

BASIS STATEMENT FOR REPEAL OF CHAPTER 21—PESTICIDE CONTAINER DISPOSAL AND STORAGE

Basis Statement

The passage of Public Law 2011, Chapter 510, eliminated the statutory mandate for a restricted use pesticide container deposit system. As a result, Chapter 21 of the Board's rules needs to be repealed in order to implement the legislative intent. Repealing this rule would reduce the regulatory burden on applicators and pesticide distributors.

No comments were received concerning this amendment during the comment period.

Since it was the Legislature's intent that the deposit system be eliminated, the Board decided that the repeal of Chapter 21 is both logical and appropriate.

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.

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 21—Pesticide Container Disposal and Storage

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

Approximately two pesticide distributors and approximately 1,000 small farms will likely be impacted by the proposed repeal of Chapter 21.

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

Small distributors of restricted use pesticides will likely need to spend about 30 fewer hours per year obtaining stickers, affixing them to containers, charging deposits and processing the returns. This would translate into an annual administrative savings of approximately \$1,500.

Small farms that apply restricted use pesticides will probably need to devote approximately five fewer hours per year organizing the return of their empty containers. This would translate to a savings of approximately \$250 annually in administrative costs.

Brief Statement of the Probable Impact on Affected Small Businesses

The administrative burdens on small businesses will be reduced slightly by the proposed amendments.

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

Since the proposed repeal will eliminate some current administrative requirements, there are no less intrusive or less costly alternatives.

01 DEPARTMENT OF AGRICULTURE

026 BOARD OF PESTICIDE CONTROL

Chapter 21: PESTICIDE CONTAINER DISPOSAL AND STORAGE

PREFACE: Statutes governing the Board of Pesticides Control make it illegal for "any person to dispose of, discard or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or pollute any water supply or waterway; 7 M.R.S.A. §606(2)(E). The Board's statutes also require it "to regulate the return and disposal of limited and restricted use pesticide containers" by promulgating regulations to (1) establish a deposit to be collected pending return of the container, (2) require stickers to be affixed to all such containers at time of sale, (3) insure triple rinsing or equivalent of the containers, and (4) specify places where rinsed containers may be returned for refund, in addition to the place of business of the dealer; 22 M.R.S.A. §1471(Q). These regulations shall be effective April 1, 1985.

SUMMARY: These rules set forth the regulations for the management of emptied pesticide containers for limited and restricted use pesticides. They establish deposit amounts, sticker requirements, triple rinse or equivalent procedures, and refund places and procedures. The rules are organized according to classification of the pesticide as to whether it was purchased in state or out of state.

A. Limited and Restricted-Use Pesticides Purchased In-State

1. **Scope.** The rules in this Subchapter A apply to limited and restricted use pesticides and their containers purchased from licensed Maine dealers. The following types of containers are exempt from these regulations but must be stored, handled and disposed of according to label directions and applicable D.E.P. regulations.
 - a. Paper, cardboard and fiberboard containers and plastic bags.
 - b. Containers of less than one half pint volume.
 - c. Sealed containers, refillable only by the manufacturer or distributor, provided that such containers are required to be returned by the applicator to the manufacturer or distributor, that a deposit of no less than \$50 per container is charged by the manufacturer or distributor to the applicator or purchaser, and that the manufacturer or distributor establishes and carries out a monitoring system which provides for the identification and tracking of each container.
2. **Deposits.** Dealers shall collect deposits in cash or posted credit charges on each pesticide container at the time of sale or delivery to the purchaser or its agent, as follows:
 - a. Non-refillable containers
 - (1) One half pint to 30 gallons capacity — \$5.00 per container

- ~~(2) 30 gallons capacity and over \$10.00 per container~~
- b. ~~Refillable containers. At their option, dealers may collect deposits greater than those required for non-refillable containers.~~
3. ~~**Stickers.** Prior to or at the time of delivery of the pesticide to the purchaser or its agent, stickers obtained from the Board of Pesticides Control shall be affixed by dealers to pesticide containers.~~
- a. ~~Dealers shall obtain stickers by making a request, on forms provided for that purpose, to the Board at least two weeks prior to anticipated need. Completed forms shall be forwarded to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333. Arrangements for emergency pick up of stickers may be made by contacting the Board at 207/287-2731. Dealers will be billed and shall pay for the costs of printing and shipping stickers, as assessed by the Board.~~
- b. ~~Dealers shall affix stickers prominently and securely to containers in a manner that will not obscure or interfere with any trademark or label instructions. Such stickers shall in no event be deemed a part of the label. If an unopened case of containers is to be sold and delivered to the purchaser or its agent, the dealer may securely attach or fasten a sufficient number of stickers (one for each container) to the exterior of the unopened case prior to delivery. In such event, the purchaser or his agent shall either affix stickers to containers immediately upon opening the case, or the containers shall at all times be kept with the case on which the stickers remain affixed, except during actual use of the containers, and shall be returned to the dealer or his agent as a unit for return of deposit and disposal.~~
- c. ~~Stickers, as supplied by the Board and completed by the dealer at the time of sale or delivery to the purchaser or his agent, shall identify the dealer and the purchaser and shall contain such other information as the Board shall require. Dealers shall keep a record of sticker numbers and corresponding purchasers for each container sold.~~
- d. ~~It shall be unlawful to remove, deface, or otherwise render illegible a sticker affixed to a container except at the time of recycling or disposal in accordance with these regulations.~~
4. ~~**Records.** Dealers shall maintain records of all restricted or limited use pesticide sales subject to these regulations for a period of two calendar years. Information required includes the following:~~
- a. ~~the name and address of the purchaser (and agent, if any), and date of delivery~~
- b. ~~the registered name of the pesticide and the number and size of each container~~
- c. ~~the serial number of each sticker affixed to a container~~

- d. ~~the amount of the deposit paid or posted to credit~~
5. **Triple rinse or equivalent.** Pesticide containers shall be triple rinsed immediately by the applicator or someone under his direct supervision, or cleaned by another authorized method or procedure ~~equivalent in residue removal effectiveness.~~
- a. ~~The standard triple rinse procedure is as follows:~~
- (1) ~~the emptied container shall be drained for at least thirty (30) seconds after steady flow of pesticide formulation has ceased and after individual drops are evident. Any pesticide formulation drained shall be added to the spray tank mix and shall be applied in accordance with label instructions.~~
 - (2) ~~a solvent, usually water, specified by the manufacturer and capable of removing the pesticide residue shall be added to the drained container in an amount equal to ten percent (10%) of its capacity. The container then shall be shaken, agitated, or rolled vigorously in such fashion as to dislodge residues from the top, bottom and sides. The liquid residues (rinsate) shall be added as make-up to the spray tank mix, and the container shall be allowed to drain for at least thirty (30) seconds after steady flow has ceased and after individual drops are evident.~~
 - (3) ~~the above procedure shall be performed two more times, each time allowing the container to drain at least thirty (30) seconds and adding all rinsate to the spray tank mix, to be applied in accordance with label instructions.~~
- b. ~~In cases where undiluted formulations are used and rinsate cannot be added to the spray tank, the residue must be disposed of in accordance with label instructions.~~
- e. ~~Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally safe manner. Any person proposing to use an equivalent method that has not been previously authorized by the Board shall first obtain the Board's approval by providing data and information to document the cleaning effectiveness of the method and the environmental safety of residue disposal.~~
- d. ~~In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. The removed liners must be handled and disposed of according to the label and D.E.P. regulations. Liners removed from pesticides containers containing pesticides listed as hazardous waste by the D.E.P. are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent by the D.E.P.~~

- e. ~~Following the rinsing, cleaning or liner removal procedure, plastic or metal containers not destined for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent reuse. Glass containers are exempt from this puncture requirement.~~
6. ~~**Affidavits.** The Board shall provide blank affidavit forms which purchasers or their agents must accurately complete and provide to the dealer or his representative prior to disposal and a refund of the deposit. No deposit shall be returned unless this requirement is satisfied.~~
- a. ~~The following information must be recorded on the affidavit form:~~
- ~~(1) the name and address of the purchaser, and agent if any~~
 - ~~(2) the registered name of the pesticide and the number and size of each container~~
 - ~~(3) the serial number of each sticker affixed to a container~~
- b. ~~The following must be completed by the purchaser or his agent on the affidavit at the time the empty and properly rinsed containers are returned to an authorized collection, recycling or disposal place:~~
- ~~(1) The following certification to be signed by the purchaser or his agent and the person performing container rinsing "This is to certify under oath that the container(s) with the sticker number(s) listed herein has(have) been properly rinsed according to regulations adopted by the Board of Pesticides Control."~~
 - ~~(2) The location and date containers were returned.~~
- e. ~~The information contained on the affidavit shall be true and correct. It shall be a violation hereof to sign or submit a false affidavit.~~
- d. ~~The dealer shall retain a copy of the completed affidavit for two years following return or may forward the same to the Board.~~
7. ~~**Return and refund**~~
- a. ~~Containers bearing the Board's stickers that have been properly rinsed according to the Board's regulations, and that are accompanied by completed affidavits to that effect, shall be returned for refund of deposit as follows:~~
- ~~(1) to an authorized collection, disposal or recycling facility specified by the dealer, provided that arrangement for the use of such facility have been made by the dealer, or~~
 - ~~(2) otherwise, to the place of business of the dealer who sold the pesticide.~~

- b. ~~Upon return of the containers and receipt of the affidavit as provided above, cash deposits shall be refunded by the dealer in cash, and deposits that were posted to credit accounts shall be credited to reduce such accounts, except that if such accounts have been paid in full prior to return, then refunds shall be in cash.~~

B. ~~Limited and Restricted Use Pesticide Purchased Out of State~~

1. ~~**Scope.** The rules in this Subchapter B apply to limited and restricted use pesticides and their containers purchased out of state and brought into the State other than for resale, and which are held for use or used within the State. The following types of containers are exempt from these regulations but must be stored, handled and disposed of according to label directions and applicable D.E.P. regulations.~~
- a. ~~Paper, cardboard and fiberboard containers and plastic bags.~~
- b. ~~Containers of less than one half pint volume.~~
- c. ~~Sealed containers, refillable only by the manufacturer or distributor, provided that such containers are required to be returned by the applicator to the manufacturer or distributor, that a deposit of no less than \$50 per container is charged by the manufacturer or distributor to the applicator or purchaser, and that the manufacturer or distributor establishes and carries out a monitoring system which provides for the identification and tracking of each container.~~
2. ~~**Deposits.** Any person who purchases or otherwise acquires pesticides in containers within the scope of the regulations in this Subchapter B shall pay deposits on the containers to the Board of Pesticides Control, as follows:~~
- a. ~~All containers~~
- ~~(1) One half pint to 30 gallons capacity — \$5.00~~
- ~~(2) 30 gallons capacity and over — \$10.00~~
- b. ~~Deposits shall be in cash, check, or money order and must be paid at the time stickers are requested under paragraph 3.~~
3. ~~**Stickers.** At the time that pesticides are received for use in this State, stickers must be obtained from the Board and shall be affixed to such containers by the purchaser or his agent, as follows:~~
- a. ~~Stickers shall be obtained by making a request, on forms provided for that purpose, to the Board at least two weeks prior to anticipated need. Completed forms shall be forwarded to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333. Arrangements for emergency pick up of stickers may be made by contacting the Board at 207/289-2731. All requests must be accompanied by cash, check, or money order in an amount to cover the~~

~~deposits due and for the costs of printing and shipping the stickers, as assessed by the Board.~~

~~b. Stickers shall be affixed prominently and securely to containers in a manner that will not obscure or interfere with any trademark or label instruction. Such stickers shall in no event be deemed part of the label.~~

~~c. It shall be unlawful to remove, deface, or otherwise render illegible a sticker except at the time of recycling or disposal of the container in accordance with these regulations.~~

~~4. **Affidavits.** The Board will provide blank affidavit forms to those seeking stickers for containers and the purchaser or his agent must complete such a form prior to returning containers for disposal.~~

~~a. The following information must be completed on the affidavit form:~~

~~(1) the name and address of the purchaser, and agent if any~~

~~(2) the registered name of the pesticide and the number and size of each container~~

~~(3) the serial number of each sticker affixed to a container~~

~~b. The following must be completed by the purchaser or his agent on the affidavit at the time the empty and properly rinsed containers are returned to an authorized collection, recycling or disposal place:~~

~~(1) the following certification to be signed by the purchaser or his agent and the person performing container rinsing "This is to certify under oath that the container(s) with the sticker number(s) listed herein has(have) been properly rinsed according to regulations adopted by the Board of Pesticides Control."~~

~~(2) The location and date containers were returned.~~

~~c. The information contained on the affidavit shall be true and correct. It shall be illegal to sign or submit a false affidavit.~~

~~d. The completed and signed affidavit shall be submitted to the Board at the time a request is made for refund of the deposit.~~

~~5. **Triple rinse or equivalent.** Pesticide containers shall be triple rinsed immediately by the applicator or someone under his direct supervision, or cleaned by another authorized method or procedure equivalent in residue removal effectiveness.~~

~~a. The standard triple rinse procedure is set forth in Subchapter A, Section 5 a and b of this Chapter.~~

- b. ~~Methods of rinsing or cleaning containers, other than the standard triple rinsing procedure described above, may be used provided they are shown to remove equivalent amounts of pesticide residues which can be disposed of in an environmentally sound manner. Any person proposing to use an equivalent method that has not been previously authorized by the Board shall first obtain the Board's approval by providing data and information to document the cleaning effectiveness of the method and the environmental safety of residue disposal.~~
- c. ~~In the case of containers with removable inner liners that prevent contact between the pesticide and the container, removal of the liner shall be considered the equivalent of triple rinsing. All removed liners must be handled and disposed of according to the label and D.E.P. regulations. Liners removed from pesticides containers containing pesticides listed as hazardous waste by the D.E.P. are also considered hazardous waste unless the liners are triple rinsed with an applicable solvent or other method approved as equivalent by the D.E.P.~~
- d. ~~Following the rinsing, cleaning, or liner removal procedure, plastic or metal containers not designated for return to manufacturers or shipment to reconditioners shall be punctured prior to disposal to insure they are empty and to prevent reuse. Glass containers are exempt from this puncture requirement.~~

6. ~~Return for Refund~~

- a. ~~Containers bearing the Board's stickers that have been properly rinsed and punctured according to the Board's regulations shall be returned to an authorized recycling, collection or disposal facility, as follows:~~
 - (1) ~~completed and signed affidavits must accompany all containers returned~~
 - (2) ~~the place and date of return shall be confirmed by the operator of the recycling, collection or disposal facility.~~
- b. ~~Requests for refund of deposits shall be made, on forms provided for that purpose, to the Board of Pesticides Control, Deering Building, AMHI Complex, Augusta, Maine 04333. All requests must be accompanied by properly completed and signed affidavits that account for stickers issued by the Board.~~

- 7. ~~**Out of State Dealer Option.** Any out of state dealer may elect to act as if it were an in-state dealer under Subchapter A hereof. In that case such dealer shall apply for stickers from the Board and shall otherwise comply with the requirements of Subchapter A. Purchasers from such dealers and other handlers shall comply with Subchapter A. The provisions of this Subchapter B shall not apply in such case.~~

- C. ~~**Held-over Containers.** After April 1, 1985, it shall be unlawful for any person to possess a restricted or limited use pesticide container without a sticker issued by the Board and affixed to the container, except as specifically exempted under Subchapter A and B hereof and except for containers held by dealers for sale. Stickers for pesticide containers subject to this regulation in the possession of applicators or users on April 1, 1985 shall be obtained by making a request, on~~

~~forms provided for that purpose, to the Board of Pesticides Control, Deering Building, AMHH Complex, Augusta, Maine 04333.~~

- ~~1. The request must contain the following information:
 - ~~a. The registered name of the pesticide, and the number of the containers.~~
 - ~~b. The following certification "This is to certify that the pesticide containers described herein were in my possession on April 1, 1985," signed by the person requesting stickers.~~~~
 - ~~2. Stickers issued by the Board under this Subchapter C shall be supplied without fee.~~
 - ~~3. Stickers provided by the Board must be affixed to the containers described in the request as described in Subchapter B. Such stickers shall not be affixed to any other containers.~~
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STATUTORY AUTHORITY: 22 M.R.S.A. §1471-Q

EFFECTIVE DATE:

April 1, 1985

AMENDMENT EFFECTIVE:

May 18, 1986

June 27, 1988

EFFECTIVE DATE (ELECTRONIC CONVERSION):

March 1, 1997

CONVERTED TO MS WORD:

March 11, 2003

AMENDED:

March 4, 2007 – phone number in Section A(3)(a), filing 2007-66

SUMMARY OF COMMENTS—CHAPTER 21—SEPTEMBER 2012

TESTIMONY GIVEN AT SEPTEMBER 7, 2012 PUBLIC HEARING

Person/Affiliation	Summary of Testimony	Board Response
No testimony was given		

WRITTEN COMMENTS RECEIVED BY SEPTEMBER 28, 2012

Person/Affiliation	Summary of Comments	Board Response
No written comments were received		