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An Act To Revise Notification Requirements for Pesticides Applications Using Aircraft or Air-carrier Equipment

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is in the public interest to inform citizens of certain pesticides applications occurring in proximity to populated areas; and

Whereas, revisions are needed to increase awareness of and compliance with registry provisions in the laws governing pesticides applications; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1471-Y, as enacted by PL 2009, c. 378, §1, is repealed.

Sec. 2. 22 MRSA §1471-Z, as enacted by PL 2009, c. 378, §2, is amended to read:

§ 1471-Z. Registry of property requiring notification for pesticides applications

The board shall develop and maintain a registry of the properties of residents, lessees and property owners in the State who request to that their properties be placed on a registry for the purpose of receiving information in order that the residents, lessees and owners receive advance notification of the outdoor application of pesticides using aircraft or air-carrier equipment in addition to the information required under section 1471-Y.

1. Development of registry. The board shall solicit participation in ~~the~~ registry of citizens through newspaper articles, public notices distributed to municipal offices and a notice posted on the board's publicly accessible website. ~~To~~For a property to be placed on the registry, a person must submit to the board, using a form provided on the board's publicly accessible website or a paper copy provided by the board upon request, the following information:

A. The person's full name;

B. The person's telephone number;

C. The physical location of the property owned, leased or occupied by the person registering being registered, including the street address if available. The location must be described. If a street address is not available, longitude and latitude coordinates or a description of the property in sufficient detail to be located on a 7.5 or 15 minute series topographical map produced by the United States Geological Survey or a map of equivalent or superior detail must be provided;

- D. The person's mailing address at which the person prefers to receive notification; and
- E. The person's e-mail address-if available, regularly used and acceptable for notification purposes; and
- F. The person's preferred means of notification.

Any resident, owner or lessee of property in the State is entitled to behave that property placed on the registry of citizens. A fee may not be charged to register. PersonsProperty must remain on the registry until they notifythe resident, owner or lessee notifies the board in writing that they wantthe property is to be removed from the registry or until the board staff determines that the contact is no longer valid.

2. Obligations to provide information to people on registry. A land manager intending to conduct an outdoor application of pesticides using aircraft or air-carrier equipment shall access the registry to identify any person entitled to notification under subsection 3 and, except as provided in subsections 5, 6 and 7, shall provide that person with notification no later than the day before and no earlier than 7 days before the day of the application. The notification must include:

- A. The date and approximate time of application;
- B. The type of equipment to be used and the manner in which the pesticides will be applied;
- C. The brand names and the United States Environmental Protection Agency's registration numbers for the pesticides to be used;
- D. Contact information for the land manager; and
- E. The location of the property that the land manager intends to spray.

Upon the request of a person receiving notification under this subsection, a land manager shall provide the material safety data sheets for the pesticides being used or copies of the pesticides labels. A land manager is not required to postpone an application pending delivery of the requested information.

3. Criteria requiring notification. A land manager is required to notify a person whose property is on the registry if:

- A. Pesticides are being applied using aircraft and the registered property lies within 1,320 feet of the intended spray area;
- B. Pesticides are being applied using air-carrier equipment and the registered property lies within 1,320 feet of the intended spray area; or
- C. Notwithstanding paragraph B, pesticides are being applied using air-carrier equipment into the crowns of fruit trees or Christmas trees and the registered property lies within 500 feet of the intended spray area. This paragraph is repealed January 1, 2012.

4. Means of notification. A land manager conducting or contracting for a pesticides application using aircraft or air-carrier equipment shall make a good faith effort to convey the information required in subsection 2. Acceptable means of notification include:

- A. Personal delivery of notification forms;
- B. Mailing notification forms through the United States Postal Service;
- C. Electronic mailing of notification forms;
- D. Telephone calls, either personal or automated; or
- E. Other means determined acceptable by the board.

5. Delayed notification acceptable. A land manager using integrated pest management, as defined in Title 7, section 2401, may provide the information required under subsection 2, paragraphs A to D on the day of the application but prior to the application when an immediate threat to a crop arises and a delay would:

- A. Result in significantly greater crop damage; or
- B. Necessitate a more extensive application of pesticides or use of more toxic pesticides.

A land manager providing delayed notification under this subsection shall inform the board no later than 10 days after the application of the circumstances necessitating the application and provide any other information required in rules adopted under subsection 9.

6. Waiver for public health emergencies and pest outbreaks that threaten severe economic or natural resource loss. The board may waive notification requirements under subsection 2 in the event of a pest management emergency declared by the Governor or the commissioner, the Commissioner of Conservation or the Commissioner of Agriculture, Food and Rural Resources.

7. Applicability. The notification requirements under subsections 2 and 3 do not apply to:

- A. Aerial pesticides applications subject to and conducted in compliance with section 1471R and rules adopted to implement section 1471R; and
- B. Outdoor nonagricultural pesticides applications conducted in compliance with notification requirements for individuals on the registry established in rules adopted under section 1471M, subsection 2, paragraph D.

This subsection is repealed January 1, 2012.

8. Records maintained. The board shall require a land manager to maintain records sufficient to determine compliance with this section. The board shall establish record-keeping requirements through rulemaking under subsection 9.

9. Rulemaking. The board shall adopt rules to implement this section. The rules may provide additional means of identifying property registered under subsection 1 and alternate means of providing notification under subsection 2. Notwithstanding Title 7, section 610, subsection 6, paragraph B, rules adopted or amended in 2010 to implement this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2A. Beginning January 1, 2011, revisions to rules adopted under this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2A.

10. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Air-carrier equipment" means any application equipment that uses a mechanically generated airstream to propel spray droplets. "Air-carrier equipment" does not include backpack sprayers or air-assisted application equipment in which the airstream is directed downward into the target canopy.

B. "Land manager" means the owner of the land upon which pesticides are to be applied, a person leasing the land or a person, firm, company or other legal entity designated by the owner to manage the land, vegetation on the land or pests occurring on the land.

Sec. 3. 22 MRSA §1471-AA is enacted to read:

§ 1471-AA. Awareness of outdoor pesticides applications; role of the board

1. Public awareness. The board shall increase awareness of the registry established under section 1471Z using newspapers, public notices distributed to municipal offices and notices posted on the board's publicly accessible website and through cooperative efforts with other state agencies and private organizations.

2. Acceptance of funds. The board may accept gifts, donations, grants and matching funds from any private or public source for the purposes of publicizing the registry under section 1471Z, developing efficient mechanisms for land managers, as defined in that section, to access the registry and promoting compliance with that section. The board shall deposit all funds accepted for these purposes with the Treasurer of State to be credited to the board's special fund under Title 7, section 621. Any gift, donation, grant or matching funds accepted with a stipulated purpose may be used only for that purpose.

Sec. 4. Awareness of registry for receiving pesticides application information. Until July 1, 2010, the Department of Agriculture, Food and Rural Resources, State Board of Pesticides Control shall concentrate its efforts under the Maine Revised Statutes, Title 22, section 1471AA to raise awareness of the registry under Title 22, section 1471-Z and its purpose in areas of the State where pesticides applications using aircraft and air-carrier equipment occur and shall conduct outreach with land managers engaged in aerial and air-carrier applications to maximize understanding of and compliance with the requirements of Title 22, section 1471Z, subsection 3. In June 2010, the board shall update the registry, and the board shall make the updated registry available to land managers no later than July 1, 2010.

Sec. 5. Directive to State Board of Pesticides Control to establish comprehensive notification registry. The Department of Agriculture, Food and Rural Resources, State Board of Pesticides Control shall work to develop a comprehensive notification registry as a single source for accessing information on registered properties and the notification of persons entitled to be notified under the Maine Revised Statutes, Title 22, sections 1471R and 1471Z and under Chapter 28 and Chapter 51 of the rules of the board.

The board, with input from the Department of Health and Human Services and other public health professionals, may provisionally adopt major substantive rules under Title 22, section 1471Z, subsection 9 that expand the requirement that land managers consult the comprehensive notification registry before conducting pesticides applications using aircraft or air-carrier equipment to include other types of outdoor applications and that modify and incorporate into the comprehensive notification registry notification requirements for persons currently entitled to notification of pesticides applications under Chapter 28 or Chapter 51 of the rules of the board or otherwise entitled to notification. The rules must specify distances from the intended application area within which a person must be notified before application of pesticides based on the type of equipment used and other criteria considered appropriate by the board. The board shall consider options for efficiently notifying people with registered property, including, but not limited to, an Internet-based system of direct notification, and may establish acceptable methods of notification in rule.

Sec. 6. Report to legislative committee. The Department of Agriculture, Food and Rural Resources, State Board of Pesticides Control, with input from the Department of Health and Human Services and other public health professionals, shall submit a report, including suggested legislation, to the joint standing committee of the Legislature having jurisdiction over agricultural matters no later than February 1, 2011 on:

1. Progress made in working towards a comprehensive notification registry for persons who want to receive specific information about outdoor pesticides applications;
2. Recommendations regarding changes to the distances and types of applications requiring notification under the Maine Revised Statutes, Title 22, section 1471Z, subsection 3;
3. The effectiveness of the public awareness activities conducted under Title 22, section 1471-AA and section 4 of this Act;
4. The feasibility and advisability of requiring land managers to post signs on the perimeter of properties on which pesticides will be applied using aircraft or air-carrier equipment; and
5. The feasibility of establishing and maintaining an Internet-based system to allow a land manager to electronically provide information required in Title 22, section 1471-Z, subsection 2, paragraphs A to E to persons on the registry who are entitled to notification under Title 22, section 1471-Z, subsections 2 and 3.

Sec. 7. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Pesticides Control - Board of 0287

Initiative: Allocates one-time funds for a campaign to raise awareness about the pesticides notification registry.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$25,000	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	<hr/> \$25,000	\$0

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 124th
Legislature, Second Regular Session, unless otherwise indicated.