connors said that has come up many times. One example is GE in Bangor: they asked if they could use Roundup along a fence line without a license; we said yes because customers did not go there for any reason. Another example is landlords: they can treat a vacant apartment, but they must be licensed to treat common areas, inside and outside.
- Granger asked whether posting the grass with a “Keep Off” sign would make the area considered inaccessible. Jennings said that it could get sticky; he cited an example where a car dealership sprayed a ditch near the road—is the public invited into the ditch? In general, if a property is open to the public and the public is not prevented from going into the area in question, then it is considered open to the public. The Board has invested a fair amount of time answering this question; Chapter 10 has a lot of verbiage trying to answer that question.
- Morrill asked if the area was posted. Connors said that it was not; generally someone who isn’t licensed as an applicator is unlikely to post, but that was not the major part of the violation.
- Eckert remarked that the Board has attempted to do outreach to let people know that a license is required and asked whether another effort should be made.
  - **Morrill/Granger: Moved and seconded to accept consent agreement**
  - **In favor: Unanimous**

## 10. Discussion About Offering Commercial Certification Exams in Spanish

At the January 18, 2013, meeting, the staff alerted the Board that it received a request to assist Spanish-speaking individuals with the commercial certification exams by offering the exams in Spanish. After some discussion, the Board directed the staff to research the feasibility of translating commercial Maine pesticide exams into Spanish. The staff surveyed other states about whether they offer exams in Spanish and evaluated some of the practical considerations. The staff will present its findings and discuss what the most appropriate next steps might be.

Presentation By: Henry Jennings  
Director

Action Needed: Provide guidance to staff

- Jennings explained that the issue is how to best help individuals for whom English is not their first language. Many states have larger Spanish-speaking populations than Maine; Fish sent out a questionnaire and received 37 replies. The data is summarized on the chart (see March Board meeting packet). There was a lot of interesting feedback received, other things to consider that we hadn't thought of. The staff discussed the issue in depth, along with Randlett. Some concerns arose, including the fact that Spanish is not one language, but a lot of dialects. The staff would like to try some things first, and if they don't work, then we can revisit the idea of translating exams. We could try to work with the Migrant Health people to do some tutoring. Currently if someone flunks a test three times, they can review the exam in person with a staff member, focusing on the questions missed; 90 percent of the people who do this, pass.
- Morrill thanked Fish for the information; it educates the public as well as the Board. It's important just to be aware that people are having trouble and the Board is offering to help.
- Eckert noted that some Board members have not seen the exams. She noted that people from other countries have told her that the most difficult thing about taking exams in English is the nuances in the multiple choice questions. A translator might be able to help make the questions clearer.
- Morrill said that his intention was not just to focus on Spanish; a lot of Agricultural Basic license folks will be licensed in the next few years and a lot of them may have trouble with testing.
- Jennings said that some legal questions came up that made the staff nervous. For instance, if we do it for one language, do we have to do it for all?
- Eckert said that she was suggesting that someone for whom English is not the first language, but who is still fluent, look at the exams to make sure they are clear. She said that there is a person with the Migrant program who comes to the clinic with migrants who speaks English very well.
- Jennings said we could consider having someone from the Migrant program give the training in Spanish, but it would be a bit of a task teaching them so they could teach about pesticides.
- Bohlen pointed out that legally binding labels are in English; there is a necessity to know enough to understand the technical parts. He asked if there was anything on the exams that tests the ability to understand the label. Jennings replied that the core exam has 10 questions relating to an actual label. Bohlen said that if we concentrated too much on making the exam easy in a different language he would be worried about their ability to understand the label.
- Eckert said that we're probably talking about people who speak some English, but don't read or write it well. Jennings noted that one concern we heard from other states was once the exam was available in Spanish, there was an expectation that they didn't need to be able to speak English.
- Tomlinson pointed out that the EPA does not review the Spanish translation labels; they say they must be accurate, but because there is no review, they are not legally enforceable.
- Eckert asked Randlett if there would be a legal requirement to provide in other languages. Randlett said there is no policy, but there is some general applicability of federal law that you need to make reasonable accommodations. There are legitimate reasons why there could be limitations placed on providing exams; where the Board is federally funded, under federal law Title 6, there is some requirement to make them reasonably available; Henry's suggestion covers that.

- Granger said that Jennings has suggested tutoring; some in the blueberry community were resistant to that at first because they were concerned about how much time it would take, but they have agreed to try it and see if it works. There was a plan to put forward some legislation, but that has been pulled; the opposition to tutoring has vanished.

#### 11. Discussion of Board Policy Relating to Staff Participation in Municipal Meetings

At the January 18, 2013, meeting, the Board discussed staff participation in municipal meetings where local ordinances are discussed. Prior to the meeting, Department management worked with the staff to formulate a position in which the staff would refrain from participating in such meetings. Instead, the staff would offer technical advice in response to specific questions, and provide overview presentations to municipal organizations. This position was based on the reasoning that, (1) the staff should not risk creating the perception that it is meddling in a local rule issue, and (2) there are approximately 492 municipalities in Maine, so if the staff participates in ordinance discussions in one municipality, it should be prepared to participate in all of them. This position then led to a brief discussion about who directs the staff in such matters. The Board will now discuss appropriate roles with respect to staff supervision and whether participation in municipal ordinances is an area in which it should take a position, and if so, what that position should be.

Presentation By: Henry Jennings  
Director

Action Needed: Provide guidance to staff

- Jennings explained that the staff has received requests to go to different towns to participate in discussions about town ordinances; in general, staff and the administration are more comfortable with trying to participate in broader meetings, such as municipal town managers' association meetings, to provide some overview information such as: what is a pesticide; what are the state laws; what does a town need to do in order to pass a municipal ordinance. The staff would prefer to give technical information and stay out of the policy discussions. The staff is prepared to develop a web page specifically about municipal ordinances and the information the Board can provide. It is also willing to meet with town managers and selectman, to answer questions, but the staff is reluctant to get involved in a town meeting where it is difficult to keep separate what is technical vs. what should the town policy be. Historically the Board has told the staff what its priorities are, but hasn't told them specifically how to address the priorities. Our sense is that there's a concern that towns are not getting accurate information; we can try to make sure they have that information, but there are certain forums which are a no-win situation. If Chip Osborne is giving a presentation on organic landcare, there's not much we can say.
- Eckert asked if a town could ask for information about what they can include in an ordinance. Jennings replied that they sometimes have questions about whether things conflict with state law; they tend not to know what the laws are already and they don't want to do something that conflicts with current law. Technical information can be broader.
- Eckert noted that the staff gives technical assistance for other topics; Lebel prepared information for the City of Augusta about herbicides; made them feel that we were interested in their concerns. Jennings said that they asked for information on glyphosate; that's not a policy issue, that's technical.

- Stevenson said that a lot of towns probably don't know the Board exists. He asked if there is some kind of outreach that can be done to ensure that towns know there are rules in place. Jennings replied that, from an efficiency point of view, it's better to work through associations and get a web page up with good information as well as copies of existing ordinances.
- Bohlen suggested keeping track of technical questions that come up consistently that could be highlighted as things that every town should think about regardless of the outcome.
- Dave Struble noted that this has happened before with forestry laws and shore land zoning laws; the question is, what is unique to pesticides? If you're considering an ordinance, these are the things to consider. Then let them fight it out.
- Eric Seamen said that he is on his town's planning board and their resources are the agencies. One of the Board's missions is to educate; the biggest thing you're going to run into in towns is ignorance about pesticides. The staff could develop an FAQ document, give the facts, what a pesticide is, how they are used, etc. Make this information available to municipalities so they can hand it out to residents. Also, certain laws supersede what towns can do; Seaman suggested that the staff create a pamphlet that helps towns.
- Jesse O'Brien said he was at a meeting in Gorham, which was a group from Gorham, but not a town group. The group pushing for an ordinance in Scarborough was not a town group, but they had their point of view. Last month the town manager had a long discussion with Jennings and was worrying about the town's assets; the deck was stacked against them, but the town made a decision without an official from the State present. O'Brien thought there should be a brochure about how pesticides are used, focusing on the IPM process.
- Granger stated that a lot of the discussion is about anticipating what towns will need; this is true to a point; there are frequently asked questions, and we can get that information prepared, but when you get to a town meeting things will come up that are not answered on fact sheets. Some questions can be answered later, some not, because a vote will be made right away. There is a legitimate concern about sticking our nose in towns' business, but we rely on Dr. Hicks and I have faith that we can send her and she would not take a position for or against. As the Board discusses what kind of guidance it wants to give, it shouldn't limit the ability to share the expertise we have.
- Flewelling disagreed with Granger, saying that the Board has enough responsibility without looking for more; there are other resources, such as Cooperative Extension; this should not be the only place that towns look for information.
- Bohlen said that the real political challenge revolves around the reality that these questions aren't about facts, but about perception. It is difficult to step in and say we are the experts and have them listen; it gets political very quickly. What set of facts do they accept? He would be hesitant to give details; the line between science and politics is unclear.
- Hicks agreed with Bohlen, saying that nine times out of ten, when asked questions she has to say that she needs to do more research to come up with something scientifically valid. There are many people out there who don't believe in science. Preparing for a town meeting takes a lot of time and there's no way to prepare for every question that will come up.
- Eckert said that if we can identify questions that come up over and over it would be good to have a web page or have answers prepared that can be given over the phone. There may be some really specific things and we have to decide whether we're going to answer them; some you can't win, such as "Are GMOs safe?" But some specific things we can answer: "Do the pesticides sprayed in blueberry country cause lung cancer?" We did the best we could but didn't satisfy everyone. Hicks stated that you can't win those kinds of arguments; all you can do is say that the data says this and we'll send it to you.

- Bohlen stated that it's not viewpoints, it's a different construction of what the question is: Is this pesticide dangerous vs. is this pesticide present? There are different perspectives on appropriate pesticide policy, but the public generally isn't asking scientific questions.
- Morrill noted that a lot of this focusses around the turf and ornamental industry. Unfortunately, at this stage of the game there aren't resources at Cooperative Extension or anywhere else to provide technical resources. Towns are saying they need information from someone; if it isn't us, who should it be? There has to be some sort of resource available. University of Massachusetts, University of Rhode Island, Cornell, have great turf programs; expertise is available. Nothing in Maine. It's not appropriate for staff to get thrown in the middle of the fight, but maybe trying to meet with town officials is appropriate; they could meet in Augusta and save the staff time.
- Granger agreed that it might be a good idea for town officials to come in and ask questions. We could try that out and see how it works for the Department and the staff. Maybe it depends on how we frame our response. People ask why the Board doesn't respond to requests. We need to change the answer about how the Board does respond.
- Eckert said that there should be a web page that answers a lot of questions; make sure to define pesticides; if you mean herbicide, make sure you say that. Include a way to contact the staff for more information.
- Jennings suggested that staff write up a list of bullets for the next meeting with proposals of what staff should provide.

## 12. Legislative Update

When the 126<sup>th</sup> Maine Legislature convened, there were approximately nine bill titles affecting pesticides. The staff will update the Board on the status of the pending bills.

Presentation By: Henry Jennings  
Director

Action Needed: Determination if the Board wants to take a position on any bills

- Jennings explained that DEP had submitted a bill which would clear the way for issuing a Pesticide General Permit. He said there is one bill about GMO labeling which is not a pesticide bill. There were potentially nine bills of interest; two are about to be pulled. One bill was about lining up certification requirements for dealers who are also master applications—there were 14 people with this combination; we dealt with it. The other bill was about offering commercial exams orally—which conflicts with federal rules. There is a notification bill; we have no details yet. There is a school bill; the sponsor is trying to steer it to another legislative committee. As soon as these get printed, we will email them to you. There isn't much time between when a bill is printed and when testimony is due. He asked the Board to let him know if they do have a position, and specifically asked about the mosquito bill.
- Morrill and Eckert said they supported the mosquito bill. Jennings explained that the purpose of the bill is to build an infrastructure where we can use IPM and not have to do aerial spraying.
- Morrill said there were questions about vernal pools, tree holes and similar habitat that are difficult to get at with Bt. Jennings explained that that is the EEE mosquito; unless you hire an army of elves to get to the crypts, it would be difficult to use Bt. This is not true of WNV mosquitoes.



- Dave Bell mentioned that the conflict with the Clean Water Act has not been fully addressed in Maine yet. Mosquito spraying may require an NPDES permit. What is the NPDES permit going to look like? Obviously, DEP has jurisdiction. What's done through the Board and done through labeling are the most effective means of addressing water quality concerns. Getting a general permit from DEP is one model. Another model is to have all the federal requirements on the label, etc., and then there could be additional rules and BMPs at the state level. Most of us think that things are pretty well regulated here in Maine. We would prefer not to have two different sets of rules and regulations. Obviously, the Legislature has a say on how this might go, but with your experience is it preferable to have all the regulations of pesticides with this body and get DEP to buy in.
- Randlett said he wasn't sure that would be possible, because DEP has responsibility for water, and the Board can't shift jurisdiction from DEP to any other entity.
- Hicks stated that, historically, DEP was not comfortable with labels or with pesticide rules. When DEP was looking at pesticides for use on aquatic invasive plants they asked for information way above and beyond what EPA required for its risk assessment.
- Bohlen stated there are a lot of other areas where a general permit has been created. Maine will get there eventually, but there are a lot of steps to go through.

### 13. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Henry Jennings  
Director

Action Needed: Nominations and election of officers

- **Eckert/Flewelling: Moved and seconded to keep the current officers**
- **In Favor: Unanimous**

### 14. Other Old or New Business

- a. Letter to individuals with both a Restricted Use Dealer and Commercial Master Certification regarding certification periods—G. Fish
- b. Other?

### 15. Schedule of Future Meetings

April 12, May 17, June 21, and July 26, 2013, are tentative Board meeting dates. The Board will decide whether to change and/or add dates. The July 26 meeting is slated to take place in Unity.

Adjustments and/or Additional Dates?

- **Added September 6 as a meeting date; agreed to make it a planning session and include a lunch break. Added October 18 and December 6 as meeting dates.**

16. 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 attention of Paul Schlein, Public Education Specialist, at the Board's office. 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.



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 JENNINGS  
DIRECTOR

To: Board of Pesticides Control Members  
From: Mary Tomlinson, Pesticides Registrar/Water Quality Specialist  
RE: EPA Special Local Need (SLN) [FIFRA, Section 24(c)] application to approve an increase in the number of applications of Gowan Malathion 8 Flowable, EPA Reg. No. 10163-21, on cane berries, to control spotted wing drosophila  
Date: May 24, 2013

\*\*\*\*\*

Enclosed is the above referenced Special Local Need (SLN) [FIFRA, Section 24(c)] application and supporting documents for your consideration.

Maine cane berry growers suffered significant losses in 2012 due to spotted wing drosophila (SWD). Due to increasing populations of this pest in blueberry and cane berry growing areas across the country, the EPA has encouraged states to submit Section 24(c) registrations in lieu of Section 18 declarations for an increase in rates of use of Gowan Malathion 8 Flowable.

Malathion has demonstrated effective control against SWD on cane berries at a rate of two pints per acre four times per year. The currently labeled rate of two pints per acre, with a maximum of three applications per year, is much less effective in achieving control. Due to its short reentry and post-harvest intervals, Malathion is a pesticide of choice. Use of this product in rotation with other pesticides with different modes of action will aid in resistance prevention.

Please review the following documents and let me know if you have any questions.

- FIFRA, Section 24(c) application
- Letter of support from David Handley, Vegetable and Small Fruit Specialist, Maine Cooperative Extension
- Letter of support from Dave Yarborough, Wild Blueberry Specialist, Maine Cooperative Extension
- Letter of support from Shauna Weaver, Registration Specialist, Gowan Company
- Gowan Malathion 8 Flowable draft Maine SLN label
- Gowan Malathion 8 Flowable Section 3 label
- Gowan Malathion 8 Flowable MSDS

Please review these materials and let me know if you have any questions.



United States Environmental Protection Agency  
Office of Pesticide Programs, Registration Division (7505C)  
Washington, DC 20460

**Application for/Notification of State Registration  
of a Pesticide To Meet a Special Local Need**  
(Pursuant to section 24(c) of the Federal Insecticide,  
Fungicide, and Rodenticide Act, as Amended)

For State Use Only  
Registration No. Assigned  
Date Registration Issued

**1. Name and Address of Applicant for Registration**  
Gowan Company  
P.O. Box 5569  
Yuma, AZ 85366-5569

**2. Product is (Check one)**  
EPA-Registered  EPA Registration Number 10163-21  
New (not EPA-registered)  EPA Company Number 10163  
Attach EPA Form 8570-4, Confidential Statement of Formula for new products.

**4. Product Name**  
Gowan Malathion 8 Flowable

**3. Active Ingredient(s) in Product**  
malathion  
**5. If this is a food/feed use, a tolerance or other residue clearance is required. Cite appropriate regulations in 40 CFR Part 180, 185, and/or 186.** 180.111

**6. Type of Registration (Give details in Item 13 or on a separate page, properly identified and attached to this form):**  
a. To permit use of a new product.   
b. To amend EPA registrations for one or more of the following purposes:  
 (1) To permit use on additional crops or animals.  
 (2) To permit use at additional sites.  
 (3) To permit use against additional pests.  
 (4) To permit use of additional application techniques or equipment.  
 (5) To permit use at different application rates.  
 (6) Other (specify below)

**7. Nature of Special Local Need (check one)**  
 There is no pesticide product registered by EPA for such use.  
 There is no EPA-registered pesticide product which, under the conditions of use within the State, would be as safe and/or as efficacious for such use within the terms and conditions of EPA registration.  
 An appropriate EPA-registered pesticide product is not available.

**10. Has FIFRA section 24(c) registration for this use of the product ever, by another State, been (check appropriate box(es), if known):**  
 Sought  Issued  Denied  Revoked  
If any of the above are checked, list States in Item 13 below.  
 No FIFRA section 24(c) Action

**8. If this registration is an amendment to an EPA-registered product, is it for a "new use" as defined in 40 CFR 152.3?**  
 Yes (discuss in item 13 below)  No

**9. Has an EPA Registration or Experimental Use Permit for this chemical ever been (check applicable box(es), if known):**  
 Sought  Issued  Denied  Cancelled  Suspended  
 Registration  Experimental Use Permit  No Previous Permit Action

**Certification**  
I certify that the statements I have made on this form and all attachments thereto are true, accurate, and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.

**11. Endangered Species Act: (Give details in Item 13 or on a separate page, properly identified and attached to this form)**  
Identify the counties where this pesticide will be used. If Statewide, indicate "all." Provide a list of Federally protected endangered/threatened species which occur in the areas of proposed use.

Signature of Applicant or Authorized Representative  
*Shana J. Weaver*  
Title  
Registration Specialist  
Telephone Number 928-819-1542 Date 5/08/13

**12. Indicate use status of Special Local Need, i.e., planned dates of use:**  
From: \_\_\_\_\_ To: 12/31/17

**13. Comments (attach additional sheet, if needed)**  
For Control of Spotted Wing Drosophila in Caneberries in Maine.  
SLN's currently registered in MI, NH and PA.

**Determination by State Agency**

This registration is for a Special Local Need and is being issued in accordance with section 24(c) of FIFRA, as amended. To the best of our knowledge, the information above is correct, except as noted in "Comments" below or in attachments.

**Name, Title, and Address of State Agency Official**  
Mary Tomlinson  
Maine Board of Pesticides Control  
28 State House Station  
Augusta, ME 04333  
**Title**  
Pesticides Registrar/Water Quality Specialist  
**Telephone Number** (207) 287-2731 **Date** May 24, 2013

**Comments (by State Agency Only)**

**Received by EPA**



*Putting Knowledge to Work with the People of Maine*

March 4, 2013  
Mary E. Tomlinson  
Pesticide Registrar/Water Quality Specialist  
Maine Board of Pesticides Control  
28 State House Station  
Augusta, ME 04333

**Highmoor Farm**  
P.O. Box 179  
Monmouth, ME 04259-0179  
Tel. (207) 933-2100  
Fax (207) 933-4647  
dhandley@umext.maine.edu

Dear Mary:

I am writing in support of a 24(c) label for the use of a higher rate of Malathion 8F on cane berries in Maine to control spotted wing drosophila. In our monitoring and survey work during 2012, it became clear that this insect poses a significant threat to cane berry fruit in Maine, causing premature fruit decay in all plantings we visited. Numerous growers were forced to abandon crops after just a few pickings, or altogether, due to the high rate of larval infestation of the fruit. Most growers were able to continue harvest only through controlling SWD through regular insecticide applications. Malathion, spinosad, and synthetic pyrethroids were the most commonly used insecticides. It is vital that growers are able to alternate between chemical families to prevent the development of resistance. Malathion presently offers fair to good control and a short preharvest interval at a reasonable price. However, we believe that the higher rate will significantly improve control levels, improve residual activity, and further reduce the risk of resistance development. This will make the product a highly effective part of an overall pest management plan for this new pest.

I request that the Board of Pesticides control approve a State of Maine 24(c) label for control of the spotted wing drosophila in blueberries and cane fruit in Maine for 2013.

Sincerely,

David T. Handley, Ph. D.  
Vegetable & Small Fruit Specialist  
Cooperating Professor of Horticulture

[www.umext.maine.edu](http://www.umext.maine.edu)

The University of Maine and the U.S. Department of Agriculture cooperating.  
Cooperative Extension provides equal opportunities in programs and employment.

*A Member of the University of Maine System*



Wild Blueberry Office Deering Hall University of Maine, Orono 04469

March 4, 2013

Mary E. Tomlinson  
Pesticide Registrar/Water Quality Specialist  
Maine Board of Pesticides Control  
28 State House Station  
Augusta, ME 04333

Dear Mary:

In 2012 the State of Maine applied to the EPA for an application emergency Section 18 for the use of a higher rate of Malathion 8F for control of the spotted wing drosophila and Gowan Co provided the label. This year the consensus is that a 24(c) label with the higher use rates is the approach that we should take to obtain a label for control of the spotted wing drosophila (SWD). This pest is increasing and will continue to be a serious threat, so this label is needed to insure its control. The current label rates are not highly effective in controlling this pest. Because of ability of the SWD to rapidly increase and its highly destructive nature, this higher rate is needed to control SWD. It is essential that we also have pesticides available with different modes of action to rotate in order to prevent pesticide resistance from occurring.

I request that the Board of Pesticides control approve a State of Maine 24(c) label for control of the spotted wing drosophila in blueberries and cane fruit in Maine for 2013. I have provided a request to Gowan Company on behalf of the wild blueberry growers in Maine and Dr. David Handley will provide a letter of support for its need in cultivated blueberries and cane fruit in Maine.

Sincerely,

David Yarborough PhD  
Wild Blueberry Specialist  
Professor of Horticulture  
the University of Maine  
5722 Deering Hall Rm. 414  
Orono, ME 04469-5722

Phone: [207-581-2923](tel:207-581-2923)  
TollFree: [800-897-0757 x 1](tel:800-897-0757)  
Fax: [207-581-2941](tel:207-581-2941)  
EMail [Davidy@Maine.edu](mailto:Davidy@Maine.edu)  
[www.wildblueberries.maine.edu](http://www.wildblueberries.maine.edu)

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*One of Maine's public universities*

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*The Go To Company*

P.O. Box 5569 ▲ Yuma, AZ 85366-5569 ▲ Phone (928) 783-8844 ▲ FAX (928) 343-9255

April 10, 2013

Maine Department of Agriculture, Conservation, and Forestry  
Maine Board of Pesticide Control  
28 State House Station  
Augusta, ME 04333-0028

Attention: Mary Tomlinson

RE: Gowan Malathion 8F Agricultural Insecticide, EPA Reg. No. 10163-21  
SLN 24(c) Application, Increased Applications on Caneberries

Dear Ms. Tomlinson:

I would like to give you some background to the request for an SLN 24(c) in Maine for control of Spotted Wing Drosophila on caneberries. Based on the major economic impact of SWD in berry crops during 2012, there is a continued need for growers of raspberry, boysenberries, dewberries, loganberries and blackberries to have a full suite of insecticide options available to them for 2013. As you are most recently aware we have submitted an SLN 24(c) for of Spotted Wing Drosophila on Blueberries. EPA opted to address caneberries at a later date.

On 3/28/13, David Epstein, USDA held another conference call regarding caneberries. EPA again express support for the following on caneberries: 4 applications of up to 2 pts./acre per year, 1 day PHI with a total limit of 8 lbs. a.i. per year.

The tolerance approved by EPA for malathion on blackberries, boysenberries, dewberries, loganberries and raspberries is 8 ppm (40 CFR 180.111).

The University of Maine, Dr. David Yarborough has asked Gowan Company to support this registration because efficacy trials have shown that the current labeled rate of 3 applications of up to 2 pts. per acre per year will not sufficiently or effectively control Spotted Wing Drosophila which is a devastating pest for caneberry growers.

Gowan Company would like to apply for this Special Local Need Registration of Gowan Malathion 8F Agricultural Insecticide for use in Maine on caneberries.

In support of this application, we have enclosed the following:

- Cover Letter
- Application for/Notification of State Registration of a Pesticide To Meet a Special Local Need (EPA Form 8570-25)
- Proposed Malathion 8 Flowable 24(c) label
- Current Malathion 8 Flowable EPA Stamped Label
- Current Malathion 8 Flowable Section 3 Label
- Letter from Michigan State University with attached Appendix A
- Letter of Support from David Yarborough, Ph.D., University of Maine

If I can provide further information or documentation, please contact me at (928) 819-1542 or [sweaver@gowanco.com](mailto:sweaver@gowanco.com).

Kind regards,

Shauna Weaver  
Registration Specialist

Enclosures



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

TO: Board of Pesticides Control  
FROM: Lebel Hicks PhD DABT, Pesticides Toxicologist  
RE: Malathion use on cane berries

DATE: May 3, 2013

\*\*\*\*\*

The 24c application currently being considered raises the number of Malathion 8 (EPA# 10163-21) applications per season to combat the spotted wing drosophila in cane berries (blackberries, boysenberries, dewberries, loganberries and raspberries). The Malathion 8 label allows two pints per acre with a seven-day interval between applications and a pre-harvest interval of one day. The 24c label would increase the maximum number of applications from three to four per year with the same re-treatment and pre-harvest intervals.

In the 2009 EPA Registration Eligibility Decision for malathion, the tolerances in cane berries were re-assessed and the recommendation to decrease the tolerances from 8 ppm to 6 ppm was made but not implemented therefore, the tolerances in cane berries for malathion remain at 8 ppm (40 CFR 180.111).

The increase in the number of applications per year in blackberries, boysenberries, dewberries, loganberries and raspberries under the proposed 24c label will not result in tolerance violations or an increase in dietary risk.





The Go To Company

P.O. Box 5569 • Yuma, AZ 85366 • Toll Free: 800.883.1844 ext. 2 • www.gowanco.com

FIFRA §24(c) SPECIAL LOCAL NEED REGISTRATION

FOR DISTRIBUTION AND USE ONLY WITHIN THE STATE OF MAINE  
FOR CONTROL OF SPOTTED WING DROSOPHILA IN CANEBERRIES

**GOWAN MALATHION 8 FLOWABLE**  
AGRICULTURAL INSECTICIDE

EPA Reg. No. 10163-21

SLN No. ME-XXXXXX

This label expires and must not be distributed or used in accordance with this SLN registration after 12-31-17

|   |                 |
|---|-----------------|
| ACTIVE INGREDIENT:  | <b>% By Wt.</b> |
| Malathion (O,O-dimethyl phosphorodithioate of diethyl mercaptosuccinate): ..... | 79.5%           |
| INERT INGREDIENTS .....   | 20.5%           |
|   | TOTAL 100.0%    |

Contains Petroleum Distillates  
Contains 8 lbs. Malathion per gallon  
**KEEP OUT OF REACH OF CHILDREN**  
**CAUTION**

- It is a violation of Federal law to use this product in a manner inconsistent with its labeling.
- Follow all applicable directions, restrictions, Worker Protection Standard (WPS) requirements, and precautions on the EPA registered label for Gowan Malathion 8 Flowable (EPA Reg. No. 10163-21).
- This labeling must be in the possession of the user at the time of pesticide application.

**DIRECTIONS FOR USE**

| CROP   | REI      | RATE (PTS/ACRE) | PEST                       | RESTRICTIONS  |
|--|----------|-----------------|----------------------------|---|
| BLACKBERRIES (1),<br>BOYSENBERRIES (1),<br>DEWBERRIES (1),<br>LOGANBERRIES (1),<br>RASPBERRIES (1) | 12 hours | Up to 2         | Spotted Wing<br>Drosophila | The maximum application rate is 2.0 pints of product per acre; the maximum number of applications per year is 4; and the minimum retreatment interval is 7 days.<br><br>Do not exceed a total maximum use rate of malathion from all sources of 8 lbs. ai per acre per year.<br><br>Do not apply within 1 (one) day of harvest. |

**IMPORTANT:** This product is sold subject to the Conditions of Sale and Warranty and Liability Limitations set forth on the container label.

**24(c) REGISTRANT:** Gowan Company  
P.O. Box 5569  
Yuma, AZ 85366-5569

# GOWAN MALATHION 8 FLOWABLE

## AGRICULTURAL INSECTICIDE

|   |       |              |
|---|-------|--------------|
| ACTIVE INGREDIENT:  |       | % By Wt.     |
| Malathion (O,O-dimethyl phosphorodithioate of diethyl mercaptosuccinate): | ..... | 79.5%        |
| INERT INGREDIENTS   | ..... | 20.5%        |
|   |       | TOTAL 100.0% |

Contains Petroleum Distillates  
Contains 8 lbs. Malathion per gallon  
**KEEP OUT OF REACH OF CHILDREN**  
**CAUTION**

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle. (If you do not understand the label, find someone to explain it to you in detail.)

| FIRST AID<br>Organophosphate Insecticide   |   |
|--|---|
| <b>If swallowed</b>  | <ul style="list-style-type: none"><li>• Immediately call a poison control center or doctor.</li><li>• Do not induce vomiting unless told to by a poison control center or doctor.</li><li>• Do not give any liquid to the person.</li><li>• Do not give anything by mouth to an unconscious person.</li></ul> |
| <b>If in eyes</b>  | <ul style="list-style-type: none"><li>• Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing.</li><li>• Call a poison control center or doctor for treatment advice.</li></ul>                         |
| <b>If on skin or clothing</b>  | <ul style="list-style-type: none"><li>• Take off contaminated clothing.</li><li>• Rinse skin immediately with plenty of water for 15-20 minutes.</li><li>• Call a poison control center or doctor for treatment advice.</li></ul>   |
| <b>If inhaled</b>  | <ul style="list-style-type: none"><li>• Move person to fresh air.</li><li>• If person is not breathing, call 911 or ambulance, then give artificial respiration, preferably mouth-to-mouth if possible.</li><li>• Call a poison control center or doctor for further treatment advice.</li></ul>              |
| HOT LINE NUMBER  |   |
| Have the product container or label with you when calling a poison control center or doctor, or going for treatment. You may also contact <b>1-888-478-0798</b> for emergency medical treatment information. |   |
| NOTE TO PHYSICIAN  |   |
| Malathion upon use may cause cholinesterase inhibition. Atropine is antidotal. May pose an aspiration pneumonia hazard. Contains petroleum distillates.  |   |

### PRECAUTIONARY STATEMENTS HAZARDS TO HUMANS AND DOMESTIC ANIMALS CAUTION

Harmful if swallowed. Avoid breathing of spray mist. Avoid contact with skin.

#### PERSONAL PROTECTIVE EQUIPMENT (PPE)

Some materials that are chemical-resistant to this product are barrier laminate, butyl rubber, nitrile, or viton. If you want more options, follow the instructions for category F on an EPA chemical resistance category selection chart.

**Mixers, Loaders, Applicators, Flaggers, and other Handlers must wear:**

- Long-sleeved shirt and long pants
- Chemical-resistant gloves
- Shoes plus socks

Follow manufacturer's instructions for cleaning/maintaining PPE. If no such instructions for washables exist, use detergent and hot water. Keep and wash PPE separately from other laundry.

NET CONTENTS \_\_\_\_\_ GALLONS

EPA Reg. No. 10163-21  
EPA Est. No.

**Gowan**  
The Go To Company

Produced For:  
Gowan Company  
P. O. Box 5569  
Yuma, AZ 85366-5569  
800-883-1844

### USER SAFETY RECOMMENDATIONS

Users should:

- Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.
- Remove clothing/PPE immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
- Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

### ENGINEERING CONTROLS

Pilots must use an enclosed cockpit in a manner that is consistent with the WPS for Agricultural Pesticides [40 CFR 170.240(d)(6)]. Pilots must wear the PPE required on this labeling for applicators.

### ENVIRONMENTAL HAZARDS

This pesticide is toxic to aquatic organisms, including fish and invertebrates. This product may contaminate water through drift of spray in wind. This product has a high potential for runoff after application. Use care when applying in or to an area which is adjacent to any body of water, and do not apply when weather conditions favor drift from target area. Poorly draining soils and soils with shallow water tables are more prone to produce runoff that contains this product.

A level, well maintained vegetative buffer strip between areas to which this product is applied and surface water features such as ponds, streams, and springs will reduce the potential for contamination of water from rainfall-runoff. Runoff of this product will be reduced by avoiding applications when rainfall is forecasted to occur within 48 hours.

Do not apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment washwater or rinsate.

This pesticide is highly toxic to bees exposed to direct treatment on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds while bees are actively visiting the treatment area.

### DIRECTIONS FOR USE

It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. For any requirements specific to your State or Tribe, consult the agency responsible for pesticide regulation.

Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application.

### AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, and nurseries, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), and restricted-entry intervals. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI). The REI for each crop is listed in the directions for use associated with each crop.

PPE required for early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water is:

- Coveralls
- Chemical-resistant gloves, made out of any waterproof material
- Shoes plus socks

### NON-AGRICULTURAL USE REQUIREMENTS

The requirements in this box apply to uses of this product that are NOT within the scope of the Worker Protection Standard (WPS) for agricultural pesticides (40 CFR Part 170). The WPS applies when this product is used to produce agricultural plants on farms, forests, or nurseries.

Do not enter or allow others to enter until sprays have dried.

### PRECAUTIONS AND RESTRICTIONS

In order that pesticide residues on food and forage crops will not exceed tolerances established by the Federal Food and Drug Administration, use only the specified rates and intervals, and do not apply closer to harvest than prescribed.

Unless otherwise specified, apply at the first sign of infestation and repeat as needed observing the use limitations listed for each specified crop in the application tables. Consult your State Agriculture Experiment Station or the State Agricultural Extension Service for additional information as the timing of applications needed will vary with local conditions.

Applications may be made by aircraft or by ground equipment according to the DIRECTIONS FOR DILUTION below. The amount of water needed to treat an acre varies, therefore the following directions are given to cover a broad range of applications.

Buffer Zones for Aerial Application:

When making a Non-ULV application with aerial application equipment, a minimum buffer zone of 25 feet must be maintained along any water body.

Do not use in greenhouses.

### PHYTOTOXICITY ADVISORY STATEMENT

As is common with most emulsifiable concentrate formulations adverse effects, such as spotting or discoloration of the fruit or foliage can occur. Some conditions known to contribute to phytotoxicity include, but are not limited to: high temperatures, poor spray drying conditions, excessive spray runoff, certain spray mixtures, stage of crop development or tank mixes with other pesticides.

### SPRAY DRIFT REQUIREMENTS

Observe the following requirements when spraying in the vicinity of aquatic areas such as, but not limited to lakes; reservoirs; rivers; permanent streams; marshes or natural ponds; estuaries and commercial fish ponds.

**Droplet Size:** Use the largest droplet size consistent with acceptable efficiency. Formation of very small droplets may be minimized by appropriate nozzle selection, by orienting nozzles away from the air stream as much as possible, and by avoiding excessive spray boom pressure.

For groundboom and aerial applications, use only medium or coarser spray nozzles according to ASAE (S572) definition for standard nozzles, or a volume mean diameter (VMD) of 300 microns or greater for spinning atomizer nozzles. In conditions of low humidity and high temperatures, applicators should use a coarser droplet size.

**Wind Direction and Speed:** Make aerial or ground applications when the wind velocity favors on target product deposition (approximately 3 to 10 mph). Do not apply when wind velocity exceeds 15 mph. Avoid applications when wind gusts approach 15 mph. For all non-aerial applications, wind speed must be measured adjacent to the application site on the upwind side, immediately prior to application.

**Temperature Inversion:** Do not make aerial or ground applications into areas of temperature inversions. Inversions are characterized by stable air and increasing temperatures with increasing distance above the ground. Mist or fog may indicate the presence of an inversion in humid areas. Where permissible by local regulations, the applicator may detect the presence of an inversion by producing smoke and observing a smoke layer near the ground surface. In conditions of low humidity and high temperatures, applicators should use a coarser droplet size.

**Additional Requirements for Ground Applications:** Spray should be released at the lowest height consistent with pest control and flight safety. Applications more than 10 feet above the crop canopy should be avoided. For groundboom applications, apply with nozzle height no more than 4 feet above the ground or crop canopy. For airblast applications, turn off outward pointing nozzles at row ends and when spraying the outer two rows. To minimize spray loss over the top in orchard applications, spray must be directed into the canopy.

**Additional Requirements for Aerial Applications:** For aerial applications, the spray boom should be mounted on the aircraft as to minimize drift caused by wingtip or rotor vortices. The minimum practical boom length should be used and must not exceed 75% of wing span or 90% rotor diameter. Aerial applicators must consider flight speed and nozzle orientation in determining droplet size. When applications are made with a cross-wind, the swath will be displaced downwind. The applicator must compensate for this displacement at the downwind edge of the application area by adjusting the path of the aircraft upwind.

### DIRECTIONS FOR DILUTION

Rates are given in terms of pints of Malathion 8 Flowable per acre.

#### Dilute Application

Field and Row Crops: Use specified rate in 20 to 60 gallons of water per acre.

Trees and Vines: Use specified rate in 100 to 800 gallons of water per acre.

### MIXING DIRECTIONS

Pour specified amount of product into spray tank nearly filled with water. Add balance of water to fill tank. Keep agitator running during filling and spraying operations. If mixture does not mix readily, but tends to separate as an oily layer, do not use as injury to plants may result. Do not combine with wettable powders unless previous use of the mixture has proven physically compatible and safe to plants. Always thoroughly emulsify this product with at least half of total water before adding wettable powders.

### PREHARVEST INTERVAL

Minimum days between last application and harvest are given in ( ) after each crop name.

### TREES AND VINES

Under heavy pest pressure, use higher rates.

| CROP   | REI (HRS) | RATE (PTS/ACRE) | PESTS   | COMMENTS  |
|--|-----------|-----------------|---|---|
| APRICOTS (7)   | 12        | 1.5             | Aphid, Codling moth, European Lecanium scale, Orange tortrix, Soft brown scale, Terrapin scale  | The maximum application rate is 1.5 pints of product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| AVOCADOS (7)   | 48        | 4.7             | Green house thrips, Latania scale, Omnivorous looper, Soft brown scale, Orange tortrix  | The maximum application rate is 4.7 pints of product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 30 days. |
| BLACKBERRIES (1),<br>BOYSENBERRIES (1),<br>DEWBERRIES (1),<br>LOGANBERRIES (1),<br>RASPBERRIES (1) | 12        | 2               | Japanese beetle, Leafhoppers, Mites, Thrips   | The maximum application rate is 2.0 pints of product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
|  |           | 2               | Aphid, Rose scale   |   |
| BLUEBERRIES (1)  | 12        | 1.25            | Aphids, Blueberry maggot, Blueberry tip borer, Cherry fruitworm, Cranberry fruitworm, Japanese beetle, Plum curculio, Leafrollers, Sharp-nosed leafhopper, White Tussock moth | The maximum application rate is 1.25 pints of product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 5 days. |

**TREES AND VINES**

Under heavy pest pressure, use higher rates. (Continued)

| CROP  | REI (HRS)                                    | RATE (PTS/ACRE)                                | PESTS  | COMMENTS  |
|---|--|--|--|---|
| CITRUS [GRAPEFRUIT, LEMONS, LIMES, ORANGES, TANGELOS, TANGERINES [Mandarin or Mandarin Oranges, Tangors, and other hybrids of tangerines with other citrus] (7) | 72   | CA:<br>7.5<br>All Other States:<br>4.5         | Aphids, Black scale (single and off-brooded), California red scale, Citricola scale, Orange worm, Purple scale, Soft scale, Thrips, Yellow scale | Do not apply when trees are in bloom.<br>FOR CALIFORNIA:<br>The maximum application rate is 7.5 pints of product per acre; the maximum number of applications per year is 1.<br>ALL OTHER STATES:<br>The maximum application rate is 4.5 pints of product per acre; the maximum number of applications per year is 1. |
|   |  | CA:<br>1 - 7.5<br>All Other States:<br>1 - 4.5 | Mediterranean fruit fly  |   |
| KUMQUATS (7)  | 48   | 4.5  | Aphids, Black scale (single and off-brooded), California red scale, Citricola scale, Orange worm, Purple scale, Soft scale, Thrips, Yellow scale | Do not apply when trees are in bloom.<br>The maximum application rate is 4.5 pints product per acre; the maximum number of applications per year is 1.  |
| CURRENTS (1)  | 12   | 1.25   | Japanese beetle, Mites   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 3; the minimum retreatment interval is 7 days.  |
| GOOSEBERRIES (3)  | 12   | 2  | Currant aphid, Imported currantworm  | The maximum application rate is 2.0 pints product per acre; the maximum number of applications per year is 3; the minimum retreatment interval is 7 days.   |
| FIGS (5)  | 12   | 1.5  | Dried fruit beetles, Vinegar flies   | Apply with 1 - 2 gallons sulfured molasses per acre.<br>The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 2; the minimum retreatment interval is 5 days.   |
| GRAPES (3)  | 72 girdling and tying<br>24 other activities | 1.88   | Drosophila, European fruit lecanium, Grape leafhopper, Japanese beetle, Leafhopper, Mealybug, Spider mites, Terrapin scale                       | Injury may occur to grape berries when applications are made after bloom.<br>The maximum application rate is 1.88 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 14 days.  |
| GUAVA (2)<br>(Not Registered for Use in California)   | 12   | .75 - 1.25                                     | Fruit flies  | Apply with 1 pound partially hydrolyzed yeast protein or enzymatic yeast hydrolyzate.<br>The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 13; and the minimum retreatment interval is 3 days.  |
| MANGO (1)<br>(Not Registered for Use in California)   | 12   | 0.9375   | Fruit flies  | The maximum application rate is 0.9375 pints product per acre; the maximum number of applications per year is 10; and the minimum retreatment interval is 7 days.   |
| PASSION FRUIT (3)<br>(Not Registered for Use in California)   | 12   | 1  | Fruit flies  | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 8; and the minimum retreatment interval is 7 days.   |
| MACADAMIA NUTS (1)  | 12   | 0.94   | Green Stink bug  | The maximum application rate is 0.94 pints product per acre; the maximum number of applications per year is 6; and the minimum retreatment interval is 7 days.  |
| NECTARINES (7)  | 24   | 3  | Black cherry aphid, Black peach aphid, Green peach aphid, Japanese beetle, Rusty plum aphid  | May be mixed with spray oil for dormant and delayed dormant applications. Follow spray oil manufacturer's directions.<br>The maximum application rate is 3.0 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.                                |
| PEACHES (7)   | 24   | 1.25   | Cottony peach scale, Lesser peach tree borer, Plum curculio, Oriental fruit moth, San Jose scale, Terrapin scale                                 | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 11 days.   |

**TREES AND VINES**

Under heavy pest pressure, use higher rates. (Continued)

| CROP        | REI (HRS) | RATE (PTS/ACRE) | PESTS   | COMMENTS  |
|-------------|-----------|-----------------|---|---|
| PECANS (7)  | 24        | 2.5             | Aphid, Mites, Pecan bud moth, Pecan leaf casebearer, Pecan nut casebearer, Pecan phylloxera | The maximum application rate is 2.5 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days. |
| WALNUTS (7) | 24        | 1.5 - 2.5       | Aphid, Mites, Walnut husk fly   | The maximum application rate is 2.5 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days. |

**FIELD AND ROW CROPS**

Under heavy pest pressure, use higher rates.

| CROP   | REI (HRS) | RATE (PTS/ACRE) | PESTS  | COMMENTS  |
|--|-----------|-----------------|--|---|
| ALFALFA, BIRDSFOOT TREFOIL, CLOVER, LESPEDEZA, VETCH (0)   | 12        | 1 - 1.25        | Alfalfa weevil larvae, Aphids, Armyworms, Clover leaf weevil, Grasshoppers, Lygus bugs, Pea aphid, Potato leafhoppers, Spider mites, Spittlebug, Vetch bruchid | Use higher rate for Armyworm control. Apply to alfalfa in bloom only in the evening or early morning when bees are not working in the fields or are not hanging on the outside of hives. The maximum application rate is 1.25 pints product per acre; the maximum number of applications is 2 per cutting; and the minimum retreatment interval is 14 days. |
| <b>LEAFY VEGETABLES (EXCEPT BRASSICA VEGETABLES) CROP GROUPING:</b> AMARANTH (LEAFY AMARANTH, CHINESE SPINACH, TAMPALA) (7), ARRUGULA (ROQUETTE) (7), CELTUCE (7), CHERVIL (7), CHRYSANTHEMUM-Edible-leafed, Garland (7), CORN SALAD (7), DOCK (SORREL) (7), FLORENCE FENNEL (7), ORACH (7), PURSLANE-Garden and Winter (7) (Not Registered for Use in California) | 24        | 1 - 1.25        | Aphids   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| DANDELIONS (7)   | 24        | 1.25            | Aphids   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| PARSLEY (7)  | 24        | 1.5             | Aphids   | The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| SWISS CHARD (14) (Not Registered for Use in California)  | 12        | 1.0             | Aphids   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| CELERY (7)   | 24        | 1.0 - 1.5       | Aphids, spider mite  | The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| LETTUCE, FIELD HEAD (14)   | 24        | 1.88            | Aphids, Alfalfa loopers, Leafhoppers, Mites  | The maximum application rate is 1.88 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 6 days.  |
| LETTUCE, FIELD LEAF (14)   | 24        | 1.88            | Aphids, Alfalfa loopers, Leafhoppers, Mites  | The maximum application rate is 2.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 5 days.   |
| ENDIVE, FIELD (7)  | 24        | 1.25            | Aphids, Alfalfa loopers, Leafhoppers, Mites  | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |

**FIELD AND ROW CROPS**  
Under heavy pest pressure, use higher rates. (Continued)

| CROP   | REI (HRS)   | RATE (PTS/ACRE) | PESTS   | COMMENTS   |
|--|---|-----------------|---|--|
| SPINACH (7)  | 12  | 1.0             | Aphids  | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| BEETS, Table (7)   | 12  | 1.25            | Aphids, Beet armyworm, Blister beetles, Flea beetles  | Do not use on Sugar Beets. The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| <b>COLE CROPS</b> (Brassica (cole) Leafy Vegetable crop group: BROCCOLI (2), BROCCOLI RAAB (RAPINI) (2), BRUSSELS SPROUTS (2), CAULIFLOWER (2), CAVALO BROCCOLO (2), CHINESE BROCCOLI (2), CHINESE MUSTARD CABBAGE (7), MIZUNA (7), MUSTARD SPINACH (7), RAPE GREENS (7) | 48  | 1.25            | Aphids, Cabbage loopers, Flea beetles, Imported cabbage worms   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| CABBAGE (7)  | 48  | 1.25            | Aphids, Cabbage loopers, Flea beetles, Imported cabbage worms   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 6; and the minimum retreatment interval is 7 days.   |
| CHINESE CABBAGE (BOK CHOY, NAPA) (7)   | 48  | 1.25            | Aphids, Cabbage loopers, Flea beetles, Imported cabbage worms   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| COLLARDS (7)   | 12  | 1               | Aphids, Cabbage loopers, Flea beetles, Imported cabbage worms   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| KALE (7), MUSTARD GREENS (7).  | 12  | 1               | Aphids, Cabbage loopers, Flea beetles, Imported cabbage worms   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 5 days.  |
| KOHLRABI (7)   | 24  | 1.25            | Aphids, Cabbage loopers, Flea beetles, Imported cabbage worms   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| CORN-Field (7)   | 72 hours for detasseling<br>12 hours for all other activities | 0.61            | Aphids, Corn rootworm adults, Sap beetles, Thrips, Young grasshoppers   | <b>CAUTION:</b> Injury may occur in whorl and silk stages. The maximum application rate is 0.61 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.                                    |
| COTTON (7)   | 48  | 2.5             | Aphids, Brown cotton leafworm, Cotton leaf perforator, Leafhoppers, Spider mites, Whitefly, Boll weevils, Cotton fleahoppers, Fall armyworms, Grasshoppers, Garden webworms and Lygus | Do not graze or feed forage to livestock. The maximum application rate is 2.5 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| CUCUMBERS (1)  | 24  | 1.75            | Aphids, Cucumber beetles, Cutworms, Darkling ground beetles, Leafhoppers, Pickleworm, Spider mites, Squash vine borer, Thrips   | Do not apply unless plants are dry. For vine borer apply to stems and vines at base of plant. The maximum application rate is 1.75 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days. |
| SQUASH, Summer (1)   | 24  | 1.75            | Aphids, Cucumber beetles, Cutworms, Darkling ground beetles, Leafhoppers, Pickleworm, Spider mites, Squash vine borer, Thrips   | The maximum application rate is 1.75 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.   |
| SQUASH, Winter (1)   | 12  | 1               | Aphids, Cucumber beetles, Cutworms, Darkling ground beetles, Leafhoppers, Pickleworm, Spider mites, Squash vine borer, Thrips   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |

**FIELD AND ROW CROPS**  
Under heavy pest pressure, use higher rates. (Continued)

| CROP  | REI (HRS) | RATE (PTS/ACRE) | PESTS  | COMMENTS  |
|---|-----------|-----------------|--|---|
| EGGPLANT (3)  | 12        | 1.56            | Aphids, Spider mites, Lace bugs                      | The maximum application rate is 1.56 pints product per acre; the maximum number of applications per year is 4; and the minimum retreatment interval is 5 days.  |
| FLAX (52)   | 12        | 0.5             | Grasshoppers   | The maximum application rate is 0.5 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.   |
| GARLIC (3)  | 24        | 1 - 1.56        | Aphids, Thrips                                       | The maximum application rate is 1.56 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| LEEKs (3), SHALLOTS (3)                                 | 24        | 1 - 1.56        | Aphids, Thrips                                       | The maximum application rate is 1.56 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| GRASSES (Forage, Hay) (0)                               | 12        | 1 - 1.25        | Aphids, Grasshoppers, Leafhoppers                    | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 1.  |
| HOPS (10)<br>(Not Registered for Use in California)     | 12        | 0.63            | Aphids   | The maximum application rate is 0.63 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| HORSERADISH (7),<br>PARSNIPS (7), SALSIFY (7)           | 24        | 1.25            | Aphids, Diamondback moths, Flea beetles, Leafhoppers | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| RADISHES (7)  | 12        | 1               | Aphids, Diamondback moths, Flea beetles, Leafhoppers | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.   |
| MUSHROOMS (1)<br>(Not Registered for Use in California) | 12        | 1.7             | Phorid flies, Sciarid flies                          | Apply in 130 gallons of water per acre, or 1 tablespoon per 3 gallons of water per 1000 square foot bed. Make thorough application as soon as possible after picking. The maximum application rate is 1.7 pints product per acre; the maximum number of applications per year is 4; and the minimum retreatment interval is 3 days. |
| OKRA (1)<br>(Not Registered for Use in California)      | 12        | 1.2             | Aphids, Japanese beetles                             | The maximum application rate is 1.2 pints product per acre; the maximum number of applications per year is 5; and the minimum retreatment interval is 7 days.   |
| ONIONS- Bulb and Green (3)                              | 12        | 1 - 1.56        | Thrips   | The maximum application rate is 1.56 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
|   |           | 1.5             | Onion maggots  |   |
| PEAS, DRIED (3)   | 12        | 1               | Aphids, Pea weevils                                  | Do not graze or feed forage to livestock. Dried peas can be treated by ground and foliar applications only. The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| PEAS, GREEN (3)   | 12        | 1               | Aphids, Pea weevils                                  | Do not graze or feed forage to livestock. Green peas can be treated by ground, foliar and aerial applications. The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| PEPPERMINT (7),<br>SPEARMINT (7)                        | 12        | 0.94            | Adult flea beetles, Leafhoppers                      | The maximum application rate is 0.94 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.  |
| PEPPERS (Field) (3)                                     | 12        | 1.5             | Aphids, Pepper maggots                               | The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 5 days.   |



**FIELD AND ROW CROPS**  
Under heavy pest pressure, use higher rates. (Continued)

| CROP   | REI (HRS)                            | RATE (PTS/ACRE) | PESTS  | COMMENTS  |
|--|--------------------------------------|-----------------|--|---|
| POTATOES (0)   | 12                                   | 1               | False chinch bugs, Leafhoppers, Mealybugs  | The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
|  |                                      | 1.5             | Aphids, Blister beetles  |   |
| RICE-Domestic, Grain or Wild (7)                       | 12                                   | 1.25            | Rice leaf miners, Rice stink bugs  | Do not apply Propanil within 15 days of Malathion treatment. Broadcast use only over intermittently flooded areas. Application may not be made around bodies of water where fish or shellfish are grown and/or harvested commercially. The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days. |
| RUTABAGAS (7)  | 12                                   | 1               | Aphids   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 3; and the minimum retreatment interval is 7 days.   |
| SMALL GRAINS (BARLEY) (7)                              | 12                                   | 1 - 1.25        | Armyworms, English grain aphids, Grasshoppers, Greenbugs   | The maximum application rate is 1.25 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.  |
| SMALL GRAINS (OATS, RYE, WHEAT[spring and summer]) (7) | 12                                   | 1               | Armyworms, English grain aphids, Grasshoppers, Greenbugs   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| SORGHUM-Grain (7)                                      | 12                                   | 1.0             | Greenbugs  | Do not graze or feed forage to livestock. The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
| STRAWBERRIES (3)                                       | 12                                   | 1.5 - 2         | Aphids, Field crickets, Lygus bugs, Potato leafhoppers, Spider mites, Spittlebugs, Strawberry leafrollers, Strawberry root weevils, Thrips, Whiteflies | The maximum application rate is 2.0 pints product per acre; the maximum number of applications per year is 4; and the minimum retreatment interval is 7 days.   |
| SWEET CORN (Field) (5)                                 | 72 detassling<br>12 other activities | 1               | Japanese beetles   | <b>CAUTION:</b> Injury may occur in whorl and silk stages. The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 5; and the minimum retreatment interval is 5 days.  |
| SWEET POTATOES (3)                                     | 12                                   | 1 - 1.5         | Leafhoppers  | The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 2; and the minimum retreatment interval is 7 days.   |
|  |                                      | 1.5             | Morning Glory leafminers   |   |
| TOMATOES (Field) (1)                                   | 12                                   | 1.5             | Aphids, Spider mites, Drosophila flies   | Apply a full coverage application to fruit and foliage. The maximum application rate is 1.5 pints product per acre; the maximum number of applications per year is 4; and the minimum retreatment interval is 5 days.   |
| WATERCRESS (7)   | 12                                   | 1               | Aphids   | The maximum application rate is 1.0 pints product per acre; the maximum number of applications per year is 5; and the minimum retreatment interval is 3 days.   |

**OUTDOOR ORNAMENTALS**

Note: Before treating a large number of ornamental plants with Gowan Malathion 8 Flowable alone or as a tank mixture with any other material, make a test application on a few plants and observe for 7-10 days prior to treating large areas to reduce the possibility of plant injury.

| CROP                            | REI (HRS) | RATE  | PESTS  | COMMENTS  |
|---------------------------------|-----------|---|--|---|
| FLOWERS, SHADE TREES and SHRUBS | 12        | 1 pint in 100 gals of water as a dilute spray     | Aphids, Euonymus scales, European pine shoot moths, Four-lined leaf bugs, Japanese beetle adults, Lace scales, Mealybugs, Millipedes, Oyster shell scales, Potato leafhoppers, Rose leafhoppers, Scurfy scales, Spider mites, Springtails, Sowbugs, Tarnished plant bugs, Thrips, Whiteflies | <b>CAUTION:</b> Avoid use on certain ferns including Boston, Maidenhair and Pteris, as well as some species of Crassula and Canaetri Juniper.<br>For Oyster shell, Fletch, Juniper, Oak kermes and Pine needle scales apply when scale crawlers have settled on foliage. The maximum number of applications per year is 2; and the minimum retreatment interval is 10 days. |
|                                 |           | 1.25 pints in 100 gals of water as a dilute spray | Azalea scales, Bagworms, Birch leafminers, Boxwood leafminers, Fletch scales, Florida-red scales, Juniper scales, Magnolia scales, Oak kermes, Pine leaf scales, Tent caterpillars   |   |
|                                 |           | 1.6 pints in 100 gals of water                    | Black scale crawlers, Monterey pine scales   |   |
|                                 |           | 2 pints in 100 gals of water                      | Pine needle scales, Wax scales   |   |

**SLASH PINE, PINE SEED ORCHARDS, and CHRISTMAS TREE PLANTATIONS**

| CROP                               | REI (HRS) | PESTS  | RATE  | COMMENTS  |
|------------------------------------|-----------|--|---|---|
| SLASH PINE, and PINE SEED ORCHARDS | 12        | Slash pine flower thrips, European pine sawfly | For ground application, mix 0.4 gallons of Malathion 8 Flowable in 100 gallons of water.      | Apply 3/4 gallon of the mixture per tree on the smallest flowering trees. Mist blowers or airblast sprays may be used.<br>The maximum application rate is 3.2 pints product per acre; the maximum number of applications per year/growing season is 2; and the minimum retreatment interval is 7 days.  |
|                                    |           |  | For air application, mix 0.4 gallons of Malathion 8 Flowable in at least 10 gallons of water. | Apply a minimum of 10 gallons of mixture per acre. Make two applications, the first when female flowers are in twig bud stage, the second one week prior to maximum flower receptivity to pollen.<br>The maximum application rate is 3.2 pints product per acre; the maximum number of applications per year/growing season is 2; and the minimum retreatment interval is 7 days. |
| CHRISTMAS TREE PLANTATIONS         | 12        | Slash pine flower thrips, European pine sawfly | For ground application, mix 0.4 gallons of Malathion 8 Flowable in 100 gallons of water.      | Apply 3/4 gallon of the mixture per tree on the smallest flowering trees. Mist blowers or airblast sprays may be used.<br>The maximum application rate is 3.2 pints product per acre; the maximum number of applications per year is 2.   |
|                                    |           |  | For air application, mix 0.4 gallons of Malathion 8 Flowable in at least 10 gallons of water. | Apply a minimum of 10 gallons of mixture per acre. Make two applications, the first when female flowers are in twig bud stage, the second one week prior to maximum flower receptivity to pollen.<br>The maximum application rate is 3.2 pints product per acre; the maximum number of applications per year is 2.  |

## MOSQUITO CONTROL

### AROUND THE OUTSIDE OF BUILDINGS

Around lower outside foundations of homes, yards - spot treatment only, out-door garbage cans, and garbage dumps: Apply 0.2439 gallons of Malathion 8 Flowable undiluted per 1000 sq. ft. on painted surfaces. Apply 0.2439 gallons of Malathion 8 Flowable undiluted per 1000 sq. ft. on unpainted surfaces.

### CULL FRUIT AND VEGETABLE DUMP

Around cull fruit and vegetable dumps: Apply 6.857 pounds of Malathion 8 Flowable undiluted per 1000 sq. ft. on painted surfaces. Apply 2 gallons of Malathion 8 Flowable undiluted per 1000 sq. ft. on unpainted surfaces.

### APPLICATION THROUGH IRRIGATION SYSTEMS - CHEMIGATION

Apply this product only through sprinkler, including center pivot, lateral move, end tow side (wheel) roll, traveler, big gun, solid set, or hand move, or drip (including surface and subsurface) irrigation systems. Do not apply this product through any other type of irrigation system. Crop injury, lack of effectiveness, or illegal pesticide residues in the crop can result from nonuniform distribution of treated water.

If you have questions about calibration, you should contact State Extension Service specialists, equipment manufacturers or other experts. Do not connect an irrigation system (including greenhouse systems) used for pesticide application to a public water system unless the pesticide label prescribed safety devices for public water systems are in place.

A person knowledgeable of the chemigation system and responsible for its operation or under the supervision of the responsible person, shall shut the system down and make necessary adjustments should the need arise.

Mix in clean supply tank the specified amount of this product for acreage to be covered, and needed quantity of water.

This product should not be tank-mixed with other pesticides, surfactants or fertilizers unless prior use has shown the combination noninjurious under your conditions of use. Follow precautionary statements and directions for all tank-mix products.

On all crops, use sufficient gallonage of water to obtain thorough and uniform coverage, but not cause runoff or excessive leaching. This will vary depending on equipment, pest problem and stage of crop growth. Application of more or less than optimal quantity of water may result in decreased chemical performance, crop injury or illegal pesticide residues.

Meter this product into the irrigation water uniformly during the period of operation. Do not overlap application. Follow specified label rates, application timing, and other directions and precautions for crop being treated. Continuous mild agitation of pesticide mixture may be needed to assure a uniform application, particularly if the supply tank requires a number of hours to empty.

Do not apply when wind speed favors drift beyond the area intended for treatment.

### CHEMIGATION SYSTEMS CONNECTED TO PUBLIC WATER SYSTEMS

Note: Gowan Company does not encourage connecting chemigation systems to public water supplies. The following information is provided for users who have diligently considered all other application and water supply options before electing to make such a connection.

Public water systems means a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Chemigation systems connected to public water systems must contain a functional reduced-pressure zone, backflow preventer (RPZ) or the functional equivalent in the water supply line upstream from the point of pesticide introduction. As an option to the RPZ, the water from the public water system should be discharged into a reservoir tank prior to pesticide introduction. There shall be a complete physical break (air gap) between the flow outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection.

The pesticide injection pipeline must contain a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shutdown.

The system must contain functional interlocking controls to automatically shut off the pesticide injection pump when the water pump motor stops, or in cases where there is no water pump, when the water pressure decreases to the point where pesticide distribution is adversely affected.

Systems must use a metering pump, such as a positive displacement injection pump (e.g., diaphragm pump) effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock. Do not apply when wind speed favors drift beyond the area intended for treatment.

### SPRINKLER CHEMIGATION (FOLIAR SPRAY USES)

The system must contain a functional check valve, vacuum relief valve and low pressure drain appropriately located on the irrigation pipeline to prevent water source contamination from backflow. The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection pump.

The pesticide injection pipeline must also contain a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shut down. The system must contain functional interlocking controls to automatically shut off the pesticide injection pump when the water pump motor stops. The irrigation line or water pump must include a functional pressure switch which will stop the water pump motor when the water pressure decreases to the point where pesticide distribution is adversely affected.

Systems must use a metering pump, such as a positive displacement injection pump (e.g., diaphragm pump) effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock.

Do not apply when wind speed favors drift beyond the area intended for treatment.

### DRIP (INCLUDING SURFACE AND SUBSURFACE) CHEMIGATION

The system must contain a functional check valve, vacuum relief valve and low pressure drain appropriately located on the irrigation pipeline to prevent water source contamination from backflow.

The pesticide injection pipeline must contain a functional, automatic, quick-closing check valve to prevent the flow of fluid back toward the injection pump.

The pesticide injection pipeline must also contain a functional, normally closed, solenoid-operated valve located on the intake side of the injection pump and connected to the system interlock to prevent fluid from being withdrawn from the supply tank when the irrigation system is either automatically or manually shut down.

The system must contain functional interlocking controls to automatically shut off the pesticide injection pump when the water pump motor stops. The irrigation line or water pump must include a functional pressure switch which will stop the water pump motor when the water pressure decreases to the point where pesticide distribution is adversely affected.

Systems must use a metering pump such as a positive displacement injection pump (e.g., diaphragm pump) effectively designed and constructed of materials that are compatible with pesticides and capable of being fitted with a system interlock.

#### STORAGE AND DISPOSAL

DO NOT CONTAMINATE water, food or feed by storage or disposal.

**PESTICIDE STORAGE:** Gowan Malathion 8 Flowable should be stored in the original unopened container in a secure, dry place. Do not contaminate with other pesticides or fertilizers. The product should never be heated above 55°C (131°F), and should not be stored for long periods of time at a temperature in excess of 25°C (77°F).

**PESTICIDE DISPOSAL:** To avoid wastes, use all materials in this container by application according to label directions. If wastes cannot be avoided, offer remaining product to a waste facility or pesticide disposal program (often such programs are run by state or local governments or by industry).

**CONTAINER DISPOSAL:** Nonrefillable container. Do not reuse or refill this container. Offer for recycling, if available. Triple rinse container (or equivalent) promptly after emptying. Triple rinse as follows: Empty the remaining contents into application equipment or a mix tank and drain for 10 seconds after the flow begins to drip. Fill the container 1/4 full with water and recap. Shake for 10 seconds. Pour rinsate into application equipment or a mix tank or store rinsate for later use or disposal. Drain for 10 seconds after the flow begins to drip. Repeat this procedure two more times. After cleaning, if recycling is not available, puncture and dispose of in a sanitary landfill.

FOR 24-HOUR EMERGENCY ASSISTANCE (SPILL, LEAK OR FIRE), CALL CHEMTREC® (800) 424-9300  
For other product information, contact Gowan Company or see Material Safety Data Sheet.

#### NOTICE OF CONDITIONS OF SALE AND WARRANTY AND LIABILITY LIMITATIONS

Important: Read the entire Directions for Use and Notice of Conditions of Sale and Warranty and Liability Limitations before using this product. If terms are not acceptable return the unopened container for a full refund.

Our directions for use of this product are based on tests believed to be reliable. However, it is impossible to eliminate all risk associated with the use of this product. Crop injury, inadequate performance, or other unintended consequences may result due to soil or weather conditions, off target movement, presence of other materials, method of use or application, and other factors, all of which are beyond the control of Gowan Company. All such risks shall be assumed by the Buyer and User.

Gowan Company warrants that this product conforms to the specifications on the label when used in strict conformance with Direction for Use, subject to the above stated risk limitations. GOWAN COMPANY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOR ANY OTHER EXPRESS OR IMPLIED WARRANTY. TO THE FULLEST EXTENT PERMITTED BY LAW, GOWAN COMPANY'S EXCLUSIVE LIABILITY FOR ANY AND ALL LOSSES, INJURIES OR DAMAGES RESULTING FROM THE USE OR HANDLING OF THIS PRODUCT WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, OR ANY OTHER LEGAL THEORY IS STRICTLY LIMITED TO THE PURCHASE PRICE PAID OR REPLACEMENT OF PRODUCT, AT GOWAN COMPANY'S SOLE DISCRETION.

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01-R0811



## MATERIAL SAFETY DATA SHEET

### 1. PRODUCT AND COMPANY IDENTIFICATION

Formulator: Gowan Company  
P.O. Box 5569  
Yuma, Arizona 85366-5569  
(928) 783-8844

**Emergency Phone:** (928) 783-3803  
**For 24-Hour Emergency Assistance (Spill, Leak, Fire, or Exposure), Call CHEMTREC®:** **Inside the U.S.:** (800) 424-9300  
**Outside the U.S.:** (703) 527-3887  
**For MEDICAL Emergency:** (888) 478-0798

**Product:** Malathion 8 Flowable  
**EPA Signal Word:** Caution  
**Active Ingredient:** Malathion (79.5%)  
**Chemical Name:** O,O-Dimethyl dithiophosphate of diethyl mercaptosuccinate  
**Chemical Class:** Organophosphate

**EPA Registration No.:** 10163-21  
**CAS No.:** 121-75-5

### 2. HAZARDS IDENTIFICATION

#### Physical Properties

**Appearance:** Clear, light amber colored liquid  
**Odor:** Mild mercaptan odor

#### Symptoms of Overexposure

Malathion causes inhibition of cholinesterase activity. Symptoms of intoxication include depressed ChE activity, headache, lacrimation, excessive salivation, anorexia, vomiting, uneasiness, restlessness, anxiety, ataxia, tremors, sweating, coma with absence of reflexes, dyspnea, cough, fluid in the lungs, non-reactive pin-point pupils, blurred vision, diarrhea, nausea, abdominal cramps, involuntary urination, muscular twitching, fasciculation, muscle cramping, weakness, and cyanosis. Severe overexposure may lead to muscular fibrillation, pulmonary edema, convulsions, possible cardiac arrest and death. Exposure to butanol in this formulation may produce drowsiness and irritation of the throat.

#### Medical Conditions Likely to be Aggravated by Exposure

Pre-existing skin, eye, liver, kidney and nervous disorders. Persons with depressed cholinesterase levels or hemolytic anemia, or who are under treatment with morphine, theophylline, aminophylline or phenothiazine drugs may show pronounced effects from exposure to this product.

#### Primary Routes of Exposure

Harmful if inhaled, ingested or if eye and skin contact occurs.

#### Hazardous Decomposition Products

Carbon monoxide, carbon dioxide, sulfur dioxide, phosphorus trioxide, methyl mercaptan, hydrogen sulfide, and dimethyl sulfide.

#### Unusual Fire, Explosion, and Reactivity Hazards

Containers in fire may burst or explode from excessive heat. Stay well back from fire area. Vapors may travel along floor to ignition source and flash back.

### 3. COMPOSITION/INFORMATION ON INGREDIENTS

| INGREDIENT NAME                  | OSHA – PEL             | ACGIH – TLV            | OTHER           | NTP/IARC/OSHA CARCINOGEN |
|----------------------------------|------------------------|------------------------|-----------------|--------------------------|
| Malathion (79.5%)                | 15.0 mg/m <sup>3</sup> | 10.0 mg/m <sup>3</sup> | Not established | No                       |
| 1-Butanol (3.1%)<br>CAS# 71-36-3 | 300 mg/m <sup>3</sup>  | 152 mg/m <sup>3</sup>  | Not established | No                       |

Only the identities of the active ingredient(s) and any *hazardous* inert ingredients are listed. Specific information on all of this product's ingredients can be obtained by the treating medical professional or spill emergency responder for the management of exposures, spills, or safety assessments.

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## 4. FIRST AID MEASURES

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**IF SWALLOWED:** Call a poison control center or doctor immediately for treatment advice. Have person sip a glass of water if able to swallow. Do not induce vomiting unless told to do so by a poison control center or doctor. Do not give anything by mouth to an unconscious person.

**IF INHALED:** Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably mouth-to-mouth if possible. Call a poison control center or doctor for further treatment advice.

**IF ON SKIN CLOTHING:** Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. Call a poison control center or doctor for treatment advice.

**IF IN EYES:** Hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes and then continue rinsing eye. Call a poison control center or doctor for treatment advice.

**Have the product container or label with you when calling a poison control center or doctor or going for treatment.**

**FOR MEDICAL EMERGENCIES INVOLVING THIS PRODUCT , CALL TOLL FREE: 1-888-478-0798**

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## 5. FIRE FIGHTING MEASURES

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**Flashpoint (test method):** > 200°F (TCC)

### **Appropriate Extinguishing Media**

Dry chemical, foam, CO<sub>2</sub>, water spray or fog. Avoid use of heavy water stream.

### **Fire Fighting Guidance**

Smoke and fumes from fire may contain hazardous components. Use self-contained breathing apparatus and full-protective clothing. Fight fire from upwind side. Avoid run-off. Keep non-essential personnel away from immediate fire area, and out of any fall-out or run-off areas. If water is used to fight fire or cool containers, contain run-off by diking to prevent contamination of water supplies.

### **Unusual Fire, Explosion, and Reactivity Hazards**

Containers in fire may burst or explode from excessive heat. Stay well back from fire area. Vapors may travel along floor to ignition source and flash back.

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## 6. ACCIDENTAL RELEASE MEASURES

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### **In Case of Spills or Leaks**

Isolate and post spill area. Wear prescribed protective clothing and equipment. Keep out animals and unprotected persons. Keep material out of streams and sewers. Dike to confine spill, and absorb with an absorbent such as clay, sand or cat litter. Vacuum, shovel or pump wastes into an approved drum. To decontaminate spill area, tools and equipment, wash with a suitable solution (i.e., organic solvent, detergent, bleach or caustic), and add the solution to the drums of wastes already collected. Label drums for contents. Dispose of drummed wastes, including decontamination solution, according to the method outlined in Section 13 – Disposal Considerations.

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## 7. HANDLING AND STORAGE

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### **Precautions in Storing**

DO NOT contaminate water, food or feed by storage or disposal. Store in a cool, dry, well-ventilated place. Avoid excess heat. Store in original containers only. Keep out of reach of children and animals. Do not contaminate other pesticides or fertilizers by storage or disposal.

### **Storage**

Store in a cool, dry, well-ventilated place. Avoid excess heat. Store in original containers only. Keep out of reach of children and animals.

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## 8. EXPOSURE CONTROLS/PERSONAL PROTECTION

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### Engineering Controls

Thoroughly ventilate all transport vehicles prior to unloading. Use local exhaust at all process locations to control employee exposure.

### Eye/Face

Not required; use normal safety precautions.

### Skin Protection

Applicators and other handlers must wear long-sleeved shirt and long pants, chemical-resistant gloves such as barrier laminate, butyl rubber  $\geq$  14mils, nitrile  $\geq$  14mils, or Viton  $\geq$  14mils, and shoes plus socks.

### Respiratory Protection

Not required; use normal safety precautions.

### Additional Protection

### Information

Inspect gloves regularly for leaks. Emergency eyewash fountain should be located nearby. Follow manufacturer's instructions for cleaning/maintaining personal protective equipment (PPE). If no such instructions for washables, use detergent and hot water. Keep and wash PPE separately from other laundry.

### Applicators/Handlers

Applicators and other handlers must wear long-sleeved shirt and long pants, chemical-resistant gloves such as barrier laminate, butyl rubber  $\geq$  14mils, nitrile  $\geq$  14mils, or Viton  $\geq$  14mils, and shoes plus socks.

### User Safety

### Recommendations

Users should wash hands before eating, drinking, chewing gum, using tobacco or using the toilet. Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.

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## 9. PHYSICAL AND CHEMICAL PROPERTIES

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**Appearance:** Clear, light amber colored liquid

**Odor:** Mild mercaptan odor

**Melting Point:** Not applicable

**Boiling Point:**  $> 300^{\circ}\text{F}$

**Specific Gravity/**

**Density:** 1.21 / 10.06 lbs./gal

**Solubility in H<sub>2</sub>O**

**Malathion** Emulsifies

**Vapor Pressure**

**Malathion** 31 (Reid-ASTM D323)

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## 10. STABILITY AND REACTIVITY

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**Stability:** Stable

**Hazardous**

**Polymerization:** Will not occur

**Decomposition**

**Products:** Carbon monoxide, carbon dioxide, sulfur dioxide, phosphorus trioxide, methyl mercaptan, hydrogen sulfide, and dimethyl sulfide.

**Hazardous**

**Mixtures:**

None known

**Conditions**

**To Avoid:**

Excessive heat and fire, alkalis and oxidizers. Thermal decomposition and burning may produce highly toxic by-products.

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## 11. TOXICOLOGICAL INFORMATION

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### Acute Toxicity/Irritation Studies

|                         |  |
|-------------------------|--|
| <b>Ingestion:</b>       | Acute oral LD <sub>50</sub> =5400(M) / 5700(F) mg/kg (rat) |
| <b>Dermal:</b>          | Acute dermal LD <sub>50</sub> >2000 mg/kg (rat)            |
| <b>Inhalation:</b>      | Acute inhalation LC <sub>50</sub> >5.2 mg/L (rat)          |
| <b>Eye Irritation:</b>  | Slight conjunctival irritation: clear by 7 days (rabbit)   |
| <b>Skin Irritation:</b> | Slight dermal irritant (rabbit)                            |
| <b>Skin Sensitizer:</b> | Not a sensitizer (guinea pig)                              |

### Mutagenic Potential

None

### Reproductive Hazard Potential

Acceptable

### Chronic/Subchronic Toxicity Studies

Acceptable

### Carcinogenic Potential

Acceptable

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## 12. ECOLOGICAL INFORMATION

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### Summary of Effects

#### Malathion

This pesticide is toxic to fish, aquatic invertebrates and aquatic life stages of amphibians. For terrestrial uses, do not apply directly to water, or to areas where surface water is present or to intertidal areas below the mean high water mark. Do not contaminate water when disposing of equipment wash waters. This product is highly toxic to bees exposed to direct treatment on blooming crops or weeds. Do not apply this product or allow it to drift to blooming crops or weeds if bees are actively visiting the treatment area.

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## 13. DISPOSAL CONSIDERATION

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### Pesticide Disposal

Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to the label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

### Container Disposal

Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by other procedures approved by State and local authorities.

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## 14. TRANSPORT INFORMATION

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### DOT Classification

Not regulated.\*

\*For 30 gallon and 55 gallon containers DOT classification will be:

UN 3082, RQ, Environmentally Hazardous Substance, Liquid, N.O.S., (Malathion), 9, PG III

### International Maritime Organization

UN 3082, Environmentally Hazardous Substance, Liquid, N.O.S., (Malathion), 9, PG III, Marine Pollutant, NAERG# 171

### International Civil Aviation Organization

UN 3082, Environmentally Hazardous Substance, Liquid, N.O.S., (Malathion), 9, PG III, Marine Pollutant, NAERG# 171



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## 15. REGULATORY INFORMATION

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### SARA Title III Classification

Section 302/304: Not applicable  
Section 311/312: Immediate (acute) health hazard  
Fire hazard  
Section 313 chemical(s): Malathion, 1-Butanol

### Proposition 65

Not applicable

### CERCLA Reportable Quantity (RQ)

12.5 gals. of product (100 lbs. of Malathion)

### RCRA Classification

Under RCRA, it is the responsibility of the product user to determine at the time of disposal, whether a material containing the product or derived from the product should be classified as a hazardous waste.

### TSCA Status

Exempt from TSCA

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## 16. OTHER INFORMATION

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### NFPA Hazard Ratings

**Health:** 2  
**Flammability:** 2  
**Reactivity:** 0

|   |          |
|---|----------|
| 0 | Least    |
| 1 | Slight   |
| 2 | Moderate |
| 3 | High     |
| 4 | Severe   |

**Notice:** The information and recommendations contained herein are provided in good faith and are based upon data believed to be correct. However, no guarantee or warranty of any kind, expressed or implied, is made with respect to the information herein.

### Prepared By:

Gowan Company  
(928) 783-8844

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 1 - TESTIMONY GIVEN AT MARCH 1, 2013 PUBLIC HEARING**

| Person/Affiliation   | Summary of Testimony   | Board Response  |
|--|--|---|
| <p>Katy Green (MOFGA) (also submitted written testimony)</p> | <p>Questions the efficacy of spraying mosquitoes to prevent disease.</p> <p>Would like the Board to do more outreach on how people can protect themselves.</p> <p>Any person should be able to opt out for any reason.</p> <p>Government-sponsored spray programs should not be exempted from entire chapter e.g., in Chapter 22: monitoring of wind speeds, positive identification of sites.</p> <p>Hope protection of organic farms will be included in rule; prefer anyone be able to opt out, but if not, then at least organic farms.</p> <p>MOFGA has been working on mapping organic farms; it's unclear how the mapping will be managed and who will maintain the maps .</p> <p>Would like Board policy to be available for review and comment soon.</p> <p>Concerned that Maine does not have enough data about mosquitoes and virus presence and we are putting the spraying ahead of monitoring.</p> | <p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.</p> <p>The Board continues to support education to help people protect themselves from mosquitoes and supports the use of an IPM approach to managing mosquitoes and protecting public health.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>The Board reviewed Chapters 22 and 51 and agreed that parts of them should not be exempted. It adjusted the proposed amendments accordingly.</p> <p>The Board will work with MOFGA and other groups to develop plans for mapping exclusion zones.</p> <p>The Board agrees that mosquito surveillance is critical to making informed decisions and is working with the Maine CDC to expand mosquito surveillance.</p> |
| <p>Jody Spear (also submitted written testimony)</p>         | <p>Spray programs are ineffective .</p> <p>Pesticides are dangerous for the environment, especially for pollinators.</p> <p>Organic farmers should be able to opt out of aerial spraying.</p> <p>Maine should not “come into line” with other states, but should lead the way by having a policy that is less damaging</p>   | <p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.</p> <p>Data from Massachusetts suggest that bees are not harmed by carefully conducted public health mosquito-control pesticide applications because of product choice</p>  |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 1 - TESTIMONY GIVEN AT MARCH 1, 2013 PUBLIC HEARING**

| Person/Affiliation  | Summary of Testimony   | Board Response  |
|---|--|---|
|   | <p>to the environment.</p> <p>Granger asked if there is any way to conduct a spray program and protect the pollinators and Spear replied that there is not.</p>  | <p>application rates and application timing.</p> <p>The Board supports exclusion zones for organic farms but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>The Board supports the use of an IPM approach to managing mosquitoes and protecting public health.</p>   |
| <p>Dave Bell (Maine Wild Blueberry Commission) (also submitted written testimony)</p> | <p>Concerned about potential residue on fruit, making it unacceptable to overseas customers.</p> <p>Would like organic farms to be named as sensitive sites to be avoided.</p> <p>Looked at cranberry study done in Massachusetts, but because the samples were taken 3–5 days after spraying, can't be sure there would be no detect the day after spraying. Would like research on the materials most likely to be used.</p> <p>Concerned that the way the rule is currently written it would require only a “reasonable effort” for ground-based spraying. Needs a stronger requirement to avoid application to commercial fruits, especially near suburban interfaces.</p> <p>For aerial spraying the “extent feasible” is not adequate to provide protection. Section should be strengthened.</p> <p>Wild blueberries are only sensitive near harvest. Would like to see research on the timing. If the materials biodegrade in 24 hours then they could postpone harvest for one or two days, but if it takes longer, couldn't postpone for five days, would lose harvest.</p> <p>Shouldn't be exempt from standards in Chapter 22: equipment, weather, identification and recording of sensitive sites; some sections would have to be modified, but most</p> | <p>There are U.S. tolerances for residues of the active ingredients which could be used in a public health mosquito application. Mosquito public health adulticide applications are at much lower rates of active ingredient per acre than are residential or agricultural uses.</p> <p>Blueberry farms are large enough to be easily excluded; and would not generally be part of the target areas for mosquito control which are centered around the interface of vector habitat and population areas.</p> <p>Data from Massachusetts on cranberries suggests that within a few days there will be no residues from the insecticides most likely to be used in a public health mosquito control program.</p> <p>The Board supports the idea of additional research to address crop residue concerns. The BPC toxicologist indicated that some research has already been done on residues and she will study the data and report back.</p> <p>The Board agrees that agricultural sites need not be sprayed and supports mapping those sites as exclusion zones. It also recognizes that very small sites may not be feasible to exclude from an aerial spray program.</p> <p>The Board is sensitive to concerns about the standard</p> |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

TABLE 1 - TESTIMONY GIVEN AT MARCH 1, 2013 PUBLIC HEARING

| Person/Affiliation  | Summary of Testimony  | Board Response   |
|---|---|--|
|   | <p>should not be exempted.</p>  | <p>of care required of the government entity, but could not identify alternative language that would not create an unreasonable impediment to public health control programs.</p> <p>The Board agrees that parts of Chapter 22 should not be exempt and has revised the amendments to address this concern.</p>  |
| <p>May Linda Rapelye (also submitted written testimony)</p> | <p>Would like organic to be able to opt out.</p> <p>Wonders what happens to the pesticide when it kills mosquitoes in the air; do the mosquitoes, along with the pesticide, drop into the water?</p> <p>Thinks treating larvae with Bti is more effective and would like to see it made possible.</p> | <p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.</p> <p>EPA has approved labels for the products with wide-area public health programs for mosquito control. This means they have been through the environmental risk assessment process and EPA has determined that - at labeled rates - the products pose an acceptable risk to aquatic life.</p> <p>The Board supports the use of an IPM approach to managing mosquitoes and protecting public health which would include the use of <i>Bti</i> and other methods. The staff has engaged in a dialog with the Maine DEP about revising the General Permit for Larval Mosquito Control to make larval control more practical.</p> |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

| <b>Person/Affiliation</b>   | <b>Summary of Comments</b>   | <b>Board Response</b>  |
|---|--|--|
| <p>Bell, David – Executive Director, Maine Blueberry Commission</p> | <p>Concerned about pesticide residues on blueberries that may not be acceptable to international customers or above international tolerance levels.</p> <p>Concerned about organic growers losing the opportunity to sell their crop as certified organic if a prohibited substance is applied above a field.</p> <p>Wants a stronger opt-out option for ground-based applications in section 6.C.2.of Chapter 20.</p> <p>Wants to make sure that blueberry fields with maturing fruit are considered a sensitive site under section 6.C.3., and to strengthen the language, “takes affirmative steps” to ensure sensitive sites will be protected from residues.</p> <p>Suggests field trials to ensure that control materials used will result in minimal product quality risk.</p> <p>Suggests only exempting public health applications from specific requirements in Chapter 22 and to do a review to see if there may be a need for additional standards for this type of application project.</p> <p>Suggested specific changes to Chapter 22, Section 2.C &amp; D.; Section 3.B,C,D&amp;E and Section 4.B.</p> | <p>There are U.S. tolerances for residues of the active ingredients which could be used in a public health mosquito application. Mosquito public health adulticide applications are at much lower rates of active ingredient per acre than are residential or agricultural uses.</p> <p>Blueberry farms are large enough to be easily excluded; and would not generally be part of the target areas for mosquito control which are centered around the interface of vector habitat and population areas.</p> <p>Data from Massachusetts on cranberries suggests that within a few days there will be no residues from the insecticides most likely to be used in a public health mosquito control program..</p> <p>The Board agrees that agricultural sites need not be sprayed and supports mapping those sites as exclusion zones. It also recognizes that very small sites may not be feasible to exclude from an aerial spray program.</p> <p>The Board is sensitive to concerns about the standard of care required of the government entity, but could not identify alternative language that would not create an unreasonable impediment to public health control programs.</p> <p>The Board supports the idea of additional research to address crop residue concerns. The BPC toxicologist indicated that some research has already been done on residues and she will study the data and report back</p> <p>The Board agrees that parts of Chapter 22 should not be exempt and has revised the amendments to address this concern.</p> |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013

INDIVIDUAL RESPONSES

| Person/Affiliation  | Summary of Comments   | Board Response   |
|---|---|--|
| <p>Simone, Michael, Owner,<br/>Mosquito Terminators</p>                     | <p>Believes the exceptions from Chapters 20, 22 and 51 should be extended to any legitimate licensed mosquito control company operating in areas that have been identified by the Maine CDC.</p>  | <p>The Board determined that the scope of the current rulemaking effort is public health mosquito control programs undertaken by governmental entities. Governmental entities will likely contract with commercial pesticide applicators for this type of control work, and therefore these amendments will apply to commercial applicators as well.</p>   |
| <p>McCarron, Patricia,<br/>Director, Maine<br/>Lobstermen’s Association</p> | <p>Strongly opposed to the amendments to all chapters. Concerned that insecticides sprayed for mosquitoes will harm lobster since both are arthropods and that they will have lethal and sub-lethal effects.</p> <p>Questions the efficacy of mosquito adulticiding and encourage public educational programs to emphasize elimination of breeding sites and resting habitat, encouraging natural predators and personal protection from bites.</p> <p>If education fails, suggest larvicide programs using <i>Bacillus thuringiensis israelensis</i></p> <p>Opposes elimination of a property owner’s right to be excluded from aerial spray programs.</p> | <p>EPA has approved labels for the products with wide-area public health programs for mosquito control. This means they have been through the environmental risk assessment process and EPA has determined that - at labeled rates – the products pose an acceptable risk to aquatic life. There are U.S. tolerances for residues of the active ingredients which could be used in a public health mosquito application. Mosquito public health adulticide applications are at much lower rates of active ingredient per acre than are residential or agricultural uses.</p> <p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it’s in the best interest of the state.</p> <p>The Board continues to support education to help people protect themselves from mosquitoes and supports the use of an IPM approach to managing mosquitoes and protecting public health.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

| <b>Person/Affiliation</b>  | <b>Summary of Comments</b>  | <b>Board Response</b>  |
|--|---|--|
| <p>Spear, Jody, Harborside, Maine</p>  | <p>Requests that the opt-out choice be retained in Chapter 20 and does not think the words “reasonable effort” in Section C.2 and “to the extent feasible” in Section C.3 are appropriate.</p> <p>Concerned that the “sensitive sites” referred to in Chapter 20 Section C.3 will go unprotected if Chapter 22 is amended as proposed.</p> <p>Would like more specifics in Chapter 20 B.1 and C.1 including a similar (3 day) advance notice for ground spraying.</p> <p>Doesn’t think Chapter 20 properly replaces the 500 foot notification requirements in Chapter 51.</p> <p>Doesn’t think the words “reasonable effort” in Chapter 22 Section 6.B are appropriate.</p> | <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>Sensitive sites referred to in Chapter 20 will be excluded from the target area and buffer zones will be implemented.</p> <p>The Board agrees that notifying the public is of paramount importance. It also recognizes an outbreak of EEE may require a very rapid response. Historically, the media has found wide-area spray programs to be extremely newsworthy. Additionally, government entities understand the value of keeping the public informed.</p> <p>The Board is sensitive to concerns about the standard of care required of the government entity, but could not identify alternative language that would not create an unreasonable impediment to public health control programs.</p> |
| <p>McCammon, Laurie, Scarborough, Maine</p>  | <p>Strongly opposed to aerial spraying. Wants to make sure all have the ability to opt out of spraying. Has child with multiple life-threatening allergies.</p>   | <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p>   |
| <p>Green, Katy, Organic Transitions Coordinator, Maine Organic Farmers and Gardeners Association</p> | <p>Prefers that the Board educate the public about personal protection from arboviral disease instead of changing the rules to allow for spraying.</p> <p>Would like the rule to allow any citizen, for any reason, to have their property included in the exclusion zones that would be defined in either Board rule or policy for both aerial and ground applications.</p>  | <p>The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it’s in the best interest of the state.</p> <p>The Board continues to support education to help people protect themselves from mosquitoes and supports the use</p>   |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 2 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**INDIVIDUAL RESPONSES**

| <b>Person/Affiliation</b> | <b>Summary of Comments</b>   | <b>Board Response</b>   |
|---------------------------|--|---|
|                           | <p>Sees no reason to exempt government sponsored spray programs from Chapter 22 or Section VI of Chapter 51.</p> <p>Wants to make sure the Board provides resources to ensure that no organic farm mapped by MOFGA is accidentally treated. Would like the Board to draft a policy regarding the system that will be used to identify exclusion zones and the process to be followed to make sure applicators get the maps that identify those exclusion zones.</p> <p>The Board should also direct resources to mosquito surveillance so that any spray program will be based on robust data.</p> | <p>of an IPM approach to managing mosquitoes and protecting public health.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> <p>The Board reviewed Chapters 22 and 51 and agreed that parts of them should not be exempted. It adjusted the proposed amendments accordingly.</p> <p>The Board will work with MOFGA and other groups to develop plans for mapping exclusion zones.</p> <p>The Board agrees that mosquito surveillance is critical to making informed decisions and is working with the Maine CDC to expand mosquito surveillance.</p> |



SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| Person/Affiliation                         | Summary of Comments   | Board Response  |
|--|---|---|
| <b>Beekeepers</b>                          |   |   |
| Thurlow-Kimball, Karen,<br>Browns Bee Farm | Identified themselves as Beekeepers   |   |
| Gideon, Victor, Raymond,<br>Maine          | Opposed to the changes in all three rules and concerned about off-target deposition and effects on their hives.                   | Data from Massachusetts suggest that bees are not harmed by carefully conducted public health mosquito-control pesticide applications because of product choice application rates and application timing.       |
| Weymouth, Jason,<br>Brunswick, Maine       | Believe everyone has the right to know about applications.  | The proposed amendments do not eliminate advance notification, they only modify the requirements for property owner authorization in the event of mosquito-borne disease public health threat.                  |
| Geer, Ron, Essential<br>Valuation LLC      | Believe everyone should have the right to opt-out of applications. Some call for at least a 5 miles no-spray radius around hives. |   |
| Poppema, Louise,<br>Cumberland, Maine      |   | The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications. |
| Crowell, Sandra,<br>Raymond, Maine         |   |   |
| Sullivan, Louise, Cape<br>Elizabeth, Maine |   |   |
| McCloskey, Susan                           |   |   |
| Leavitt, Pete, Beekeeper                   |   |   |
| Gilbert, William, Eliot,<br>Maine          |   |   |
| Burks, Bernadette,<br>Kennebunk, Maine     |   |   |
| Allen, Tracey,<br>Scarborough, Maine       |   |   |
| Shoe, Randy, Berwick,<br>Maine             |   |   |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| Person/Affiliation   | Summary of Comments  | Board Response   |
|--|--|--|
| Riney, Monika,<br>Wildermirth Farm,<br>Winthrop, Maine         |  |  |
| Peiffer, Lawrence, MSBA<br>Vice President, Master<br>Beekeeper |  |  |
| <b>Organic Farmers</b>   |  |  |
| Bouchard, Jennifer   | <p>Identified themselves as organic farmers.</p> <p>Oppose the changes in Chapter 20 that allow application without landowner/occupant consent. All should be able to opt out of spray programs.</p> | <p>Requiring individual property owner authorization is not feasible and would prevent most wide-area public-health spray programs.</p> <p>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.</p> |
| Wotton, Angela,<br>Hammond, Maine                              |  |  |
| Berry, Eli   |  |  |
| Faull, Sara, Mandala Farm,<br>Gouldsboro, Maine                |  |  |
| Theriacult, Sonya, Summit<br>Springs Farm, Poland,<br>Maine    |  |  |
| Forsythe, Alexander,<br>Richmond, Maine                        |  |  |
| Marquis, Wayne, Van<br>Buren, Maine                            |  |  |
| Pike, Jordan, Two Toad<br>Farm, Lebanon, Maine                 |  |  |
| Bolduc, Karen, South<br>Auburn Organic Farm,<br>Auburn, Maine  |  |  |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| Person/Affiliation  | Summary of Comments  | Board Response  |
|---|--|---|
| Lassen, Hugh, Intervale Blueberry Farm, Cherryfield, Maine                      |  |   |
| Oliver, Sarah, Even Keel Farm, Pemaquid, Maine                                  |  |   |
| <b>Unspecified</b>  |  |   |
| Scully, David, President, Prouts Neck Audubon Society                           | Requests no-spray zone over Stratton and Bluff Islands because 32 priority bird species use the area during migration and more than 240 species including endangered Roseate Terns use the island.   | Endangered and threatened species habitat are commonly excluded from public health related mosquito control programs.   |
| Kress, Stephen, Director, Seabird Restoration Program, National Audubon Society |  |   |
| Eddy, Terry, Scarborough, Maine   | Against the changes in Chapter 20 that allow application without landowner/occupant consent. All should be able to opt out of spray programs.  | Requiring individual property owner authorization is not feasible and would prevent most wide-area public-health spray programs.<br><br>The Board supports opt-out provision for ground spraying and an exclusion provision for aerial spraying, but recognizes that some parcels may be too small to be practically excluded from aerial applications.   |
| Pepin, Kimberly   |  |   |
| Wilder, Sara, Norridgewock, Maine   | Oppose the changes to the rules.<br><br>Against mosquito spraying.<br><br>Prefer public education about personal protection.<br><br>Efficacy of aerial applications negligible.<br><br>Do not take away the requirement for consent before spraying. | The Board is sensitive to concerns about pesticide use and is not recommending pesticide applications, but it is proposing changes to its rules to make public health related treatments feasible if state public health officials determine it's in the best interest of the state.<br><br>The Board continues to support education to help people protect themselves from mosquitoes and supports the use of an IPM approach to managing mosquitoes and |
| Tomash, Adam, West Gardiner, Maine  |  |   |
| Maier, James, M.D., Scarborough, Maine  |  |   |
| MacMahon, James, M.D., Scarborough, Maine                                       |  |   |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| <b>Person/Affiliation</b>                      | <b>Summary of Comments</b> | <b>Board Response</b>   |
|--|----------------------------|---|
| Foley-Ferguson, Suzanne,<br>Scarborough, Maine |                            | protecting public health.<br><br>Requiring individual property owner authorization is not feasible and would prevent most wide-area public-health spray programs. |
| Davis, Derek,<br>Scarborough, Maine            |                            |   |
| Bottesch, Marla,<br>Norridgewock, Maine        |                            |   |
| Balgooyen, Helen,<br>Norridgewock, Maine       |                            |   |
| Zando, Marla,<br>Scarborough, Maine            |                            |   |
| Woodin, Eddie, S.<br>Portland, Maine           |                            |   |
| Tanner, Nanette,<br>Scarborough, Maine         |                            |   |
| Sweet-Demetriou,<br>Marcella, Winham, Maine    |                            |   |
| Sweet, Arlene                                  |                            |   |
| Sweet, William                                 |                            |   |
| Robbins, Sandy                                 |                            |   |
| Nomani, Louise,<br>Norridgewock, Maine         |                            |   |
| Michka, Kay, Lexington,<br>Maine               |                            |   |
| D'Andrea, Karen,<br>Scarborough, Maine         |                            |   |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| Person/Affiliation  | Summary of Comments | Board Response |
|---|---------------------|----------------|
| Cutter, Jane, Scarborough, Maine                                    |                     |                |
| Malis, Suzanne  |                     |                |
| Stoesser, Cora, Bowdoin, Maine                                      |                     |                |
| scooterweeks@yahoo.com  |                     |                |
| Lamb, Scott, Appleton, Maine  |                     |                |
| Hathaway, Nancy, Blue Hill, Maine and Surry Conservation Commission |                     |                |
| Christie, Jeanne  |                     |                |
| Bedard, Deb   |                     |                |
| Avila, Lelania, NE Harbor, Maine                                    |                     |                |
| Ward, Dayle, Appleton, Maine  |                     |                |
| McBride, Chris, Stephanie and Cooper                                |                     |                |
| Ludders, Jessica, Charleston, Maine                                 |                     |                |
| Gleeson, Karen, Northport, Maine                                    |                     |                |
| Christen, Renata, Waldo County                                      |                     |                |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| <b>Person/Affiliation</b>                               | <b>Summary of Comments</b> | <b>Board Response</b> |
|---|----------------------------|-----------------------|
| Bailey, Roberta, Fedco Seeds, Vassalboro, Maine         |                            |                       |
| Twidwell, Karen, Greene, Maine                          |                            |                       |
| Rapelye, Mary Linda, Lyric Meadow Farm, Boothbay, Maine |                            |                       |
| Elliott, Alice, Richmond, Maine                         |                            |                       |
| Domenichelli, Angela, Belfast, Maine                    |                            |                       |
| Burke, Amy, York, Maine                                 |                            |                       |
| Ciarrocca, Joe  |                            |                       |
| Pierce, Julia and Benjamin, Vassalboro, Maine           |                            |                       |
| Patrick, Eileen   |                            |                       |
| Brown, Deborah, Jefferson, Maine                        |                            |                       |
| Comstock, Lauren  |                            |                       |
| Lodata, Bob, Charleston, Maine                          |                            |                       |
| Livingston, Laura                                       |                            |                       |
| Drake, Cynthia, Dover-Foxcroft, Maine                   |                            |                       |
| Moger, Bonnie, Westbrook, Maine                         |                            |                       |

SUMMARY OF COMMENTS—CHAPTERS 20, 22, AND 51—MARCH 2013

**TABLE 3 - WRITTEN COMMENTS RECEIVED BY MARCH 15, 2013**

**GROUP RESPONSES**

| <b>Person/Affiliation</b>          | <b>Summary of Comments</b> | <b>Board Response</b> |
|------------------------------------|----------------------------|-----------------------|
| Higgins, Lois, Kittery,<br>Maine   |                            |                       |
| Thompson, Laurie, Dayton,<br>Maine |                            |                       |

**01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES**

**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. 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).
- B. 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.
- C. 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.
- D. 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.

**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. Prohibition of Unauthorized Application of Pesticides~~**

- ~~A. Except as provided by Chapter 20.6(D) and 6(E) below, 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 consent 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.

- ~~B. Except as provided by Chapter 20.6(D) and 6(E) below, no person may apply a pesticide to a property of another unless prior consent 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.~~
- ~~C. Except as provided by Chapter 20.6(D) and 6(E) below, no commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 
  - ~~1. 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~~
  - ~~2. 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.~~~~
- ~~D. The requirements of Chapter 20.6(A), (B) or (C) shall not apply when the pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of maintaining such easement or right of way.~~
- ~~E. When the Maine Center for Disease Control (CDC) recommends mosquito control for arboviral diseases, the requirements of Chapter 20.6(A), (B) or (C) shall not apply to government sponsored mosquito control programs, provided that the government entity:
 
  - ~~1. makes a reasonable effort to provide advance notice to residents about mosquito 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 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, makes efforts to avoid applications to certified organic crops and livestock.~~~~

## **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. ~~Transition~~**

~~This regulation will become effective on January 1, 2008.~~

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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

## **BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 20—SPECIAL PROVISIONS**

### **Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 20 requires authorization from each individual property owner which would be impractical for wide-area programs conducted in residential areas. The proposed amendment to Chapter 20 relaxes the need for individual property owner authorization when the Maine CDC recommends spraying due to vector-borne disease threats.

No changes were made to the amendments based on comments received.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

### **Findings of Emergency**

The Board finds that the potential hazard arising from a mosquito-borne disease outbreak in Maine involving either West Nile Virus or Eastern Equine Encephalitis poses an imminent threat to public health, safety and welfare, thus creating an emergency within the meaning of 5 M.R.S. §8054. Consequently, the Board determined it was appropriate to promulgate an emergency rule under 5 M.R.S. §8052 in case the need for spraying arises during the summer or fall of 2013, since legislative review of the proposed amendments will not occur until the winter of 2014.

### **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 Provision

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

Small business that contract for mosquito control work may benefit from the proposed rule amendments. There may be as many as 200 such businesses.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

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

The proposed amendments would reduce the administrative burdens for small businesses.

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

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 22: STANDARDS FOR OUTDOOR APPLICATION OF PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET DEPOSITION**

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**SUMMARY:** These regulations establish procedures and standards for the outdoor application of pesticides by powered equipment in order to minimize spray drift and other unconsented exposure to pesticides. The primary purpose of these regulations is to implement the legislative mandate of the Board, as expressed by 7 M.R.S.A. §606(2)(G), to design rules which “minimize pesticide drift to the maximum extent practicable under currently available technology.”

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### **SECTION 1. EXEMPTIONS**

The regulations established by this chapter shall not apply to pesticide applications in any of the following categories:

- A. Applications of pesticides confined entirely to the interior of a building;
- B. Applications of pesticides by non-powered equipment;
- C. Applications of pesticides exclusively in granular or pelletized form;
- D. Applications of pesticides injected underground or otherwise injected directly into the target medium. Such applications must involve no spraying of pesticides whatsoever.

### **SECTION 2. STANDARDS OF CONDUCT FOR PESTICIDE APPLICATIONS**

All pesticide applications subject to these regulations shall be undertaken in compliance with the following standards of conduct:

- A. Equipment
  - I. Pesticide spray equipment shall be used in accordance with its manufacturer’s recommendations and instructions, and shall be in sound mechanical condition, free of leaks and other defects or malfunctions which might cause pesticides to be deposited off-target.
  - II. Pesticide spray equipment shall be properly calibrated consistent with Board or University published guidance. Sufficient records to demonstrate proper calibration must be maintained and made available to representatives of the Board upon request.

III. Pesticide application equipment shall have properly functioning shut-off valves or other mechanisms which enable the operator to prevent direct discharge and minimize drift to non-target areas. Spray equipment designed to draw water must also have a properly functioning antisiphoning device.

B. Weather Conditions

I. Spray applications shall not be undertaken when weather conditions favor pesticide drift onto Sensitive Areas or otherwise prevent proper deposition of pesticides on target.

II. Pesticide application must cease immediately when visual observation reveals or should reveal that spray is not being deposited on target.

III. Without limitation of the other requirements herein, under no circumstances shall pesticide application occur when wind speed in the area is in excess of 15 miles per hour.

C. Identifying and Recording Sensitive Areas

Prior to spraying a pesticide, the applicator must become familiar with the area to be sprayed and must identify and record the existence, type and location of any Sensitive Area located within 500 feet of the target area. Applicators shall prepare a site map or other record, depicting the target area and adjacent Sensitive Areas. The map or other record shall be updated annually. The site map or other record shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request. This requirement shall not apply to commercial application categories 3B (turf), 3A (ornamental tree and plant) or 7A (structural general pest control applications).

D. Presence of Humans, Animals

Pesticide applications shall be undertaken in a manner which minimizes exposure to humans, livestock and domestic animals.

The applicator shall cease spray activities at once upon finding evidence showing the likely presence of unprotected persons in the target area or in such proximity as to result in unconsented exposure to pesticides.

E. Other Requirements

These regulations are intended to be minimum standards. Other factors may require the applicator to take special precautions, beyond those set forth in these regulations, in order to avoid adverse impacts on off-target areas and to protect public health and the environment.



**SECTION 3. STANDARDS FOR AERIAL APPLICATION OF PESTICIDES****A. Positive Identification of the Target Site**

The person contracting for an aerial pesticide application shall ensure that the application site (i.e., target area) is positively identified prior to application, using a unique and verifiable method, including:

- I. An onboard, geo-referenced electronic mapping and navigation system (e.g., GPS); or
- II. Effective site markings visible to the applicator; or
- III. Other method(s) approved by the Board.

**B. Site Plans Required**

Prior to spraying by aerial application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the person contracting for the application shall provide to the applicator a site plan that includes:

- I. a site map drawn to scale that:
  - (i) delineates the boundaries of the target area and the property lines;
  - (ii) depicts significant landmarks and flight hazards;
  - (iii) depicts the type and location of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area; and
  - (iv) depicts other Sensitive Areas within 500 feet of the target area.
- II. If applicable, a school bus schedule shall accompany the site map.
- III. The site plan and site map with identified sensitive areas required under Section 3(B) shall be retained by the applicator for a period of two years following the date of applications and shall be made available to representatives of the Board upon request.
- IV. Compliance with this section satisfies the requirements of Section 2(C).

**C. Site-Specific Application Checklist**

Prior to conducting an aerial pesticide application within 1,000 feet of a Sensitive Area Likely to Be Occupied, the applicator shall complete a Board-approved pre-application checklist for each distinct field or target site. The checklist shall be maintained by the applicator for a period of two years and shall be available for inspection by representatives of the Board at reasonable times, upon request. The checklist shall include, at a minimum, the following elements:

- I. The date, time, description of the target site and name of the applicator;
  - II. Confirmation that the notification requirements contained in CMR 01-026, Chapters 28 and 51, have been carried out;
  - III. Confirmation that the target site has been positively identified;
  - IV. The location of where weather conditions are measured and a description of the equipment used to measure the wind speed and direction;
  - V. Confirmation that conditions are acceptable to treat the proposed target site, considering the location of any Sensitive Area Likely to Be Occupied and current weather conditions;
  - VI. Wind speed and direction;
  - VII. The measures used to protect all Sensitive Areas;
  - VIII. Confirmation that there are no humans visible in or near the target area.
- D. Buffer Zones for any Sensitive Area Likely to Be Occupied
- Aerial applicators shall employ site-specific buffer zones adjacent to any Sensitive Area Likely to Be Occupied sufficient to prevent unlawful pesticide drift, unless consent has been granted by the landowner, lessee and occupant (when applicable), consistent with the provisions of Section 4(C) of this rule.
- E. Wind Speeds for Aerial Applications
- Unless otherwise specified by the product label, an applicator may not conduct an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied unless the wind speed is between 2 and 10 miles per hour.

#### **SECTION 4. GENERAL STANDARDS FOR OFF-TARGET PESTICIDE DISCHARGE AND RESIDUE**

- A. Prohibition of Unconsented, Off-Target Direct Discharge of Pesticides.
- Pesticide applications shall be undertaken in a manner which does not result in off-target direct discharge of pesticides, unless prior authorization and consent is obtained from the owner or lessee of the land onto which such discharge may occur in a manner consistent with the pesticide label.
- B. Standards for Unconsented, Off-Target Drift of Pesticides
- I. General Standard. Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the

pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors.

- II. **Prima Facie Evidence.** Pesticide residues in or on any off-target Sensitive Area Likely to Be Occupied resulting from off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The Board shall review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred. For purposes of this standard, the residue in the target area, and the residue in the Sensitive Area Likely to Be Occupied, may be adequately determined by evaluation of one or more soil, foliage or other samples, or by extrapolation or other appropriate techniques.
- III. **Standard of Harm.** An applicator may not apply a pesticide in a manner that results in:
  - (i) Off-target pesticide residue detected in or on any nearby crop which violates EPA tolerances for that crop, as established under 40 CFR, Part 180.
  - (ii) Off-target pesticide residue detected in or on any nearby organic farm or garden which causes the agricultural products thereof to be excluded from organic sale in accordance with 7 CFR, Part 205, Section 205.671.
  - (iii) Off-target pesticide residue detected on any nearby persons or vehicles using public roads.
  - (iv) Documented human illness. For this standard to be met, the Board must receive verification from two physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.
  - (v) Off-target damage or injury to any organism.
- IV. **Enforcement Considerations.** The Board shall consider the particular circumstances of violations arising from Subsections 4(B)(I) and (III) in determining an appropriate response, including, but not limited to:
  - (i) The standard of care exercised by the applicator;
  - (ii) The degree of harm or potential harm that resulted from or could have resulted from off-target drift from the application;
  - (iii) The risk (toxicity and exposure) of adverse effects from the pesticide applied.

C. Consent

- I. Consent, How Given. Authorization and consent by the owner or lessee and occupant (when applicable) of land receiving a pesticide discharge or drift in a manner consistent with the pesticide label may be given in any manner, provided that the consent is reasonably informed and is given prior to the onset of the spray activity in question. The burden of proof shall be upon the applicator to demonstrate that requisite authorization and consent has been given. For this reason, applicators are encouraged to obtain such consent in writing and to maintain records thereof.
- II. The residue and harm standards in Sections 4(B)(II) and (III) for off-target drift do not apply where the owner, lessee and occupant (when applicable) of the off-target area receiving the pesticide drift have given authorization and consent as prescribed in Section 4(C).
- III. Except with the prior written approval of the Board, no authorization or consent may be given with regard to off-target direct discharge or off-target drift of pesticides upon any bodies of water or critical areas as defined in CMR 01-026, Chapter 10, "Definitions; Sensitive Area."

**SECTION 5. VARIANCES FROM STANDARDS**

A. Variance Permit Application

An applicator may vary from any of the standards imposed under this chapter by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:

- I. The name, address, and telephone number of the applicant;
- II. The area(s) where pesticides will be applied;
- III. The type(s) of pesticides to be applied;
- IV. The purpose for which the pesticide application(s) will be made;
- V. The approximate date(s) of anticipated spray activities;
- VI. The type(s) of spray equipment to be employed;
- VII. The particular standards from which the applicant seeks a variance;
- VIII. The particular reasons why the applicant seeks a variance from such standards, including a detailed description of the techniques to be employed to assure a reasonably equivalent degree of protection and of the monitoring efforts to be made to assure such protection;

- IX. The names and addresses of all owners or lessees of land within 500 feet of the proposed spray activity, and evidence that such persons have been notified of the application. The Board may waive this requirement where compliance would be unduly burdensome and the applicant attempts to notify affected persons in the community by another means which the Board finds reasonable.
- B. Board Review; Legal Effect of Permit, Delegation of Authority to Staff
- I. Within 60 days after a complete application is submitted, the Board shall issue a permit if it finds that the applicant will achieve a substantially equivalent degree of protection as adherence to the requirements of this chapter would provide and will conduct spray activities in a manner which protects human health and the environment. Such permit shall authorize a variance only from those particular standards for which variance is expressly requested in the application and is expressly granted in the permit. The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as conditioned in the permit, the applicant shall undertake spray activities in accordance with all of the procedures described in the application 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.
- II. The Board may delegate authority to review applications and issue permits to the staff as it feels appropriate. All conditions and limitations as described in Section 5(B) I shall remain in effect for permits issued by the staff. If the staff does not grant the variance permit, the applicator may petition the Board for exemption following the requirements set forth in 22 MRSA §1471-T, "Exemptions."

## SECTION 6. EMERGENCIES

- A. In the event that severe pest or weather conditions threaten to cause a ~~public health emergency as determined by the Commissioner of the Maine Department of Health and Human Services, or a threat of significant natural resource and/or economic loss, as determined by either the Commissioner of the Maine Department of Agriculture, Conservation and Forestry or the Commissioner of the Maine Department of Agriculture, Food and Rural Resources, the specified requirements contained in Section 3 of this Chapter shall be waived, subject to the following conditions:~~
- I. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.
- II. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 3 of this Chapter,
- III. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aerial application in the affected regions and the approximate dates that the emergency may continue.

- IV. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 3 that will be waived.
- V. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 3 and minimize off-target drift to Sensitive Areas.

B. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government sponsored vector control programs are exempt from Sections 2C, 2D, 3B, 3C, 3D, 3E and 4 of this chapter, provided that reasonable efforts are made to avoid spraying non-target areas.

June 12, 2009 amendments become effective on January 1, 2010

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STATUTORY AUTHORITY: 7 M.R.S.A. §606(2)(G):  
22 M.R.S.A. §1471-M(2)(D)

EFFECTIVE DATE:  
January 1, 1988

AMENDED:  
October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):  
March 1, 1997

AMENDED:  
September 22, 1998 - also converted to MS Word  
January 4, 2005 – filing 2004-603 affecting Section 3.B.II.(iii)  
January 1, 2010 by request of agency in filing 2009-252

**BASIS STATEMENT FOR ADOPTION OF  
CMR 01-026 CHAPTER 22—STANDARDS FOR OUTDOOR APPLICATION OF  
PESTICIDES BY POWERED EQUIPMENT IN ORDER TO MINIMIZE OFF-TARGET  
DEPOSITION**

**Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 22 imposes operational standards that would be impractical for wide-area programs conducted in residential areas.

The amendments to Chapter 22 originally exempted wide-area vector control programs from the entire chapter. Some comments received during the comment period suggested that certain portions of Chapter 22 were appropriate and feasible for public health related mosquito control programs. The Board agreed that there was some value to retaining some of the requirements in Chapter 22 and revised the proposed amendments consistent with the comments. Notably the Equipment standards, Weather Condition standards, and Positive Identification of Target Site were retained. The sections to be exempted include Identifying and Recording Sensitive Areas, Presence of Humans and Animals, and certain specifics of Site Plans, which would not be practical in an emergency situation.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

**Findings of Emergency**

The Board finds that the potential hazard arising from a mosquito-borne disease outbreak in Maine involving either West Nile Virus or Eastern Equine Encephalitis poses an imminent threat to public health, safety and welfare, thus creating an emergency within the meaning of 5 M.R.S. §8054. Consequently, the Board determined it was appropriate to promulgate an emergency rule under 5 M.R.S. §8052 in case the need for spraying arises during the summer or fall of 2013, since legislative review of the proposed amendments will not occur until the winter of 2014.

**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 22—Standards for Outdoor Application of Pesticides by powered Equipment in Order to Minimize Off-Target Deposition

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

Small businesses that contract for mosquito control work may benefit from the proposed amendments. There may be as many as 200 such businesses.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

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

The proposed amendments would reduce the administrative burden on small businesses.

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

Since there are no anticipated impacts on small businesses, there are no less intrusive or less costly alternatives.



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

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 51: NOTICE OF AERIAL PESTICIDE APPLICATIONS**

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

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

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

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

## **Section II. Forest Insect Applications**

### **A. Responsible Parties**

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

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

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

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

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

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

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

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

### **Section III. Ornamental Plant Applications**

#### **A. Responsible Parties**

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

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

1. An article about/advertisement of ornamental plant aerial pesticide applications shall be published in a paper of general circulation in the affected area at least 3 days but not more than 60 days prior to the commencement of the intended spray

activity. The article/ advertisement shall contain the information required in section I(A) and (B) and shall not be limited to a legal notice.

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

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

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

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

**A. Responsible Parties**

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

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

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

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

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

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

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

**Section V. Biting Fly and Public Health Pest Applications**

**A. Responsible Parties**

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

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

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

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

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

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

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

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

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

**1. Written notice to the Board**

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

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

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

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

## Section VII. ~~Variances From Notice Requirements~~ Emergencies

### A. ~~*[Repealed by sunset provision, April 19, 1996.]*~~ Disease Vectors

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

### B. Other Emergencies

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

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



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

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

EFFECTIVE DATE:

August 12, 1985

AMENDED:

May 19, 1991

April 8, 1992

April 19, 1994

October 2, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998 - inserted "residential rental," in II(B)(4), III(B)(2), IV(B)(2), V(B)(2), VI(B)(1)(e); conversion to MS Word 2.0.

March 5, 2003 - VI(A), filing 2003-62

July 11, 2012 - spelling correction in Section 2(B)(3)

**BASIS STATEMENT FOR ADOPTION OF  
CMR 026-01, CHAPTER 51—NOTICE OF AERIAL PESTICIDE APPLICATIONS**

**Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law.

Chapter 51 details requirements for notice of aerial applications. Originally, the intent of the Board was to exempt government-sponsored, wide-area vector control programs from the entire chapter because notice requirements are included in Chapter 20 in lieu of individual notification. Comments received during comment period suggested that certain elements of Chapter 51 were still feasible. The Board agreed with those comments and revised its proposed amendments consistent with the comments. Notably, the Board decided there was value in retaining the requirement for notice to the Board and Maine Poison Control Center as described in the chapter.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

**Findings of Emergency**

The Board finds that the potential hazard arising from a mosquito-borne disease outbreak in Maine involving either West Nile Virus or Eastern Equine Encephalitis poses an imminent threat to public health, safety and welfare, thus creating an emergency within the meaning of 5 M.R.S. §8054. Consequently, the Board determined it was appropriate to promulgate an emergency rule under 5 M.R.S. §8052 in case the need for spraying arises during the summer or fall of 2013, since legislative review of the proposed amendments will not occur until the winter of 2014.

**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 51—Notice of Aerial Pesticide Applications

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

There are currently two companies that contract to make aerial pesticide applications in Maine that might benefit from the proposed amendments.

### **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**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

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

The proposed amendments would reduce the administrative burdens on small businesses.

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

Since there are no anticipated impacts on small businesses, there are no less intrusive or less costly alternatives.

## **Proposed Administrative Consent Agreement Background Summary**

**Subject:** TruGreen Lawncare  
2 Delta Drive  
Westbrook, Maine 04092

**Date of Incident(s):** July 20, 2012

**Background Narrative:** On July 20, 2012, the Board received a complaint call from a Westbrook resident. The caller said he was an ex-customer of TruGreen Lawncare, but cancelled their services in 2010. TruGreen Lawncare continued to solicit him as a customer. He never responded. The Westbrook resident and his wife returned home on July 20, 2012, and his lawn was posted with TruGreen Lawncare pesticide signs. The posted signs and paper work left by TruGreen indicated that TruGreen made a preventative grub application of Merit 0.2% Plus Turf Fertilizer to the lawn.

**Summary of Violation(s):** CMR 01-026 Chapter 20 Section 6(B) requires prior consent from the property owner before a person can apply pesticides to the property of another.

**Rationale for Settlement:** The staff compared the violation to similar cases settled by the Board and the Company's violation history in formulating a penalty proposal.

**Attachments:** Proposed Consent Agreement

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

APR 16 2013

CHK#  
21907607  
CHK date:  
3-25-13  
Amount:  
\$ 2,000.-

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

This Agreement by and between TruGreen Lawncare (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998.

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 15084 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
2. That on July 23, 2012, Paul Willey, a previous customer of the Company, called the Board to report that the Company made an unauthorized pesticide application to his lawn at 64 Kennard Street in Westbrook on July 20, 2012.
3. That in response to the call in paragraph two, a Board inspector conducted a follow-up inspection with Becky Miller, who works in commercial customer service for the Company, on July 25, 2012. The inspector also spoke with Michael Basso, the Company manager.
4. That from the inspection in paragraph three, it was determined that Company applicator Robert Sirois (license COA 46496) applied Merit 0.2 Plus Fertilizer, EPA # 432-1349-10404, to Willey's lawn at 64 Kennard Street on July 20, 2012.
5. That Basso told the inspector that Willey had been a Company customer, but cancelled the Company's services in 2010. The Company subsequently bought out another lawn care company (The Turf Doctor) in the Portland area. Basso said Willey was a customer of the Turf Doctor and the Company simply made the application the Turf Doctor had already scheduled with Willey.
6. That the Board inspector contacted Willey about the incident. Willey told the inspector the he never hired the Turf Doctor directly. Willey further indicated that he hired a landscaper a couple of years ago (at least two) and that landscaper may have subcontracted some of the work to The Turf Doctor. Willey emphasized that he had no direct contact with the Turf Doctor and never authorized them to do any work.
7. That during the inspection in paragraph three the Company could not document that they had authorization to make the July 20, 2012, pesticide application to Willey's lawn.
8. That CMR 01-026 Chapter 20 Section 6(B) requires prior consent from the property owner before a person can apply pesticides to the property of another.
9. That the Company did not have Willey's consent for the July 20, 2012, application of pesticide to his property.

10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026 Chapter 20 Section 6(B).
11. That the Company entered into an Administrative Consent Agreement with the Board for an unauthorized application of pesticide made on August 2, 2012. That the Company entered into an Administrative Consent Agreement with the Board for insufficient notification to two people when pesticide applications were made on June 19, June 20, and June 26, in 2009. The Company also entered into an Administrative Consent Agreement with the Board on June 28, 2012, for not providing notification to a registry member for applications made on May 2, and June 8, 2012. Consequently, the violation described in paragraph ten is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(A).
12. That the Board has regulatory authority over the activities described herein.
13. 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.
14. That this Agreement shall not become effective unless and until the Board accepts it.

That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph ten, the Company agrees to pay a penalty to the State of Maine in the sum of \$2,000.00. (Please make checks payable to Treasurer, State of Maine). In addition the Company will submit a written plan or policy to the Board specifying how they will avoid future pesticide applications to properties without the owners' consent. The written plan or policy must be submitted at the same time the Company signs and submits this Consent Agreement to the Board.

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

**TRUGREEN LAWNCARE**

By:  Date: 4/11/2013

Type or Print Name: Michael T Bassi

**BOARD OF PESTICIDES CONTROL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Henry Jennings, Director

**APPROVED:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mark Randlett, Assistant Attorney General



## Maine Customer Renewal Process-2013

We will use the following process before applying pesticides to any customer in 2013.

1. Any customer who has pre-paid for services will be considered renewed for 2013.
2. Customers who have returned signed mail cards will be considered renewed for 2013.
3. Emails or faxes from customers with the form below will be considered renewed for 2013.
4. If we have not received renewals outlined in steps 1-3 we will call customers and record the following information.

Date and time of the call, name of the person agreeing to the service, name of our representative.

Phone Script-“Thank you for using Trugreen last season. We are calling to inform you that we may need to use pest control measures this season and to get your approval if they are needed to be used. Examples of these would be weed, insect or disease controls for your lawn or landscape. These products may be used during 2013 unless sooner terminated by you or us. Thank you, we will see you in the Spring.”

All customers will be called before each service by an automated calling system referred to as “Trudy”.

*Michael Bass*

*4/12/2013*

*Michael Bass*

*4/12/2013*

STATE OF MAINE

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IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

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H.P. 201 - L.D. 292

**Resolve, Directing the Department of Agriculture, Conservation and Forestry To Develop a Plan for the Protection of the Public Health from Mosquito-borne Diseases**

**Sec. 1. Department of Agriculture, Conservation and Forestry to develop a plan for the protection of the public health from mosquito-borne diseases.**

**Resolved:** That the Department of Agriculture, Conservation and Forestry is directed to develop, within existing resources, a plan for the protection of the public health from mosquito-borne diseases, in cooperation with appropriate personnel from the Department of Health and Human Services and with other state agencies as may be necessary. In developing this plan, the department shall consider, at a minimum, the ecological and economic impacts of proposed methods of controlling mosquitoes and preventing their breeding. These proposed methods must include integrated pest management techniques and other science-based technology that minimizes the risks of pesticide use to humans and the environment. The department shall include in the plan the criteria for declaring a mosquito-borne disease public health threat, the elements of a response to such a threat and a description of the lines of authority and responsibilities during a public health threat; and be it further

**Sec. 2. Report. Resolved:** That the Department of Agriculture, Conservation and Forestry shall report on its plan for protecting the public health from mosquito-borne diseases to the Joint Standing Committee on Agriculture, Conservation and Forestry by December 15, 2013. The Joint Standing Committee on Agriculture, Conservation and Forestry may report out a bill on the plan for the protection of the public health from mosquito-borne diseases to the Second Regular Session of the 126th Legislature.





# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 718

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H.P. 490

House of Representatives, February 26, 2013

### **An Act To Protect Maine Food Consumers' Right To Know about Genetically Engineered Food and Seed Stock**

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Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative HARVELL of Farmington.  
Cosponsored by Senator JOHNSON of Lincoln, Senator CAIN of Penobscot and  
Representatives: BEAR of the Houlton Band of Maliseet Indians, BEAUDOIN of Biddeford, BEAULIEU of Auburn, BECK of Waterville, BENNETT of Kennebunk, BERRY of Bowdoinham, BOLAND of Sanford, BRIGGS of Mexico, BROOKS of Winterport, CAMPBELL of Newfield, CAREY of Lewiston, CASAVANT of Biddeford, CHAPMAN of Brooksville, CHASE of Wells, CHIPMAN of Portland, COTTA of China, CRAFTS of Lisbon, DAUGHTRY of Brunswick, DAVIS of Sangerville, DeCHANT of Bath, DICKERSON of Rockland, DION of Portland, DOAK of Columbia Falls, DUNPHY of Embden, ESPLING of New Gloucester, EVANGELOS of Friendship, FARNSWORTH of Portland, FOWLE of Vassalboro, GIDEON of Freeport, GILBERT of Jay, GILLWAY of Searsport, GOODE of Bangor, GRAHAM of North Yarmouth, GRANT of Gardiner, GUERIN of Glenburn, HAMANN of South Portland, HARLOW of Portland, HICKMAN of Winthrop, HOBBS of Saco, HUBBELL of Bar Harbor, JOHNSON of Greenville, JONES of Freedom, JORGENSEN of Portland, KENT of Woolwich, KESCHL of Belgrade, KINNEY of Limington, KNIGHT of Livermore Falls, KRUGER of Thomaston, KUMIEGA of Deer Isle, KUSIAK of Fairfield, LAJOIE of Lewiston, LIBBY of Lewiston, LONGSTAFF of Waterville, MacDONALD of Old Orchard Beach, MacDONALD of Boothbay, MAKER of Calais, MALABY of Hancock, MASTRACCIO of Sanford, McCABE of Skowhegan, McCLELLAN of Raymond, McGOWAN of York, McLEAN of Gorham, MONAGHAN-DERRIG of Cape Elizabeth, MOONEN of Portland, MORIARTY of Cumberland, MORRISON of South Portland, NADEAU of Winslow, NELSON of Falmouth, NEWENDYKE of Litchfield, PARRY of Arundel, PEAHEY HASKELL of Milford, PEOPLES of Westbrook, PETERSON of Rumford, PLANTE of Berwick, POULIOT of Augusta, POWERS of Naples, RANKIN of Hiram, REED of Carmel, ROCHELO of Biddeford, RUSSELL of Portland, RYKERSON of Kittery, SANBORN of Gorham, SANDERSON of Chelsea, SCHNECK of Bangor, SHAW of Standish, SHORT of Pittsfield, SIROCKI of Scarborough, SOCTOMAH of the Passamaquoddy Tribe, STANLEY of Medway, STUCKEY of Portland, TIPPING-SPITZ of Orono, TREAT of Hallowell, TURNER of Burlington, TYLER of Windham, VILLA of Harrison, VOLK of Scarborough, WALLACE of Dexter, WEAVER of York, WELSH of Rockport, WERTS of Auburn, WILSON of Augusta, WINCHENBACH of Waldoboro, Senators: President ALFOND of Cumberland, BOYLE of Cumberland, COLLINS of York, CRAVEN of Androscoggin, DUTREMBLE of York, GERZOFKY of Cumberland, GRATWICK of Penobscot, HAMPER of Oxford, HASKELL of Cumberland, HILL of York, JACKSON of Aroostook, LACHOWICZ of Kennebec, LANGLEY of Hancock, MAZUREK of Knox, MILLETT of Cumberland, PATRICK of Oxford, PLUMMER of Cumberland, TUTTLE of York, WHITTEMORE of Somerset.

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

2 **Sec. 1. 22 MRSA c. 565** is enacted to read:

3 **CHAPTER 565**

4 **GENETICALLY ENGINEERED PRODUCTS**

5 **§2591. Definitions**

6 As used in this chapter, unless the context otherwise indicates, the following terms  
7 have the following meanings.

8 **1. Commissioner.** "Commissioner" means the Commissioner of Agriculture,  
9 Conservation and Forestry.

10 **2. Genetically engineered.** "Genetically engineered" has the same meaning as  
11 under Title 7, section 1051, subsection 2.

12 **3. Medical food.** "Medical food" means food prescribed by a physician for  
13 treatment of a medical condition.

14 **§2592. Disclosure requirements for genetically engineered food**

15 **1. Disclosure.** Beginning 18 months after the effective date of this section, any food  
16 or seed stock offered for retail sale that is genetically engineered must be accompanied by  
17 a conspicuous disclosure that states "Produced with Genetic Engineering." The statement  
18 must be located on the package for all packaged food or seed stock or, in the case of  
19 unpackaged food or seed stock, on a card or label on the store shelf or bin in which the  
20 food or seed stock is displayed.

21 **2. Use of term "natural."** A food or seed stock that is subject to disclosure under  
22 subsection 1 may not be described on the label or by similar identification as "natural."

23 **3. Misbranding.** Any food or seed stock that is genetically engineered that does not  
24 display the disclosure required under subsection 1 or that is labeled or identified as  
25 natural in violation of subsection 2 is considered misbranded for the purposes of chapter  
26 551, subchapter 1 except that:

27 **A.** A food or seed stock is not considered misbranded if the food or seed stock is  
28 produced by a person who:

29 (1) Grows, raises or otherwise produces that food or seed stock without  
30 knowledge that the food or seed stock was created from other seed or other food  
31 that was genetically engineered; and

32 (2) Obtains a sworn statement from the person from whom the food or seed  
33 stock was obtained that the food or seed stock was not knowingly genetically  
34 engineered and was segregated from and not knowingly commingled with a food  
35 or seed stock component that may have been genetically engineered;

1 B. A food product derived from an animal is not considered misbranded if the animal  
2 was not genetically engineered but was fed genetically engineered feed; and

3 C. Until July 1, 2019, a packaged processed food is not considered misbranded if the  
4 total weight of the processed food that was genetically engineered is less than 0.9%  
5 of the total weight of the processed food.

6 **4. Rules.** The commissioner may adopt routine technical rules under Title 5, chapter  
7 375, subchapter 2-A for the administration and enforcement of this chapter.

8 **§2593. Third-party protection**

9 **1. Reliance on affidavit.** A distributor or retailer that sells or advertises food or  
10 seed stock that is genetically engineered that fails to make the disclosure required under  
11 section 2592, subsection 1 is not subject to liability in any civil action to enforce this  
12 chapter if the distributor or retailer relied on the affidavit under section 2595 provided by  
13 the producer or grower stating that the food or seed stock is not subject to the disclosure  
14 requirements under this chapter.

15 **2. Restaurants.** Restaurants are exempt from the disclosure requirements of this  
16 chapter.

17 **3. Exempt products.** Alcoholic beverages and medical food are exempt from the  
18 disclosure requirements of this chapter.

19 **§2594. Enforcement**

20 **1. Authority.** The commissioner shall enforce this chapter in the same manner as is  
21 authorized for enforcement of chapter 551, subchapter 1.

22 **2. No private right.** There is no private right of action to enforce this chapter.

23 **3. Penalty.** A person who violates this chapter commits a civil violation for which a  
24 fine may be assessed that may not exceed \$1,000 per day per misbranded product per  
25 sales location.

26 **§2595. Affidavit**

27 The commissioner shall develop an affidavit form that may be provided by a  
28 producer or grower of food or seed stock to distributors and retailers and that may be  
29 included in shipments of food or seed stock within the State certifying that the food or  
30 seed stock being sold or shipped is not subject to the disclosure requirements of this  
31 chapter.

32 **Sec. 2. Contingent effective date; contingent repeal.** The Commissioner of  
33 Agriculture, Conservation and Forestry shall monitor legislative activities in other states  
34 and certify to the Secretary of State and the Revisor of Statutes when legislation  
35 substantially similar to this Act has been adopted in at least 5 other states or in a state or  
36 states with a population or combined population of at least 20,000,000. Those sections of  
37 this Act that enact the Maine Revised Statutes, Title 22, chapter 565 take effect 30 days  
38 after the date of the commissioner's certification. If no certification has been made by the

1 commissioner pursuant to this section by January 1, 2023, this Act is repealed on that  
2 date.

3

### **SUMMARY**

4 This bill requires disclosure of genetic engineering at the point of retail sale of food  
5 and seed stock and provides that food or seed stock for which the disclosure is not made  
6 is considered to be misbranded and subject to the sanctions for misbranding. The bill  
7 provides that food or seed stock may not be labeled as natural if it has been genetically  
8 engineered. The bill exempts products produced without knowledge that the products, or  
9 items used in their production, were genetically engineered; animal products derived from  
10 an animal that was not genetically engineered but was fed genetically engineered food;  
11 and products with only a minimum content produced by genetic engineering. The bill  
12 also provides that the disclosure requirements do not apply to restaurants, alcoholic  
13 beverages or medical food. The disclosure provisions are administered by the  
14 Department of Agriculture, Conservation and Forestry.



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1430

S.P. 516

In Senate, April 23, 2013

### An Act To Clarify the Permitted Use of Aquatic Pesticides

---

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.

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

2 **Sec. 1. 38 MRSA §464, sub-§4, ¶A,** as amended by PL 2007, c. 291, §1, is  
3 further amended to read:

4 A. Notwithstanding section 414-A, the department may not issue a water discharge  
5 license for any of the following discharges:

6 (1) Direct discharge of pollutants to waters having a drainage area of less than 10  
7 square miles, except that:

8 (a) Discharges into these waters that were licensed prior to January 1, 1986  
9 are allowed to continue only until practical alternatives exist;

10 (b) Storm water discharges in compliance with state and local requirements  
11 are exempt from this subparagraph;

12 (c) Aquatic pesticide or chemical discharges approved by the department and  
13 conducted by the department, the Department of Inland Fisheries and  
14 Wildlife or an agent of either agency for the purpose of restoring biological  
15 communities affected by an invasive species are exempt from this  
16 subparagraph;

17 (d) Chemical discharges for the purpose of restoring water quality in GPA  
18 waters approved by the department are exempt from this subparagraph; ~~and~~

19 (e) Discharges of aquatic pesticides approved by the department for the  
20 control of mosquito-borne diseases in the interest of public health and safety  
21 using materials and methods that provide for protection of nontarget species  
22 are exempt from this subparagraph. When the department issues a license for  
23 the discharge of aquatic pesticides authorized under this division, the  
24 department shall notify the municipality in which the application is licensed  
25 to occur and post the notice on the department's publicly accessible website;  
26 and

27 (f) Discharges of pesticides approved by the department are exempt from  
28 this subparagraph that are:

29 (i) Unintended and an incidental result of the spraying of pesticides;

30 (ii) Applied in compliance with federal labeling restrictions; and

31 (iii) Applied in compliance with statute, Board of Pesticides Control  
32 rules and best management practices.

33 (2) New direct discharge of domestic pollutants to tributaries of Class-GPA  
34 waters;

35 (3) Any discharge into a tributary of GPA waters that by itself or in combination  
36 with other activities causes water quality degradation that would impair the  
37 characteristics and designated uses of downstream GPA waters or causes an  
38 increase in the trophic state of those GPA waters except for ~~aquatic pesticide or~~  
39 ~~chemical discharges approved by the department and conducted by the~~  
40 ~~department, the Department of Inland Fisheries and Wildlife or an agent of either~~

1 ~~agency for the purpose of restoring biological communities affected by an~~  
2 ~~invasive species in the GPA waters or a tributary to the GPA waters; the~~  
3 ~~following:~~

4 (a) Aquatic pesticide or chemical discharges approved by the department and  
5 conducted by the department, the Department of Inland Fisheries and  
6 Wildlife or an agent of either agency for the purpose of restoring biological  
7 communities affected by an invasive species in the GPA waters or a tributary  
8 to the GPA waters; or

9 (b) Discharges of pesticides approved by the department that are:

10 (i) Unintended and an incidental result of the spraying of pesticides;

11 (ii) Applied in compliance with federal labeling restrictions; and

12 (iii) Applied in compliance with statute, Board of Pesticides Control  
13 rules and best management practices.

14 (4) Discharge of pollutants to waters of the State that imparts color, taste,  
15 turbidity, toxicity, radioactivity or other properties that cause those waters to be  
16 unsuitable for the designated uses and characteristics ascribed to their class;

17 (5) Discharge of pollutants to any water of the State that violates sections 465,  
18 465-A and 465-B, except as provided in section 451; causes the "pH" of fresh  
19 waters to fall outside of the 6.0 to 8.5 range; or causes the "pH" of estuarine and  
20 marine waters to fall outside of the 7.0 to 8.5 range;

21 (6) New discharges of domestic pollutants to the surface waters of the State that  
22 are not conveyed and treated in municipal or quasi-municipal sewage facilities.  
23 For the purposes of this subparagraph, "new discharge" means any overboard  
24 discharge that was not licensed as of June 1, 1987, except discharges from  
25 vessels and those discharges that were in continuous existence for the 12 months  
26 preceding June 1, 1987, as demonstrated by the applicant to the department with  
27 clear and convincing evidence. The volume of the discharge from an overboard  
28 discharge facility that was licensed as of June 1, 1987 is determined by the actual  
29 or estimated volume from the facilities connected to the overboard discharge  
30 facility during the 12 months preceding June 1, 1987 or the volume allowed by  
31 the previous license, whichever is less, unless it is found by the department that  
32 an error was made during prior licensing. The months during which a discharge  
33 may occur from an overboard discharge facility that was licensed as of June 1,  
34 1987 must be determined by the actual use of the facility at the time of the most  
35 recent license application prior to June 1, 1987 or the actual use of the facility  
36 during the 12 months prior to June 1, 1987, whichever is greater. If the  
37 overboard discharge facility was the primary residence of an owner at the time of  
38 the most recent license application prior to June 1, 1987 or during the 12 months  
39 prior to June 1, 1987, then the facility is considered a year-round residence.  
40 "Year-round residence" means a facility that is continuously used for more than 8  
41 months of the year. For purposes of licensing, the department shall treat an  
42 increase in the licensed volume or quantity of an existing discharge or an  
43 expansion in the months during which the discharge takes place as a new  
44 discharge of domestic pollutants;

1 (7) After the Administrator of the United States Environmental Protection  
2 Agency ceases issuing permits for discharges of pollutants to waters of this State  
3 pursuant to the administrator's authority under the Federal Water Pollution  
4 Control Act, Section 402(c)(1), any proposed license to which the administrator  
5 has formally objected under 40 Code of Federal Regulations, Section 123.44, as  
6 amended, or any license that would not provide for compliance with applicable  
7 requirements of that Act or regulations adopted thereunder;

8 (8) Discharges for which the imposition of conditions can not ensure compliance  
9 with applicable water quality requirements of this State or another state;

10 (9) Discharges that would, in the judgment of the Secretary of the United States  
11 Army, substantially impair anchorage or navigation;

12 (10) Discharges that would be inconsistent with a plan or plan amendment  
13 approved under the Federal Water Pollution Control Act, Section 208(b); and

14 (11) Discharges that would cause unreasonable degradation of marine waters or  
15 when insufficient information exists to make a reasonable judgment whether the  
16 discharge would cause unreasonable degradation of marine waters.

17 Notwithstanding subparagraph (6), the department may issue a wastewater discharge  
18 license allowing for an increase in the volume or quantity of discharges of domestic  
19 pollutants from any university, college or school administrative unit sewage facility,  
20 as long as the university, college or school administrative unit has a wastewater  
21 discharge license valid on the effective date of this paragraph and the increase in  
22 discharges does not violate the conditions of subparagraphs (1) to (5) and (7) to (11)  
23 or other applicable laws.

24 **Sec. 2. 38 MRSA §465, sub-§1, ¶C**, as amended by PL 2007, c. 291, §2, is  
25 further amended to read:

26 C. Except as provided in this paragraph, there may be no direct discharge of  
27 pollutants to Class AA waters.

28 (1) Storm water discharges that are in compliance with state and local  
29 requirements are allowed.

30 (2) A discharge to Class AA waters that are or once were populated by a distinct  
31 population segment of Atlantic salmon as determined pursuant to the United  
32 States Endangered Species Act of 1973, Public Law 93-205, as amended, is  
33 allowed if, in addition to satisfying all the requirements of this article, the  
34 applicant, prior to issuance of a discharge license, objectively demonstrates to the  
35 department's satisfaction that the discharge is necessary, that there are no other  
36 reasonable alternatives available and that the discharged effluent is for the  
37 purpose of and will assist in the restoration of Atlantic salmon and will return the  
38 waters to a state that is closer to historically natural chemical quality.

39 (a) The department may issue no more than a total of 3 discharge licenses  
40 pursuant to this subparagraph and subsection 2, paragraph C, subparagraph  
41 (2).



1 (b) A discharge license issued pursuant to this subparagraph may not be  
2 effective for more than 5 years from the date of issuance.

3 (3) Aquatic pesticide or chemical discharges approved by the department and  
4 conducted by the department, the Department of Inland Fisheries and Wildlife or  
5 an agent of either agency for the purpose of restoring biological communities  
6 affected by an invasive species are allowed.

7 (4) Discharges of aquatic pesticides approved by the department for the control of  
8 mosquito-borne diseases in the interest of public health and safety using materials  
9 and methods that provide for protection of nontarget species are allowed. When  
10 the department issues a license for the discharge of aquatic pesticides authorized  
11 under this subparagraph, the department shall notify the municipality in which  
12 the application is licensed to occur and post the notice on the department's  
13 publicly accessible website.

14 (5) Discharges of pesticides approved by the department are allowed that are:

15 (a) Unintended and an incidental result of the spraying of pesticides;

16 (b) Applied in compliance with federal labeling restrictions; and

17 (c) Applied in compliance with statute, Board of Pesticides Control rules and  
18 best management practices.

19 **Sec. 3. 38 MRSA §465, sub-§2, ¶C**, as amended by PL 2007, c. 291, §3, is  
20 further amended to read:

21 C. Except as provided in this paragraph, direct discharges to these waters licensed  
22 after January 1, 1986 are permitted only if, in addition to satisfying all the  
23 requirements of this article, the discharged effluent will be equal to or better than the  
24 existing water quality of the receiving waters. Prior to issuing a discharge license,  
25 the department shall require the applicant to objectively demonstrate to the  
26 department's satisfaction that the discharge is necessary and that there are no other  
27 reasonable alternatives available. Discharges into waters of this classification  
28 licensed prior to January 1, 1986 are allowed to continue only until practical  
29 alternatives exist.

30 (1) This paragraph does not apply to a discharge of storm water that is in  
31 compliance with state and local requirements.

32 (2) This paragraph does not apply to a discharge to Class A waters that are or  
33 once were populated by a distinct population segment of Atlantic salmon as  
34 determined pursuant to the United States Endangered Species Act of 1973, Public  
35 Law 93-205, as amended, if, in addition to satisfying all the requirements of this  
36 article, the applicant, prior to issuance of a discharge license, objectively  
37 demonstrates to the department's satisfaction that the discharge is necessary, that  
38 there are no other reasonable alternatives available and that the discharged  
39 effluent is for the purpose of and will assist in the restoration of Atlantic salmon  
40 and will return the waters to a state that is closer to historically natural chemical  
41 quality.

1 (a) The department may issue no more than a total of 3 discharge licenses  
2 pursuant to this subparagraph and subsection 1, paragraph C, subparagraph  
3 (2).

4 (b) A discharge license issued pursuant to this subparagraph may not be  
5 effective for more than 5 years from the date of issuance.

6 (3) This paragraph does not apply to aquatic pesticide or chemical discharges  
7 approved by the department and conducted by the department, the Department of  
8 Inland Fisheries and Wildlife or an agent of either agency for the purpose of  
9 restoring biological communities affected by an invasive species.

10 (4) For the purpose of allowing the discharge of aquatic pesticides approved by  
11 the department for the control of mosquito-borne diseases in the interest of public  
12 health and safety, the department may find that the discharged effluent will be  
13 equal to or better than the existing water quality of the receiving waters as long as  
14 the materials and methods used provide protection for nontarget species. When  
15 the department issues a license for the discharge of aquatic pesticides authorized  
16 under this subparagraph, the department shall notify the municipality in which  
17 the application is licensed to occur and post the notice on the department's  
18 publicly accessible website.

19 (5) This paragraph does not apply to discharges of pesticides approved by the  
20 department that are:

21 (a) Unintended and an incidental result of the spraying of pesticides;

22 (b) Applied in compliance with federal labeling restrictions; and

23 (c) Applied in compliance with statute, Board of Pesticides Control rules and  
24 best management practices.

25 **Sec. 4. 38 MRSA §465-A, sub-§1, ¶C**, as amended by PL 2007, c. 291, §5, is  
26 further amended to read:

27 C. There may be no new direct discharge of pollutants into Class GPA waters. The  
28 following are exempt from this provision:

29 (1) Chemical discharges for the purpose of restoring water quality approved by  
30 the department;

31 (2) Aquatic pesticide or chemical discharges approved by the department and  
32 conducted by the department, the Department of Inland Fisheries and Wildlife or  
33 an agent of either agency for the purpose of restoring biological communities  
34 affected by an invasive species;

35 (3) Storm water discharges that are in compliance with state and local  
36 requirements; ~~and~~

37 (4) Discharges of aquatic pesticides approved by the department for the control  
38 of mosquito-borne diseases in the interest of public health and safety using  
39 materials and methods that provide for protection of nontarget species. When the  
40 department issues a license for the discharge of aquatic pesticides authorized  
41 under this subparagraph, the department shall notify the municipality in which

1 the application is licensed to occur and post the notice on the department's  
2 publicly accessible website; and

3 (5) Discharges of pesticides approved by the department that are:

4 (a) Unintended and an incidental result of the spraying of pesticides;

5 (b) Applied in compliance with federal labeling restrictions; and

6 (c) Applied in compliance with statute, Board of Pesticides Control rules and  
7 best management practices.

8 Discharges into these waters licensed prior to January 1, 1986 are allowed to continue  
9 only until practical alternatives exist. Materials may not be placed on or removed  
10 from the shores or banks of a Class GPA water body in such a manner that materials  
11 may fall or be washed into the water or that contaminated drainage may flow or leach  
12 into those waters, except as permitted pursuant to section 480-C. A change of land  
13 use in the watershed of a Class GPA water body may not, by itself or in combination  
14 with other activities, cause water quality degradation that impairs the characteristics  
15 and designated uses of downstream GPA waters or causes an increase in the trophic  
16 state of those GPA waters.

17 **Sec. 5. 38 MRSA §465-B, sub-§1, ¶C**, as amended by PL 2009, c. 654, §7, is  
18 further amended to read:

19 C. There may be no direct discharge of pollutants to Class SA waters, except for the  
20 following:

21 (1) Storm water discharges that are in compliance with state and local  
22 requirements;

23 (2) Discharges of aquatic pesticides approved by the department for the control of  
24 mosquito-borne diseases in the interest of public health and safety using materials  
25 and methods that provide for protection of nontarget species. When the  
26 department issues a license for the discharge of aquatic pesticides authorized  
27 under this subparagraph, the department shall notify the municipality in which  
28 the application is licensed to occur and post the notice on the department's  
29 publicly accessible website; ~~and~~

30 (3) An overboard discharge licensed prior to January 1, 1986 if no practicable  
31 alternative exists; and

32 (4) Discharges of pesticides approved by the department that are:

33 (a) Unintended and an incidental result of the spraying of pesticides;

34 (b) Applied in compliance with federal labeling restrictions; and

35 (c) Applied in compliance with statute, Board of Pesticides Control rules and  
36 best management practices.

1

## SUMMARY

2           Due to a federal court decision, all discharges of pesticides to waters of the United  
3 States are now required to obtain a National Pollutant Discharge Elimination System  
4 permit. Previously certain discharges of pesticides were exempt as long as the  
5 application of the pesticide was managed in accordance with the Federal Insecticide,  
6 Fungicide and Rodenticide Act. This bill allows the Department of Environmental  
7 Protection to issue permits for certain discharges of pesticides to Class AA, A, SA and  
8 GPA waters, tributaries of Class GPA waters and waters having a drainage area of less  
9 than 10 square miles where, with limited exceptions, discharges are currently prohibited,  
10 allowing compliance with the federal court decision. The discharges of pesticides that  
11 may be approved under this bill are discharges that are unintended and an incidental  
12 result of the spraying of pesticides, applied in compliance with federal labeling  
13 restrictions and applied in compliance with statute, Board of Pesticides Control rules and  
14 best management practices.



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1531

S.P. 578

In Senate, May 14, 2013

### An Act To Maintain Access to Safe Medical Marijuana

(AFTER DEADLINE)

(EMERGENCY)

---

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the people of Maine voted in support of access for patients to legal and  
4 safe medical marijuana in both 1999 and 2009; and

5           **Whereas,** thousands of Maine residents suffer from one of the debilitating medical  
6 conditions for which medical marijuana is currently allowed for treatment, including  
7 cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune  
8 deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation  
9 of Alzheimer's disease and nail-patella syndrome, among others; and

10           **Whereas,** immediate enactment of this Act is necessary to ensure continued access  
11 to safe medical marijuana for the thousands of Maine patients currently recommended  
12 this medicine; and

13           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
14 the meaning of the Constitution of Maine and require the following legislation as  
15 immediately necessary for the preservation of the public peace, health and safety; now,  
16 therefore,

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

18           **Sec. 1. 22 MRSA §2423-A, sub-§2, ¶B,** as amended by PL 2011, c. 407, Pt. B,  
19 §16, is further amended to read:

20           B. Cultivate up to 6 mature marijuana plants for each qualifying patient who has  
21 designated the primary caregiver to cultivate marijuana on the patient's behalf,  
22 subject to the limitation in subsection 1, paragraph B on the total number of plants  
23 authorized per qualifying patient. A primary caregiver may not use a pesticide on  
24 marijuana being cultivated for a patient unless the pesticide has been approved for  
25 such use by the Department of Agriculture, Conservation and Forestry, Board of  
26 Pesticides Control. A primary caregiver may not cultivate marijuana for a patient  
27 unless the patient has designated the primary caregiver for that purpose and the  
28 patient has not designated a registered dispensary to cultivate marijuana for the  
29 patient's medical use. In addition to the marijuana plants otherwise authorized under  
30 this paragraph, a primary caregiver may have harvested marijuana plants in varying  
31 stages of processing in order to ensure the primary caregiver is able to meet the needs  
32 of the primary caregiver's qualifying patients;

33           **Sec. 2. 22 MRSA §2428, sub-§9, ¶G** is enacted to read:

34           G. A dispensary may not use a pesticide on marijuana being cultivated for a patient  
35 unless the pesticide has been approved for such use by the Department of  
36 Agriculture, Conservation and Forestry, Board of Pesticides Control.

37           **Sec. 3. Authorized pesticides for use in medical marijuana cultivation.**  
38 The Department of Agriculture, Conservation and Forestry, Board of Pesticides Control  
39 shall establish and make publicly available a list of minimum risk pesticides authorized

1 for use in the cultivation of medical marijuana. The authorized pesticides must be  
2 exempt from federal regulation under the Federal Insecticide, Fungicide and Rodenticide  
3 Act, Section 25(b). The board shall publish the list no later than 30 days following the  
4 effective date of this section. Action taken by the board pursuant to this section is not  
5 rulemaking for purposes of the Maine Revised Statutes, Title 5, chapter 375.

6 **Emergency clause.** In view of the emergency cited in the preamble, this  
7 legislation takes effect when approved.

8 **SUMMARY**

9 This bill prohibits the use of pesticides in the cultivation of medical marijuana unless  
10 the pesticide is authorized by the Department of Agriculture, Conservation and Forestry,  
11 Board of Pesticides Control. The bill directs the board to establish, for authorized use in  
12 the cultivation of medical marijuana, a list of minimum risk pesticides that are exempt  
13 from federal regulation under the Federal Insecticide, Fungicide and Rodenticide Act,  
14 Section 25(b).



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
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: Members of Joint Standing Committee on Agriculture, Forestry and Conservation  
FROM: Lebelle Hicks PhD, DABT  
RE: Questions from the work session on LD 718 Thursday May 2<sup>nd</sup>, Survey of the literature

May 10, 2013

\*\*\*\*\*

During and following the recent work session several questions were raised by members of the Joint Standing Committee on Agriculture Forestry and Conservation. The questions addressed the potential allergenicity of Bt-corn varieties, the question of purified cooking oils as potential sources for proteins which may be allergenic and the source of the herbicide resistance genes.

**Corn Allergies**

Corn may cause allergic reactions following exposure via skin (corn starch based powders in latex gloves), lungs (farmers and corn processors including bakers) and food. The scope of this review is food allergies from corn (or soybeans) with special emphasis on studies where corn food allergies were evaluated and genetically modified corn and appropriate varieties were compared.

Food allergies, including corn, are commonly brought on by IgE (immunoglobulin E). These reactions require an exposure followed by sensitization reactions. Reactions resulting from exposure to corn in sensitized individuals range from urticarial (hives, wheals and itching) to anaphylaxis (whole body histamine reaction, life threatening). The first report of corn induced anaphylaxis was reported in 1984 (Scibilia *et al.*, 2008).

Current research into corn allergies is attempting to identify the proteins involved in the allergic reaction, followed by determining if the allergenic proteins are amplified in the GMO corn varieties or if the proteins added during the genetic engineering process are allergenic in their own right.

People who have allergic reactions to corn products are identified by clinical tests. These tests include the skin prick test and the double blind placebo control dietary challenge. In test tubes blood from these positive individuals react with proteins obtained from the food causing the allergy and are considered IgE reactive.

Two types of corn preparations are used to determine IgE reactivity, extracts from the corn containing the mix of proteins present and purified proteins known to be present in the GMO corn varieties. The proteins may be purified from the corn extracts using biochemical techniques or they may be formed from DNA specific for the proteins.

If a protein extract or a purified protein binds to the IgE from the sera of sensitized patients, then that protein is recognized as an allergen. The tests which have been performed for the Bt-corn proteins are summarized in Appendix I. Table 1. In no instances were extracts from GMO corn or purified GMO



proteins found to specifically bind to IgE from the sera of either food allergic or specifically corn allergic individuals. *However, not all of the GMO proteins in currently available GMO corn have been tested in these assays.* When the blood was obtained from individuals allergic to corn there was binding to IgE, the patterns of binding for GMO was virtually identical to non-GMO corn (Batista *et al.*, 2005, Takagi *et al.*, 2006, Nakajima *et al.*, 2007, Nakajima *et al.*, 2010).

### **Contamination of Cooking oils with Proteins**

One study was identified where purified cooking oils were evaluated for protein content. Proteins of a size which could be allergenic were identified from two samples of soybean oil, two samples of corn oil, one sample of peanut oil and one sample of sunflower oil. The only protein sample from the oils which contained allergens was peanut oil (Ramazzotti *et al.*, 2008).

### **Source of the Genes for Herbicide Resistance**

The glyphosate (CAS# 1071-83-6) mode of action in plants is the inhibition of the 5-enolpyruvylshikimate-3-phosphate (EPSP) synthase, an enzyme necessary for the formation of aromatic amino acids (Herbicide Resistance Action Committee (HRAC) and Weed Science Society of America (WSSA) 2013 at [wssa.net/wp-content/uploads/HerbicideMOAClassification.pdf](http://wssa.net/wp-content/uploads/HerbicideMOAClassification.pdf)). The Roundup Ready gene codes for a glyphosate tolerant enzyme 5-enolpyruvylshikimate-3-phosphatase protein. The source of the Roundup Ready gene is *Agrobacterium* sp Strain CP4. Shorthand for this protein is CP4 EPSPS (Jennings *et al.*, 2013).

The Liberty Link, herbicide resistance gene codes for resistance to glufosinate herbicides. It was obtained from *Streptomyces hygroscopicus* (Thompson *et al.*, 1987, Sutton *et al.*, 2003). This bacterium is the source of multiple antibiotics and the naturally occurring herbicide, bialaphos (Thompson *et al.*, 1987), not registered in the US (NPSIRS 2013). Bialaphos (CAS# 35597-43-4) is a three amino acid peptide and contains the modified glutamic acid residue called phosphinothricin. The ammonium salt of phosphinothricin is also known as glufosinate-ammonium (CAS# 77182-82-2) and marketed as Liberty herbicide. Glufosinate-ammonium inhibits glutamine synthetase in plants and bacteria (Thompson *et al.*, 1987).

**Appendix I Table1. GMO Corn Extracts and Proteins, Results of Testing for Allergenicity**

| <b>Test Sample (registration status in Maine)</b>   | <b>Protein(s)</b>        | <b>Function</b>                              | <b>Assay</b>                  | <b>n</b>   | <b>Positive</b> | <b>Negative</b> | <b>Reference</b>            |
|---|--------------------------|--|-------------------------------|------------|-----------------|-----------------|-----------------------------|
| Bt11 Corn protein extract (currently registered)    | Cry1Ab                   | Insect resistance lepidoptera <sup>(a)</sup> | Skin Prick Test               | 27         | 0               | 27              | Batista <i>et al</i> , 2005 |
|   | LL <sup>(b)</sup>        | Herbicide resistance                         |                               |            |                 |                 |                             |
|   | PAT <sup>(c)</sup>       | Antibiotic resistance marker                 |                               |            |                 |                 |                             |
| Bt176 Corn-protein extract (never registered)       | Cry1Ab                   | Insect resistance lepidoptera                |                               | 27         | 0               | 27              |                             |
|   | LL                       | Herbicide resistance                         |                               |            |                 |                 |                             |
|   | PAT                      | Antibiotic resistance marker                 |                               |            |                 |                 |                             |
| T25 Corn- Protein Extract (not a pesticide)         | LL                       | Herbicide resistance                         |                               | 50         | 0               | 50              |                             |
|   | PAT                      | Antibiotic resistance marker                 |                               |            |                 |                 |                             |
| MON810 Corn- protein extract (currently registered) | Cry1Ab                   | Insect resistance lepidoptera                | 50                            | 0          | 50              |                 |                             |
| Roundup Ready Soy-protein extract (not a pesticide) | CP4 EPSPS <sup>(c)</sup> | Herbicide resistance glyphosate              | 27                            | 0          | 27              |                 |                             |
| Purified proteins (found in GMO corn)               | Cry1Ab                   | Insect resistance lepidoptera                | Skin prick test               | 77         | 0               | 77              |                             |
|   |                          |  | IgE <sup>(d)</sup> reactivity | 57         | 0               | 57              |                             |
|   | PAT                      | Antibiotic resistance protein                | Skin prick test               | 77         | 0               | 57              |                             |
|   |                          |  | IgE reactivity                | 57         | 0               | 57              |                             |
|   | CP4 EPSPS                | Herbicide resistance                         | Skin prick test               | 27         | 0               | 27              |                             |
|   |                          |  | IgE reactivity                | Not tested |                 |                 |                             |

**Appendix I Table1. GMO Corn Extracts and Proteins, Results of Testing for Allergenicity**

| <b>Test Sample (registration status in Maine)</b>            | <b>Protein(s)</b> | <b>Function</b>               | <b>Assay</b>                          | <b>n</b>  | <b>Positive</b> | <b>Negative</b> | <b>Reference</b>              |
|--|-------------------|-------------------------------|---------------------------------------|---|-----------------|-----------------|-------------------------------|
| Purified proteins (never registered)                         | Cry9C             | Insect resistance lepidoptera | IgE reactivity                        | 140   | 0               | 140             | Takagi <i>et al.</i> , 2006   |
| Purified proteins (found in GMO corn registered)             | PAT               | Antibiotic resistance protein | IgE reactivity                        | 151   | 0               | 151             |                               |
| Purified proteins (found in GMO corn registered)             | CP4 EPSPS         | Herbicide Resistance          | IgE reactivity                        | 132   | 0               | 132             |                               |
| MON810 Corn- protein extract (currently registered)          | Cry1Ab            | Insect resistance lepidoptera | Staining patterns on a separation gel | Virtually identical; GMO corn extract and isoline extract |                 |                 | Nakajima <i>et al.</i> , 2007 |
| Purified protein (found in corn registered in Maine)         | Cry1Ab            | Insect resistance lepidoptera | IgE reactivity                        | 44  | 0               | 44              |                               |
| MON863 Corn- protein extract (currently registered in Maine) | Cry3Bb1           | Insect resistance rootworms   | Staining patterns on a separation gel | Virtually identical; GMO corn extract and isoline extract |                 |                 | Nakajima <i>et al.</i> , 2010 |
| Purified protein (found in corn registered in Maine)         | Cry3Bb1           | Insect resistance rootworms   | IgE reactivity                        | 55  | 0               | 55              |                               |

- a) Lepidoptera = caterpillars of corn borers and ear worms
- b) LL = Liberty Link resistance to glufosamine-ammonium
- c) PAT = marker protein for antibiotic resistance, phosphinothricin-N-acetyl transferase
- d) CP4 EPSPS = glyphosate tolerant enzyme 5-enolpyruvylshikimate-3-phosphatase found in Roundup Ready commodities
- e) Immunoglobulin E

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WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

April 30, 2013

Donald J. Dubois  
Dubois Contracting  
295 St. John Road  
Fort Kent, ME 04743

**RE: Variance Permit for CMR 01-026, Chapters 29 for Vegetation Control on the Fort Kent Levee**

Dear Mr. Dubois:

This letter will serve as your variance permit for 2013 for broadcast application of herbicides along portions of the Ft. Kent levee. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section IX of your April 30, 2013 application.

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

Sincerely,

A handwritten signature in cursive script that reads "Henry Jennings".

Henry Jennings  
Director  
Maine Board of Pesticides Control



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
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WALTER E. WHITCOMB  
COMMISSIONER

HENRY S. JENNINGS  
DIRECTOR

April 22, 2013

Robert W. Moosmann  
Maine Department of Transportation, Bureau of Maintenance & Operations  
16 State House Station  
Augusta, Maine 04333-0016

**RE: Variance permits for CMR 01-026, Chapters 22 and 29**

Dear Mr. Moosmann:

This letter will serve as your 2013 variance permits covering Section 2 (C) of Chapter 22 and Section 6 of Chapter 29 for weed control along state maintained roads and other transportation facilities. Please bear in mind that these variance permits require agency personnel and contractors to adhere to the measures outlined in Section X of the Chapter 22 permit application and Section IX of the Chapter 29 permit application.

I will alert the Board at its May 24, 2013 meeting that the variance permits have been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

A handwritten signature in cursive script that reads 'Henry Jennings'.

Henry Jennings  
Director  
Maine Board of Pesticides Control