

01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES

026 BOARD OF PESTICIDES CONTROL

Chapter 60: DESIGNATION OF CRITICAL PESTICIDE CONTROL AREAS

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**SUMMARY:** These regulations establish criteria which the Board will use in deciding if an area should be designated as a critical pesticide control area. In addition, these regulations specify the procedures parties must follow in requesting such a designation. These regulations also define the locations that have been designated as critical areas by the Board.

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1. Procedure

- A. The Board shall receive, consider and act upon petitions for designation of critical pesticide control areas in accordance with 5 M.R.S.A., Ch. 375, subchapter II. Citizen petitions shall be allowed in accordance with 5 M.R.S.A. § 8055. A municipality or county may make such petition in accordance with 22 M.R.S.A. § 1471-M, sub-§ 4. In addition, the Board's staff may initiate such a petition.
- B. The Board shall provide public notice and opportunity for public comment on any such petition in accordance with 5 M.R.S.A., Ch. 375, subchapter II.
- C. There shall be opportunity for local participation in Board decisions regarding the designation of critical areas, as provided by 22 M.R.S.A. § 1471-V.

2. Information required in Petition

Any person or persons petitioning the Board to designate an area as a critical pesticide control area shall submit the following information in support of the petition:

- A. The name, address and telephone number of the petitioner(s) and a statement of the petitioner's interest in the proposed designation.
- B. The name of the pesticides or group of pesticides for which restrictions are sought. Petitioners may seek restrictions on specific formulations which have enhanced toxicity, rather than on all products containing the active ingredient. For purposes of this regulation, pesticides shall include both active and inert ingredients, and carriers used in any pesticide application.
- C. The name(s) and address(es) of the owner(s) of property within the proposed critical area.

- D. A map of the proposed critical area.
- E. A description of the purposes for which the pesticide(s) is or may be applied within the proposed area (if known).
- F. For petitions for designation under criteria of sections 3(A), 3(B) or 3(C), the name(s) of the species for which protection is sought and a summary of the data establishing adverse effects of pesticides upon the species.
- G. For petitions for designation under criteria of section 3(D), a copy of any applicable town ordinances, a summary of: evidence establishing that the pesticides may enter ground or surface water, hydrogeologic data which adequately defines the proposed critical area, and evidence establishing that the pesticide(s) may have an adverse effect upon the health of current or future users of the ground or surface water.
- H. For petitions for designation under criteria of section 3(E), a summary of medical and/or epidemiological evidence that exposure to the pesticide(s) causes serious and/or longstanding health effects to sensitive individuals or groups of individuals.
- I. For petitions for designation under criteria of sections 3(F) or 3(G), a copy of any management plan for the area or species.
- J. A description of the petitioner's proposed restrictions on the use of pesticide(s) within the proposed critical area.

### 3. Criteria for designation

The Board of Pesticides Control will use the following criteria to determine whether to designate a critical pesticide control area. Where the Board is persuaded by the evidence that any of these criteria are met, it may designate a critical pesticide control area and adopt additional pesticide use restrictions, prohibitions or management plans for that area as necessary to protect health, welfare and the environment.

- A. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of the habitat or range of any animal or plant species that:
  - (1) is listed as endangered pursuant to state or federal law; or
  - (2) is listed as threatened pursuant to state or federal law; or

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- (3) is an invertebrate species ranked G1, G2 or S1 under the Natural Heritage Program of The Nature Conservancy and which is, in the Board's judgment, of natural significance.
    - B. Areas where use of pesticide(s), without additional restrictions, is likely to negatively affect the mortality rate and/or reproductive capability of any animal or plant species that:
      - (1) is listed as endangered pursuant to state or federal law; or
      - (2) is listed as threatened pursuant to state or federal law; or
      - (3) is an invertebrate species ranked G1, G2 or S1 under the Maine Natural Areas Program in the Department of Conservation and which is, in the Board's judgment, of natural significance.
    - C. Areas where use of pesticide(s), without additional restrictions, is likely to cause the significant destruction or curtailment of significant wildlife habitat. "Significant wildlife habitat" is as identified under the Natural Resources Protection Act, 38 M.R.S.A., Ch. 3, subchapter 1, Art. 5-A.
    - D. Areas where use of pesticide(s), without additional restrictions, is likely to significantly risk the quality of surface or groundwater supplies used for human consumption.
    - E. Areas where use of pesticide(s), without additional restrictions, is likely to cause serious and/or longstanding impairment of the health of sensitive individuals or groups of individuals who normally occupy such areas. The Board contemplates that this designation will require verified medical and/or epidemiological documentation of human sensitivity to one or more pesticides.
    - F. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural or other resources owned or managed by a government agency, or is contrary to the duly adopted management plan for an area owned or managed by a government agency.
    - G. Areas where use of pesticide(s), without additional restrictions, is likely to significantly harm natural resources within an area which is identified as an exemplary natural community or ecosystem of recognized exceptional qualities and has been designated for long-term ecological research and/or conservation purposes.
  4. Designated Critical Pesticide Control Area
    - A. Deblois Fish Hatchery Critical Pesticide Control Area

(1) Facts and policies

- (a) A fish cultural facility owned by the Maine Department of Inland Fisheries and Wildlife and operated by Connors Aquaculture exists in the Town of Deblois, Washington County, Maine.
- (b) The purpose of the above facility is to hatch and propagate salmonid fishes for commercial use.
- (c) The above hatchery and rearing pools are surrounded by extensive areas of land devoted to the commercial culture of lowbush blueberries.
- (d) The above blueberry land has historically been sprayed with insecticides on a regular basis, for the purpose of controlling maggots of the blueberry fruit fly.
- (e) Aerial application of pesticides for the above purpose has on at least one occasion resulted in the mortality of large numbers of fish when it was a State fish-cultural facility.
- (f) Connors Aquaculture's plan and the critical habitat necessary for continued operation are threatened by improper selection or use of pesticide products or application equipment in the surrounding area.

(2) Location

The Deblois Critical Area shall encompass the area within one thousand feet of the fish-cultural facilities owned by the Department of Inland Fisheries and Wildlife in Deblois, and of the tributary water supplies to said facilities. The above fish-cultural facilities are sited on two parcels of land in the eastern portion of the Town of Deblois, Washington County, Maine, as follows:

- (a) The hatchery parcel, so-called, located on Hatchery Brook, so-called, an officially un-named tributary to Bog Stream, at 45°45'0" Latitude and 67°56'10" Longitude.
- (b) The rearing pool parcel, so-called, located on Bog Stream at 44°44'30" Latitude and 67°56'0" Longitude.

(3) Conditions

Within the Deblois Critical Area, the following restrictions are to be in effect:

- (a) No one shall carry out pesticide applications on property of the Maine Department of Inland Fisheries and Wildlife, except for employees of the Department or Connors Aquaculture engaged in normal fish cultural and household activities.
- (b) No one shall make pesticide applications within the Deblois Critical Pesticide Control Area as designated under Section 4.A.(2) Location unless it is performed in accordance with a Pest Management Plan approved by the Board.
- (c) The Pest Management Plan referred to in (b) above shall be developed by the University of Maine Cooperative Extension with input from the Maine Department of Agriculture, Food and Rural Resources and the Maine Department of Inland Fisheries and Wildlife. This plan shall be reviewed and updated on a periodic basis as new pesticides and application technology are introduced.
- (d) Prior to each insecticide application referred to in (b) above, the blueberry grower making or contracting for the application shall notify personnel of the Deblois fish-cultural facility.

B. Dennys River Critical Pesticide Control Area

- (1) The above entitled matter having come up for public hearing on 7 March, 1978, at 2:00 P.M. before the Pesticides Control Board in Room 102 of the Science Building at the University of Maine in Machias; and the Board, having considered the evidence and arguments presented, and with a quorum present, has this day voted to declare a critical area under provisions of Title 22, Chapter 258-A, Sections 1471-F and 1471-M (2)(A), within which critical area no aerial application of pesticide is to be made without prior approval of the Board of Pesticides Control.
- (2) The critical area herein established is described as follows: Commencing at the dam at the foot of Meddybemps Lake and extending down the Dennys River to the Gilman Dam, so-called, the critical area shall include all land within one-half mile of either bank of the Dennys River; commencing at the Gilman Dam, so-called, and extending down the Dennys River to its entrance into Dennys Bay, so-called, the critical area shall include all land within one mile of either bank of the Dennys River.

**FISCAL IMPACT:** This rule will not impose any fiscal impact on counties or municipalities.

STATUTORY AUTHORITY: 5 M.R.S.A., § 8051 *et seq.* and 22 M.R.S.A., §§ 1471-F and M.

EFFECTIVE DATE:

July 6, 1979

AMENDED:

May 8, 1989

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

April 14, 1998

July 12, 2000

MINOR CORRECTION:

November 23, 2000 - citation in § 4(C)(4)

AMENDED:

December 24, 2000 - repealed § 4(C)