

01 DEPARTMENT OF AGRICULTURE

026 BOARD OF PESTICIDES CONTROL

Chapter 28: NOTIFICATION PROVISIONS FOR OUTDOOR PESTICIDE APPLICATIONS

SUMMARY: These regulations establish procedures and standards for informing interested members of the public about outdoor pesticide applications in their vicinity. This chapter sets forth the requirements for requesting information or notification about pesticide applications, for notifying adjacent residents about aerial applications, for posting property on which certain commercial pesticide applications have occurred and also establishes the Maine Pesticide Notification Registry structure and fees.

Section 1. ~~Requesting Notification About Outdoor Pesticide Applications~~

~~The purpose of the following notification requirement is to enable individuals an opportunity to obtain information regarding outdoor pesticide application activities in their vicinity.~~

A. ~~Requests for Notification; How Made~~

~~The owner, lessee or other legal occupant of a sensitive area may make a request to be notified about any outdoor pesticide application(s) which may occur within 500 feet of that sensitive area.~~

- ~~1. The request may be made in any fashion, so long as it is effective in informing the person receiving the request of the name, address, telephone number, and interest in receiving notification of the person making the request.~~
- ~~2. The request for notification should be made to the person responsible for management of the land on which the pesticide application will take place. If the person making the request for notification is uncertain as to the identity of the person to whom the request should be made, he/she may make the request for notification to the person who owns the land involved, as such ownership is ascertainable from the tax records of the municipality. That landowner shall then be responsible for assuring compliance with provisions of this section.~~

B. Procedure of Notification

Once a request for notification has been made as provided in Section 1(A), the person receiving the request shall cause notification to be given as follows:

1. General notification of intent to apply pesticides out of doors shall be given to the person making the request for notification. Such general notification may be given in any fashion, provided that it is effective in informing the person receiving the notice of the following:
 - a. the approximate date(s) when pesticide(s) may be applied;
 - b. the pesticide(s) which may be applied;
 - c. in general terms, the manner of application; and
 - d. the name, address and telephone number of a person responsible for the pesticide application from whom additional information may be obtained.
 - e. If requested, the person responsible for managing the land shall make reasonable efforts to supply a copy of the MSDS(s) and/or the pesticide label(s). However such requests for additional information will not delay nor prohibit the intended pesticide application.

Where feasible, such general notification shall be given within one week after the request for notification is received and at least one day before any pesticide application is to occur. Such notification may cover outdoor pesticide applications which are planned over a period of up to one growing season.

2. If, following receipt of the general notification as provided by Section 1(B)(1) above, the person seeking notification believes there is a need for additional or updated information regarding impending pesticide application activities, he/she may make a further request for additional information from the person identified in the general notification. This request for additional information must specify the type of information needed, including, for example, more specific information regarding the date or dates on which pesticides will be applied when known. The person responsible for the notification shall make reasonable efforts to comply with such request for additional information.
3. If any person is dissatisfied with the efforts made by any other person at complying with these notification provisions, a complaint may be filed

~~with the Board. The Board shall then make efforts to attempt to reach a reasonable and fair resolution between the parties.~~

Section 1. Obtaining Information or Notification About Outdoor Pesticide Applications

The purpose of this section is to allow neighbors an opportunity to obtain information or notification about outdoor pesticide applications that may occur in their vicinity and establishes the responsibilities of landowners and managers to provide that information or notification. Subsection A allows neighbors to request general information about pesticide applications that may occur within one calendar year. Subsection B allows neighbors to request advance notice about specific applications. Finally, Subsection C requires anyone contracting for an aerial application of pesticides to determine whether neighbors wish to receive advance notification.

A. Requests for General Information About Pesticide Applications

1. The owner, lessee or legal occupant of a Sensitive Area (hereinafter called the “neighbor”) may request general information about future outdoor pesticide applications which may occur within 500 feet of the Sensitive Area for ground applications and within 1,500 feet of the Sensitive Area for aerial applications.
 - a. The request for information should be made to the person responsible for management of the land on which pesticides will be applied (hereinafter called the “manager”). If the neighbor does not know how to contact the manager he/she may make the request to the landowner. The landowner shall then be responsible for assuring compliance with provisions of this section.
 - b. The request for general information may be made in any fashion, so long as it is effective in informing the manager or landowner of the neighbor’s relevant contact information (name, address, telephone numbers, e-mail address, etc.).
2. Once a request for general information has been made, as provided in Section 1(A)(1), the person receiving the request shall provide the information to the neighbor within one week after the request for information is received and at least 24 hours prior to any planned application time. Such information may cover outdoor pesticide applications which are planned over a period of one growing season or year and may be given in any fashion, provided that it effectively informs the neighbor of the following:
 - a. the approximate date(s) when pesticides may be applied;

- b. in general terms, the manner of application and the pesticides that may be applied; and
- c. the contact information for the manager.

B. Requests for Advance Notice of Specific Pesticide Applications

1. A neighbor may request to be notified about specific outdoor pesticide applications which may occur within 500 feet of that Sensitive Area for ground applications and within 1,500 feet of the Sensitive Area for aerial applications.
 - a. The request for notification should be made to the manager. If the neighbor does not know how to contact the manager, he/she may make the request for notification to the landowner. That landowner shall then be responsible for assuring compliance with the provisions of this section.
 - b. The request for notification may be made in any fashion, so long as it is effective in informing the manager or landowner of the neighbor's relevant contact information (name, address, telephone numbers, e-mail, etc.).
 - c. The request for notification shall be valid until such time as the neighbor declines future notice or until the neighbor no longer owns, leases or occupies the Sensitive Area.
2. Once a request for notification has been made as provided in Section 1(B)(1), the person receiving the request shall notify the neighbor at least 24 hours, but not more than 7 days, prior to the planned application time. Such notification may be given in any fashion, provided that it effectively informs the neighbor of the following:
 - a. the date and approximate start time for when pesticides may be applied;
 - b. in the event of inclement weather, an alternate date and start time for when pesticides may be applied;
 - c. the brand name and EPA registration number of the pesticide(s) to be applied;
 - d. in general terms, the manner of application; and
 - e. the contact information for the manager.

3. The neighbor may also request a copy of the Material Safety Data Sheet(s) (MSDS) and/or pesticide label(s) for the pesticides which may be applied. However, such requests for additional information will not delay nor prohibit any intended pesticide application(s).
4. The neighbor and the manager may agree to modify the terms of the notification procedures set forth in Section 1(B). Either party may terminate said agreement by providing a 30-day written notice.

C. Notification About Aerial Pesticide Applications

1. Prior to contracting for an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied by humans, the person contracting for the application shall determine whether the occupant(s) of any Sensitive Area Likely to Be Occupied within 1,000 feet of the target area wish to be notified prior to any aerial application of pesticides. Said determination may be accomplished by any means, including written correspondence, personal contact or through use of an up-to-date notification list, as long as it is effective in conveying and carrying out the intent of this section. This determination must be updated annually. The burden of proof for demonstrating compliance with this section lies with the person contracting for the application.
2. The person contracting for an aerial application of pesticides within 1,000 feet of a Sensitive Area Likely to Be Occupied shall notify individuals as identified in Section 1(C)(1) as follows:
 - a. Notice of aerial pesticide applications shall be given to the occupant of a Sensitive Area Likely to Be Occupied at least 24 hours, but not more than 7 days, prior to the planned application time. Such notification may be given in any fashion, provided that it is effective in informing the occupant of the following:
 - i. the approximate date and start time for when pesticides may be applied;
 - ii. in the event of inclement weather, an alternative date and start time for when pesticides may be applied;
 - iii. the brand name and EPA registration number of the products to be applied; and
 - iv. the contact information for the person contracting for the pesticide application from whom additional information may be obtained.

- b. The Sensitive Area Likely to Be Occupied occupant may also request a copy of the Material Safety Data Sheet(s) (MSDS) and/or pesticide label(s) for the pesticides which may be applied. However, such requests for additional information will not delay nor prohibit any intended pesticide application(s).
- c. When a Sensitive Area Likely to Be Occupied is only sporadically occupied, e.g., picnic areas, parks, etc., and there is no readily identifiable contact person for the Sensitive Area Likely to Be Occupied, the person contracting for the aerial pesticide application must post a Board-approved sign or signs (see Appendix A) at least 24 hours, but not more than two days, prior to the application. The signs required under CMR 01-026 Chapter 51 Sections II(C) and IV(C) may also be used. The Sensitive Area Likely to Be Occupied shall be posted in a manner, and at locations, designed to reasonably assure that persons entering such area will see the notice. The minimum specification for the signs required by this Section are as follows:
- i. at least 8½ inches by 11 inches;
 - ii. made of rigid, weather-resistant material that will last at least 48 hours when placed outdoors; and
 - iii. light-colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green).
- d. The occupant of the Sensitive Area Likely to Be Occupied and the person contracting for the aerial application may agree to modify the terms of the notification procedures set forth in this section. Either party may terminate said agreement by providing a 30-day written notice.

D. Emergencies

1. In the event that severe pest or weather conditions threaten to cause a public health emergency as determined by the Commissioner of the Maine Department of Health and Human Services, or a threat of significant natural resource and/or economic loss, as determined by either the Commissioner of the Maine Department of Conservation or the Commissioner of the Maine Department of Agriculture, Food and Rural Resources, the specified requirements of Section 1(C) of this Chapter shall be waived, subject to the following conditions:
2. The severe pest and/or weather conditions must necessitate immediate wide-scale aerial application of pesticides.

3. The immediate need for aerial pesticide application does not provide sufficient time to complete the requirements of Section 1(C) of this Chapter.
4. Prior to any aerial application, the Commissioner shall issue a press release notifying residents of affected regions about the emergency, the likelihood of aerial application in the affected regions and the approximate dates that the emergency may continue.
5. The Commissioner, in consultation with the Board's staff, shall specify the requirements in Section 1(C) that will be waived.
6. Land managers and aerial applicators shall make good faith efforts to comply with the intent of Section 1(C).

Section 2. Maine Pesticide Notification Registry for Non-Agricultural Pesticide Applications

The Board shall maintain a list of individuals who must be notified of outdoor, non-agricultural pesticide applications in their vicinity. This list shall be referred to as the Maine Pesticide Notification Registry.

A. Individuals To Be Included on the Registry

1. Individuals requesting to be listed on the Maine Pesticide Notification Registry shall pay all appropriate fees and provide the following information on forms supplied by the Board:
 - a. Name;
 - b. Mailing address;
 - c. Listed registry residence, including street or road address and city;
 - d. Daytime and evening telephone number(s), one of which is designated as the primary contact number; and
 - e. The names and addresses of all landowners or lessees within 250 feet of the boundary of the listed registry residence.
2. Individuals may register more than one residence by completing additional forms and paying all appropriate fees.

3. The effective period of the registry will be from March 1 to February 28 of the following year. Individuals must submit their request for inclusion on the next effective registry by December 31. All submissions received after that date will be included on the following registry. Individuals may notify the Board at any time of changes in their listed registry residence, however, changes will not take effect until the following registry. An individual will not be considered officially included on the Maine Pesticide Notification Registry unless their name appears on the current effective registry.
4. The Board shall mail renewal notices to individuals listed on the Maine Pesticide Notification Registry on or before November 1 of each year. An individual must re-apply and pay all appropriate fees annually to remain on the registry for the next twelve month period.

B. Alerting Neighbors to the Presence of an Individual on the Registry

1. All individuals on the Maine Pesticide Notification Registry shall annually provide a letter to all landowners and lessees within 250 feet of their property boundary from whom they want to receive notification.
2. This letter, approved and supplied by the Board, must inform neighbors of the existence of the Maine Pesticide Notification Registry, the individual's request to be notified in the event of an outdoor pesticide application, the distance from the property boundary which shall cause notification to be given for non-agricultural pesticide applications, and the notification requirements of this chapter.
3. The individual on the registry requesting notification bears the burden of proof for demonstrating that this provision has been met.
4. Failure to distribute the letter will not prohibit an individual from being added to or remaining on the registry.

C. Registry Provided to Commercial Applicators

The Maine Pesticide Notification Registry shall be printed and distributed annually to affected licensed Commercial Master Applicators on or before its effective date of March 1. Newly licensed Commercial Master Applicators will be provided a copy of the current effective registry upon licensing.

D. Notification to Individuals on the Maine Pesticide Notification Registry

1. Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application that is within 250 feet of the property boundary of the listed registry residence.

2. A person who receives a letter in accordance with Section 2(B) and who performs any outdoor, non-agricultural pesticide application within 250 feet to the property boundary of the listed registry residence shall notify the individual from whom the letter was given or sent.
3. Notification must consist of providing the following information to the individual on the registry:
 - a. The location of the outdoor pesticide application;
 - b. The date and approximate start time of the pesticide application (within a 24 hour time period) and, in the event of inclement weather, an alternative date or dates on which the application may occur;
 - c. The brand name and EPA registration number of the pesticide product(s) which will be used; and
 - d. The name and telephone number of the person or company making the pesticide application.
4. An individual on the registry who receives notification may request a copy of the pesticide product label or Material Safety Data Sheet. The person or company performing the pesticide application shall make reasonable efforts to comply with such request for additional information. However, such requests for additional information will not delay nor prohibit the person or company from performing the pesticide application as scheduled.
5. Notification must be received between 6 hours and 14 days prior to the pesticide application.
6. Notification must be made by telephone, personal contact or mail.
 - a. In cases where personal contact with the individual listed on the registry is not achieved, notification requirements are met via telephone if:
 - i. the information is placed on a telephone answering device activated by calling the individual's primary contact telephone number; or
 - ii. the information is given to a member of the household or workplace contacted by dialing the primary contact telephone number.

- b. If notification cannot be made after at least two telephone contact attempts and personal contact is not feasible, notification may be made by securely affixing the notification information in written form on the principal entry of the listed registry location.
7. The person or company performing the pesticide application bears the burden of proof for demonstrating that they have complied with this section.

E. Exceptions

1. Any person providing written notices to property owners in accordance with Chapter 51, "Notice of Aerial Pesticide Applications," shall be exempt from this section.
2. The following types of pesticide applications do not require notification under this section:
 - a. The application of pesticides indoors;
 - b. Agricultural pesticide applications;
 - c. The outdoor commercial application of pesticides to control vegetation in rights-of-way in certification and licensing categories VI(A) - Utility Rights-of-Way, VI(B) - Roadside Vegetation Management, and VI(C) - Railroad Vegetation Management;
 - d. The outdoor commercial application of pesticides in certification and licensing category VII(a) - Structural General within five (5) feet of a human dwelling, office building, institution such as a school or hospital, store, restaurant or other occupied industrial, commercial or residential structure which is the intended target site;
 - e. The application of general use pesticides by hand or with non-powered equipment to control stinging insects;
 - f. The placement of pesticidal baits;
 - g. The injection of pesticides into trees or utility poles;
 - h. The placement of pesticide-impregnated devices on animals, such as ear tags and flea collars;

- i. The application of pesticidal pet supplies, such as shampoos and dusts;
- j. The application of disinfectants, germicides, bactericides and virucides, such as bleach. The use of disinfectants in the pressure-washing of the exterior of buildings is not exempt under this section;
- k. The application of insect repellents to the human body;
- l. The application of swimming pool products;
- m. The application of general use paints, stains, and wood preservatives and sealants applied with non-powered equipment or by hand or within an enclosure which effectively prevents the escape of spray droplets of the product being applied; and
- n. The injection of pesticides into wall voids.

F. Exemption from this section

If an individual on the current effective registry and a person or company performing pesticide applications subject to this rule can reach an agreement on notification provisions acceptable to both parties other than those described herein, then the requirements as described in this section may be waived. For such an exemption to be in effect, the details of the notification agreement must be placed in writing and signed by both parties. Either party may terminate the notification agreement with a 14-day, written notice.

G. Fee

The annual application fee for an individual requesting to be on the registry will be \$20.00. The Board may waive the fee for individuals who demonstrate an inability to pay, or where other extenuating circumstances exist which justify granting a waiver. Evidence of an individual's inability to pay shall include, but not be limited to, the individuals participation in any of the following programs:

1. Food Stamps
2. Temporary Assistance for Needy Families (TANF)
3. Supplemental Security Income (SSI)
4. Social Security Disability (SSD)
5. Maine Care (Medicaid)

Requests for a fee waiver must be in writing and be made by the individual at the time of application for listing on the registry. The written request must contain sufficient information for the Board to determine that a basis for granting a fee waiver has been demonstrated in accordance with this rule.

Section 3. Posting Requirements for Pesticide Applications in Certain Commercial Licensing Categories

Where outdoor commercial pesticide applications in certification and licensing categories III(a) - Outdoor Ornamentals, III(b) - Turf, and VII(a) - Structural General will take place, the area shall be posted in a manner and at locations designed to reasonably assure that persons entering such area will see the notice. Such notice shall be posted before application activities commence and shall remain in place at least two days following the completion of the application. The sign shall be sufficient if it meets the following minimum specifications:

- A. The sign must be at least five (5) inches wide and four (4) inches high;
- B. The sign must be made of rigid, weather resistant material that will last at least forty-eight (48) hours when placed outdoors;
- C. The sign must be light colored (white, beige, yellow or pink) with dark, bold letters (black, blue or green);
- D. The sign must bear:
 - 1. the word CAUTION in 72 point type;
 - 2. the words PESTICIDE APPLICATION in 30 point type or larger;
 - 3. the Board designated symbol;
 - 4. any reentry precautions from the pesticide labeling;
 - 5. the name of the company making the pesticide application and its telephone number;
 - 6. the date and time of the application; and
 - 7. a date and/or time to remove the sign.
- E. **Exemption from this section**

1. The placement of marked bait stations in outdoor settings shall be exempt from this section.
 2. Any person providing notice in accordance with Chapter 51 - Notice of Aerial Pesticide Applications, Section III. - Ornamental Plant Applications, shall be exempt from this section.
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STATUTORY AUTHORITY: 22 MRSA §1471-M(2)D

EFFECTIVE DATE:

September 22, 1998

AMENDED:

April 27, 1999

June 26, 2000

March 4, 2007 – Section 1(B)(e), filing 2007-68

Notice of Nearby Aerial Pesticide Application

Pesticides may be applied by aircraft within 1,000 feet of this area on
(date & time) _____

Pesticide(s) to be applied: _____

To request information about this application, contact:

Company: _____

Phone/E-mail: _____

For general information on
pesticides and regulations contact:

Maine Board of Pesticides Control
287-2731, or visit
www.thinkfirstspraylast.org

