

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of
the Maine Attorney General as transferred to
the Maine State Law and Legislative Reference
Library on January 19, 2022**

STATE OF MAINE

Inter-Departmental Memorandum Date May 9, 1975

To Donald F. Mairs Dept. Pesticides Control Board
From Joseph E. Brennan, Attorney General Dept. Attorney General
Subject Aquatic Application Permit; Spruce Budworm Control Program

This is a reply to your memorandum dated April 25, 1975, asking whether the Maine Bureau of Forestry is required to obtain an aquatic application permit from the Pesticides Control Board prior to carrying out the spruce budworm control program. The answer is no.

The provisions of 22 M.R.S.A. § 1454-A state that:

"No person, firm, corporation or other legal entity shall apply pesticides to or in any river or stream or tributary thereof, or any great pond, without a permit from the board."

It is our opinion that the proposed spruce budworm spraying project does not constitute an application of pesticides to or in any river or stream or tributary thereof or any great pond, within the meaning of the quoted statutory provision. The application of the pesticides will be by spray planes operating over the forest canopy in the project area, and it is foreseeable that accidental pesticide introductions might occur in the case of airborne spray drift. However, it is our opinion that such an application of pesticides does not amount to an application to or in rivers, streams or ponds, within the meaning of § 1454-A.

"We are ascertaining here not what the Legislature may have meant by what it said but rather are deciding what that which the Legislature said means." State v. Millett, 160 Me. 357, 360.

Additional support for the conclusion is evidenced by the fact that the Act appropriating funds for the State's share of the spruce budworm control program (P.L., 1975, c. 162), enacted as an emergency measure, provides as follows:

"Whereas, a severe outbreak of spruce budworm has developed in the forests of Maine, threatening the destruction of one of Maine's outstanding natural resources, threatening further destruction by fire and damage to wildlife and other environmental damage, and threatening the economy and employment of the State; and

"Whereas, the following legislation is vitally necessary to control this outbreak so as to save the 3,500,000 acres of Maine forest to be sprayed and the other Maine forest lands which are vulnerable to the spread of this infestation; and "

In view of the foregoing, we conclude that the Maine Bureau of Forestry is not required to obtain an aquatic application permit from the Pesticides Control Board prior to carrying out their spruce budworm control program.

s/ Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

JEB/ec