

## **BASIS STATEMENT FOR ADOPTION OF AN AMENDMENT TO CHAPTER 28— NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS**

Chapter 28 of the Board's rules establishes a series of mechanisms by which members of the public may obtain information about pesticide applications that may occur near their residence or in public places. The notification provisions were originally promulgated in 1987 as part of the Board's drift rule, and then transferred to Chapter 28 as part of a consolidation of the notification provisions in 1998.

The Board conducted a major review and overhaul of rules affecting aerial application of pesticides beginning in 2006 and resulting in provisional adoption of amendments to three Board rules, including Chapter 28. The amended Chapter 28 included a new aerial application notification registry and an updated section that provided for notification about specific pesticide applications by request. The provisional rule was submitted for review to the Joint Standing Committee on Agriculture, Conservation and Forestry on February 24, 2009, but the Committee voted not to authorize final adoption of the rule and, instead, enacted Public Law 2009, Chapter 378 (hereinafter referred to as Chapter 378), An Act to Require Citizen Notification of Pesticide Applications Using Aerial Spray or Air-carrier Application Equipment.

Chapter 378 requires creation of a notification registry and a mandatory initial notification to all abutting landowners at least 90 days prior to the first application of pesticides, when aircraft or air-carrier equipment is used. However, the new statute lacked sufficient detail to operate without associated rules. In addition, stakeholders from all sides of the issues expressed concerns about the new statute and requested that the Board clarify some requirements with new amendments to Chapter 28.

Consequently, the Board determined it was necessary to initiate rulemaking to implement the requirements of Chapter 378. A notice of agency rulemaking was published on September 9, 2009, and a public hearing was held on October 2, 2009, in Waterville. The proposed amendments to Chapter 28 provide operational details for the new registry and modify the requirements of the mandatory notice to add flexibility and reduce unnecessary burdens.

Following the comment period, the Board made a number of changes based on suggestions and comments. The rule was reorganized and condensed to simplify it. The Board also agreed to modify the minimum time frame required for notifying registry participants from 24 hours to one calendar day to address applicator concerns that pest management decisions are often made at the last minute. Members discussed trying to craft an emergency exemption to further aid applicators with last-minute decisions, but decided it would be too cumbersome and contrary to the spirit of the legislation.

The proposed exemption for pesticide applications covered by the notice requirements contained in Chapter 51 was removed from the proposal because it was contrary to common logic. It didn't make sense to exempt some wide-scale aerial spray programs while imposing a burden on wide-scale agricultural spraying.

The Board did not make any changes to the mandatory 90-day advance-written-notice requirement, even though they received more comments objecting to this requirement than any other. While, the Board recognized that the requirement imposes a substantial burden on spray

operations that involve many properties across numerous towns, it reasoned that this requirement was one of the fundamental elements of the statute and, as such, is not within the Board's purview. Board members agreed they could convey any concerns they have when the provisional rule is transmitted to the Legislature.

**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.