



PAUL R. LePAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER
HENRY JENNINGS
DIRECTOR

May 31, 2012

Timothy J. McBride
Railroad Division Manager – Region 1
DeAngelo Brothers, Inc
100 Conahan Drive
Hazleton, PA 18201

RE: Variance permits for CMR 01-026, Chapters 22 and 29

Dear Mr. McBride:

Thank you for your cooperation in working with us on acceptable guidelines for the requested variances to Chapter 22 and 29.

At its May 2011 meeting, the Board directed the staff to encourage companies doing rail line work to transition toward the Maine Department of Transportation (DOT) model. According to Bob Moosmann of DOT, this would include using products with a low risk of lateral movement, leaching or persistence; using low rates; eliminating surfactants and instead using NuFilm for adhesion; being mindful of timing regarding weather and providing at least a 10 foot buffer from open water. Your permit applications indicate that you are prepared to work within these guidelines.

This letter will serve as your 2012 variance permits covering Section 2 (C) of Chapter 22 and Section 6 of Chapter 29 for vegetation control within railroad right-of-ways.

I will alert the Board at its June 15, 2012 meeting that the variance permits have been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control

**BOARD OF PESTICIDES CONTROL APPLICATION FOR VARIANCE PERMIT (Pursuant to Chapter
22 of the Board's Regulations)**

I. Tim McBride 570-459-5800
Name Telephone Number

DeAngelo Brothers Inc.
Company Name

100 North Conahan Drive Hazleton PA 18201
Address City State Zip

II. Edward Elliott 46304
Master Applicator License Number

573 Tioga Ave. Kingston PA 18704
Address City State Zip

III. Area(s) where pesticide will be applied:

St. Lawrence and Atlantic Railroad – 24' Pattern (12' each side of track)

The purpose is to treat the ballast and shoulder sections of the track and the area adjacent to shoulder to control Weed, Grass and Brush species.

IV. Pesticide(s) to be applied:

41% Glyphosate 2qt/Acre, Arsenal RR 1pt/Acre and Nufilm IR 6oz/Acre; all at 30 gallons of water per acre.

V. Purpose of pesticide application:

The ballast, shoulder and areas adjacent to shoulder sections of the ROW must remain weed, grass and brush free for inspection, safety, drainage, visibility and better working conditions. FRA requires tracks to be free of vegetation.

VI. Approximate dates of spray application:

June 1st 2012

VII. Application Equipment:

Hi-Rail Truck Equipment with fixed mounted booms approximately 18 inches above the rail.

VIII. Standard(s) to be varied from:

Chapter 22, Section 2 (D) Identification of Sensitive Areas.

IX. Reason for variance:

Railroads run through towns and alongside rivers, lakes, ponds and streams. It would be an extreme hardship to the Railroad to note each sensitive area – the abutting property owners (homes, buildings, apartments). DBI Inc. chooses products that have been proven safe when applied according to the label. Because of the rates used and following regulations of the State of Maine as to buffer zones where no spraying occurs DBI Inc. feels these products in conjunction with an IPM Program will minimize risk for the general public and environment.

X. Method to assure equivalent protection:

The railroads patrolmen have track charts which show rivers, streams, ponds, road crossings etc. He normally is in a track vehicle running ahead of the spray unit and through the use of radio communication, gives a warning signal where there are culverts, bridges with running water underneath, and other sensitive areas adjacent to the track. DBI Inc. has check valves mounted on every nozzle to assure that no pesticides drip or enter the waterways of the State of Maine when going over any bridges. DBI Inc. will leave a buffer zone of ten feet (10') from lakes, rivers, streams and surface waters. In the case of a public water supply DBI will only apply 41% glyphosate for a distance of one half mile before the site and one half mile beyond. DBI Inc. will monitor the weather in conjunction with the uses of drift control agents to reduce the chance of drift to non-target areas along with surfactants that help make the herbicide adhere to the ground and plants. Uses of low pump pressure (20-60PSI) nozzles will produce larger droplet sizes to prevent off-target damage. DBI Inc. will notify those affected towns that the railroad runs through in advance via advertisement through newspaper and include a pesticide application form to post with information concerning the spray program.

Signed: _____

Date: _____

 5/30/12

Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028 OR**

E-mail to: pesticides@state.me.us

**BOARD OF PESTICIDES CONTROL
APPLICATION FOR VARIANCE PERMIT
(Pursuant to Chapter 29, Section 6 of the Board's Regulations)**

I. Tim McBride 570-459-5800
Name Telephone Number

DeAngelo Brothers Inc.
Company Name

100 North Conahan Drive Hazleton PA 18201
Address City State Zip

II. Area(s) where pesticide will be applied:

St. Lawrence and Atlantic Railroad – 24' pattern (12' each side center of track)

The purpose is to treat the ballast and shoulder sections of the track and the area adjacent to shoulder to control Weed, Grass and Brush species.

III. Pesticide(s) to be applied:

41% Glyphosate 2qt/Acre, Arsenal RR 1pt/Acre, Nufilm IR 6 oz/Acre; all at 30 gallons of water per acre.

IV. Purpose of pesticide application:

The ballast, shoulder and areas adjacent to shoulder sections of the ROW must remain weed, grass and brush free for inspection, safety, drainage, visibility, and better working conditions. FRA requires tracks to be free of vegetation.

V. Approximate dates of spray application:

June 1st 2012

VI. Application Equipment:

Hi-Rail Truck Equipment with fixed mounted booms approximately 18 inches above the rail.

VII. Standard(s) to be varied from:

Chapter 29 Section 6: Standards of Conduct for Pesticide Applications

D. Identification of Sensitive Areas

VIII. Reason for variance:

Railroads run through towns and alongside rivers, lakes, ponds and streams. It would be an extreme hardship to the railroad to note each sensitive area – the abutting property owners (homes, buildings, apartments). DBI Inc. chooses products that have been proven safe when applied according to the label. Because of the rates used and following the regulations of the State of Maine as to buffer zones to where no spraying occurs, DBI Inc. feels these products or combinations of these products in conjunction with an IPM Program will minimize risk for the general public and the environment.

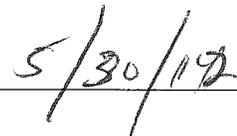
IX. Method to assure equivalent protection:

The railroads patrolmen have track charts which show rivers, streams, ponds, road crossings etc. He normally is in a track vehicle running ahead of the spray unit and through the use of radio communication, gives a warning signal where there are culverts, bridges with running water underneath, and other sensitive areas adjacent to the track. DBI Inc. has check valves mounted on every nozzle to assure that no pesticides drip or enter the waterways of the State of Maine when going over any bridges. DBI Inc. will leave a buffer zone of ten feet (10') from lakes, rivers, streams and surface waters. In the case of a public water supply DBI Inc. will only apply 41% glyphosate for a distance of one half mile before the site and one half mile beyond. DBI Inc. will continue using drift control agents, surfactants, and nozzles that enlarge droplet size along with low volatile chemicals to all prevent off target damage due to drift or run off. DBI Inc. will notify those affected towns that the railroad runs through in advance via advertisement through newspaper and include a pesticide application form to post with information concerning the spray program.

Signed: _____



Date: _____



Return completed form to: **Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028**

OR E-mail to: pesticides@maine.gov

Bills, Anne

Subject: FW: MAINE DOT SPEC
Attachments: 2012_VariancePermitCh29.doc; 2012_SpryVar_AllRds_Ch22SensitiveAreas.doc

From: Moosmann, Robert
Sent: Wednesday, May 30, 2012 8:45 PM
To: 'Tim McBride'
Cc: Jennings, Henry
Subject: RE: MAINE DOT SPEC

Tim:

I believe we have spoken at least once before about rail spraying in Maine. I am happy to assist in any way I can. I have read the last e-mail Henry Jennings sent to you regarding some of the primary reasons for choosing time of year, a surfactant free approach, and materials that present a low risk of lateral movement, leaching, or persistence. Henry has captured the essence of the approach. I am attaching our variance request for this year. Please be aware that it is not specific to rail but rather covers any of the areas that the department is likely to apply herbicides.

Maine is not unique in its interest in maintaining a healthy environment, but I can say in my experience that we do take it very seriously. The Board has reviewed rail herbicide practices since at least 2002 and I chaired a stakeholder group that included several individuals from DBI, rail companies such as Guilford, Easter Maine, MM&A, STLA, as well as members of the Maine Forest Service, BPC, and the Maine Drinking Water Program.

As long as your program seeks to protect natural resources by using low rates, products that are not persistent, is mindful of timing regarding weather, eliminates surfactants that would increase the risk of lateral movement off target, uses NuFilm to adhere products in place, and provides for at least a 10 foot buffer from open water you will be following our model.

Please call me if you need further clarification.

Bob Moosmann, Statewide Vegetation Manager
Maine DOT, Bureau of Maintenance & Operations
16 State House Station
Augusta, ME 04333-0016
Phone: 207-592-0774

From: Tim McBride [mailto:tmcbride@dbiservices.com]
Sent: Tuesday, May 29, 2012 5:04 PM
To: Moosmann, Robert
Subject: MAINE DOT SPEC

Bob,

What is your spec for the Maine RR spraying, chemical mix and width from center?

Timothy (Tim) J. McBride
Railroad Division Manager - Region 1

DeAngelo Brothers, Inc
100 Conahan Drive
Hazleton, PA 18201
570-436-8738 (Mobile)
570-459-5800 ext: 1316 (Office)
570-459-5500 (Fax)
tmcbride@dbiservices.com

www.dbiservices.com

Bills, Anne

From: Jennings, Henry
Sent: Wednesday, May 30, 2012 8:58 AM
To: Tim McBride
Cc: Moosmann, Robert; Bills, Anne
Subject: RE: 2012 DeAngelo Brothers Inc

Hello Tim:

We looked around for something that describes the MDOT model, but we realized we didn't have a concise description. Consequently, I called Bob Moosmann this morning and discussed it with him. The fundamental tenets of MDOT model are to:

- Select products with favorable water quality profiles and avoid the older high rate/persistent products like diuron.
- Use the lowest effective rates. Bob specifically mentioned evidence that Arsenal may be effective at much lower rates than the label states.
- Employ herbicides that do not have surfactants as part of the formulation and instead use NuFilm. Since the transition to NuFilm, both Bob and our staff have seen that the relatively common issue of herbicide "wash off" has been eliminated.
- Avoid applications in May and June because of the likely presence of surface water at that time. However, Bob concedes that this causes scheduling challenges for contractors, so he accepts June applications, but the later the better, as less surface water is likely to be present at the time of the application.

Bob is in the field this morning. He promised to call you when he returns. If you can resend your requests consistent with MDOT's model, Anne will be able to issue your variances immediately.

Sincerely,

Henry Jennings, Director
Maine Board of Pesticides Control
207-287-7543
henry.jennings@maine.gov

From: Tim McBride [mailto:tmcbride@dbiservices.com]
Sent: Tuesday, May 29, 2012 5:03 PM
To: Jennings, Henry
Cc: Bills, Anne
Subject: RE: 2012 DeAngelo Brothers Inc

Chapter 22 attached.

Let me understand this, if we comply with the MDOT specs we then are able to spray this year, but if I want to spray based on the submitted forms it has to go to the board is that correct?

Sorry for the confusion.

Timothy (Tim) J. McBride
Railroad Division Manager - Region 1
DeAngelo Brothers, Inc
100 Conahan Drive
Hazleton, PA 18201
570-436-8738 (Mobile)
570-459-5800 ext: 1316 (Office)
570-459-5500 (Fax)
tmcbride@dbiservices.com

www.dbiservices.com

From: Jennings, Henry [mailto:Henry.Jennings@maine.gov]
Sent: Tuesday, May 29, 2012 4:48 PM
To: Tim McBride
Cc: Bills, Anne
Subject: RE: 2012 DeAngelo Brothers Inc

Hi Tim:

As I mentioned last year, the Board approved your 2011 variance for 1 year, but instructed the staff not to renew it in 2012 unless it conformed to MDOT model. It looks identical last year's, so we'll need to place it on the Board meeting agenda for June 15. Please note that there are generally 2 variances required for railroad spraying in Maine, one for Chapter 22 and one for Chapter 29. What you forwarded by email only covers Chapter 29 – so you'll probably want to email me the Chapter 22 request ASAP so we can cover both on June 15. For future reference, please note that Anne Bills is now coordinating the variance requests. She can be reached at Anne.Bills@maine.gov or 207-287-2661.

See excerpt from the May 6, 2011 Board meeting below. Let me know if you have any questions.

Sincerely,

Henry Jennings, Director

Board members expressed the view that DeAngelo Brothers should be encouraged to transition toward the MDOT model in future years, if they continue to do rail line work in the state. There was brief discussion about the use of pyraflufen-ethyl, which is listed as a carcinogen by the State of California. Due to its low mobility and application rate, and the low risk of human exposure, the Board concluded the risks were acceptable.

Eckert/Ravis: Moved and seconded approval of the variance for one year. Future requests should only be approved by the staff if the request is consistent with the MDOT model.

In Favor: Unanimous