

## *MOFGA Response to Concepts for Improving Notification*

1. Amend Section 1 of Chapter 28 to specify that abutters have the right to request timely advance notice of individual applications similar to the provision in Section 3 of Chapter 28 for the Maine Outdoor Notification Registry. The current provisions in Section 1 contemplate providing abutters a summary of proposed spray activities over the course of the season. While some people are interested in the summary, by and large, abutters simply want to know when spraying will occur. Currently requests for notification are only valid for one year. The Board should determine whether requests should be valid for a longer period. A number of people have claimed to be “on the notification list,” believing their request should be valid indefinitely.

**MOFGA’s Position: Requests for notification should be automatically renewed year-to-year, until such time as the landowner requests to be removed from the notification list, or the land changes ownership.**

2. Amend Chapter 28 to create a new section covering only aerial agricultural spraying.

**MOFGA’s Position: No comments at this time.**

3. Create a definition for “sensitive areas likely to be occupied” to include residences, commercial and institutional buildings, other areas where regular human use is likely, such as parks and playgrounds, and possibly livestock areas, since livestock need regular tending. Historical incidents suggest many people want to ensure that their livestock is protected when aerial spraying occurs.

**MOFGA’s Position: This definition should broaden to include land that is producing food for immediate consumption (pasture, gardens, cropland) and not only include buildings likely to be occupied, but the space around the building likely to be occupied (lawns, driveways, etc) and outbuildings (barns, sheds, garages), and areas where people are likely to be working or recreating outside (road construction crews, agricultural workers, loggers, landscape crews, roadways, recreational trails)**

4. For aerial agricultural spraying, make advance notice to adjacent “sensitive areas likely to be occupied” mandatory, with two procedural options to allow maximum flexibility:

o The first option would require that land managers send an annual letter to adjacent property owners occupying sensitive areas, informing them that the agricultural land may be sprayed by air during the upcoming season and of their right to receive timely notice in advance of when spraying will occur. This would be the recommended option and would allow the land manager to develop a list of people who want to be notified which would be useful in succeeding years. Similarly, if people don’t want to be notified, and the land manager knows that the person occupying the property has not changed, the section could be worded so that the annual letter would not be necessary until the person occupying the

property changes. This approach allows the land manager to develop a more manageable notification list that can be refined over the years, and doesn't require calling people who don't wish to know. It also allows the neighbors more time to plan any remedial actions they may wish to take. The annual letter could be used until some set time prior to spraying, such as 30 days or two weeks, to make sure recipients receive the letter and have time to read it, respond, and then be placed on the notification list.

o The second option would be for land managers to simply provide advance notice to persons occupying adjacent sensitive areas similar to the manner used for the Maine Outdoor Pesticide Notification Registry. Land managers must first attempt contacting abutters via telephone calls or personal contact, but if this approach is not successful, a door hanger is affixed to the principal entry of the residence. The notice should be provided just before the spraying, such as 24 to 48 hours in advance. This option provides flexibility for land managers when the need for aerial spraying arises quickly, but doesn't allow the neighbors much time to plan. The same notification procedure could be used in conjunction with the option above once a list of who wants to be notified has been developed.

If agreed upon by both parties, allow notice to be made via fax or e-mail. This approach has been used successfully already.

**MOFGA's Position: MOFGA supports the notion that emerged at the February BPC meeting that would initiate contact in the spring with landowners within a certain (as yet undetermined) distance from the land to be sprayed to notify them of the pests usually encountered, products & methods used and with information on how to obtain detailed info at time of application later in season.**

The abutter should not have to seek out the information, but rather the applicator/land manager should initiate contact via a previously mutually agreed upon method (phone, fax, email – even if email only contains a link directing to web site with info). Information should also be provided about the material to be sprayed, and how to obtain more information about this material.

If the detailed information at the time of application is to be automated (on a website and phone message), it should be required to be updated no less than every 24 hours and should be a method that is accessible to all (phone option needed), and should include specific time, location and materials used.

5. Carry forward provisions from Section 1 of Chapter 28 that allow abutters to request additional information such as the label and MSDS, and the provision that specifies that the Board will arbitrate notification disputes.

**MOFGA's Position: We request that anyone should have the right to request additional information about material that is being applied, not just abutters.**

6. Extend the distance for notifying nearby residents about aerial spraying to 1,000 feet. This number is based on a review of historical complaint data and enforcement cases. In

addition, many people residing beyond 500 feet from the target area have shown a reasonable need to be notified about aerial spraying.

**MOFGA's Position:** In order to protect all citizens from the negative impacts of drift, MOFGA encourages the distance to those notified to be the greatest distance that drift has been shown to occur given the method of application (ground/aerial/etc.).

Also, if spray is occurring near schools, daycares, or other institutions housing legal dependents, those responsible for that individual (parent, legal guardian, etc) should be notified.

7. Notice for aerial spraying should include a statement about the possibility that the spraying could be delayed due to unfavorable weather. If spraying is delayed, the Board will need to decide what its expectations of the land manager will be. A couple of staff options are outlined below:

- o Require the land manager to continue to call until the spraying is completed; or
- o Have a statement in the notice specifying that if the person receiving the notice wants confirmation of whether the spraying has occurred, they must call the land manager.
- o Electronic communication should also be an option for this part of the process.

**MOFGA's Position:** In the event that weather conditions delay a spraying, then established methods of notifying neighbors should be utilized to provide the most updated information as soon as it is available.

Applications should never be allowed to occur earlier than previously notified, and this should be specified in the rule.

### ***MOFGA Response to Ideas for Ensuring the Correct Site is Sprayed***

- Amend Chapter 22 to require that anyone contracting for an aerial pesticide application must positively identify the target using one of the following methods:
  - o A geo-referenced map depicting the boundaries of the target area; or
  - o A detailed description of the target area coupled with distinct ground markings pre-positioned by the land manager; or
  - o A target site meeting between the applicator and land manager that includes a review of the target site boundaries.

**MOFGA's Position:** Similar to recently published rules about 'verifiable method of identifying the correct site' in regards to lawn care service applications, an aerial applicator should be responsible for making a positive verification of the site to be sprayed before making the application. MOFGA supports the notion to require either a verifiable geographic reference (longitude & latitude) OR IF the tagging method is first approved by the board, a *uniquely* identifiable 'tag' to identify the site (code #, colored flags, etc).

## Examples of Buffers Zones Established for Protection from Pesticide Drift\*

Ground applications have the lowest drift distance; orchard air blasts (air assisted) droplets move 300 feet according to a study in Washington and aerial applications present greatest risk and travel longest distances. Volatile organophosphates have been found up to 1.5 miles from application site.

<u>Where or What</u>	<u>Buffer Size</u>	<u>Notes</u>
Bees	?	Bees are protected from pesticide applications providing them with more protection than people.
Salmon in Oregon, California and Washington	20 yards ground spray & 100 yards aerial spray around streams and rivers for a diminishing list of pesticides (started with 54 pesticides)	"The Court finds that buffer zones are a common, simple and affective strategy of avoiding jeopardy to threatened and endangered salmonoids."
Grape plants in Oregon		Plants have more protection than children because growers use "economic loss" as a driver
Alabama	400 ft buffers	Buffers around schools for aerial sprays
Alaska	200 ft buffers	Buffer for drinking water supplies
Arizona	Buffers for Aerial Applications: Highly toxic liquids - 1/4 mile schools/day care; 400 ft health care; 100 ft residential Highly toxic dust - 1/4 mile schools/day care; 400 ft health care; 300 ft residential Odiferous - 1/4 mile schools/day care; 1/4 mile health care; 1/4 mile residential	For Ground Applications: Highly toxic liquids - 1/4 mile schools/day care; 400 ft health care; 50 ft residential Highly toxic dust - 1/4 mile schools/day care; 400 ft health care; 300 ft residential Odiferous - 1/4 mile schools/day care; 1/4 mile health care; 1/4 mile residential
California	AB 947: restricts use of state funds for pesticide spraying within 1/4 mile of a school.	Gives Ag Commissioner authority to restrict pesticides. Tulare County is so far the only county to make use of this law.

<b>Hawaii</b>	SB 3170: establishes a pesticide free buffer zone of 1,500 foot buffer around elementary school property for ground spraying. 1/2 mile buffer for elementary school property for aerial spraying	Reporting requirement for any commercial pesticide application within 5 miles of a school or educational institution property & imposes 72 hour written notice to all schools
<b>Louisiana</b>	1000 ft buffer zones for aerial spray	Restrictions on spray only during school hours
<b>Massachusetts</b>	500 ft buffer zones for aerial spray	Around schools
<b>New Jersey</b>	300 ft buffer zones for aerial spray	(BP graph states 2 miles - 2 1/2 miles around schools for gypsy moth)
<b>North Carolina</b>	300 ft buffer zones around schools	100 feet of residential; 300 feet of schools, churches and businesses; and 25 feet of either side of public roads.
<b>New Hampshire</b>	No size	Aerial application, during School, commuting hours & outdoor activity in sensitive areas.
<b>Oregon</b>	Lane County only	For County Roads Vegetation Management program - pesticide buffers established of 100 feet for lakes, streams or wetlands and 200 feet for school bus stops and bus stations
<b>Europe and New Zealand</b>	Emerging best management practices	Planting buffer hedgerows for drift containment; Development of high tech equipment to minimize drift. (e.g. thick tarps to minimize fumigation drift and better ground spray equipment to keep pesticides on target crops)

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for week

A series of developing cases may also support liability for harm based on common law theories of trespass and negligence. See generally *Klass, Bees, Trees, Preemption, and Nuisance: A New Path to Resolving Pesticide Land Use Disputes*, 32 Ecology Law Quarterly 763 (2006).

\*Collecting up-to-date information on drift policies and legislation is one task of the PAN Drift Committee. This list may be incomplete.