

Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS

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

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**Section 1. Requesting Notification About Outdoor Pesticide Applications**

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

**A. Requests for Notification; How Made**

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

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

**B. Procedure of Notification**

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

- ~~1. General notification of intent to apply pesticides out of doors shall be given to the person making the request for notification. Such general notification may be given in any fashion, provided that it is effective in informing the person receiving the notice of the following:~~
  - ~~a. the approximate date(s) when pesticide(s) may be applied;~~
  - ~~b. the pesticide(s) which may be applied;~~

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

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

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

## **Section 1. Obtaining Information or Notification About Outdoor Pesticide Applications**

The purpose of this section is to allow neighbors an opportunity to obtain information or notification about outdoor pesticide applications that may occur in their vicinity and establishes the responsibilities of landowners and land managers to provide that information or notification. Subsection A allows neighbors to request general information about pesticide applications that may occur within one calendar year. Subsection B allows neighbors to request advance notice about specific applications. Subsection C requires land managers planning to conduct pesticide applications using aircraft or air carrier equipment to provide written disclosure of their application plans to residents of buildings on abutting properties. Finally, Subsection D requires land managers to provide advance notice of aerial or air carrier spraying to participants on a notification registry.

### **A. Requests for General Information About Pesticide Applications**

- 1. The owner, lessee or legal occupant of a Sensitive Area (hereinafter called the "occupant") may request general information about future outdoor pesticide applications which may occur within 500 feet of the Sensitive Area for ground applications using other than air carrier equipment and within 1,320 feet of the Sensitive Area for aerial and air carrier equipment applications.
  - a. The request for information should be made to the person responsible for management of the land on which pesticides will be applied (hereinafter called



2. Provided that a request for notification, as described in Section 1(B)(1), has been made at least 48 hours in advance of the first planned application, the person receiving the request shall notify the occupant at least 24 hours, but not more than 7 days, prior to the planned application time. Such notification may be given in any fashion, provided that it effectively informs the occupant of the following:
  - a. the date and approximate start time for when pesticides may be applied;
  - b. the brand name and EPA registration number of the pesticide(s) to be applied;
  - c. in general terms, the method of pesticide application; and
  - d. the contact information for the land manager.
3. The occupant may also request a copy of the Material Safety Data Sheet(s) (MSDS) and/or pesticide label(s) for the pesticides which may be applied. However, such requests for additional information will not delay nor prohibit any intended pesticide application(s).
4. The occupant and the land manager may agree to modify the terms of the notification procedures set forth in Section 1(B). Either party may terminate said agreement by providing a 30-day written notice.

**C. Mandatory Disclosure About Air Carrier (Air Blast and Mist Blower) and Aerial Pesticide Applications**

Using the appropriate method described below in section 1 (C), a land manager intending to conduct a pesticide application using aircraft or air carrier equipment must make a good faith effort to inform residents and managers of commercial, institutional or residential buildings on abutting properties and within 1320 feet of the pesticide application area.

1. In the case of pesticide applications that routinely occur on an annual or biennial basis, the land manager shall provide written disclosure 90 days in advance of the first application of the season. Disclosure under this section must only be done once every three years. The disclosure must include the following information:
  - a. In general terms, the method(s) of application;
  - b. An approximate schedule of when pesticide applications generally occur;
  - c. The brand name and EPA registration number for the pesticides that are likely to be applied; and
  - d. Information about the citizens' notification registry and how individuals can participate.
  - e. Disclosure under this section may be accomplished by personal delivery of notification forms, mailing notification through the U.S. Postal Service, electronic mailing of notification forms, or other methods approved by the Board. If the names of residents are unknown, mailings through the U.S. Postal Service under

this section may be sent to the “resident” at the address of the property as described on the municipal tax records.

2. In the case of pesticide applications that cannot be reasonably foreseen 90 days in advance, at least 48 hours prior to each individual pesticide application, the land manager shall notify residents and managers of commercial, institutional and residential buildings that are on abutting properties and within 1320 of the pesticide application area. Acceptable means of notification include personal delivery of notification forms, mailing of notification forms through the U.S. Postal Service, electronic mailing of notification forms, telephone calls, or other methods approved by the Board. Telephone calls must be received by a responsible individual or left on voicemail or an answering machine. The following information must be provided:
  - a. The date and approximate time of the planned application;
  - b. The method of application;
  - c. The brand name(s) and EPA registration numbers(s) for the pesticide(s) to be applied;
  - d. Contact information for the land manager.
  - e. If the resident or manager of any buildings on the abutting properties decline advance notification of future pesticide applications, the land manager shall record such information and cease providing advance notice.
3. Land managers conducting pesticide applications using air carrier equipment for control of ornamental tree pests and biting flies are exempt from the requirements described above in sections C (1) (a) and C (1) (b) providing the company complies with the following requirements:
  - a. Just prior to the application, the applicator shall post a Board approved sign in a conspicuous location most visible to the public. The sign shall be constructed of weather resistant materials with instructions stating the sign shall remain posted for at least 48 hours. The sign shall inform the public of the pending application and contain information about the citizen registry described in section 1 (D) below and how to participate in the registry.
  - b. At least 90 days prior to the first application of the season, the applicator shall publish a Board approved notice in newspaper(s) with circulation covering the area in which applications will occur. The notice shall inform the public that air carrier pesticide applications are planned for the upcoming season, the general areas where applications will likely take place, information on the citizen notification registry described in section 1 (D) below, and how to participate in the registry.
4. Land managers shall maintain records demonstrating compliance with the requirements of section 1 (C). Such records shall include lists of individuals provided disclosure as required under section 1 (C) (1), notification as required under section 1 (C) (2) and the dates that the information was provided. When applicable, records of newspaper notices

as required under section 1 (C) (3) shall be maintained also. Records shall be maintained for a period of three years and shall be available for inspection by representatives of the Board at reasonable times upon request.

5. Land managers conducting aerial pesticide applications subject to the provisions of CMR 01-026, Chapter 51, are exempt from the requirements of Chapter 28, Section 1 (C).

6. Variances From the Standards of Section 1 (C)

Land managers may vary from the requirements of Section 1 (C) 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:

- a. The name, address, telephone number and email address (if applicable) of the applicant;
- b. The purpose of the application, a description of when pesticides will be applied, the areas where pesticides will be applied, the trade name and EPA registration number for the pesticides that will likely be applied, and the method of application;
- c. The particular standard from which the applicant seeks a variance;
- d. The particular reasons why the applicant seeks a variance from such standards; and
- e. A detailed description of the techniques that will be employed to assure a reasonably equivalent degree that residents and managers of buildings on abutting properties and within 1320 feet of the pesticide application are aware that pesticide applications will be made and that they have the right to participate in the notification registry.

Within 60 days after a complete application has been received, the Board shall issue a permit if it finds that the proposed techniques satisfy the standard set forth in Section 1 (C) (6) (e) above. 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 will comply with such conditions. Permits are not transferrable or assignable except with further written approval by the Board and are valid only for the period specified by the Board. The Board may delegate authority to review and issue permits to the staff as it deems appropriate. All conditions and limitations described in this paragraph shall pertain to permits issued by the staff. If the staff denies a permit request, the applicant may appeal the staff decision by requesting that the matter be placed on the agenda for the next Board meeting.

#### **D. Notification Registry for Air Carrier and Aerial Pesticide Applications**

The Board shall maintain a registry of individuals interested in receiving advance notice of air carrier or aerial pesticide applications. Land managers planning to conduct air carrier or aerial pesticide application shall review the registry and provide advance notice of applications in

accordance with this section. The Board will make the registry available to pesticide applicators and land managers by April 1 of each year.

1. Signing Up for the Notification Registry for Air Carrier and Aerial Pesticide Applications

Individuals wishing to receive advance notice of pending pesticide applications made using aircraft or air carrier equipment may sign up to participate on the notification registry for air carrier and aerial applications. Individuals who sign up by March 15 of any year will be included on the registry for that calendar year. The Board will provide forms for signing up on the registry on its web site and through the mail by request. Individuals must provide the following information to sign up for the registry:

- a. Full name;
- b. Telephone number;
- c. The physical location of property as described by the street address if available. If a street address is not available, longitude and latitude coordinates may be provided or a description of the property sufficient to locate it on 7.5 minute topographical map;
- d. The Maine mailing address where the advance notice may be mailed; and
- e. If applicable, an email address that is regularly used and acceptable for notification purposes.

2. Board to Make Registry Available to Applicators and Land Managers

By April 1 of each calendar year, the Board will provide electronic access to the citizens' registry available to land managers. Paper copies will be provided upon request to land managers who can not access the electronic version.

3. Land Managers' Duty to Provide Advance Notice to Registry Participants

Prior to conducting a pesticide application using aircraft or air carrier equipment, the land manager shall review the citizens' registry and determine whether any of the listed properties are within 1320 of the pesticide application area.

- a. Land managers shall make a good faith effort to provide advance notice to registry participants of any applications that will occur within 1320 feet of the registry participant's property at least 24 hours but not more than 7 days prior to the application.
- b. Acceptable means of notification include personal delivery of notification forms, mailing of notification through the U.S. Postal Service, electronic mailing of notification forms, and personal or automated telephone calls. Telephone calls must be received by a responsible individual or left on a voicemail or answering machine.

- c. Land managers shall provide the following information to registry participants occupying property within 1320 feet of the pesticide application area:
  - i. The date an approximate time of the application;
  - ii. The method of application;
  - iii. The brand name(s) and EPA registration number(s) for the pesticide(s) to be applied; and
  - iv. Contact information for the land manager.
- d. The registry participant may also request a copy of the Material Safety Data Sheet(s) (MSDS) and/or pesticide label(s) for the pesticides which may be applied. However, such requests for additional information will not delay nor prohibit any intended pesticide application(s).

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

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

### **A. Individuals To Be Included on the Registry**

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

individual will not be considered officially included on the Maine Pesticide Notification Registry unless their name appears on the current effective registry.

4. The Board shall mail renewal notices to individuals listed on the Maine Pesticide Notification Registry on or before November 1 of each year. An individual must re-apply and pay all appropriate fees annually to remain on the registry for the next twelve month period.

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

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

**C. Registry Provided to Commercial Applicators**

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

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

1. Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet of the property boundary of the listed registry residence.
2. A person who receives a letter in accordance with Section 2(B) and who performs any outdoor, non-agricultural pesticide application within 250 feet to the property boundary of the listed registry residence shall notify the individual from whom the letter was given or sent.
3. Notification must consist of providing the following information to the individual on the registry:
  - a. The location of the outdoor pesticide application;

- b. The date and approximate start time of the pesticide application (within a 24 hour time period) and, in the event of inclement weather, an alternative date or dates on which the application may occur;
  - c. The brand name and EPA registration number of the pesticide product(s) which will be used; and
  - d. The name and telephone number of the person or company making the pesticide application.
4. An individual on the registry who receives notification may request a copy of the pesticide product label or Material Safety Data Sheet. The person or company performing the pesticide application shall make reasonable efforts to comply with such request for additional information. However, such requests for additional information will not delay nor prohibit the person or company from performing the pesticide application as scheduled.
  5. Notification must be received between 6 hours and 14 days prior to the pesticide application.
  6. Notification must be made by telephone, personal contact or mail.
    - a. In cases where personal contact with the individual listed on the registry is not achieved, notification requirements are met via telephone if:
      - i. the information is placed on a telephone answering device activated by calling the individual's primary contact telephone number; or
      - ii. the information is given to a member of the household or workplace contacted by dialing the primary contact telephone number.
    - b. If notification cannot be made after at least two telephone contact attempts and personal contact is not feasible, notification may be made by securely affixing the notification information in written form on the principal entry of the listed registry location.
  7. The person or company performing the pesticide application bears the burden of proof for demonstrating that they have complied with this section.

#### **E. Exceptions**

1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
2. The following types of pesticide applications do not require notification under this section:
  - a. The application of pesticides indoors;
  - b. Agricultural pesticide applications;

- c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing categories VI(A) - Utility Rights-of-Way, VI(B) - Roadside Vegetation Management, and VI(C) - Railroad Vegetation Management;
- d. The outdoor commercial application of pesticides in certification and licensing category VII(a) - Structural General within five (5) feet of a human dwelling, office building, institution such as a school or hospital, store, restaurant or other occupied industrial, commercial or residential structure which is the intended target site;
- e. The application of general use pesticides by hand or with non-powered equipment to control stinging insects;
- f. The placement of pesticidal baits;
- g. The injection of pesticides into trees or utility poles;
- h. The placement of pesticide-impregnated devices on animals, such as ear tags and flea collars;
- i. The application of pesticidal pet supplies, such as shampoos and dusts;
- j. The application of disinfectants, germicides, bactericides and virucides, such as bleach. The use of disinfectants in the pressure-washing of the exterior of buildings is not exempt under this section;
- k. The application of insect repellents to the human body;
- l. The application of swimming pool products;
- m. The application of general use paints, stains, and wood preservatives and sealants applied with non-powered equipment or by hand or within an enclosure which effectively prevents the escape of spray droplets of the product being applied; and
- n. The injection of pesticides into wall voids.

**F. Exemption from this section**

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

**G. Fee**

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

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

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

### **Section 3. Posting Requirements for Pesticide Applications in Certain Commercial Licensing Categories**

Where outdoor commercial pesticide applications in certification and licensing categories III(a) - Outdoor Ornamentals, III(b) - Turf, and VII(a) - Structural General will take place, the area shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted before application activities commence and shall remain in place at least two days following the completion of the application. The sign shall be sufficient if it meets the following minimum specifications:

- A. The sign must be at least five (5) inches wide and four (4) inches high;
- B. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- C. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- D. The sign must bear:
  1. the word CAUTION in 72 point type;
  2. the words PESTICIDE APPLICATION in 30 point type or larger;
  3. the Board designated symbol;
  4. any reentry precautions from the pesticide labeling;

5. the name of the company making the pesticide application and its telephone number;
6. the date and time of the application; and
7. a date and/or time to remove the sign.

**E. Exemption from this section**

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
  2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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