
REPORT ON FINDINGS AND RECOMMENDATIONS PURSUANT TO PL 2009, CHAPTER 584

JANUARY 2011

MAINE BOARD OF PESTICIDES CONTROL



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EXECUTIVE SUMMARY

In an effort to mitigate a continuing conflict between nearby residents and aerial pesticide applicators, which was marked by a series of attempted legal actions intended to restrict or ban aerial spraying, the Maine Board of Pesticides Control (BPC) agreed to embark on a major rewrite of pertinent rules beginning in 2006. Rules covering advance notice of spraying were identified as key to this effort, because advance warning removes the element of surprise and allows neighbors to take common-sense steps to avoid potential exposure. While the Board's proposed rule revisions were not approved by the Legislature, a new law calling for a notification registry was enacted in the spring of 2009 (Public Law 2009, Chapter 378).

Recognizing that Chapter 378 created substantial burdens for some businesses, the Legislature amended the law in the spring of 2010 by enacting Public Law 2009, Chapter 584 (hereinafter referred to as Chapter 584). In fact, balancing the rights of neighbors to know about nearby spraying, against the costs incurred with providing it, is what makes the subject contentious and polarizing. Like the previous statute, Chapter 584 directs the BPC to establish and maintain an outdoor pesticide notification registry. The new registry focused only on applications made by aircraft or air-assisted sprayers initially, but Chapter 584 directs the BPC to develop a comprehensive notification registry. The BPC must also file a progress report with the Legislature no later than February 1, 2011, including updates on four other specific subjects outlined in the statute. This report identifies key public policy questions for which the Board is seeking Legislative input and summarizes the BPC's efforts to fulfill its mandates.

Key Policy Questions for the Legislature

Based on Board deliberations and stakeholder input, during 2010 the Board made a number of policy determinations relative to development of a comprehensive registry. In particular, there are two key, controversial policy questions (below and with more detail on page 5) that the BPC seeks Legislative input on prior to initiating rulemaking on a comprehensive registry.

1. *Who Should Identify Properties that Trigger Notification?*

With the advent of Chapter 584, the BPC now administers two notification registries—one agricultural and the other non-agricultural. Different parties are assigned the responsibility of identifying properties that trigger a notification duty. Under the non-agricultural registry, the registry participants must identify properties within 250 feet of their boundary. Under the new agricultural registry, the burden to identify properties that trigger a notification duty falls on the land manager. Who identifies properties that trigger a notification duty is of greater concern to commercial applicators who work in the urban/suburban landscape, since they generally treat a much larger number of properties. The Board has focused primarily on the system dictated by the new statute. However, stakeholders are sharply divided over who should bear this burden under a comprehensive registry. Consequently, the BPC is seeking the Legislature's input on this question prior to initiating rulemaking on a comprehensive registry. (See additional discussion on page 5.)

2. *What Types of Pesticide Applicators Should Be Required to Notify Neighbors under a Comprehensive Notification Registry?*

The other key policy question the BPC is seeking Legislative input on is what types of pesticide applicators should be required to notify registry participants. The Board is in general agreement that a comprehensive registry should pertain to pesticide applications made by commercial applicators and commercial farmers. This position is based on practical considerations of available resources, the size of areas treated and the

equipment used by these two groups of applicators. Expanding the notification registry to require homeowners to comply would necessitate a parallel expansion of the Board's staff. However, a number of stakeholders have argued that a comprehensive registry should apply to all outdoor pesticide applications, regardless of the resource constraints or consideration of scale. (See additional discussion on page 5.)

Summary of Board Actions to Fulfill Mandates under Chapter 584

Chapter 584, Section 6, Subsections 1–5, required the Board to report to the Legislature on five specific topic areas. A brief summary for each topic is listed below with a more detailed explanation in the full report that follows.

1. Since enactment of Chapter 584, the Board held five public forums across the state and worked on the comprehensive registry at all eight of its regular meetings. Consensus was reached on most of the operational details and the Board is prepared to initiate rulemaking once input has been received from the Legislature.
2. The Board has reached consensus to move forward with three notification distances—250, 500 and 1,320 feet—based on the type of pesticide application equipment used. Details are contained in the full report.
3. The Board's staff conducted an extensive public awareness campaign during May and June of 2010. The campaign focused on paid newspaper ads and free publicity using press releases and e-mails to municipalities, non-profit organizations and governmental agencies. A statewide survey indicated about 18% of adults were aware of the registry in August of 2010.
4. The Board was unable to identify a practical sign posting requirement because, in many cases, the signs would not be in a publicly visible location. Some stakeholders still advocate the use of signs as a substitute for the pre-season notification requirement that was repealed during the previous Legislative session.
5. The Board is moving forward with development of an Internet-based mapping tool that is expected to greatly reduce the effort required to determine which registry participants must be notified.

Summary of Other Key Concepts Recommended for a Comprehensive Registry

- For a variety of reasons, the Board recommends retaining the “by request” option for receiving notification and this system would be used when registry participants want to be notified by neighbors who are not commercial applicators or commercial farmers.
- Other existing pesticide notification requirements should be merged and consolidated into CMR 01-026, Chapter 28.
- The BPC staff should take affirmative steps to ensure that the registry remains current.
- There is general agreement to move forward with an Internet-based tool to assist stakeholders in determining which properties trigger a notification duty.

Next Steps

Once the Board has met with the Joint Standing Committee on Agriculture, Conservation and Forestry, and received its feedback on key policy issues, the BPC is prepared to initiate rulemaking to establish a comprehensive notification registry. The Maine Legislature would then review the proposed rule again early in 2012, or it could choose to bypass the additional review by designating the notification rules as routine technical. The Board will then turn its attention to implementation.

The full report to the Legislature follows, and it contains additional details on the topics described above, as well as additional background and other information about the Board's recommendations and activities relating to the pesticide notification issue.

FULL REPORT TO THE LEGISLATURE PURSUANT TO PUBLIC LAW 2009, CHAPTER 584

Why Advance Notification of Spraying?

Conflicts between pesticide applicators and nearby residents date back to at least the 1970s. In the 1980s, both the Maine Legislature and the Maine Board of Pesticides Control recognized that keeping the public informed about nearby pesticide applications should reduce the conflict. Experience has demonstrated that pesticide notification is an effective, low-cost tool for alleviating the conflict because it removes the element of surprise and allows nearby residents to take simple, common-sense steps to reduce the risk of pesticide exposure.

History of Pesticide Notification in Maine

In 1984, the Maine Legislature enacted two provisions that eventually lead to different forms of pesticide notification in the state. In response to a series of events surrounding aerial budworm spraying, the Legislature enacted Public Law 1983, Chapter 819, that set forth a series of requirements regulating aerial forest insect spraying and included a public notice (newspaper) provision. In Public Law 1983, Chapter 761, the Legislature directed the Board to promulgate rules designed to minimize pesticide drift to the maximum extent practicable. Rulemaking to fulfill this mandate proved to be contentious, taking over three years to complete. A key provision of the Board's new drift rule was the so-called "by request" notification option, which allowed nearby residents (within 500 feet) to ask for spray notification. This provision has generally been viewed favorably by the regulated community. The principle shortcoming is that a relatively low percentage of the public is aware of it.

In the mid 1990s, during a sharp rise in the use of lawn care pesticides, a Board stakeholder committee recommended establishing a notification registry to cover commercial, non-agricultural pesticide applications. The logic behind this registry is that commercial pesticide applications are not made by the land owner, making it more difficult for concerned neighbors to request notification from the pesticide applicator. The Board established the non-agricultural registry in 1996 and required an annual \$20 membership fee. While the non-agricultural registry has functioned smoothly, very few people (just over 20, on average, annually) have participated in it since its inception. Several factors are thought to be responsible for the low participation, including a general lack of awareness, the annual fee and the requirement to list property owners within 250 feet. Despite the low participation, feedback suggests it's a very important tool for a handful of people with health issues that may be exacerbated by chemical exposures.

In response to a series of legal actions indicating increasing public concern about aerial spraying, the Board began a comprehensive review of pertinent regulations beginning in 2006. The Legislature approved revisions to the Board's drift rule in the spring of 2009, but did not authorize final adoption of its revisions to the notification rule (CMR 01-026, Chapter 28). Instead, the Legislature enacted Public Law 2009, Chapter 378 which established a pesticide notification registry covering applications made by aircraft and air-carrier equipment. Chapter 378 was amended the following spring (Public Law 2009, Chapter 584) due to concerns that it created significant burdens for businesses that apply pesticides to a large number of properties. The amended statute further directed the Board to develop a comprehensive notification registry and to file this report with the Legislature no later than February 1, 2011.

Key Notification Policy Decisions for the Maine Legislature

During the course of its deliberations on the development of a comprehensive notification registry, the Board identified two key policy questions that it believes are fundamental in nature and of sufficient importance, such that they are more appropriately decided by the Legislature. Consequently, the Board prefers that the

Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) provide guidance on these topics prior to moving forward with a formal rulemaking process.

- With the advent of Chapter 584, Maine pesticide law now has two pesticide notification registries with two different models for identifying properties that—when treated—create a duty to notify registry participants. In Chapter 584, the Maine Legislature placed this burden on the land manager, while the non-agricultural registry contained in CMR 01-026, Chapter 28, of the Board’s rules places the burden on the registry participants. The Board assumed it should rely on the model laid out by the Legislature in Chapter 584. Furthermore, it believes that identifying properties that trigger a notification duty will create a burden primarily in the first year of implementation, and the burden will decrease in succeeding years, until it becomes relatively manageable. The burden should be further diminished by the development of the Internet-based mapping tool. However, the stakeholder community is polarized and divided on this issue and the Board sees merit in both sides of the argument.
- The Board received considerable input suggesting that homeowners and other applicators that are not part of the Board’s primary regulated community should be required to review and comply with the comprehensive notification registry. While the Board agrees that homeowners are more prone to misuse of pesticides, they also recognized that homeowners rarely use equipment capable of dispensing large volumes of pesticides, nor do they apply pesticides to large acreages. For these reasons, the Board believes that homeowners are far less likely to apply pesticides in a manner in which their neighbors may be concerned or exposed. Moreover, the Board recognized that requiring the entire state population to comply with a new regulation is far beyond the capability of the Board’s staff. In addition, the Board believes there is a more practical and tested approach for people to be informed about homeowner use of pesticides (see next page). Consequently, the Board does not recommend requiring homeowners to comply with the notification requirements in a comprehensive registry, but it believes the Legislature needs to be aware of the issue because of the wide variety of stakeholders who advocated for it.

Board Recommendations Relating to the Development of a Comprehensive Registry

After soliciting feedback and extensive deliberations on the subject, the Board arrived at consensus around the following recommendations for a comprehensive registry:

- Sign-up and distribution of the registry should be primarily electronic in order to keep administration manageable. Hardcopy options must be retained for those without computer access.
- There should be three notification distances—250, 500 and 1,320 feet (see discussion on recommendations of distances below)—based on the type application equipment used.
- In an expanded registry, the current annual March 15 deadline for signing up should be moved back so the BPC staff can distribute the registry earlier. The reason for this is that commercial pesticide applications may begin as early as April 1, and commercial pesticide application companies often apply pesticides to a far larger number of properties, necessitating greater time to compare the registry to their customer list and implement the requirements. The sign-up deadline presumably loses significance as the registry matures, since most people who are interested will have already signed up. A deadline of January 31 would be a reasonable compromise.
- The scope of the registry (see key policy issues above) should cover the regulated community that the Board regularly communicates and primarily deals with: commercial applicators and commercial farmers. It is this group of applicators that does the type of spraying that is historically of concern to area residents. Again, it should be noted that many stakeholders advocated for a comprehensive registry that covers all outdoor pesticide applications, including those made by homeowners. While the Board acknowledges that homeowners are more prone to misuse of pesticides, it also notes that

homeowners generally don't spray large volumes of pesticides nor do they own powerful, large-volume spray equipment. Accordingly, the Board has taken the position that requiring homeowners to comply with a whole new set of rules is both impractical and well beyond the means of the BPC's resources. Thus, requiring homeowners to comply with the notification registry would necessitate a significant expansion of the Board's staff.

- Alternatively, the Board recommends that anyone who wants to be notified about pesticide applications made by homeowners send their neighbor a Board-approved letter detailing their desire to be notified and the state law requiring such notice. This approach has both a precedent and a positive track record under the non-agricultural registry.
- The Board recommends that the historical "by request" option for notification within 500 feet be retained. While it recognizes that Chapter 584, Section 5, appears to envision the registry as a single source for pesticide notification contacts, and that some stakeholders are against keeping the "by request" option, the Board believes the benefits of retaining this option far outweigh any downside based on the following logic:
 - It would allow people who feel they need notice beyond 250 feet, due to medical reasons, an option.
 - Some people will refuse to participate in the registry because they don't want their personal contact information on a publicly available list on the Internet.
 - Some people prefer to communicate directly with their neighbors.
 - Some people will miss the annual deadline to sign up for the registry.
 - The "by request" option is used in another rule relating to Plant Incorporated Protectants (CMR 01-026, Chapter 41)
 - It provides a simple, effective mechanism for concerned citizens to find out about pesticides used by neighboring homeowners (see discussion of proposed regulated community above)
 - Some pesticide applicators support and prefer the "by request" approach.
- The existing "non-agricultural" registry should be merged into and aligned with the comprehensive registry.
 - The notification time frames need to be aligned.
 - The notification methods need to be aligned.
 - The annual renewal requirement and fee will have to be eliminated to be consistent with Chapter 584.
- The aerial notification requirements contained in Chapter 51 of the Board's rules should be consolidated into and aligned with CMR 01-026, Chapter 28, of the Board's rules.
 - Chapter 51 is tailored more to address "wide-area" aerial spray programs, many of which occur in the sparsely populated areas of the state that are managed for forest products. Consequently, the provisions in Chapter 51 are designed primarily around a public notification system rather than notification of individuals. Much of the logic behind the Chapter 51 provisions is still valid, so the Board supports retaining some of the major provisions including:
 - Advance notice of aerial spraying to the BPC—although there is general agreement that the notice to the Northern New England Poison Center may be discontinued.
 - There is some Board support for making the notice to the BPC for aerial spraying universal, instead of exempting agriculture as the current rules do.
 - Newspaper notices for wide-area aerial programs in unpopulated areas
 - Use of signs at major points of ingress and egress to treated areas in unpopulated areas.
 - The Board supports discontinuing the requirement that land managers notify abutting landowners about aerial spraying in areas where newspaper coverage is questionable. The comprehensive registry would substitute for that requirement.

- The BPC should take affirmative steps to ensure that a comprehensive registry is kept current. Chapter 584 specifies that participants shall remain on the registry until they notify the BPC they want to be removed or until the Board staff determines the contact information is no longer valid. Stakeholders generally agree that care must be taken to ensure the list does not contain a significant number of invalid entries. Some members of the regulated community have advocated for a statutory amendment to require an annual renewal.
- The BPC is supporting development of an Internet-based mapping application to assist in identifying properties that will trigger a notification duty when treated (see details below). The Board is mindful that the new Legislature could make changes to Chapter 584, but it reasoned that the benefits of this tool are significant compared to the costs, and it would assist in fostering good-neighbor relations regardless of the final notification requirements.
- The Legislature should also be aware that there is another section of Title 22, in addition to Section 1471-Z, that specifies spray notification requirements. Section 1471-R, dating back to 1983, requires newspaper notices and posting for aerial forest insect spray programs (see discussion of Chapter 51 above). The Board sees no obvious conflicts or redundancy between the two sections.

Board Efforts to Implement the Notification Registry for 2010

After the Governor signed Public Law 2009, Chapter 584, on April 1, 2010, the BPC staff needed to scramble to finalize the registry and assist the regulated community in implementing the law in time for the 2010 growing season. Missing or incomplete information in the registry had to be researched by contacting participants by telephone or e-mail, and then the entire list of 525 participants had to be edited, standardized and put into an accessible format for posting on the Board’s website and printing out on paper.

Then details of the new law, together with instructions for accessing the registry, were sent via e-mail and US Mail to 1,000 licensed pesticide applicators affected by the law and to all registry participants. The same e-mail was sent to Maine agricultural organizations. In addition, a press release announcing the new law was e-mailed to approximately 160 media outlets across the state, and posted on the state and BPC websites.

Board Progress in the Development of a Comprehensive Notification Registry (Chapter 584, Section 6 [1])

During 2010, development and implementation of the notification registry dominated the Board’s meeting agendas and was the top priority for the Board’s staff. In an effort for the Board to get as much input as possible from stakeholders and the public, five Public Information Gathering Meetings were held across the state (see table below), and the registry was the primary topic discussed at all eight monthly Board meetings following enactment of Chapter 584 on April 1, 2010. During that period, the Board also received and considered 157 written comments. In addition, the Board organized an ad hoc committee of public health officials which met on July 30, 2010.

PUBLIC INFORMATION GATHERING MEETINGS ON A COMPREHENSIVE PESTICIDE NOTIFICATION REGISTRY		
Location	Date	Number of Commenters
Fairfield	April 16	12
Bangor	May 14	10
Machias	June 24–25	17
Presque Isle	July 8	7
Portland	July 23	21

Over the course of the development process, the Board vetted and reviewed an array of concepts relating to the scope and operation of the registry. In addition, the Board reviewed its existing notification requirements

with an eye toward standardizing and incorporating those requirements with the comprehensive registry. In general, the Board aligned concepts and operational details with those set forth in Chapter 584, reasoning that Chapter 584 best represents the Legislative position on the subject. The Board has made preliminary determinations on all significant operational details (except the key policy questions identified above), and is prepared to initiate formal rulemaking on the comprehensive registry after receiving input from the ACF in January of 2011.

Recommendations of the Ad Hoc Committee of Public Health Professionals

One part of the Legislature's directive to the Board for developing a comprehensive notification registry was to seek input from the Department of Health and Human Services (DHHS) and other public health professionals. The Board organized a group of public health professionals that included four professionals from DHHS; Dr. Lani Graham, from Physicians for Social Responsibility; Dr. Tamas Peredy, from the Northern New England Poison Center; and the medical member of the Board, Dr. Carol Eckert.

The Ad Hoc Public Health Committee met on July 30, 2010. They reviewed the relevant components of Chapter 584 and some background information about pesticide notification in Maine. After some discussion, the Committee reached consensus that it is not feasible to use health-related sciences to determine appropriate pesticide notification distances. There was general agreement that the notification system should be simple and easy to use. Currently operating public alert systems were offered as possible models. The Committee was unable to offer further input pending a more detailed proposal to review. (See Committee minutes and comments attached.) [NOTE: This section will be updated following the next Committee meeting.]

Recommendations Regarding Changes to the Distances and Types of Applications Requiring Notification (Chapter 584, Section 6 [2])

The Board spent considerable time and effort grappling with the question of what are appropriate distances from a pesticide application site for which registry participants should be entitled to notification. Some pesticide applicators favored relying on spray droplet movement studies as a basis for setting distances. The Board decided against relying on this type of research, because it recognized droplet studies are not suitable for evaluating inhalation exposure, which is one of the principle reasons neighbors express concern about nearby spraying. In addition, individuals with allergies or other chemical sensitivities may react to a dose far below that which affects a "normal" individual.

Underlying the question of notification distances is the question of what is the purpose of notification about pesticide spraying. The Board has taken the position that notification addresses a fundamental right-to-know about the use of chemicals adjacent to occupied areas. It does not believe there needs to be clear and irrefutable evidence that pesticide drift will result in demonstrable health effects to neighboring residents before notification should become a right. On this basis, any reasonable likelihood that neighbors may be exposed to even low levels—beyond background—of pesticides is sufficient justification to honor a notification request. This logic—coupled with input from public health officials suggesting a health risk assessment approach to establishing appropriate notification distances is not feasible—led the Board to look for other information to guide the assessment.

As a result, the Board looked at historical precedents, notification requirements in other states, an evaluation of the Northern New England Poison Center human pesticide exposure data and the Board's own records relating to complaints and inquiries about pesticide applications taking place in the vicinity. Ultimately, the Board was not able to identify compelling information that clearly pointed to specific distances. At the same time, the Board reasoned that distances existing in current Maine pesticide law have worked fairly well, and that there was no clear evidence suggesting they were either too large or too small. In addition, the Board recognized that simplicity would be important for all stakeholders, and that distances based on the type of

equipment was the most logical approach. Consequently, the Board recommends the following set of notification distances:

RECOMMENDED NOTIFICATION DISTANCES FOR A COMPREHENSIVE REGISTRY	
Notification Distance <i>(application site boundary to registry participant's property boundary)</i>	Types of Pesticide Applications Covered
≤ 250 feet	<ul style="list-style-type: none"> • Non-powered commercial applications • Granular/pelletized applications (including aerial) • In furrow and band applications • Powered backpacks • Low-pressure hydraulic applications (< 60 psi)
≤ 500 feet	<ul style="list-style-type: none"> • Boom sprayers • Chemigation • Fumigation • Air-carrier equipment • High-pressure hydraulic applications (> 60 psi) • Other powered equipment
≤ 1,320 feet	<ul style="list-style-type: none"> • All aerial spraying

The Effectiveness of the BPC Public Awareness Activities (Chapter 584, Section 6 [3])

BPC staff researched the options for publicizing the notification registry to raise public awareness. With the \$25,000 budget and June 15 deadline for the close of the 2010 registry in mind, it became clear that the available resources were not sufficient enough to produce a television ad, nor buy enough airtime to achieve the desired goal. On that basis, it was determined that newspaper advertising would be the most effective means of communication. With help from one of the major newspapers, an ad was designed and formatted, and an intensive newspaper advertising campaign was developed to run in print and online media over a two-week period preceding the June 15 deadline.

A press release was also sent to all statewide news media, all municipalities, community television stations, the Maine Center for Disease Control and major environmental organizations. With the exception of the news media, an informational poster about the registry was included with the press release.

A chronology of the advertising campaign follows:

- May 23–June 6: During this period, a ¼- or ½-page display ad (see attached) ran five times in the weekday and weekend editions of five major daily newspapers and two times in twenty weekly newspapers (see list attached); total circulation coverage: 439,500; total cost: \$26,788; while the daily papers broadly covered all regions of the state, weeklies were chosen to supplement coverage in areas where aerial and air-carrier spraying are employed.
- May 30–June 15: A banner ad (see attached) ran on the websites of the five daily newspapers; total cost \$1,308 (included in the total above).
- May 27, 2010: A press release (attached) was sent to 175 Maine media outlets, including newspapers, television, radio, and wire services; the release was also posted on the State homepage and Board of Pesticides website.

- May 27, 2010: A press release and an informational poster, formatted for television (attached), were sent to 93 Maine public access community television stations for use on the air.
- June 1, 2010: A press release was sent to the Maine CDC state epidemiologist, Dr. Stephen Sears, who then forwarded it to district health liaisons for local distribution and posting in medical offices, health clinics, etc.
- June 1, 2010: A press release and an informational poster (see attached) were sent to 85 contacts at approximately 30 Maine environmental organizations.
- June 2, 2010: A press release and a copy of the newspaper ad, for use as a poster, were sent to approximately 4,000 municipal e-mail addresses.

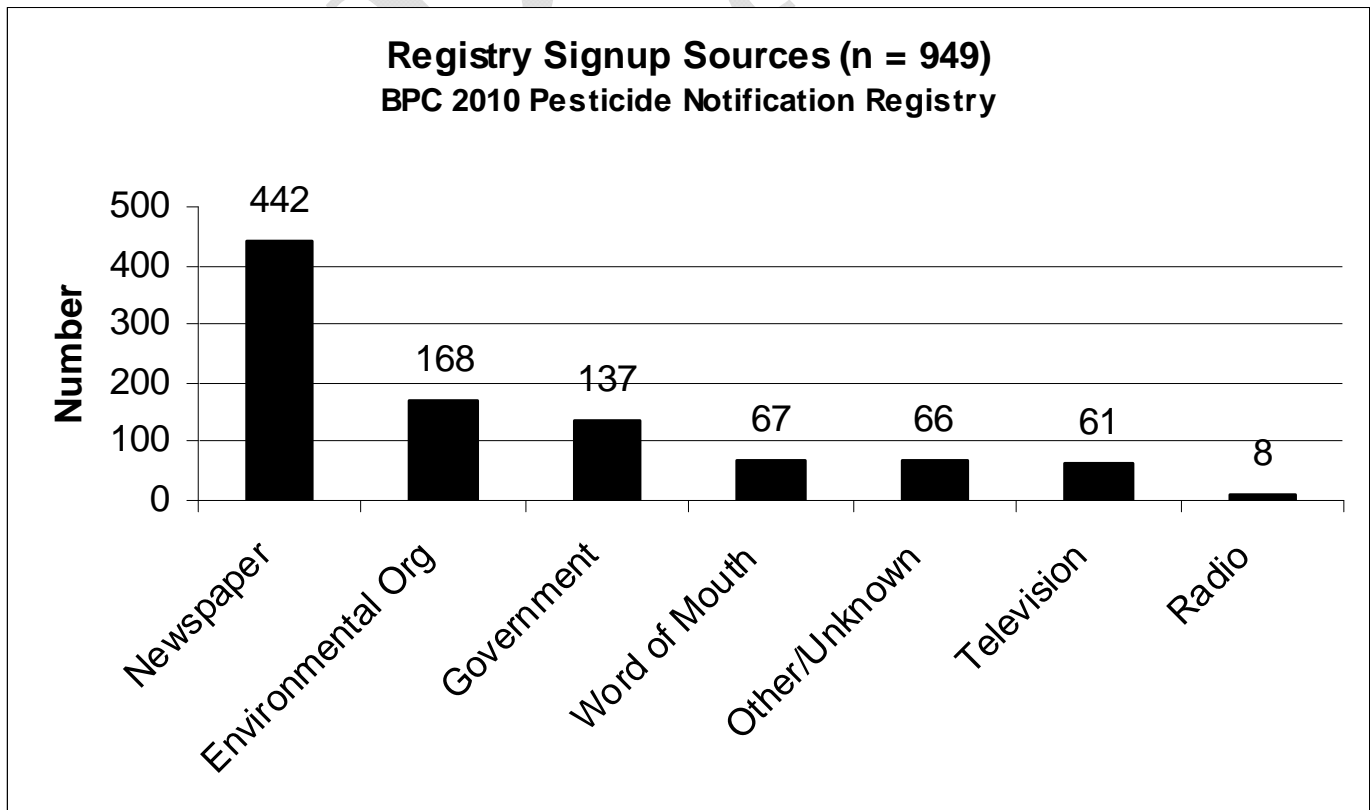
Before the campaign began, there were 525 names on the registry. By June 15, the list had increased to a total of 1,606 participants.

Following the advertising campaign and the close of the 2010 notification registry on June 15, the BPC contracted with the Portland research and marketing firm, Market Decisions, to survey Maine citizens and determine if they had heard about the registry. In a random sampling, 401 people were interviewed by telephone between July 14 and August 3. Survey participants were asked the following question:

Have you heard about the new Maine Pesticide Notification Registry which requires farm managers to inform registry participants about nearby pesticide applications?

The key finding of the survey was that 18%, or nearly 1 in 5 Maine citizens, had heard about the new registry. Other findings included that men, college graduates, and residents of northern Maine were more likely to have heard about the registry (see complete report attached). Following the survey, it was the opinion of Market Decisions, based on experience with similar campaigns and surveys, that 18% awareness was very successful and higher awareness could be achieved only with a much more comprehensive and expensive effort using television and radio.

The BPC added a field to the online sign-up form for the registry which required participants to indicate how they heard about the registry. The graph below shows the results of this query.



The Feasibility and Advisability of Requiring Land Managers to Post Signs (Chapter 584, Section 6 [4])

The Board sought input and discussed the appropriateness of a sign posting requirement during several of its meetings. With the exception of forest managers, the applicator community was opposed to any new sign requirement. Few other stakeholders voiced strong support for a sign requirement, although one organization strongly advocates for a sign requirement based on the aerial forestry spraying model. The following points summarize the Board consensus relating to a new proposed posting requirement for pesticide applications:

- The Board recommends that the current aerial posting requirements contained in Chapter 51 be retained since it focuses on “wide area” spray programs that often cover remote, unpopulated areas where recreationalists predominate.
- The Board believes that the purpose of any new posting requirement should be clear and defensible. Board members determined that posting should be intended to help alert area residents that spraying may occur and to provide a contact for obtaining additional information.
- The Board foresees a significant burden associated with any new posting requirement.
- The Board does not support a requirement for posting the perimeter of pesticide application sites, because many sites are in remote locations that are surrounded by woods or agricultural lands—if not entirely, at least in part—so that the vast majority of signs would not be visible to the public.
- Ultimately, the Board was not able to identify a practical posting requirement that would not result in posting of signs of questionable public benefit. Consequently, the Board determined that the costs associated with a comprehensive posting requirement exceed the benefits to be derived, and therefore it does not advocate for additional posting requirements at this time.

The Feasibility of Establishing and Maintaining an Internet-based System to Allow Land Managers to Electronically Provide Notification (Chapter 584, Section 6 [5])

In researching the possibility of an Internet-based notification system, the Board considered numerous entities, both public and private, with both mapping and database expertise. It was quickly realized that the Maine Office of Geographic Information Systems (MEGIS) was the most logical choice for the needed services.

Between June and October 2010, Board staff met three times with MEGIS to review the requirements of the project. It was determined that a mapping application had already been developed for the Maine Geological Survey that performed many of the desired functions and, for an additional cost of \$10,400, MEGIS would customize this existing application to add new functionality and incorporate the notification registry. The Board was informed that, without the existing application foundation, the cost of the mapping application would be about \$40,000.

The following specifications were developed for an Internet-based mapping tool (details attached):

- Based on BPC Pesticide Notification Registry
- Display property boundaries or address points of registry participants
- Provide pesticide applicators with the ability to draw pesticide application area boundaries or polygons representing a general area of pesticide applications
- Search and identify all registry properties within specified distances from the application boundary
- Provide reports to applicators with e-mail addresses, US postal addresses and telephone numbers, to enable them to contact registry participants and notify them of pending pesticide applications
- Mapping application would be completely self-contained on the State server, with no download of any software required

While there was no question that the technology existed to create an application that would meet all requirements, the availability of digital parcel data for properties listed on the registry would be essential for accuracy, as the law bases the notification distance on property boundaries. At present, data exists for all the unorganized territories, but only about 135 of the nearly 500 municipalities in the state have this information. For the 2010 registry, approximately 100 of the 382 towns currently on the registry have parcel information.

Where no parcel data exists, only a point, based on the 911 address system, will appear on the map. This point would represent only a single point somewhere along or near the property boundary, and would not allow for accurate measurement from a pesticide application site to the registry participant's property. There is also a known error margin of about 100 feet over ¼ mile for digital maps. Taking these problems into consideration, and to avoid excluding registry participants' properties that should be included, this error rate would be automatically factored into all distance measurements. In addition, two colored areas would be generated around the pesticide application site. The first area would highlight the required notification distance, and the second would extend beyond the required distance and highlight an area where there may be additional properties that should be notified, but weren't included initially. These areas will also be generated for properties where parcel data is available. Users will also have a tool that will allow for nearby properties to be manually added to the notification list.

In all cases, whether parcel data is available or not, applicators would be encouraged to err on the side of including more registry names, to be sure no one is left out due either to lack of data or the inherent inaccuracy of the distance measurement, or, at a minimum, measure the actual distance on the ground.

Concerns about the Use of an Internet-based Notification Registry

During the course of developing and implementing the notification registry required under PL 2009, Chapters 378 and 584, the Board has become aware of handful of concerns that have been expressed about the operation of the registry and operating it as an Internet-based system.

- Like virtually every written document maintained by the BPC (and most state agencies), the registry is a public document, available to anyone upon request. Since the registry contains detailed personal contact information about the participants, some people will not use the registry because they refuse to disclose their personal information for use in a publicly available document.
- Similarly, since sign-up and distribution of the registry are currently accomplished through an Internet-based application, personal contact information is essentially available to anyone with an Internet connection. The Board is currently requiring a username and password to protect the information from Web crawler software. However, the Maine Office of Information Technology has advised the Board that there is other technology to prevent Web crawler access, and they discourage use of usernames and passwords because it is contrary to state policies relating to transparency and open access.
- Another concern relating to the Internet-based registry is about malicious use of the information, such as distributing fake e-mails alerting participants about nonexistent pesticide applications.
- Finally, the Board's Assistant Attorney General has voiced concern about any potential Internet-based application that would automatically perform notification requirements for the land manager. The concern relates to the state taking responsibility for a duty assigned by law to private entities, and the legal questions that would arise if and when a failure occurs.

Costs Associated with Development of a Comprehensive Pesticide Notification Registry

Some stakeholders requested that the Board list the costs associated with the development of a comprehensive notification registry. The Board does not have any systematic method for recording and summarizing those costs, since it has primarily involved Board and staff time commitments to date. The

Maine Office of GIS has provided an estimate of \$10,400 for development of the Internet-based mapping tool to assist in the identification of properties that trigger a notification duty. In addition, the staff conservatively estimates it has devoted at least 700 man-hours to the registry project to date, and this does not include Board member time.

Next Steps for the BPC in Development of a Comprehensive Pesticide Notification Registry

After receiving policy guidance from the ACF, the BPC is prepared to initiate a formal rulemaking process, based on the concepts articulated in this report, and feedback from the Maine Legislature. Rulemaking could be completed and ready for Legislative review by January of 2012, unless the Legislature chooses to bypass additional review by designating the rule as routine technical. The Board will then turn its attention to implementing the final provisions.

Additionally, the BPC needs to refine the location information for some of the current registry participants so that the locations can be mapped using the Internet-based mapping tool. Data standards for future participants will likely need to be revised for this purpose also.

The BPC staff will need to develop and implement a system for ensuring that the registry does not contain invalid or outdated entries. Development of the Internet-based mapping tool will need to be completed and implemented. Training on all aspects of the comprehensive registry will also become a priority for the BPC over the next couple of years. Finally, the Board will need to implement an ongoing public awareness campaign to ensure that the registry is effective. This becomes more challenging as the registry matures because it becomes less newsworthy.

Attachments:

- PL 2009, Chapter 378
- PL 2009, Chapter 584
- Minutes and Comments from Ad Hoc Public Health Committee
- Memo on Internet-based system
- Registry press release, ads and poster
- Market Research report