

## **BASIS STATEMENT FOR ADOPTION OF CMR 01-026, CHAPTER 20—SPECIAL PROVISIONS**

### **Basis Statement**

Surveillance data from the last decade show that mosquito-borne viruses are on the increase in Maine. The first confirmed human case of West Nile Virus in Maine was documented in 2012. Maine's Arboviral Illness Surveillance, Prevention and Response Plan is based on a national model and is similar to most other states. That plan calls for the Maine Center for Disease Control and Prevention to recommend adult mosquito control programs in targeted areas of the state if the threat of mosquito-borne disease reaches the "high" or "critical" phase. Conducting these programs would not be feasible under current state law. Chapter 20 requires authorization from each individual property owner which would be impractical for wide-area programs conducted in residential areas. The proposed amendment to Chapter 20 relaxes the need for individual property owner authorization when the Maine CDC recommends spraying due to vector-borne disease threats.

No changes were made to the amendments based on comments received.

The majority of comments received during the comment period indicate that many people have concerns about wide-area spraying of pesticides for control of mosquitoes. The Board also has concerns, but concluded that its role has never been to determine whether pests should be controlled with pesticides. Rather, the Board's role has always been to ensure that applicators are appropriately trained and to prescribe best practices for the application of pesticides. The Board would like to emphasize that it is not recommending spraying, but is amending its rules to make urgent public health related spraying feasible if Maine's public health officials determine that control of adult mosquitoes is in the best interest of the state.

### **Impact on Small Business**

In accordance with 5 MRSA §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the Maine Board of Pesticides Control office, State House Station #28, Augusta, Maine 04333-0028, telephone 207-287-2731.

### **Provisional Adoption**

At its May 24, 2013 meeting, the Board provisionally adopted the major substantive amendments to Chapter 20.

### **Legislative Approval**

On June 26, 2013 and January 14, 2014 the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held public hearings on LD 1568, the resolve authorizing final adoption of the amendments. Work sessions were held on June 26, 2013, January 14, 2014 and January 23, 2014. Subsequently the ACF reported the resolve out as ought-to-pass as amended. The Legislature enacted the resolve and it became law without the Governor's signature on February 26, 2014 (Resolve 2013, Chapter 87).

# **Rulemaking Statement of Impact on Small Business**

## **5 MRSA §8052, sub-§5-A**

### **Agency**

Department of Agriculture, Conservation and Forestry—Maine Board of Pesticides Control

### **Chapter Number and Title of Rule**

CMR 01-026, Chapter 20—Special Provision

### **Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule**

Small business that contract for mosquito control work may benefit from the proposed rule amendments. There may be as many as 200 such businesses.

### **Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, including the Type of Professional Skills Necessary for Preparation of the Report or Record**

There are no reporting or other administrative costs associated with the proposed amendments that would impact small businesses.

### **Brief Statement of the Probable Impact on Affected Small Businesses**

The proposed amendments would reduce the administrative burdens for small businesses.

### **Description of Any Less Intrusive or Less Costly, Reasonable Alternative Methods of Achieving the Purposes of the Proposed Rule**

Since there are no anticipated increased burdens on small businesses, there are no less intrusive or less costly alternatives.

**01 DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES**

**026 BOARD OF PESTICIDES CONTROL**

**Chapter 20: SPECIAL PROVISIONS**

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**SUMMARY:** These provisions regulate the use, storage and disposal of pesticides with specific emphasis on registered pesticides, right of way and aquatic applications and employer/employee requirements.

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**Section 1. Registered Pesticides**

- A. The use of any pesticide not registered by the Maine Board of Pesticides Control in accordance with Title 7 M.R.S.A. 601 is prohibited except as otherwise provided in this chapter or by FIFRA, Section 2(ee).
- B. The use of registered pesticides for other than registered uses, or at greater than registered dosages, or at more frequent than registered intervals is prohibited, provided that application or use of unregistered pesticides and unregistered applications or uses of registered pesticides may be made for experimental purposes if in accordance with requirements of the Maine Board of Pesticides Control, and the U.S. Environmental Protection Agency.
- C. Retailers and end users of pesticides no longer registered in Maine may continue to sell and use those items provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other Federal law.
- D. In conducting review of registration or re-registration pursuant to 7 M.R.S.A. §607-A, the Board may consider the potential for environmental damage by the pesticide through direct application on or off-target or by reason of drift. If the Board finds that the use of the pesticide is anticipated to result in significant adverse impacts on the environment, whether on or off-target, which cannot be avoided or adequately mitigated, registration or re-registration will not be granted unless the Board finds that anticipated benefits of registration clearly outweigh the risks. In any case where the Board may request data in connection with registration or re-registration of any pesticide, such data may include that concerning pesticide residues, propensity for drift and testing therefor. Such data, if requested, shall provide information regarding residues and residue effects on plant tissues, soil and water and other potential deposition sites, and shall take into consideration differences in plants, soils, climatic conditions at the time of application and application techniques.

**Section 2. Right-of-Way**

Deciduous growth over six feet in height and evergreen growth over three feet in height shall not be sprayed with a herbicide within the right-of-way of any public way except that deciduous

growth which has been cut to the ground and which has grown more than six feet during the growing season following the cutting, may be sprayed that following season. In addition, chemical pruning of single limbs of trees over the prescribed heights may be performed.

### **Section 3. Pesticide Storage and Disposal**

- A. Unused pesticides, whether in sealed or open containers, must be kept in a secure enclosure and otherwise maintained so as to prevent unauthorized use, mishandling or loss; and so as to prevent contamination of the environment and risk to public health.
- B. Obsolete, expired, illegal, physically or chemically altered or unusable pesticides, except household pesticide products, shall be either:
  - 1. stored in a secure, safe place under conditions that will prevent deterioration of containers or any contamination of the environment or risk to public health, or
  - 2. returned to the manufacturer or formulator for recycling, destruction, or disposal as appropriate, or
  - 3. disposed of in a licensed hazardous waste facility or other approved disposal site that meets or exceeds all current requirements of the Maine Department of Environmental Protection and the U.S. Environmental Protection Agency for facilities receiving such waste.

### **Section 4. Aquatic Applications**

No person, firm, corporation or other legal entity shall, for the purpose of controlling aquatic pests, apply any pesticide to or in any waters of the state as defined in 38 M.R.S.A. §361-A(7) without approval of the Maine Department of Environmental Protection.

### **Section 5. Employer/Employee Requirements**

- A. Any person applying pesticide shall instruct their employees and those working under their direction about the hazards involved in the handling of pesticides to be employed as set forth on the pesticide label and shall instruct such persons as to the proper steps to be taken to avoid such hazards.
- B. Any person applying pesticides shall provide and maintain, for the protection of their employees and persons working under their direction, the necessary safety equipment as set forth on the label of the pesticide to be used.

### **~~Section 6. Prohibition of Unauthorized Application of Pesticides~~**

- ~~A. Except as provided by Chapter 20.6(D) and 6(E) below, no person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the~~

pesticide is to be applied, or that person has the consent of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.

- ~~B. Except as provided by Chapter 20.6(D) and 6(E) below, no person may apply a pesticide to a property of another unless prior consent for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.~~
- ~~C. Except as provided by Chapter 20.6(D) and 6(E) below, no commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
 
  - ~~1. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant, or~~
  - ~~2. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.~~~~
- ~~D. The requirements of Chapter 20.6(A), (B) or (C) shall not apply when the pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of maintaining such easement or right of way.~~
- ~~E. When the Maine Center for Disease Control (CDC) recommends mosquito control for arboviral diseases, the requirements of Chapter 20.6(A), (B) or (C) shall not apply to government sponsored mosquito control programs, provided that the government entity:
 
  - ~~1. makes a reasonable effort to provide advance notice to residents about mosquito control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and~~
  - ~~2. implements an “opt out” option whereby residents may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and~~
  - ~~3. if aerial applications are made, makes efforts to avoid applications to certified organic crops and livestock.~~~~

## **Section 6. Authorization for Pesticide Applications**

- A. Authorization to apply pesticides to private property is not required when a pesticide application is made by or on behalf of the holder of an easement or right of way, for the purposes of establishing or maintaining such easement or right of way.

- B. When the Maine Center for Disease Control and Prevention (CDC) has identified that an organism is a vector of human disease and the vector and disease are present in an area, a government entity shall obtain authorization for ground-based applications by:
1. Sending a written notice to the person(s) owning property or using residential rental, commercial or institutional buildings within the intended target site at least three days but not more than 60 days before the commencement of the intended spray applications. For absentee property owners who are difficult to locate, mailing of the notice to the address listed in the Town tax record shall be considered sufficient notice; and
  2. Implementing an “opt out” option whereby residents and property owners may request that their property be excluded from the application by submitting written notice to the government entity at least 24 hours before spraying is scheduled to commence. Authorization is considered given for any property for which written notice was submitted and no “opt out” request was received by the sponsoring government entity.
- C. When the Maine Center for Disease Control and Prevention (CDC) recommends control of disease vectors, government entities are not required to receive prior authorization to apply pesticides to private property, provided that the government entity sponsoring the vector control program:
1. Provides advance notice to residents about vector control programs using multiple forms of publicity which may include, but is not limited to, signs, newspaper, television or radio notices, direct mailings, electronic communication or other effective methods; and
  2. Implements an “opt out” option whereby residents and property owners may request that their property be excluded from any ground based control program and the government entity makes a reasonable effort to honor such requests; and
  3. If aerial applications are made, takes affirmative steps, to the extent feasible, to avoid applications to exclusion areas as identified by Board policy.
- D. General Provisions. For any pesticide application not described in Chapter 20.6(A),(B) or (C), the following provision apply:
1. No person may contract with, or otherwise engage, a pesticide applicator to make any pesticide application to property unless that person is the owner, manager, or legal occupant of the property to which the pesticide is to be applied, or that person has the authorization of the owner, manager or legal occupant to enter into an agreement for pesticide applications to be made to that property. The term “legal occupant” includes tenants of rented property.
  2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property. The term “legal occupant” includes tenants of rented property.

3. No commercial applicator may perform ongoing, periodic non-agricultural pesticide applications to a property unless:
- i. there is a signed, written agreement with the property owner, manager or legal occupant that explicitly states that such pesticide applications shall continue until a termination date specified in the agreement, unless sooner terminated by the applicator or property owner, manager or legal occupant; or
  - ii. the commercial applicator utilizes another system of verifiable authorization approved by the Board that provides substantially equivalent assurance that the customer is aware of the services to be provided and the terms of the agreement.

**Section 7. ~~Transition~~**

~~This regulation will become effective on January 1, 2008.~~

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STATUTORY AUTHORITY: Title 22 M.R.S.A., Chapter 258-A

EFFECTIVE DATE:

July 6, 1979

AMENDMENT EFFECTIVE:

April 1, 1985

January 1, 1988

May 21, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

AMENDED:

May 7, 1997 - Section 5

CONVERTED TO MS WORD:

March 11, 2003

CORRECTED HEADER CHAPTER NUMBER:

January 10, 2005

AMENDED:

January 1, 2008 – new Sections 6 and 7, filing 2007-65

September 13, 2012 – Section 6(E) and references added, filing 2012-270 (Emergency – expires in 90 days unless proposed and adopted in the meantime as non-emergency)

December 12, 2012 – emergency filing expires, chapter reverts to January 1, 2008 version