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**PROGRAM EVALUATION REPORT**

**BOARD OF PESTICIDES CONTROL**  
**MAINE DEPARTMENT OF AGRICULTURE,**  
**FOOD AND RURAL RESOURCES**

**Submitted in fulfillment of the requirements of**  
**Title 3, Chapter 5**

**October 31, 2005**



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## **Section 1**

### **Brief History of the Maine Board of Pesticides Control**

The Board of Pesticides Control was established as an independent agency in 1965, but was not funded until 1969. The original Board was composed of heads of eight state agencies involved with or concerned about pesticide use. They included the Commissioners of Agriculture, Forestry, Health and Welfare, Inland Fisheries and Game, and Sea and Shore Fisheries; plus the Chairman of the Highway Commission, the Public Utilities Commission and the Water Improvement Commission. Employees of these departments shared the workload until a supervisor and secretary were hired in 1970. At that time, their primary function was the licensing of custom applicators, those persons who sprayed for hire.

In 1973, a governmental reorganization resulted in the Board being placed in the Department of Agriculture. Staffing did not increase until 1976 when an additional person was hired under a U. S. Environmental Protection Agency (EPA) Grant to develop and implement a new licensing system to comply with federal pesticide law. Starting in 1977, the Board began licensing private applicators (farmers, Christmas tree growers, greenhouse and nursery operators, etc.), commercial applicators and dealers selling restricted use pesticides.

During the late 1970s, there was increasing public concern over pesticide use and the Board's limited ability to regulate it. The Maine Legislature responded in 1980 by reconstituting the Board to comprise seven public members appointed by the Governor for four-year terms. That same year, the Board entered into a cooperative enforcement agreement with the EPA and hired two inspectors to monitor pesticide applications and respond to citizen complaints.

In 1981, the Maine Legislature decided the Board should be responsible for all aspects of pesticide regulation. Therefore, they transferred the authority for registering pesticide products from the Commissioner of Agriculture to the Board. In doing so, they also transferred two additional positions, a pesticides registrar and another secretary to handle this workload.

During the mid 1980s, the Board's statutes and regulations were amended on several occasions as both the Maine Legislature and the new Board expressed considerable interest in mitigating any negative impacts from pesticides. The detection of over a hundred open pesticide container dumps on farms resulted in 1983 legislation that made Maine the first and still only state to require a mandatory deposit and return program for restricted use pesticide containers. That same year, the Board was directed to develop regulations on pesticide drift, and to conduct both health and environmental risk assessments of all pesticides used in the state. Other changes required more of the people using pesticide in places open to the public to become licensed as commercial applicators. In addition, the Legislature agreed with the Board in 1987 that education was key to ensuring proper pesticide usage, and created a certification and licensing specialist position to work toward improving the manuals, exams and continuing education programs for applicators.

As a result of controversy over a 1987 bill which would have pre-empted municipalities from adopting local pesticide ordinances, the Maine Legislature established a study committee to

review the uniformity of pesticide laws. This effort turned into a comprehensive look at the Board and the eventual conclusion that if the Board's capabilities were increased there would be less need for municipal ordinances. Accordingly, legislation was passed in 1988 that created the positions of toxicologist and public information officer so the Board could better respond to public concerns. In addition, this act also required general use pesticide dealers to become licensed so there would be a mechanism to require annual sales reports. The revenue from their license fees was designated for a grant to support a position at the University of Maine to develop better quality training manuals.

In 1990, the Board underwent Sunset Review with only two minor changes being adopted by the Maine Legislature in 1991. The first specified that the two "public members" must have a demonstrated interest in environmental protection, while the second change designated the Board as the lead state agency in developing a ground water management plan for pesticides in order to meet federal requirements and provide necessary coordination. At this time, the Board received additional EPA grant moneys to create a Planning and Research Associate I position to address new federal issues on ground water and worker protection.

The early 1990s were relatively quiet in terms of legislative activity. During this time, the Board instituted annual planning sessions to identify and deal with several new issues including the Productivity Realization Task Force that resulted in the loss of one clerical position. The Board received two citizen petitions for rulemaking in 1994 and 1995. The first requested a ban on the use of the herbicide hexazinone in blueberry production. The Board rejected the request but instead created an advisory committee that resulted in the development of a Hexazinone State Management Plan for the Protection of Ground Water. The second petition requested a ban on aerial pesticide applications but the Board did not find sufficient evidence to support eliminating the many benefits from aerial application.

In 1997, the Maine Legislature created a new state policy to minimize reliance on pesticides by promoting the implementation of integrated pest management and other science based technology. The legislation recognized that outbreaks of disease, insects and other pests would necessitate fluctuation in pesticide use but directed the Board to educate both pesticide users and the general public in the proper use of pesticides. A separate provision of this legislation directed the Board to publish an annual report on pesticide sales and use data so there could be some determination if the new policy was resulting in decreased pesticide use. However, no funds or positions were provided to produce these reports.

In 2000, the Board underwent its first program evaluation review where the Joint Committee on Agriculture, Conservation and Forestry found that the agency was operating within its statutory authority. The committee's discussion during this review focused on the difficulty in obtaining useful, reliable information on pesticide use in the state. The Committee subsequently submitted legislation to suspend the reporting requirement from the 1997 legislation for two years while the Board studied the matter and reported back in 2002. In its 2002 report, the Board described the many deficiencies in the current reporting requirements, and presented several recommendations for change that would be necessary in order to be able to produce reliable reports. These included requiring all in-state dealers to report their pesticide sales and all commercial agricultural producers to report their pesticide use on an annual basis. The Committee agreed the current reports were of little value but did not take any action to

require additional groups to report or to extend the requirement for annual reports of incomplete data.

Over the past five years there have not been any legislative bills passed to alter the Board's structure or programs. However, the 2005 budget bills have resulted in the dissolution of the Office of Agricultural, Natural and Rural Resources and the Board being transferred to the Division of Plant Industry effective September 1, 2005. In addition, half the funding for a temporarily vacant Public Relations Representative was transferred to the Division of Market and Production. The impact of this action will be discussed later in this report.

## **Section 2**

### **Overview Description of The Maine Board of Pesticides Control**

The Board of Pesticides Control was established to protect the public health and safety and the public interest in the soils, water, forests, wildlife, agricultural and other resources of the state by assuring safe, scientific and proper use of pesticides. The Board itself comprises seven public members appointed by the Governor to serve four-year terms. Qualifications for the members are prescribed by statute to include persons knowledgeable about pesticide use in agriculture, forestry and commercial application; while one person must have a medical background and another must be an agronomist or entomologist at the University of Maine with practical experience and knowledge of integrated pest management. The other two members must represent the public, have a demonstrated interest in environmental protection, and represent different geographical areas of the state.

The Board annually elects a chair and vice-chair, and meets monthly to establish policies and rule on special registrations or enforcement matters. Day to day activities are carried out by a staff of ten full-time, one half time and four seasonal employees who after September 1, 2005 are housed in the Department of Agriculture's Division of Plant Industry. The Board and staff hold an annual planning session to review progress on legislatively mandated duties and set priorities for discretionary tasks to be accomplished as time allows. More detailed information on the staff will be presented in Section 5.

The Board operates four major programs as follows:

#### **Pesticide registration**

All pesticide manufacturers and distributors doing business in the state must register their products on an annual basis and submit copies of their labels and material safety data sheets. In addition, the Board processes and forwards to the U.S. Environmental Protection Agency (EPA) requests for special local needs and emergency exemption registrations for products needed to control pest problems unique to Maine conditions. The Board also conducts health risk assessments of active ingredients when concerns are raised that a specific chemical may cause adverse health risks that were not identified in the federal registration process.

#### **Certification and Licensing**

The Board is intensively involved in the training and licensing of a wide range of pesticide dealers and applicators to ensure that products are stored and handled properly. Activities include development of study manuals, exams and training programs; administering written and oral exams; issuing licenses, maintaining computer databases of all licenses; and monitoring or delivering training sessions to recertify all applicators and restricted use pesticide dealers.

#### **Compliance**

The Board's one full-time and four seasonal inspectors spend most of their time conducting routine inspections to check registration status of pesticide products and make sure applicators

and dealers are aware of and complying with all state and federal regulations and pesticide label instructions. When a citizen complaint is received, they conduct a full priority investigation of the application and any resulting adverse effects. If any violations are detected, the staff works closely with an Assistant Attorney General to follow the Board's Enforcement Protocol and either negotiate a consent agreement in advance or prepare a case summary so the Board may decide on appropriate enforcement action.

### **Education**

The Board has a long held policy of educating applicators and dealers on following correct procedures rather than seeking enforcement action after violations occur. The Board is also committed to educating the general public and health care professionals on the risks inherent in pesticide use, reasons why pesticides are used in agriculture, forestry and other industrial applications, and the 1997 state policy on minimizing reliance on pesticides. Information is distributed via the Board's website at [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org), newsletters, press releases and an occasional newspaper ad campaign. In addition, staff makes presentations at public meetings, rents booth space at trade shows and conducts other collaborative outreach programs with the Department of Environmental Protection and environmental stewardship organizations such as The Friends of Casco Bay. During this past year the Board has enlisted the cooperation of nine additional partners to establishing a YardScaping initiative that will be described later in this report.

The Board also operates three special programs as funding levels allow that include the following:

### **Worker Protection Standard**

This program resulted from a 1992 EPA initiative to protect farm workers from occupational exposure to pesticides. The Board assists farmers, foresters, nurserymen and greenhouse operators to comply with this federal standard by providing training to both agricultural workers and pesticide handlers. These efforts are accomplished through cooperation with the Training & Development Corporation's AmeriCorps volunteers and the University of Maine Cooperative Extension.

### **Water Quality**

Activity for this program relates to the Board's designation as lead agency for pesticide contamination of ground water. On a regular basis, the Board's water quality specialist and inspectors sample residential wells in areas of pesticide use to determine if any contamination of ground water is occurring. Results are incorporated into reports and shared with interested parties. In addition, the Board conducts surface water sampling. For each of the past few summers, staff has looked for pesticides in streams draining residential areas where lawn care pesticides are used, and areas of potato and corn production. Samples are collected after rain events. Studies have also been conducted to help determine if the 10-foot no spray buffer between railroad rights of way and surface water bodies is adequate. Finally, drift studies attempt to provide information on blueberry pesticides that are applied by aircraft. Reports for these projects are also shared with interested parties.

### **Obsolete Pesticide Collection**

This currently unfunded special program has been a joint effort with the Department of Environmental Protection to provide an affordable and environmentally responsible way for farmers and homeowners to dispose of obsolete pesticides. For several years, the Board has maintained a list of persons who are holding pesticides that have either been banned or deteriorated to the point they are no longer usable. Each fall, a hazardous waste contractor is hired and the citizens are invited to bring their products in on a designated date to one of four DEP regional offices. The contractor then packages the material and transports it to an out of state, licensed disposal facility. In 2004, this program served 65 people and disposed of 6,040 pounds of unusable products. Due to a reduction in EPA grant funds, the program could not be conducted in 2005 and will remain suspended until a new funding source can be identified.

## **Section 3**

### **Enabling or Authorizing Laws**

1. Maine Board of Pesticides Control Statute 22 M.R.S.A. § 1471 A-X

This statute creates the Board of Pesticides Control, defines its purpose and policy, requires licensing of applicators and dealers, and establishes the powers of the Board to promulgate rules regulating pesticide sales and use. It also contains a 1997 amendment creating a new state policy to minimize reliance on pesticides.

2. Maine Pesticide Control Act 7 M.R.S.A. § 601-625

This statute requires the registration of all pesticides to be sold or used in this state. It also contains provisions that govern the sale and use of these products, establish penalties for violations of Maine pesticide laws and regulations, and requires public utilities and the Maine Department of Transportation to offer no-spray agreements to municipalities.

3. Federal Insecticide, Fungicide and Rodenticide Act 7 U.S.C. 136 et seq

The Board has a cooperative agreement with the U.S. Environmental Protection Agency (EPA) and has been granted enforcement primacy for enforcing this federal statute that governs the manufacture, sale and use of pesticides. Generally, the Board only uses this authority when EPA requests that it inspect a pesticide producing establishment or check on compliance with the federal Worker Protection Standard.

## Section 4

### Programs and Performance Measures

The vast majority of activities conducted by the Board are mandated by state and/or federal statutes. The Board has divided its operation into four major programs that were described in Section 2. In addition, it also operates the three special programs as time and funding permit.

The Board originally participated in the Department's strategic planning process and the Board's activities appear in the Department's goal to protect the public health, the environment and the welfare of animals. The Board's objective is to reduce the number of adverse incidents from pesticides and all Board's programs fall under the strategy to protect the public health and natural resources of the State by assuring safe, scientific and proper use of pesticides.

The Board's performance measures for FY '05 are presented as follows:

<u>Performance Measures</u>	<u>FY '99 Baseline</u>	<u>FY '05 Target</u>	<u>FY '05 Actual</u>
1. # of products registered	6,895	7,100	7,892
2. # of licensees	3,949	3,750	3,767
3. % of enforcement actions based on total number of inspections	4%	4%	1.2%
4. # of training programs conducted	121	125	144

The Board questions the usefulness of the above performance measures but wishes to point out the great difficulty of obtaining other more meaningful measures. It is obviously quite impossible to determine how many people were not poisoned because they used pesticides properly or that reduced their use of pesticides after receiving educational information about integrated pest management. It is also important to note that in spite of recent declines in the national economy, the number of products registered has been increasing the past few years as registrants continue to market more specialty formulations containing the same active ingredient. Conversely, the number of licensees has been declining both because many farmers have gone out of business and others no longer need to be licensed because many of the restricted use pesticides they formerly used have been replaced by lower risk products classified for general use. The Board believes it is more effective to hold an annual planning session with staff to review the past year's activities and establish priorities for discretionary tasks that will take considerable time and effort to accomplish in the coming year. The tasks identified at the June 3, 2005 planning session are prioritized below.

2005 – 2006 Discretionary Tasks

- \_\_1\_\_ Address aerial application issues including revisiting notification requirements and possibly adopting buffers.
- \_\_2\_\_ Address issue of lawn care applicators applying pesticides when it is raining or there is an extended period of wet weather.
- \_\_3\_\_ Develop regulation to make applications to property illegal unless prior consent received from owner or lessee (2004 leftover).
- \_\_4\_\_ Develop legislation and/or rule-making changes to require commercial applicator licensing of all persons using pesticides in food handling establishments (2004 leftover).
- \_\_4\_\_ Develop regulation to make it illegal to authorize an application on property the person does not own or control (2004 leftover).

## **Section 5**

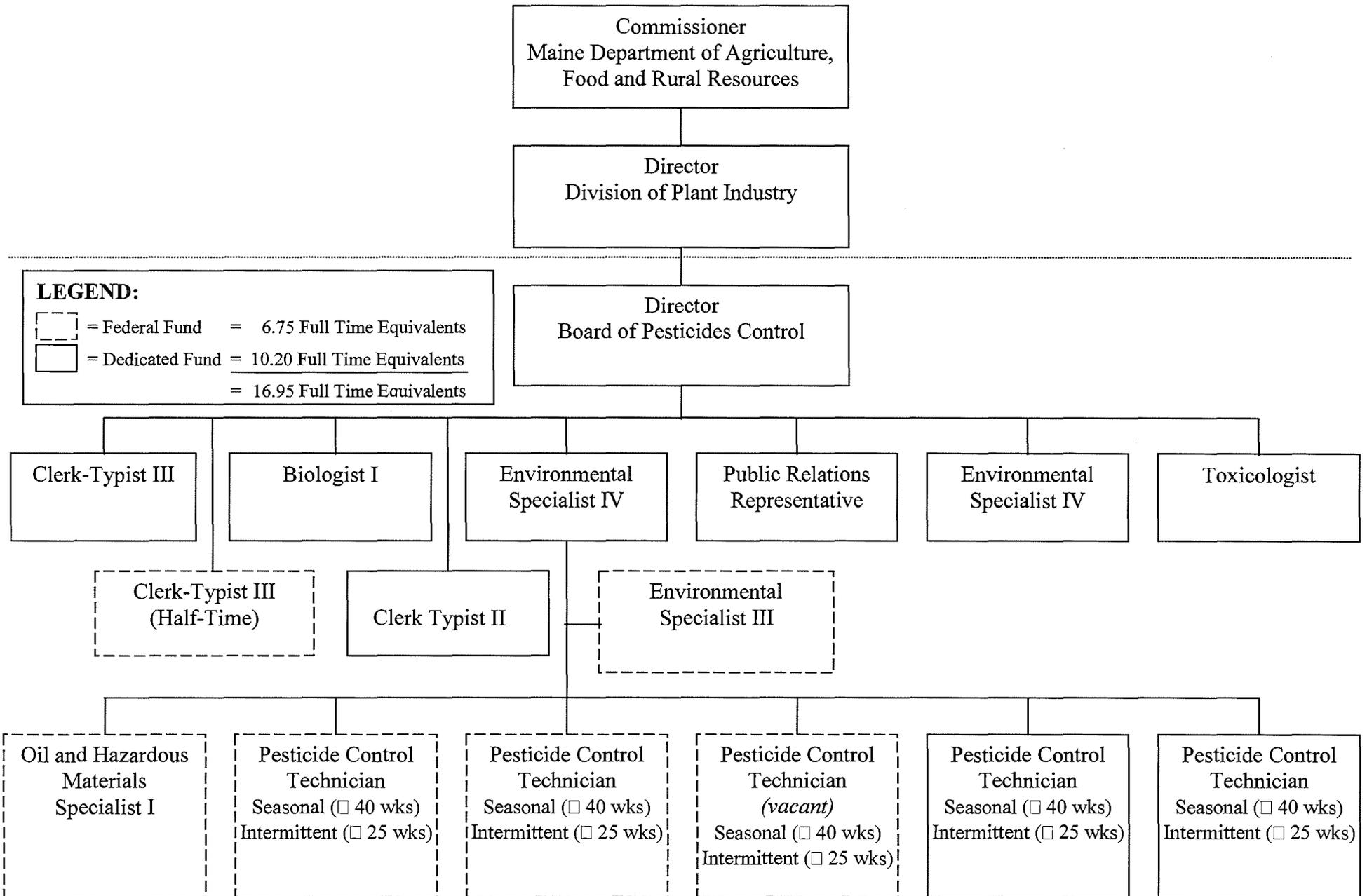
### **Organizational Structure**

The staff of the Board of Pesticides Control is housed in the Department of Agriculture's Division of Plant Industry. There are ten full-time employees who work year round and are based in Augusta in the Deering Building. The Board also employs four seasonal pesticide inspectors who work full-time for 40 weeks per year. These same employees are also available in intermittent capacity during the remainder of the year when they might be called out to attend training, investigate a serious complaint, present information at a Board meeting or monitor attendance at applicator recertification meetings.

The Board's Compliance Staff is dispersed throughout the state in a manner that reflects both the level of pesticide use and travel distance. There is one full time inspector based in Augusta who generally covers the central coastal and interior portions of the state. The seasonal inspectors operate from their homes in Mars Hill (Aroostook County), Bangor (Penobscot County), Otis (Hancock County) and Dayton (York County).

An organizational flowchart with position count and job classification for the Board appears on page 5.2. A table listing five positions that reside in the Department but are paid from Board of Pesticide Control Accounts appear on page 5.3. This situation is further described in Section 7.

# MAINE BOARD OF PESTICIDES CONTROL ORGANIZATIONAL CHART



**Other Departmental Positions Funded by Pesticide Control Fund**

<b><u>Position</u></b>	<b><u>Division</u></b>	<b><u>Full Time Equivalent</u></b>
Entomologist III	Division of Plant Industry	1
Entomologist III	Division of Plant Industry	1
Assistant Horticulturist	Division of Plant Industry	1
Assistant Horticulturist	Division of Plant Industry	1
Planning & Research Associate II	Division of Market & Production Development	0.5
Total Full Time Equivalents:		<hr/> 4.5

## **Section 6**

### **Compliance with Federal and State Health and Safety Laws**

The Board takes proactive measures to ensure compliance with all federal and state health and safety laws. As part of accepting grants from the U. S. Department of Agriculture and the U. S. Environmental Protection Agency, the Board certifies that it will comply with all federal standards relating to nondiscrimination which include but are not limited to a) Title VI of the Civil Rights Act - prohibits discrimination on the basis of race, color or national origin, b) Title XI of the Education Amendments of 1972 - prohibits discrimination on the basis of sex, c) Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination on the basis of handicaps, and d) The Age Discrimination Act of 1975 - prohibits discrimination on the basis of age.

The Board, as a unit of the Department of Agriculture, participates in safety compliance inspections conducted by the Maine Bureau of Labor Standards. In addition, the Board's Director serves as a member of the Department's Labor/Management Committee that has a goal to provide the safest working conditions for Department employees.

Work site evaluations have been performed for all employees using video display terminals in order to provide specific recommendations to enhance employee safety, comfort and efficiency. Ergonomic furniture has been obtained for all employees to implement the recommendations contained in the work site evaluations.

The Board is especially concerned about its field personnel who are frequently on site at the time of pesticide applications, or must visit an application site soon afterwards to investigate a complaint. Occupational Health and Rehabilitation, Inc. has been engaged to conduct annual physicals along with both pre and post season blood tests for each of the five employees. In addition, monthly inspector training sessions are held where frequent topics include pesticide safety. The staff annually reviews the Board's Personal Protection Policy which contains provisions that comply with the OSHA Standards contained in 29 CFR Parts 1910.134 and 1910.1200. This policy deals with the wearing of suits, boots, gloves, and other safety equipment provided by the Board to its employees. Respirator fit tests are also conducted on an annual basis. Whenever an opportunity arises, the inspectors also participate in both regional and national training sessions.

## **Section 7**

### **Financial Summary**

The Board received a general fund appropriation for many years that covered the salary of the Director and administrative expenses for operating the public board. This funding was eliminated during an initial round of budget cutting in 1990. Since 1991, all of the Board's expenses have been covered by the dedicated Pesticide Control Fund and federal grants.

The Pesticide Control Fund consists primarily of pesticide product registration fees and to a lesser extent, exam and license fees for all but governmental applicators who are exempt from paying fees. In FY '05, the product registration fees totaled \$934,296 while examination, license and miscellaneous fees generated \$98,994. This account supports the operation of the Board and the salaries and expenses of 10 Board employees. In addition, this account funds 4.5 other positions in the Department including an Entomologist who is an Integrated Pest Management Specialist, an Entomologist who is the State Apiarist, two Assistant Horticulturalists and a Planning & Research Associate. A chart displaying the last ten years of revenues and expenditures for the Pesticide Control Fund is presented on page 7-3. It should be noted that expenditures exceeded revenue in six of the ten years and the reasons will be explained below.

There have been two instances when the Maine Legislature increased fees for a specific purpose and the resulting revenue did not meet expectations. The first occurred in 1988 when general use pesticide dealers were first required to be licensed. The new license fees were dedicated to providing a grant to Cooperative Extension so a person could be hired full time to develop and revise pesticide applicator training manuals. Unfortunately, the number of general use dealers never met expectations with the maximum funds barely reaching \$15,000. Due to the importance of having up to date manuals, the Board has provided additional funds for this purpose from the Pesticide Control Fund with the 2005 grant award totaling \$35,000.

The other instance occurred in 1993 when the Maine Legislature raised the annual pesticide product registration fee from \$85 to \$105. This \$20.00 increase was dedicated to supporting the State Apiarist and the two Assistant Horticulturalists in the Division of Plant Industry that had previously been on the general fund. Once again, revenues did not meet expectations and since FY '96 the three employees and their associated expenses have annually exceeded the amount raised by more than \$20,000. This problem is illustrated by first looking at the table on page 7-4 which shows the history of the number of companies registering products, total products registered, fee increases voted by the Maine Legislature and revenue received on a calendar year basis. Since 1994, the lower number in the revenue column shows the amount generated with the intent to support the three positions in the Division of Plant Industry. In spite of a new record high in product registrations, the graph on page 7-5 shows the extent to which the Pesticide Control Fund has had to provide additional funds to support these positions. Furthermore, the chart on page 7-6 demonstrates that since this arrangement was instituted in 1994, these additional contributions have totaled \$284,645.

The Maine Legislature attempted to address these funding problems by increasing the pesticide product registration fee by \$10.00 in 2003 and again in 2004. Referring back to the

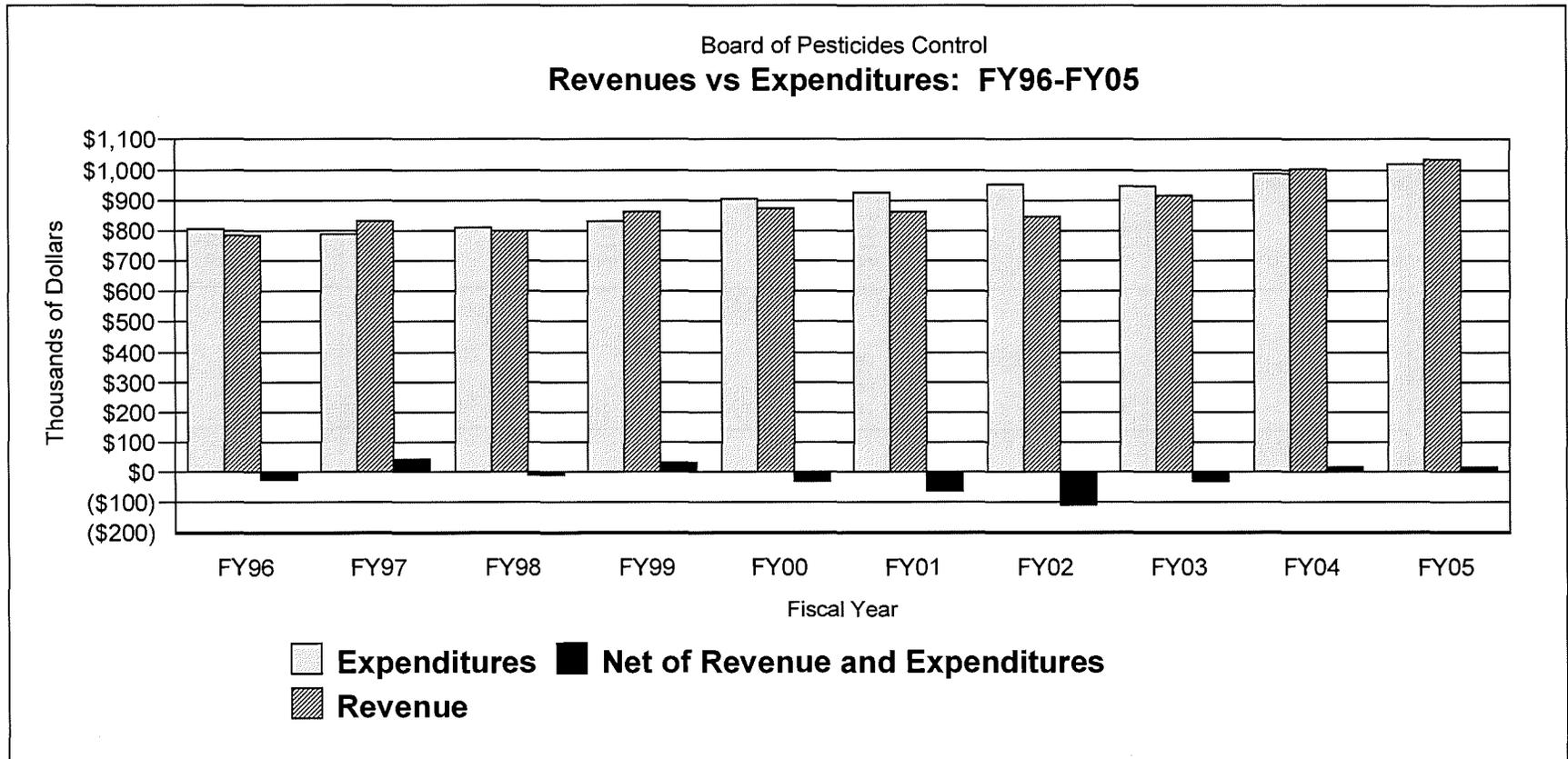
chart on page 7-3, one can see that revenue exceeded expenditures for the last two fiscal years. In FY '04 revenue exceeded expenditures by \$16,888 and in FY '05 revenue exceeded expenditures by \$14,279. It is important to note that the Public Relations Representative position was vacant the last quarter of FY '05. In addition state employees received a 3% pay raise on July 1, 2005 and another 3% increase will be granted effective July 1, 2006. Furthermore state government has experienced major increases in the cost of fringe benefits that will more than consume the small increases in revenue over expenditures during the current biennium.

Since 1980, the Board has received grant funding from the U.S. Environmental Protection Agency (EPA) to help support both certification and compliance activities as well as special initiatives in the areas of ground water, endangered species and worker protection; obsolete pesticide collection and education for the general public. In FY '04 EPA funds totaled \$351,067 to support the salary and expenses of four employees plus associated expenses of the special initiatives, and in FY '05 the total had decreased to \$328,570. EPA officials have advised that a 5 to 10% reduction in grant funds should be anticipated for FY '06 and another 5 to 10% reduction for FY '07. For this reason, the Board has suspended its obsolete pesticide collection program in FY '06 and will likely have to eliminate monitoring of water quality in FY '07. Currently, the Board is the only agency in Maine conducting water quality monitoring for pesticide residues.

As previously mentioned, the Board operates with a mix of dedicated and federal funding. The graph on page 7-7 provides a historical account of total expenditures for the agency and the four additional positions funded by these accounts. While there have been slight increases in the Pesticide Control Fund, there have been corresponding decreases in the federal grants. This means that there is no opportunity to cover potential shortfalls in dedicated funding with federal dollars.

The best measure of the Board's pending financial crisis is illustrated in the graph on page 7-8. It shows that end of fiscal year cash balances in the Pesticide Control Fund have dropped considerably from a high point of \$584,977 in FY '99 to \$386,891 in FY '05. The reasons of course include the years when expenditures exceeded revenues. In addition, the Maine Legislature in June swept the account and transferred a \$31,655 donation to the General Fund. It is important to note that the end of FY '05 cash balance is less than half of what will be needed to cover the costs for the remainder of the year.

The Board has been fortunate that even though many older pesticides have been discontinued over the years, the total number of products registered has generally continued to increase as manufacturers have created additional specialty products for their more popular active ingredients. Nevertheless, the Board needs the Maine Legislature to take action in 2006 to either identify additional revenue for the Pesticide Control Fund or preferably find another source of revenue to support the Horticultural and Markets & Production employees. Otherwise, the Board's ability to continue to conduct obsolete pesticide collections, water quality monitoring, public education for homeowners and provide a grant to Cooperative Extension's Pest Management Office to support the upgrading of training manuals will be in serious jeopardy. The Board looks forward to discussing these matters with the Joint Standing Committee on Agriculture, Conservation and Forestry this winter.



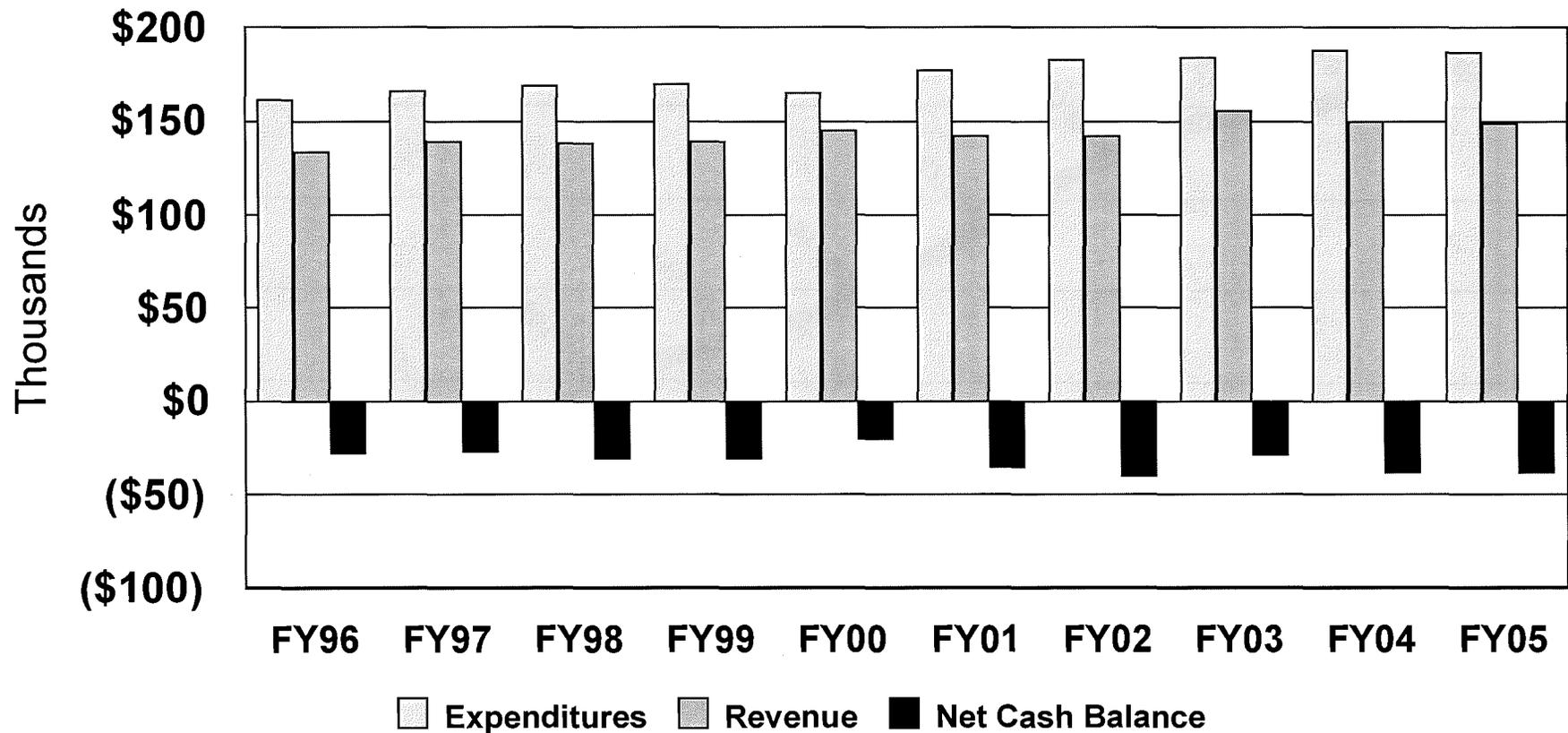
Program Evaluation Report  
 Maine Board of Pesticides Control

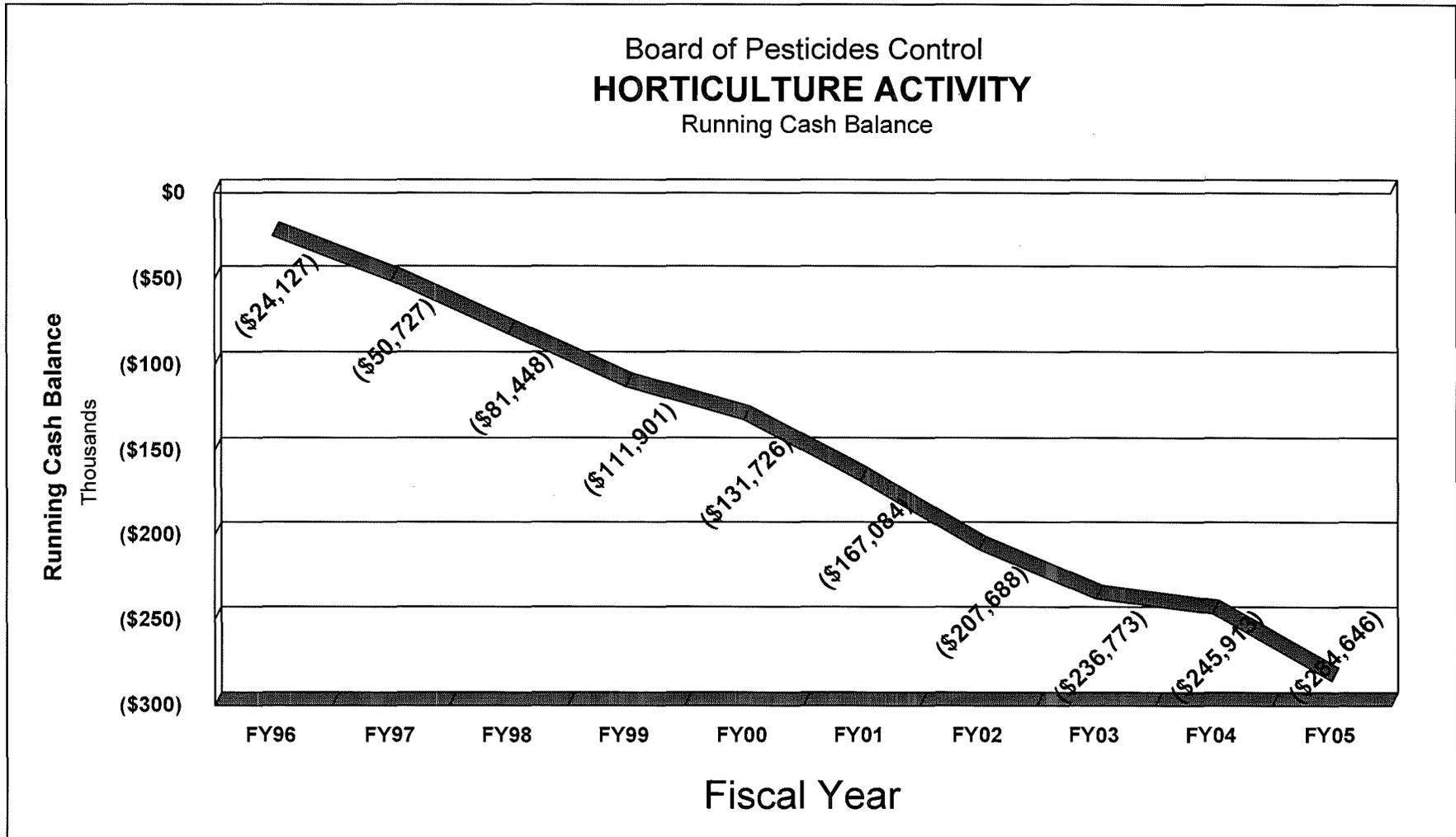
ANNUAL REGISTRATION SUMMARY

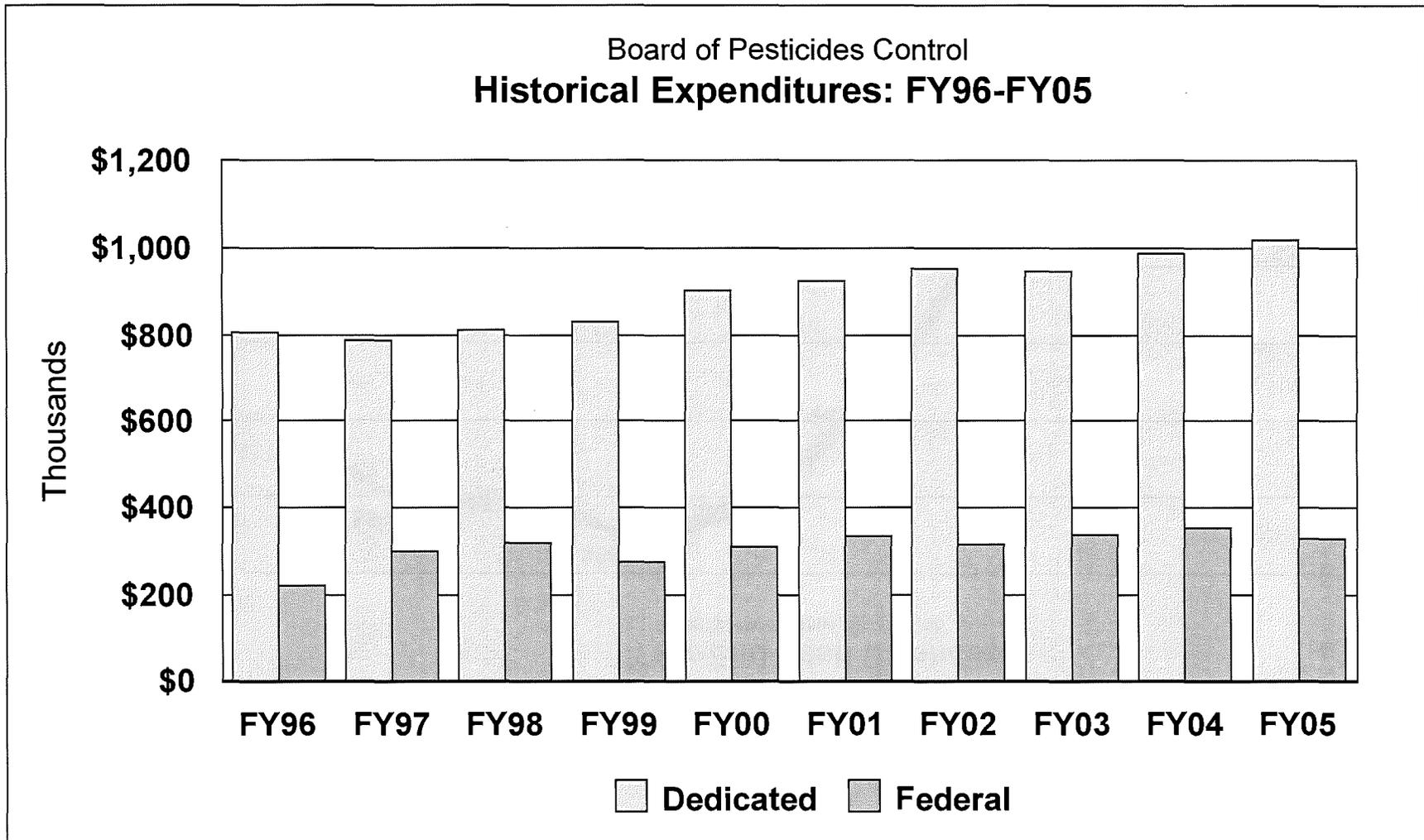
YEAR	COMPANIES	PRODUCTS	FEE/PRODUCT	REVENUE
2007			\$125 \$105 *\$20	
2006			\$125 \$105 * \$20	
2005	797	7,900	\$125 \$105 * \$20	\$829,500 \$158,000
2004	775	7,672	\$125 \$105 *\$20	\$805,560 \$153,440
2003	760	7,231	\$115 \$95 *\$20	\$686,945 \$144,620
2002	752	7,267	\$105 \$85 *\$20	\$617,695 \$145,340
2001	726	7,323	\$105 \$85 *\$20	\$622,455 \$146,460
2000	726	7,285	\$105 \$85 * \$20	\$619,225 \$145,700
1999	721	7,238	\$105 \$85 *\$20	\$615,230 \$144,760
1998	708	6,895	\$105 \$85 * \$20	\$586,075 \$137,900
1997	674	6,952	\$105 \$85 *\$20	\$590,920 \$139,040
1996	643	6,696	\$105 \$85 * \$20	\$569,160 \$133,920
1995	620	6,443	\$105 \$85 *\$20	\$547,655 \$128,860
1994 *SEE NOTE	596	6,381	\$105 \$85 *\$20	\$542,385 \$127,620

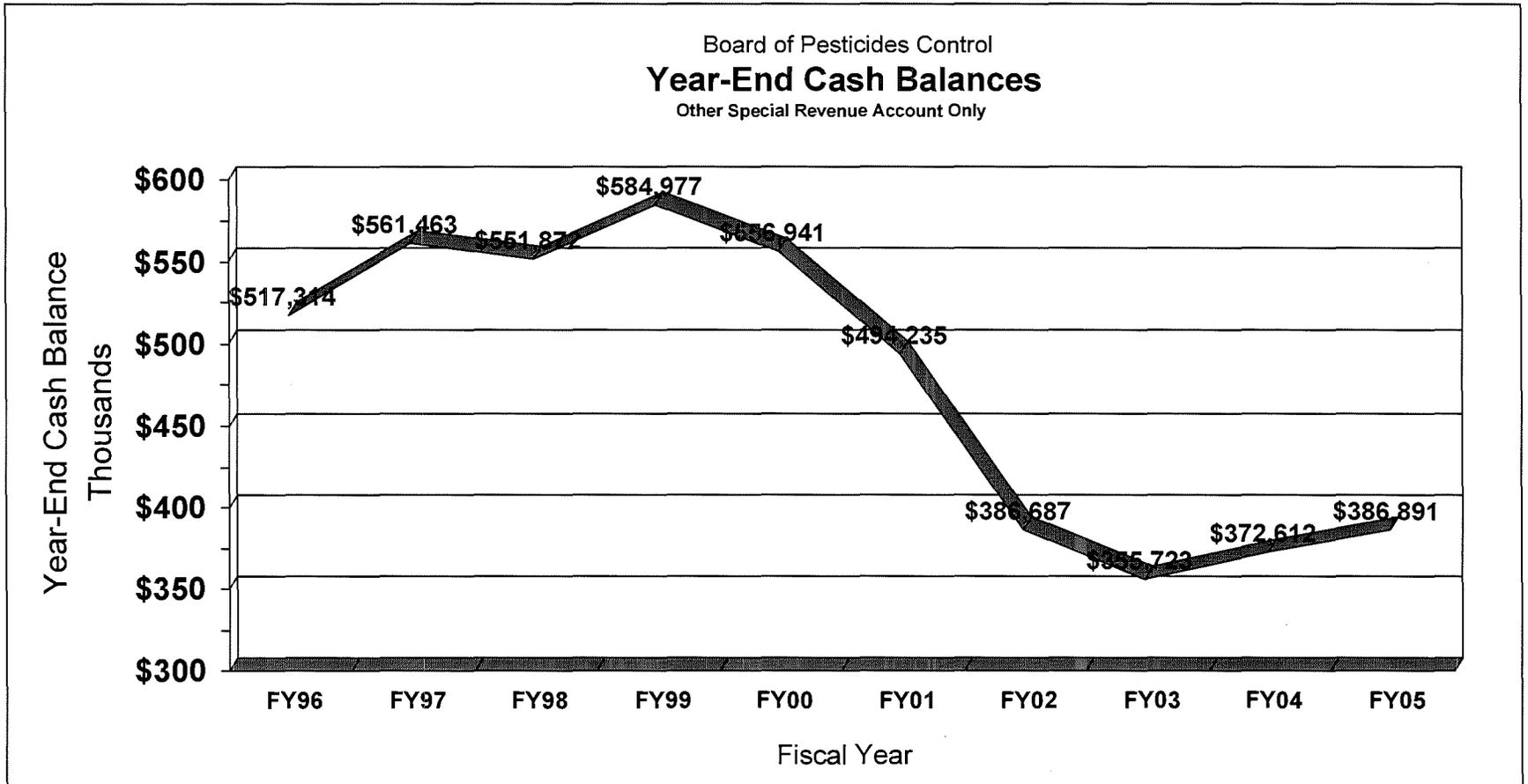
\*Note: This \$20 surcharge was implemented by the legislature in 1994 to fund three non-Board positions in the Department of Agriculture previously funded from the general fund.

### Board of Pesticides Control Horticulture Activity Analysis of Cash Balance









## **Section 8**

### **Regulations**

The Board has developed regulations over the years to address specific issues and concerns. An index to the 21 chapters appears on page 8.3 and copies of the rule may be requested from the Board. They may also be viewed online by accessing the Board's home page at <http://www.state.me.us/agriculture/pesticides> or more simply at [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org).

During the past six years, the Board only adopted one new regulation. Chapter 27 - Standards for Pesticide Applications and Public Notification in Schools - was adopted in October 18, 2002 with an effective date of August 30, 2003. This rule was developed through the consensus-based rule-making process and requires K-12 schools to adopt and implement an integrated pest management (IPM) policy that included appointing an IPM Coordinator. This person is responsible for coordinating pest monitoring and pesticide applications to school buildings and grounds. The rule also requires the schools to utilize non-pesticide control measures when practicable and when necessary to utilize pesticides that present the lowest risk and least amount of exposure to humans. In addition, it established procedures for notifying school staff, students, visitors, parents and guardians about pending higher risk pesticide applications. This rule has generally been accepted by the majority of schools and the Board's compliance staff is still assisting some that have been slow to comply.

In May of 2003 and again in February of 2004, the Board made revisions to Chapter 41 – Special Restrictions on Pesticide Use – to create a new Section 4. Aquatic Herbicides. The amendments placed restrictions on the sale and use of products registered in Maine that have aquatic uses listed on the product label. The rule provides that these products may only be sold by licensed restricted use pesticide dealers and that the dealers may only sell them to licensed pesticide applicators. This rule-making was conducted in response to officials from the Maine Department of Environmental Protection (DEP) and leaders of lake associations who wished to see these products controlled at the point of sale. The Board agreed to help educate citizens that they need to obtain an aquatic discharge permit from the DEP before suddenly deciding to purchase materials and apply them to waters of the state to control unwanted vegetative growth in front of their camps and cottages.

In December 2004, the Board adopted a series of housekeeping amendments to make minor changes to five chapters as follows: (1) amended Ch. 10 to incorporate new definitions from recently adopted Chapter 27 as well as substitute "wetlands of special significance for the obsolete terms Class I and Class II wetlands; (2) amended Ch. 24 to substitute "wetlands of special significance" for the obsolete terms Class I and Class II wetlands; (3) also amended Ch. 24 to incorporate recent policies regarding proximity to foods and placement of signs in self-service sales areas; (4) amended Ch. 31 to incorporate a recent policy requiring the licensed supervisor to be physically present on the property of the client the entire time it takes an unlicensed employee to complete the application; (5) amended Ch. 31 to create a new subcategory for persons performing sewer line root control; (6) amended Ch. 50 to clarify the requirements for commercial applicators to file annual reports; and (7) amended Ch. 51 to increase the minimum time from three to seven days for companies to provide notices to the Board and Maine Poison Center of their plans to conduct a non-agricultural aerial pesticide application.

During June 2005, the Board adopted amendments to Chapter 27 to provide clarification on several issues raised by both school officials and Board Staff. These included further defining school grounds, specifying that the IPM Coordinator must be a school employee, renaming and reorganizing Section 2 to requirements for all schools, and clarifying in Section 3 when and to whom notices must be provided. At this same time, the Board also amended Chapter 31 to incorporate previously adopted policies excluding pet groomers and swimming pool operators that are certified by the National Swimming Pool Foundation from Board licensing. In addition, the amendments also provided clarification on other certification and licensing procedures such as specifying that all licenses must be company affiliated, extending recertification periods from five to six years and defining the verification process meeting organizers must follow to have their program eligible for credit and licensees must follow to earn those credits.

The Board is currently engaged in what has become a lengthy rulemaking process to adopt a new Chapter 26 to be titled Standards for Indoor Pesticide Applications and Disclosure and Notification for All Occupied Buildings Except K-12 Schools. The Board first recognized a need for this rule back in 1987 when it adopted its Chapter 22 standards for outdoor applications. Since then, the Board has received complaints about people being exposed to pesticides in their living or workspace. However, work on the new rule was postponed several times until the need for this rule again turned up as a top priority at the Board's 2003 planning session.

This proposed new rule was patterned after the 2002 school IPM rule and the Board initially took it to public hearing on July 21, 2004. The rule focused on other occupied buildings where people would be spending long periods of time living or working in a building. It required commercial applicators to employ integrated pest management techniques to control pests in these areas. It also required them to conduct pest monitoring, make a positive identification of the pest, and first use sanitation, exclusion, trapping or biological means to control the pest problem. As a last resort, it allowed them to use low risk pesticides to eliminate pest problems. In addition, the proposed rule required the commercial applicator or the client hiring the applicator to provide at least 24 hour written notice to employees and parents when a non-exempt application was planned for the area they normally inhabit. Although many citizens supported adoption of the proposed rule, a high level of opposition was expressed by commercial applicators and the many businesses that hired them to keep their facilities pest free. The Board attempted to address the major objections with a redrafted proposal that went to public hearing on September 9, 2005. Again, many citizens supported the Board's second attempt while the same opponents declared that it still was creating unreasonable demands on their business. While the Board believes that many of the opponents' concerns result from incorrect interpretations leading to worst case scenarios, the members will be looking to make additional revisions at their October 28<sup>th</sup> meeting. The Board will attempt to clarify its intent and address the major objections regarding applications in the presence of humans and methods of providing notice to employees. These changes will likely require the Board to re-advertise the proposed rule later this year and seek additional comments.

The Board's Regulatory Agenda for 2005-2006 listing other potential rulemaking activity appears on pages 8.4 through 8.8.

## **Board Of Pesticides Control Regulations**

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## **Board of Pesticides Control Regulatory Agenda**

01-026

Maine Department of Agriculture, Food, and Rural Resources  
Board of Pesticides Control  
Robert I. Batteese, Jr., Director  
28 State House Station  
Augusta, Maine 04333-0028

**EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA:** None

### **POTENTIAL 2005-2006 RULEMAKING ACTIVITY:**

#### **CHAPTER 10: Definitions and Terms**

**STATUTORY AUTHORITY:** 22 MRSA §§1471A-X

**PURPOSE:** In 1996, the Board consolidated all definitions of rules in this Chapter. This chapter must be updated each time a new definition is added to one of the subsequent chapters. It received a series of housekeeping amendments in January 2005 and will likely be amended again if the Board is successful in adopting a new Chapter 26 setting standards for indoor applications.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All individuals and businesses affected by the Board's rules.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

#### **CHAPTER 20: Special Provisions**

**STATUTORY AUTHORITY:** 22 MRSA §§1471A-X

**PURPOSE:** The Board may amend the current Chapter to include specific duties that an employer must perform to protect their employees from occupational exposure to pesticides. Many of the amendments will be modeled on the 1992 Federal Worker Protection Standard.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All business that use pesticides and have one or more employees.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

#### **CHAPTER 21: Pesticide Container Disposal and Storage**

**STATUTORY AUTHORITY:** 22 MRSA § 1471-Q

**PURPOSE:** The Board is promoting the collection and recycling of all pesticide containers and may make amendments to reflect current practices regarding payment of deposits, issuance of stickers, and submission of affidavits.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** Pesticide applicators and dealers.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

#### **CHAPTER 22: Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition**

**STATUTORY AUTHORITY:** 7 MRSA §§ 601-625 and 22 MRSA §§1471A-X

**PURPOSE:** The Maine Legislature has directed the Board to evaluate the risks of Brown Tail Moth applications to lobsters and develop an approach that eliminates the likelihood the pesticides will end up in marine waters. The Board may initiate rule-making to adopt buffer

standards that potentially could affect all applicators making outdoor applications with powered application equipment.

ANTICIPATED SCHEDULE: Prior to October 2006

AFFECTED PARTIES: All applicators making outdoor applications with powered application equipment.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

**CHAPTER 24:** Pesticide Storage Facility Standards/Pesticide Distributors

STATUTORY AUTHORITY: 22 MRSA § 1471-O and 7 MRSA § 610(2)(B)

PURPOSE: The Board has received letters expressing concern that odors and spilled chemicals may represent a health risk for both employees and customers who enter the self-service display areas of general use pesticide dealers. The Board may find it necessary to establish standards for the display and storage of pesticides in these retail areas.

ANTICIPATED SCHEDULE: Prior to October 2006

AFFECTED PARTIES: Pesticide dealers with self-service sales areas.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

**CHAPTER 27:** Standards for Pesticide Applications and Public Notification in Schools

STATUTORY AUTHORITY: 22 MRSA §§ 1471A-X and 7 MRSA §§ 601-625

PURPOSE: The Board adopted this rule over two years ago and made some housekeeping amendments to it during Spring 2005. The Board may find additional revisions are needed to clarify the intent of the rule.

ANTICIPATED SCHEDULE: Prior to October 2006

AFFECTED PARTIES: All public and private school systems as well as commercial applicators and all persons using school buildings and grounds.

CONSENSUS-BASED RULE DEVELOPMENT: Not Contemplated

**CHAPTER 28:** Notification Provisions for Outdoor Pesticide Applications

STATUTORY AUTHORITY: 22 M.R.S.A. § 1471-M (2)(D)

PURPOSE: This rule was adopted in 1998 and amended in 2000 to establish a registry for persons who wish to be notified of outdoor pesticide applications in their vicinity. It established mechanisms for notifying applicators (commercial and homeowner) in the area of a person on the registry. Although the rule has generally worked well, the Board may wish to initiate rule-making to address problems that have arisen when owners of land to be treated have failed to notify their commercial applicators about the presence of concerned neighbors.

ANTICIPATED SCHEDULE: Prior to October 2006

AFFECTED PARTIES: Persons who believe they are sensitive to pesticides benefit greatly. Regulated parties include all commercial pesticide applicators, the landowners who hire them and anyone who applies pesticides outdoors in the vicinity of persons on the registry.

CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated

**CHAPTER 29.** Standards for Water Quality Protection

STATUTORY AUTHORITY: 22 MRSA § 1471-M(2)(D)

PURPOSE: The Board may amend this rule that was adopted in April 1999 and currently protects surface water by establishing a set back from water bodies during mixing and loading operations, requirements for securing containers on sprayers and support vehicles, and requiring prompt clean up of any spills within the set back area. The Board has been monitoring water bodies adjacent to blueberry, corn and potato fields as well as residential areas and railroad rights

of way. Depending on final sample results, the Board may move to establish minimum distances an applicator must observe as a no-spray zone when applying pesticides adjacent to bodies of surface water.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** Pesticide manufacturers, outdoor applicators, persons owning land next to surface water bodies and environmental groups.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 31: Certification and Licensing Provisions for Commercial Applicators**

**STATUTORY AUTHORITY:** 2 MRSA §§ 1471-D and S

**PURPOSE:** The Board amended this chapter during Spring 2005 but may find it necessary to revise any of its current regulations dealing with the examination, certification, licensing, and re-licensing of commercial applicators.

**ANTICIPATED SCHEDULE:** October 2006

**AFFECTED PARTIES:** All persons licensed by the Board.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 34: Certification and Licensing Provisions for Pesticide Dealers,**

**STATUTORY AUTHORITY:** 2 MRSA §§ 1471-D and S

**PURPOSE:** The Board may amend its current regulation to require pesticide dealers to have a company license in addition to having their employees licensed.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All persons licensed by the Board.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTERS 32, 35 and 36: Certification and Licensing Provisions for Private Applicators, Firms, and Monitors and Spotters**

**STATUTORY AUTHORITY:** 2 MRSA §§ 1471-D and S

**PURPOSE:** The Board may amend any of its current regulations dealing with the examination, certification, licensing, and re-licensing of private applicators, firms and monitors and spotters.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All persons licensed by the Board.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 40: State Restricted Pesticide List**

**STATUTORY AUTHORITY:** 7 MRSA §§ 601-625 and 22 MRSA §§ 1471A-X

**PURPOSE:** The Board may update its Restricted Use List by including products restricted by the US Environmental Protection Agency, deleting products that are no longer registered, and if necessary, modifying it as a result of the Board's registration review process,. Also, this action may add any products which present a threat to ground water.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** Pesticide manufacturers, pesticide applicators, and environmental groups interested in pesticide issues.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 41: Special Restrictions**

**STATUTORY AUTHORITY:** 7 MRSA §§ 601-625 and 22 MRSA §§ 1471A-X

**PURPOSE:** The Board amended this Chapter in 2003 to place additional use restrictions on pesticides that are likely to be used illegally by the general public to control weeds in waters of the State. The Board experienced problems utilizing the U. S. Environmental Protection Agency List and amended the rule early in 2004 to utilize a list based on products registered as aquatic herbicides in Maine. The Board may propose amendments to further clarify what products are considered aquatic herbicides, or it may find it necessary to place additional restrictions on products identified as potential risks by the health or environmental review processes.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All applicators making outdoor applications and environmental groups.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 50: Reporting Requirements for Applicators and Dealers**

**STATUTORY AUTHORITY:** 22 MRSA §§ 1471-G and M

**PURPOSE:** The Board adopted several housekeeping amendments to this chapter in January 2005 but may find it necessary to require applicators and dealers to record and maintain additional information about their sales and use of pesticides.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All private and commercial applicators, dealers, and consumer or environmental groups.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 51: Notice of Aerial Pesticide Applications.**

**STATUTORY AUTHORITY:** 22 MRSA § 147-R

**PURPOSE:** The Board may amend the current regulations dealing with forest insect, ornamental plant, rights-of-way, other forest pests, biting flies, other public health pests and aerial applications.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** Aerial applicators, paper company and utility officials, and environmental groups.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not contemplated

**CHAPTER 60. Designation of Critical Pesticide Control Area**

**STATUTORY AUTHORITY:** 22 MRSA § 1471 - M (4)

**PURPOSE:** Upon receipt of a petition, the Board would be required to consider restricting pesticide usage within a designated area to protect public health, threatened or endangered species or their habitat, surface or ground water, or other environmental resources.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** Persons living within the requested area and all applicators wishing to do business within the designated zone.

**CONSENSUS-BASED RULE DEVELOPMENT:** The Board engaged in consensus-based rule development the last time a request was received and would likely try it again.

**NEW RULE: Standards for Indoor Application of Pesticides**

**STATUTORY AUTHORITY:** 22 MRSA §§1471A-X and 7 MRSA §§ 601-625

**PURPOSE:** The Board initiated rule-making this past year to set standards for the application of pesticides in indoor settings and include notification procedures for tenants, employees,

customers or other visitors. The original proposal was abandoned after many people spoke or wrote in opposition. The Board is currently redrafting the proposed rule and hopes to initiate rule-making on a revised proposal during Fall 2005.

**ANTICIPATED SCHEDULE:** Prior to December 2005

**AFFECTED PARTIES:** All structural pest control applicators, owners or managers of businesses, institutions and apartment houses as well as interested members of the general public.

**CONSENSUS-BASED RULE DEVELOPMENT:** Not Contemplated

**NEW RULE:** Pesticide Use Reduction

**STATUTORY AUTHORITY:** 22 MRSA §§1471A-X and 7 MRSA §§ 601-625

**PURPOSE:** The Board is continuing to investigate ways to implement the 1997 state policy to minimize reliance on pesticides. The Board may be asked to adopt standards to expand integrated pest management practices.

**ANTICIPATED SCHEDULE:** Prior to October 2006

**AFFECTED PARTIES:** All pesticide applicators and dealers as well as interested members of the general public.

**CONSENSUS-BASED RULE DEVELOPMENT:** Contemplated

## **Section 9**

### **Coordination with Other Agencies**

The Board's staff has frequent contact with employees in other agencies to discuss items of mutual interest or shared responsibility. Some of the best examples are detailed in the following paragraphs.

#### **Cooperative Extension**

The Board's staff works very closely with the Cooperative Extension's Pest Management Office at the University of Maine on pesticide applicator training activities. This relationship has been ongoing since 1976 when training programs were initially offered to assist agricultural growers in qualifying for their first private applicator licenses to purchase and apply restricted use pesticides. In recent years, the Board's Certification and Licensing Specialist and the staff in the Pest Management Office have provided a wide variety of recertification training programs to keep licensees updated. In order to continue offering the most relevant training, the two agencies recruit national experts to present the latest information on such topics as pest biology, application technology, integrated pest management techniques and public risk communications. In addition, the two offices will be jointly sponsoring the 2007 National Certification and Training Workshop in Portland.

#### **U.S. Environmental Protection Agency (EPA)**

In addition to the many contacts with EPA Region I staff regarding management of the federal grants, the Board's staff have also collaborated to offer training programs especially on integrated pest management in schools. They are actively engaged in pesticide issues at the national level through membership in the Association of American Pesticide Control Officials (AAPCO) and the State FIFRA Interagency Research Evaluation Group (SFIREG). The Board's Director completed a seven-year commitment to AAPCO in August 2000 that included a year as president of the organization. The Board's Chief of Compliance is currently serving a two-year term as the Region I representative to SFIREG. This group meets twice a year in Washington D.C. and his travel is funded by EPA through a grant to AAPCO. In addition, there are two working committees that meet twice a year with EPA Headquarters officials to discuss potential new federal initiatives and prepare issue papers for consideration by the full SFIREG. The Board's Pesticides Toxicologist currently serves on the Pesticide Operations and Management Working Committee that primarily addresses pesticide registration and applicator licensing subjects. The Board's Certification and Licensing Specialist currently serves on the federal agency's Certification and Training Advisory Group that has issued a Pesticide Safety for the 21st Century draft report that includes recommendations to expand coverage to all applicators who apply pesticides and considered a tiered classification of pesticides based on toxicity or risk. The Board's Water Quality Specialist participates in two EPA Region I Roundtable meetings per year to share water quality information.

#### **Department of Environmental Protection (DEP)**

For the past eleven years, the Board's staff has worked jointly with staff in DEP's Bureau of Remediation and Waste Management to conduct annual collections of obsolete pesticides.

The Board maintains a list of growers and homeowners with banned or otherwise unusable products on their property. Utilizing EPA grant funds, the Board has issued a Request for Proposals for a licensed hazardous waste contractor to properly package and transport the inventory of chemicals to a licensed out of state disposal facility. The DEP staff has assisted the Board in the evaluation of bids and supervised the collections at their four regional offices in Presque Isle, Bangor, Augusta and Portland. The contracts have generally cost \$15,000 per year but due to a reduction in EPA grant funds the program was not conducted in 2005. This is extremely unfortunate because the program has been a great bargain compared to what the residents would have faced had they contracted individually for environmentally sound disposal.

The Board's Toxicologist is currently assisting DEP with their general permits for allowing herbicides to be used to control invasive plant species in lakes and ponds.

### **Environmental Protection/Resource Conservation Agencies**

Other topics of discussion with DEP staff focus on such issues as aquatic pesticide application permits and potential for nonpoint source pollution of both ground and surface water. The Board's staff has been involved with DEP, the Department of Inland Fisheries and Wildlife and the Atlantic Salmon Authority regarding potential impacts of pesticides on Atlantic Salmon. There is also contact with staff in the Maine Forest Service regarding aerial spray projects to control brown tail moth in urban areas. In addition, the Board's staff works closely with the DEP, Bureau of Health, Maine Geological Survey, Maine's Soil and Water Conservation Districts and regional planning councils to maintain the Board's Generic Plan for Pesticides and Groundwater. Furthermore, employees from these agencies as well as those of other private and governmental entities have been enlisted as volunteers to serve on the Board's Medical Advisory and Environmental Risk Advisory Committees. These groups focus on specific issues by reviewing scientific literature, analyzing available monitoring data and making recommendations to the Board on additional steps that might be taken to minimize risks from pesticides.

The Board has enlisted the aid of 11 partners to develop a YardScaping initiative to inspire Maine people to create and maintain healthy landscapes through ecologically based practices that minimize reliance on water fertilizer and pesticides. The partners include the University of Maine Cooperative Extension, DEP LakeSmart, Friends of Casco Bay, Soil and Water Conservation Districts, Congress of Lakes Association, Maine Organic Farmers & Gardeners Association, Southern Maine Community College, City of Portland, City of Brunswick, Carroll Associates and LNC Landscape Architecture. Demonstration plots are currently being developed in Back Cove in Portland and at the University of Maine in Orono to display low input lawns and landscapes. Further information is available at [www.yardscaping.org](http://www.yardscaping.org).

### **Bureau of Health**

The Board's Toxicologist has been serving on the Bureau of Health's Vector-borne Disease task force since its creation in 1999. This group was originally called the West Nile Virus task force but was renamed the Vector Borne Disease Working Group in 2005 to recognize the need to address other mosquito borne diseases such as Eastern Equine Encephalitis and tick borne Lyme disease. The Board's Certification and Licensing Specialist meets frequently with Bureau of Health Sanitarians to discuss the use of pesticides in the areas they inspect including

food handling establishments and swimming pools/spas. In addition, the Board's Water Quality Specialist works with other Health Engineering staff regarding drinking water contaminants.

### **Bureau of General Services**

The Board's Toxicologist and Certification and Licensing Specialist are currently working with Bureau of General Services and the Bureau of Purchases, Bureau of Health and the Bureau of Labor Standards to identify criteria and develop a process for identifying, and purchasing less toxic cleaning and disinfectant products to be used in state office and other public buildings.

### **Department of Education**

The Board's staff works closely with staff in the Department of Education to coordinate training programs on school integrated pest management for school officials.

### **Maine Poison Center**

The Board's Toxicologist serves as a technical consultant to the Northern New England Poison Center local at the Maine Medical Center in Portland. In this capacity, technical information is shared regarding pesticide exposures with the fire at the Asplundh garage and pesticide storage in Albion serving as the most recent example where potential exposure information was needed in an urgent timeframe. One ongoing project is the tracking of pesticide exposures in Maine in an effort to target educational programs. The Board's Toxicologist also participates in ongoing training of Poison Center staff on pesticide issues.

There has also been an ongoing effort for public education on the Brown Tail Moth problem on the southern Maine Coast. Activities have included updating of a fact sheet and joint appearances at town meetings when citizens were questioning whether to proceed with these control programs.

### **Maine Indoor Air Quality Council (MIAQC)**

The MIAQC was established in March 1998 as a 501c3 state nonprofit corporation to promote better quality of life and increased productivity through improved indoor air quality environments. The stakeholders for this group include health professionals, engineers, architects, managers of facilities, and others. The Board's Certification and Licensing Specialist has been involved with many of their training programs regarding the use of disinfectants and mold remediation. In addition, the Board's Toxicologist serves on their Education Committee.

### **Other**

The Board's Toxicologist serves on the Kennebec County Local Emergency Planning Committee (LEPC) providing them with technical information as needed.

**Department of Agriculture, Food and Rural Resources**

The Board's staff is housed in the Department and works most closely with the Department's IPM Entomologist in promoting integrated pest management in schools and coordinating training sessions and workshops on this subject. The staff also assists the Department of Agriculture in dealing with food safety issues, investigating agricultural complaints that may include pesticide use, and developing best management practices (BMPs) to help prevent future complaints. During the past year, the Board's staff has been asked to assist with agricultural terrorism issues and several staff participated in a mock exercise involving a reported threat of Foot and Mouth disease in livestock.

## **Section 10**

### **Other Program Considerations**

#### **A. Identification of Constituencies Served**

The most readily identifiable constituency of the Board is the regulated community of nearly 4,000 individuals and firms that are licensed to sell or apply pesticides. The Board is committed to providing them with information so they may obtain appropriate licenses in a prompt and efficient manner. As previously indicated, the Board also expends considerable efforts to ensure they receive the latest changes in pesticide information so they may handle products safely and in full compliance with all federal and state laws and regulations.

The entire population of Maine is an equally important constituency of the Board. Whenever a citizen formally complains that they may have been adversely impacted by a recent pesticide application, the staff treats this as their highest priority. An inspector is generally able to get to the site the same or very next day so appropriate samples may be collected and pertinent information may be obtained from both the complainant and applicator while events are still fresh in their minds. In other activities, the staff routinely answers questions from persons who simply want information about why pesticides are used and what risks are posed by that particular use. Any medical emergencies are referred to the Poison Center.

Many questions are also received about how to control a specific pest problem but these individuals are regularly referred to either the Pest Management Office in Orono or the Maine Forest Service Entomology Laboratory in Augusta since the Board's staff does not make pesticide recommendations.

In recent years, the Board has identified the at-home pesticide applicator as the user group with the greatest need to minimize its reliance upon pesticides. As a result, the Board has expressed great interest in educating the general public about pesticides, and the staff has expanded outreach efforts by purchasing advertising and collaborating with the DEP and Friends of Casco Bay to present dynamic information booths at flower and other trade shows throughout the state. During the last year, the Board has enlisted the aid of 11 partners to create the previously mentioned YardScaping Program. In addition, the Board's staff also plays an active role in making presentations at training sessions for Master Gardeners.

#### **B. Use of Alternative Delivery Systems**

Pesticide regulation is a very complex activity and the Board believes there are only very limited opportunities for privatization. Pesticide analytical laboratories offer the best example of when it is feasible. While pesticide lead agencies in many large states operate their own facilities, the Board long ago concluded there was not sufficient work to justify the high expense of maintaining quality equipment and a trained work force. Consequently, the Board has an agreement with the Food Science Laboratory at the University of Maine to analyze the bulk of both its compliance and environmental monitoring samples. When Maine laboratories are unable to meet analytical needs, the samples are shipped to a large commercial laboratory in Pennsylvania.

The Board and the Department of Health and Human Services agreed earlier this year that swimming pool and spa operators do not have to obtain licenses from either agency so long as they become certified to apply disinfecting chemicals by one of four private, non profit foundations or institutes that provide specific training on these chemicals and their appropriate application methods.

The Board accepts on-line pesticide applicator training programs for re-certification credit. In addition, it has utilized the Department of Education's Asynchronous Transfer Mode equipment to transmit video, audio, and computer data over the same network so presentations by recognized pest control experts may be transmitted to groups of applicators gathered at several remote sites around the state. This reduces the cost of having the speakers in travel status for several days and also reduces the distance applicators have to travel to obtain their re-certification credits.

The Board has developed a major web-site presence with a home page on the Internet at <http://www.state.me.us/agriculture/pesticides> or more simply [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org). This site has been widely accepted as a quick and efficient way for many people to communicate with the staff and obtain desired information. It also provides related links to many other sources of pesticide information. A recently added feature is titled "Got Pests" and it allows the general public to identify the most common pests in their homes, gardens, lawn and ornamental trees and shrubs. The Board hopes to expand this offering if it can obtain funding to return the Public Relations Representatives position to full-time.

On a different note, the Board has also enlisted the aid of volunteers from colleges and conservation groups to collect water samples after rainfall events. This also reduces staff travel and has the added benefit of the person being in the area and knowing exactly when the precipitation ends.

### **C. Comparison of Federal Laws and Regulations**

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 7 U.S.C. 136 et seq is much more extensive than the Board's two statutes because it specifies in great detail the information that a manufacturer must provide in order to get a new active ingredient registered. It also includes requirements for the manufacturer to become a pesticide producer establishment and the procedures they must follow during production and the filing of reports on amounts of chemicals produced. In addition, FIFRA details the information EPA must receive in approving experimental use permits and state requests for special local needs registrations. FIFRA allows a state to be more restrictive than the federal law but not less restrictive in the manner it regulates pesticide sales and use.

As previously mentioned, the Board has a cooperative agreement with the U.S. Environmental Protection Agency (EPA) and has been granted enforcement primacy for enforcing this federal statute that governs the manufacture, sale and use of pesticides. Generally, the Board only uses this authority when EPA requests it inspect a pesticide producing establishment that they regulate.

#### **D. Policy on Managing Personal Information**

The Board is extremely careful to protect the private personal information of its licensees by adhering to Maine's Freedom of Access Law (1M.R.S.A. § 401 et.seq) and the state's web-based privacy policy described at <http://www.maine.gov/portal/privacy.html>. Social security numbers are required on all license applications and all current applications are kept in locked files. Once the applications are no longer needed by Board staff, they are destroyed by shredding them in the Board's office.

Private information is not available on the internet and is only provided to two other agencies as mandated by law. Licensing information is provided to the State Tax Assessor pursuant to 36 M.R.S.A. § 175 for tax purposes and to the Department of Health and Human Services pursuant to 19 M.R.S.A. § 2201 to check for deadbeat dads.

The Board does not maintain applicator lists on its website but upon request does provide lists of applicators and dealers licensed in the state. The list includes the name and address of individuals and the categories of pest control for which they are certified and licensed.

#### **E. Required Reports and Applications**

The Board's statutes include the following requirements for submission of applications and reports:

7 M.R.S.A. § 607 for applications to register pesticide products on an annual basis (adopted 1975).

22 M.R.S.A. § 1471-D for applications to license commercial applicators, spray contracting firms, private applicators, government pesticide supervisors, spotters, monitors and limited and restricted use pesticide dealers on a schedule prescribed by Board rule (amended 1985).

22 M.R.S.A. § 1471-G for reports of pesticides sold by limited and restricted use dealers on a schedule prescribed by Board rule (adopted 1975).

22 M.R.S.A. § 1471-G for reports of pesticides applied by commercial applicators and spray contracting firms on a schedule prescribed by Board rule (amended 1983).

22 M.R.S.A. § 1471-W for applications to license general use pesticide dealers for a one to three year period (adopted 1989).

22 M.R.S.A. § 1471-W for reports of pesticides sold by general use dealers on an annual basis (amended 1997).

Dealer licenses have always been issued on an annual basis and private applicator licenses have always been issued for a three-year period. Commercial applicator and spray contracting firm licenses were originally renewed on an annual basis but were converted to two-year licenses in 1999 to reduce applicator paperwork and even out the staff workload. All

reports that are required to be submitted are required on an annual basis.

The number of applications and reports filed over the last two years and projected for the coming two years are as follows:

Type	2003	2004	2005	2006
Registration Applications	760	775	797	805
License Exam Applications	1295	1415	1490	1530
License Applications	2420	2435	2460	2520
Summary Reports	445	470	485	515

The Board is comfortable with the current flow of submissions and is not contemplating any changes although it would be willing to receive electronic applications and reports when the capability to accept electronic payments and proper databases becomes available.

## **Section 11**

### **Emerging Issues**

#### **Difficulties in Meeting Legislative Mandates**

The Board views this report as an opportunity to point out an ever-increasing workload for the staff and continuing difficulties to meet legislative mandates. Public interest in pesticide issues may be at an all time high and the Board and staff are increasingly frustrated by the lack of time and resources available to complete the requested activities. Many of the issues listed below highlight the complexity of the Board's operations. They also show the high degree of public interaction the Board must maintain to adequately respond to Maine citizens' concerns about the risks associated with pesticide use and exposure.

#### **Vector Borne Diseases**

The Board anticipates a call for widespread control of mosquitoes through both aerial spraying and aquatic treatments because of the continued detection of West Nile Virus (WNV) in birds and mosquitoes in Maine and the occurrence of Eastern Equine Encephalitis (EEE) in humans in New Hampshire and in birds and horses in southwestern Maine this year. In addition, there is growing public concern about tick-borne Lyme disease as evidenced by a 25% increase in the number of commercial pesticide applicators becoming licensed in the Biting Fly and Other Arthropod Vector Pest Category. Currently, the staff is working with the DEP and pest control operators to better define a process to respond quickly when school officials request mosquito control near their facilities.

#### **Aerial Application Conflicts**

##### Lobstermen Concerns

In a June 7, 2005 letter, the Joint Standing Committee on Agriculture, Conservation and Forestry requested that the Board consult with appropriate state agencies and the Maine Lobsterman's Association regarding a carryover bill, LD 1657, An Act to Minimize the Risk to Maine Marine Waters and Organisms Posed by the Application of Pesticides. In response, the Board has convened its Environmental Risk Advisory Committee that has already met three times. They have reviewed past browntail moth control programs and evaluated scientific information regarding the aerial application of Dimilin and ground application of other pesticides. Their goal is to determine if the pesticides represent a risk to lobsters and other marine organisms under current use practices. This has proven to be a major undertaking and it appears the group will meet at least two more times before developing recommendations to present at the Board's December meeting. It is too soon to know if the Board will be asked to adopt additional regulations to control these treatments. If so, the timeframe will be extremely short for the adoption of provisions to manage any expected spray program in May 2006.

##### Board's 2005 Top Priority

The Board's top priority from its June 3, 2005 Planning Session was to address aerial application conflicts by revisiting notification requirements and potentially restricting how close

to homes pesticides may be applied aerially. The members noted there is an extremely polarized and contentious atmosphere in areas where blueberries are grown in close proximity to residences. This is evidenced by the recent attempt to ban aerial spraying in Addison, and by the number of calls received at the Board's office complaining about aerial blueberry spraying. In many cases, proper notification has not occurred due to miscommunications between the landowner, land manager and pilot engaged to spray the field. In addition, the Board does not have any standards that specify how close to another person's property an aerial application may occur. The Board is well aware of the grower's need for aerial application, but believes it is time to revisit the delicate balance between the rights of sprayers and the rights of residents living adjacent to sprayed fields.

### Clean Water Act Conflict

The Board has been closely following national lawsuits regarding the conflict between the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Clean Water Act (CWA). In the last two years, environmental groups in Maine have served notice to the state's two largest blueberry management companies of their intent to sue them under the CWA if they continued to hire aerial applicators to treat their crops. These groups have quoted the Board's surface water monitoring results in their filings to demonstrate how small amounts of pesticides are drifting into the Atlantic salmon rivers. They view this drift as a violation of the CWA. The Pest Management and Fire Suppression Flexibility Act currently being considered by the U.S. Congress is intended to clarify this issue. As currently drafted, it would declare that pesticide applications performed in compliance with FIFRA are not regulated by the CWA.

### Citizen Petitions

Because of these aerial application controversies, representatives of Environment Maine and the Toxics Action Center have notified the Board they are collecting signatures on four citizen petitions to require the Board to initiate rulemaking. If adopted, these rules would:

- ban agricultural aerial application,
- require the Board to conduct drift and runoff studies,
- ban agricultural use of organophosphate pesticides,
- remove the registration fee for the Pesticide Notification Registry and
- charge licensed applicators higher fees to cover the Board's lost notification registry revenue.

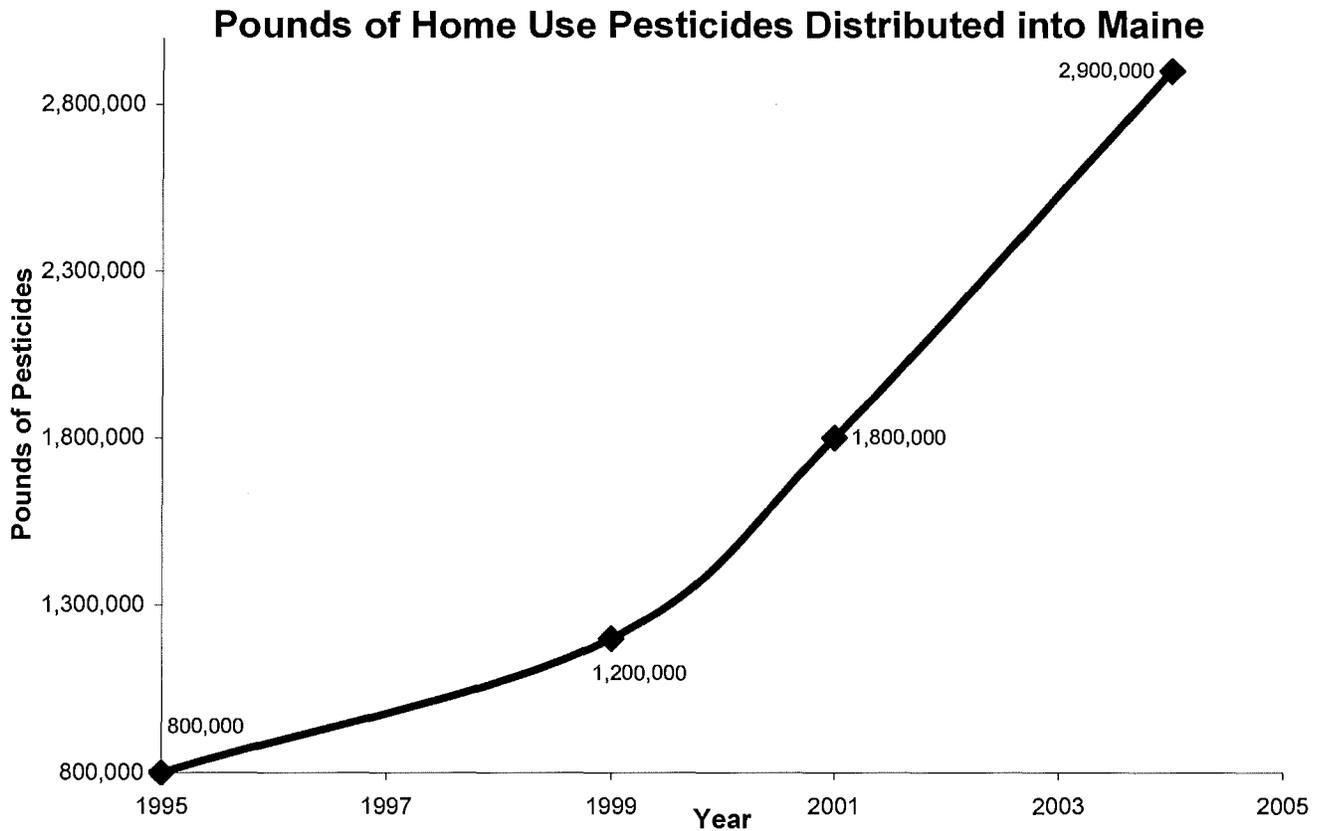
The Board has previously addressed these or related issues and generally declined to make the requested changes. A new round of rulemaking will be expensive and keep the Board from addressing more urgent issues.

### **Skyrocketing Home Pesticide Use**

The 1997 Act to Minimize Reliance on Pesticides has been mentioned previously and the Board has taken many strides to work with Cooperative Extension and non-profit groups to promote integrated pest management and develop demonstration sites for low input landscapes. The Board has concentrated on homeowner use of pesticides because of a tripling in wholesale distribution of products labeled for home use (see graph below) and pesticides have been found in surface waters from lawn runoff into Casco Bay and Augusta and Bangor area streams. As a

result of this concern for homeowner use of pesticides the Board has entered into a coalition with many non-profit organizations, two municipalities, the University of Maine and two other State agencies to develop a program called YardScaping (see [www.yardscaping.org](http://www.yardscaping.org)). However, the Board's ability to continue developing this web site and to provide education to the general public has been seriously compromised by a shift of one-half the funding for its Public Relations Representative to the Department of Agriculture's Division of Market & Production Development. The Board places a very high priority on restoring this position to full-time at the earliest opportunity that additional funding can be identified.

The Board's concern about pesticide runoff and leaching from lawn areas was further exacerbated by a report at its July 29, 2005 meeting that lawn care applicators made hundreds of pesticide applications during the monsoon-like week of May 23 through May 28. The members noted that many of the labels for the pesticides applied prohibited application prior to rainfall or to saturated soils. They agreed that a stakeholder group should be established to create best management practices as a guide for applicators experiencing long periods of rainy weather and water saturated lawns. The Board expects to convene a group this winter and may find some of the large lawn care applicator companies in opposition to standards that prevent them from maintaining their regular schedule of applications throughout the growing season.



## **Funding / Staffing Issues**

### Inadequate Compliance Staff Funding

The Board has only one full-time and four seasonal inspectors to conduct increasingly complex environmental investigations, respond to complaints and collect ground and surface water samples for monitoring programs. In recent years the inspector workload has increased dramatically and the complexity of their investigations has eclipsed the assigned job classification (Pay Range 16). That complexity is illustrated by the diversity of situations the inspectors must evaluate: inspections of schools for compliance with integrated pest management rules, checks on new pesticide distributor warehouses for proper siting and construction and determination of compliance with agricultural worker protection regulations (see below) to name just a few. The Board and the Maine Legislature need to evaluate if inspector staffing levels and compensation are adequate to meet all the state and federal statutory mandates.

The Board's staff has reported that many agricultural growers are still failing to comply with even the simplest provisions of the federal Worker Protection Standard (WPS) that became effective in 1994. Over the years, the Board has worked with Cooperative Extension, pesticide dealers and several commodity groups to make sure all their members were familiar with the requirements of the WPS. Nationally, the U.S. General Accounting Office criticized EPA for not adequately assuring the protection of agricultural workers, and in turn, the EPA is asking states to increase compliance with these regulations through strict enforcement. The Board anticipates making one more effort to encourage compliance and will be seeking aggressive enforcement action with those failing to comply.

### Elimination of Obsolete Pesticide Disposal Program

The Board views the suspension of its obsolete pesticide collection program due to reductions in federal funding as a very serious matter that needs to be resolved as soon as possible. Twenty-seven citizens are currently seeking assistance with disposal of their obsolete pesticides. Many others have called recently and decided not to be put on our waiting list because we could not guarantee there would be a program to help them with disposal. Some of the callers are farmers that have products no longer legal to use, or that are so old they have caked or congealed and are no longer usable. Other callers report just having discovered pesticides in the barn, cellar or shed of a property they recently purchased. In addition, many people either have products that their parents used many years ago or that they purchased too much of and now realize they no longer want to use them around their family, pets or livestock. When told how expensive it would be to individually hire a hazardous waste contractor, many hang up saying they will deal with it another way. The \$15,000 that the Board has spent annually seems like a bargain compared to the cost of cleaning up contaminated soils or water if citizens dump their materials illegally. It is also likely the source of arsenic in the New Sweden church poisoning cases came from obsolete pesticide stocks.

### No Funding for Water Quality Monitoring

Another issue of concern to the Board is keeping up with the demand for the monitoring of surface water for pesticides. For example, the Board's staff has been involved with the

Atlantic Salmon Recovery Plan sampling for blueberry pesticide drift. Pesticides are sometimes found in water bodies after nearby aerial applications, and although concentrations have been very low and a USGS environmental toxicologist believes the risks to salmon from such exposures are low, the public, environmental groups, and other agencies want to know more. These studies are time consuming and expensive, and compete with other sampling priorities such as sampling small streams that drain residential lawns and corn and potato growing areas. Low levels of pesticides are also sometimes found in those settings, and it will be important to collect more quality data that can be used to better determine risks to the environment. Funding from EPA has been adequate in recent years, but additional cuts in federal funding will likely eliminate future monitoring.

### **Genetically Modified Crops**

The Board anticipates a new registration request for a genetically modified *Bacillus thuringiensis kurstaki* forage corn. *Bacillus thuringiensis* is a soil bacteria that has been used as an insecticide for many years. The Board approved the *Bacillus thuringiensis tenbrionis* potato in 1995 but refused to approve two requests from Novartis and DEKALB for genetically modified (GM) corn in 1997 because the members did not find that a need for the products existed in Maine. Monsanto expressed interest in registering their GM corn in 1999 but later withdrew their request rather than appear at a public Board meeting where a large crowd of opponents was expected to be present. Since then, the Board has not received any requests to register GM products although it understands an agricultural consultant has been surveying forage growers this past season asking if they would like to have the products available. Since there is now an active Genetically Engineered Free Maine organization, there is little doubt that a request to register a GM crop containing a pesticide protein will again create controversy.

### **Other Issues**

Other planning session topics the Board would like to address include a number of incidents where pesticides were applied to properties without the consent or authorization of the landowner, lessee or legal occupant and application of pesticides to food processing areas by unlicensed applicators. Many of the unauthorized application cases occurred either because of miscommunication between the applicator, land manager and landowner, or because the applicator went to the wrong location. The Board has consistently pursued enforcement action in such cases and hopes to initiate rulemaking in the coming year to strengthen its enforcement authority in this area. The Board is also concerned about the use of pesticides in food processing areas. The current statute does not require applicators to be licensed when treating food preparation areas in restaurants, convenience stores or supermarkets because those areas are not routinely open to the public. The Board finds this loophole to be particularly concerning because of the potential for pesticides to directly enter foods.