

**Schlein, Paul B**

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**From:** jody spear [jodyspear@hotmail.com]  
**Sent:** Thursday, February 05, 2009 7:11 PM  
**To:** Schlein, Paul B  
**Subject:** RE: chapter 28

To: Pesticide Control Board

Fr: Jody Spear, Harborside

The PCB decision to replace "mandatory notification" with an aerial spraying registry is not an adequate response to the many incidents of off-target contamination reported by individuals who were unaware of being in harm's way.

Some specific problems:

If Section 1 is about both agricultural and non-agricultural applications, it should say so (Sec. 2 specifies non-ag, which might suggest that Sec. 1 governs ag solely).

Sec. 1B .. This does not address the problem of hostile neighbors, who might well spray vindictively if asked to provide notice to specific persons. That's reason enough for mandatory notification.

B3 (also C6b) .. There are contingencies that should preclude an intended pesticide application, and provision should be made for them. As we confront a devastating decline in honeybee populations, the presence of pollinating insects comes to mind, but this is only one example. "Nothing will stand in the way of pesticing" is a bad statement of policy.

B4 (also 6C) .. "Either party may terminate ..." implies that a landowner or manager can refuse to uphold the agreement with a registered individual who requires notification.. The point of the registry is to protect persons who need an agreement in force. A manager should not be allowed to nullify that agreement.

Sec. 2A2 .. Fees should not be required for registry listing.

Not having received clarification of the question I posed about commercial harvesting on park land, I repeat here the concern I raised in my December testimony:

At last month's hearing [November], Brian Powers identified himself as having been a state parks employee, a Superfund site manager, a Medomak Valley Land Trustee, and recipient of an environmental-excellence award. Yet, although he claims to know the effects of agricultural chemicals on human health, he will not acknowledge the well-established scientific basis for stringent regulation. A blueberry grower, he would like to expand his acreage, using pesticides, on state park land in Camden without observing notification and setback requirements for trails used by hikers. How is it even possible for commercial growers to use state park land, putting hikers at risk?

I look forward to receiving an answer to this question.

Despite repeated reports of persons being subjected to unacceptable risks of pesticide poisoning (chronic/subclinical as well as acute), the board is continuing to defer to growers and their industry lobbyists. This will mean taking the case to the legislature, petitioning as well for oversight of pesticide applications to be transferred to DEP.



*Maine Organic Farmers  
and Gardeners Association  
Common Ground Country Fair*

February 6, 2009

Mr. Henry Jennings  
Director  
Maine Board of Pesticides Control  
28 State House Station  
Augusta, ME 04333-0028

Dear Mr. Jennings,

Thank you again for the opportunity to comment at the January 23<sup>rd</sup> public hearing regarding proposed changes to Chapter 28 – Notification Provisions For Outdoor Pesticide Applications. This is a written summary of our concerns and suggestions.

At your public hearing in November, MOFGA was willing to go along with the proposed language regarding notification because it assigned an important and reasonable responsibility to persons contracting for pesticide applications. While we felt that the proposed language was complex and somewhat confusing, we appreciated that people who set pesticide spraying in motion would first be letting neighbors know what they were doing. It showed that neighborly notification is an ethical responsibility when one employs a technology that may adversely affect the health and/or economic interests of neighbors.

Many months of work went into developing that language. We were dismayed to witness that Board's sudden departure from that track at your meeting in December. We feel that the latest language, which drops mandatory notification, is inadequate and we do hope that the Board will reinstate that as an initial requirement.

We recommend a simple, clear and comprehensive system that will help folks contracting for powered outdoor pesticide applications to inform all their neighbors in a consistent manner.

- The system should require land managers intending to conduct powered outdoor pesticides applications to provide initial notification to occupants, farmers and owners of properties that abut or lie within 1320 feet of the intended spray area.
- The system should apply to all powered outdoor pesticide applications, not just aerial spraying.

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We do support the establishment of an opt-in registry for folks who wish to receive detailed information about all powered outdoor pesticide applications taking place within a quarter mile of their property. However, this should be considered as a second step in the communication process after all neighbors in the line of drift have been notified about general pesticide application practices taking place in the vicinity. We do believe that if landowners do a good initial job informing people about their pesticide spray practices, the neighbors will be less likely to register to receive specific chemical and spray schedule information.

Ours are reasonable and practical proposals, not without even stronger precedent. You may know that the European Parliament recently voted for some very strict regulations on pesticide spraying. The laws would ban substances that can cause cancer or that can harm human reproduction or hormones, would prohibit or severely restrict the use of pesticides near schools, parks or hospitals, and would ban aerial spraying entirely. And as I have mentioned in past testimony, California's Tulare County has ruled against spraying restricted use pesticides within a quarter mile of schools and other areas likely to be occupied.

Our proposal is far milder than of any of the developing policies mentioned above. But it does help us toward the goal that we grappled with in the Stakeholders Committee a couple of years ago - minimizing conflict that arises from pesticides drift. It's a simple, common sense, right-to-know approach.

Last year, Maine's legislature unanimously supported innovative and bold legislation to protect our citizens from harmful chemicals found in every day consumer products. Maine is seen as a leader in its ability to establish policies that will protect public and environmental health. We feel that Maine has another opportunity to be a leader in protecting public health. That opportunity is the establishment of a mandatory notification system for all powered outdoor pesticide applications.

Your motto is "Think First, Spray Last." We recommend amending that to "Think First, Notify Next, Spray Last."

Or, more simply put, "Say Before You Spray."

Thank you for your time and consideration.

Sincerely,

Heather Spalding  
Associate Director

-----Original Message-----

**From:** Mark Doty [mailto:Mark.Doty@plumcreek.com]

**Sent:** Friday, February 06, 2009 4:21 PM

**To:** Jennings, Henry

**Subject:** Chapter 28 comments

I would encourage you to make the aerial registry more like the non-ag registry.

01 DEPARTMENT OF AGRICULTURE

026 BOARD OF PESTICIDES CONTROL

Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS

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

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

2. Once a request for general information has been made, as provided in Section 1(A)(1), the person receiving the request shall provide the information to the neighbor within one week after the request for information is received and at least 24 hours prior to any planned application time. Such information may cover outdoor pesticide applications which are planned over a period of one growing season or year and may be given in any fashion, provided that it effectively informs the neighbor of the following:

The provision to provide the information at least one calendar day prior to application is not a problem unless the request for information is received less than 48 hours prior to the planned application. We would encourage you to add the 48 hours prior provision and that in no event shall an application be postponed if a reply is made within 24 hours of receipt of a request.

Could the legal occupant of a public road request such a notification?

**B. Requests for Advance Notice of Specific Pesticide Applications**

1. A neighbor may request to be notified about specific outdoor pesticide
  - c. The request for notification shall be valid until such time as the neighbor declines future notice or until the neighbor no longer owns, leases or occupies the Sensitive Area.

The request should be an annual request, not a perpetual request. The person making the request should have the responsibility to annually request the information. Please do not put the responsibility for tracking whether a person still owns, leases, or occupies a sensitive area and wishes to be notified on the entity receiving the request.

Could the legal occupant of a public road request such a notification?

2. Once a request for notification has been made as provided in Section 1(B)(1), the person receiving the request shall notify the neighbor 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 neighbor of the following:

The provision to provide the information at least one calendar day prior to application is not a problem unless the request for information is received less than 48 hours prior to the planned application. We would encourage you to add the 48 hours prior provision and that in no event shall an application be postponed if a reply is made within 24 hours of receipt of a request.



# *Wild Blueberry Commission* OF MAINE

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February 6, 2009

Dr. Carol Eckert and Board Members  
Maine Board of Pesticide Control  
28 State House Station  
Augusta, ME 04333-0028

*Via E-Mail & Fax:*  
[henry.jennings@maine.gov](mailto:henry.jennings@maine.gov)  
624-5035

RE: Chapter 28 - Notification Provisions for Outdoor Pesticide Applications

Dear Chairperson Eckert and Board members:

Thank you for the opportunity to provide written comments regarding the current proposed rule changes to Chapter 28 that would establish a registry for aerial applications. There are close to 500 Wild Blueberry growers in Maine. For over 20 years the Commission has worked with the Board and our growers to foster communication between growers and neighbors.

Some of our growers already consult the current registry for urban and suburban applications even though it is not required of farmers. The idea of creating a registry that included agricultural applications came up at a meeting with growers last year when discussing ideas regarding Chapter 28 changes, however, we set it aside thinking there would not be much support for the idea. When the Maine Organic Farmers and Gardeners and others endorsed the registry idea during the last opportunity for comment on Chapter 28 changes we revisited the idea and supported it in our written comments.

The Commission strongly supports communication between neighbors. While we believe the expectation for communication to occur can be set and some mechanism to support communication can be developed, we also understand that laws and regulations cannot accomplish true communication. Communication takes two willing parties. In this letter we will focus our comments directly on the registry idea and not on the larger perspective of fostering communication. A provision such as a registry should be viewed as a support mechanism to foster communication.

We are writing in support of an Outdoor Powered Application Registry that would include all outdoor powered applications. The notification registry process should be as simple as possible for individuals requesting notification, applicators/landowners providing notification, and the Board staff.

There should be one notification registry for all outdoor pesticide applications. Whether or not the application is related to agriculture, right of way maintenance, landscaping, or any other should not matter.

The Outdoor Pesticide Application Notification Registry should be the only required notification method thereby simplifying the system for the public, applicators, and Board staff. Our understanding is the current proposal adds an aerial registry to the current systems. There should be no more than one required method. Having one registry for all will simplify for all.

Our farmers will still be encouraged to pursue other methods of communication as they have in the past. We will still work with the Board on communication outreach as we have in the past and would be willing to help publicize a comprehensive outdoor registry.

Some of the details the Board should address before finalizing the outdoor registry include:

1. There should be a time limit to listing such as a year in order to keep the list current considering that people move and their notification needs change over time. Sun setting requests will minimize staff time necessary to keep the list current, preclude unwanted notification, and minimize time trying to locate individuals who have moved.
2. The registry should have categories of notification the individual requests such as aerial, agricultural ground, horticulture/landscape, and all. Depending on locations and concerns, neighbors may not want to be notified in all cases. A simple box check off system would allow members of the registry to sign up for notification based on application type.
3. There should be a mechanism to prevent abuse of the registry in neighbor feuds or by out of state advocacy organizations such as a campaign to sign up individuals in a geographic area. The registry should be protected as tool to help foster communication between neighbors and not abused for other reasons.
4. There should be an E-mail notification option and e-mail addresses should be requested for contact information purposes.

We appreciate the opportunity to provide suggestions to develop an Outdoor Powered Application Registry.

Sincerely,



David K. Bell  
Executive Director

Cc: Wild Blueberry Commission  
Wild Blueberry Advisory Committee

February 6, 2009

Henry Jennings, Director  
Board of Pesticides Control  
State House Station #28  
Augusta, ME 04333

RE: Proposed Rule Changes for Chapter 28

Dear Henry:

Maine Farm Bureau, the state's largest general farm organization, is opposed to any regulation that will mandate farmers using pesticides to notify all abutters before applying pesticides. It is not that we are opposed to letting neighbors know what a farmer is doing in growing crops. Rather, our opposition is based on two objections.

First, many of Maine farms use a number of small fields. It is common for a farm to use dozens of these smaller fields to grow their crops. It is going to be very difficult to know who the abutters of these fields are. This will be a problem. It needs to be thoroughly thought out before it becomes part of a regulation.

Second, this requirement of notifying abutters by a farmer using pesticides includes organic farmers as well. I have had several calls from organic farmers using organic pesticides telling me they are not in favor of a mandatory notification. There is a perception that a notification indicates that there is possibly a danger of what the farmer is doing. This, they feel, could create disharmony between neighbors.

We suggest that the current spray drift registry and general notification of pesticide application be more effectively promoted by the staff of the Board of Pesticide Control through press releases, public meetings, and editorial board visits to let the public know that there is a way for them to be notified when pesticide spraying is going to occur. We feel this will be more effective than a mandatory notification of all the abutters.

Thank you for your attention to the above.

Sincerely,

Jon Olson  
Executive Secretary