

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 and air-carrier applications, for notification registries and for posting property on which certain commercial pesticide applications will occur 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;~~
- e. ~~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. Definitions**

- A. **Land Manager.** For the purposes of this Chapter, “Land Manager” means the owner, lessee or person responsible for making pest management decisions for a given property.
- B. **Occupant.** For the purposes of this Chapter, “Occupant” means the owner, lessee or legal occupant of a property.

## **Section 2. Mandatory Disclosure and Requests for Information**

The purpose of this section is to allow occupants an opportunity to obtain information or notification about outdoor pesticide applications that may occur in their vicinity and establishes the responsibilities of land managers to provide that information or notification. Subsection A requires land managers planning to conduct pesticide applications using aircraft or air-carrier equipment to provide written disclosure of their application plans to residents and managers of buildings on abutting properties. Subsection B allows occupants to request information about pesticide applications which may occur in the vicinity and requires land managers to provide advance notification of aerial or air-carrier spraying to participants on a notification registry.

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

Using the appropriate method described in this section, a land manager intending to conduct a pesticide application using aircraft or air-carrier equipment must make a good faith effort to inform occupants of Sensitive Areas Likely to Be Occupied (except maintained recreational areas, as described in CMR 01-026, Chapter 10, Section 2 (BBB)(8)(iv)) that are both: (a) on abutting properties and (b) within 1,320 feet of the pesticide application area.

1. In the case of pesticide applications that can be reasonably foreseen, the land manager shall provide written disclosure 90 days in advance of the first application of the season. Disclosure under this section must be done at least 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 types of pesticides likely to be applied; and
  - d. Information about how to participate in the notification registry.
  - e. Acceptable means of disclosure under this section include personal delivery of notification forms, mailing notification forms 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 occupants of Sensitive Areas Likely to Be Occupied (except maintained recreational areas, as described in CMR 01-026, Chapter 10, Section 2 (BBB)(8)(iv)), that are both: (a) on abutting properties and (b) within 1,320 feet of the pesticide application area, and provide the application information described in Section 2(B)(3) below.

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, personal or automated telephone calls or other methods approved by the Board. Telephone calls must be received by a responsible individual or left on a voicemail or an answering machine.

**3. Alternative Disclosure Plans**

Land managers may vary from the requirements of Section 2(A) above 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 particular reasons why the applicant seeks a variance from such standards; and
- b. A detailed description of the techniques that will be employed to ensure to a substantially equivalent degree that occupants of Sensitive Areas Likely to Be Occupied (except maintained recreational areas, as described in CMR 01-026, Chapter 10, Section 2 (BBB)(8)(iv)), that are both: (a) on abutting properties and (b) within 1,320 feet of the pesticide application area, 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 2(A)(3)(b) above. Such permit shall authorize a variance only from those particular standards for which the variance is expressly requested in the application and as expressly granted in the permit. The Board may place conditions on any such permit, and the applicant must 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 request that the matter be placed on the agenda for the next Board meeting for consideration by the Board.

4. Land managers shall maintain records demonstrating compliance with the requirements of Section 2(A). Such records shall include lists of individuals provided disclosure, as required under Section 2(A)(1), notification as required under Section 2(A)(2) and the dates that the information was provided. 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.

## **B. Requests for Information About Pesticide Applications**

The occupant of a Sensitive Area may request information about pesticide applications, which may occur in the vicinity of that Sensitive Area, by directly contacting the adjacent land manager as provided for under Section 2(B)(1) below, or by participating in the notification registry, as provided for under Section 2(B)(2) below.

### **1. Requests for Pesticide Application Information**

An occupant of a Sensitive Area may request general information about pesticide use or to be notified about specific pesticide applications in the vicinity of that Sensitive Area. General information or notification must be given to the occupants requesting such information and/or notification when applications are done: (a) within 500 feet of a Sensitive Area for ground-based applications other than those applied using air-carrier equipment and (b) within 1,320 feet of a Sensitive Area for aerial and air-carrier equipment applications.

- a. The request for general information or notification should be made to the land manager. If the occupant does not know how to contact the land manager, he/she

may make the request to the landowner. That landowner shall then be responsible for ensuring compliance with the provisions of this section.

- b. Requests may be made in any fashion, so long as they are effective in informing the land manager or landowner of the type of request being made and the occupant's relevant contact information (name, address, telephone numbers, e-mail address, etc.).
- c. Requests for notification shall be valid until such time as the occupant declines future notification or until the occupant no longer owns, leases or occupies the Sensitive Area.
- d. Requests for general information or notification shall be handled as follows:
  - i. Land managers are allowed at least 48 hours to respond to any request;
  - ii. The person receiving the request shall provide the information described in Section 2(B)(3) below;
  - iii. The person receiving a request for notification of specific applications shall notify the occupant at least one calendar day, but not more than 7 days, prior to each application;
  - iv. The person receiving a request for general information about pesticide use shall respond at least one calendar day prior to the first application.

## 2. Pesticide Notification Registry for Aircraft or Air-Carrier Equipment

The Board shall maintain a registry of residents and property owners interested in receiving advance notification of pesticide applications made by aircraft or air-carrier equipment. Land managers planning to conduct such applications shall review the registry and provide advance notification of applications in accordance with this section. The Board will make the registry available to land managers by April 1 of each year.

### a. Signing Up for the Notification Registry for Aerial and Air-Carrier Pesticide Applications

Residents and property owners wishing to receive advance notification of pending pesticide applications made using aircraft or air-carrier equipment may sign up to participate on the notification registry. 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:

- i. Full name;
- ii. Telephone number;
- iii. 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;

- iv. The preferred mailing address where the advance notification should be mailed; and
- v. If applicable, an e-mail address that is regularly used and acceptable for notification purposes.

**b. Board to Make Registry Available to Land Managers**

By April 1 of each calendar year, the Board will provide land managers with electronic access to the notification registry. Paper copies will be provided upon request to land managers who cannot access the electronic version.

**c. Land Managers' Duty to Provide Advance Notification to Registry Participants**

Prior to conducting a pesticide application using aircraft or air-carrier equipment, the land manager shall review the notification registry and determine whether any of the listed properties are within 1,320 feet of the pesticide application site.

- i. Land managers shall make a good faith effort to provide advance notification to registry participants of any applications that will occur within 1,320 feet of the registry participant's property, at least one calendar day, but not more than 7 days, prior to the application. The advance notification shall include the information set forth in Section 2(B)(3) below.
- ii. 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, personal or automated telephone calls or other methods approved by the Board. Telephone calls must be received by a responsible individual or left on a voicemail or an answering machine.

**3. Pesticide Application Information That Must Be Provided to People Requesting Information, Registry Participants, and When Applications Using Aircraft or Air-carrier Equipment Cannot Be Reasonably Foreseen 90 Days In Advance**

The following information must be provided, as applicable, to individuals requesting information or advance notification of pesticide applications, to registry participants and in circumstances in which pesticide applications cannot be reasonably foreseen 90 days in advance.

- a. The date and approximate time of the application. When general pesticide application information is being requested, the approximate schedule of applications may be provided;
- b. The planned method(s) of application;

- c. The brand name(s) and EPA registration number(s) for the pesticide(s) planned to be applied;
- d. Contact information for the land manager; and
- e. For individuals who are not currently on the registry, information about how to participate.
- f. Any person receiving information pursuant to Section 2 of this Chapter 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).
- g. Any person receiving information pursuant to Section 2 of this Chapter and the land manager may agree to modify the terms of the notification procedures. Either party may terminate said agreement by providing a 30-day written notice.

4. **Exemption for Public Health Emergencies and Pest Emergencies That Threaten Severe Economic or Natural Resource Losses**

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 Conservation or the Commissioner of the Maine Department of Agriculture, Food and Rural Resources, the specified requirements of Section 2 of this Chapter shall be waived, subject to the following conditions:

- a. The severe pest and/or weather conditions must necessitate immediate wide-scale application of pesticides using aircraft or air-carrier equipment;
- b. The immediate need for pesticide application does not provide sufficient time to complete the requirements of Section 2 of this Chapter;
- c. Prior to any pesticide applications using aircraft or air-carrier equipment, the Commissioner declaring the emergency shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aircraft and/or air-carrier pesticide applications in the affected regions and the approximate dates that the emergency may continue;
- d. The Commissioner declaring the emergency, in consultation with the Board's staff, shall specify the requirements in Section 2 of this Chapter that will be waived; and
- e. Land managers shall make good faith efforts to comply with the intent of Section 2 of this Chapter and minimize off-target drift to Sensitive Areas.

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**Section 3. 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 3(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

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the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

#### **Section 4. 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 ensure 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.

**EFFECTIVE DATE:**

September 22, 1998

**AMENDED:**

April 27, 1999

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