

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)

(Governor's Bill)
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1905

H. P. 1783

House of Representatives, January 25, 1980

Referred to the Committee on Agriculture. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk of the House

Presented by Mr. Rolde of York.

Cosponsors: Mr. Hall of Sangerville and Mrs. Curtis of Milbridge.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Creating a Pesticide Review Board.

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

Sec. 1. 7 MRSA c. 103, sub-c. II-A, as enacted by PL 1975, c. 382, § 3, and as amended, is repealed.

Sec. 2. 7 MRSA Part 9 is enacted to read:

PART 9

PEST CONTROL

CHAPTER 801

PESTICIDE REVIEW BOARD

§ 4001. Policy and purpose

The control of pests is necessary to the production of quality food and fiber and to the protection of human health and environmental quality. It is also essential to the public health, safety and general welfare that pest control be accomplished in a manner which has minimum adverse impact on human health and the environment. There are substantial benefits to be derived from the safe, scientific and proper use of chemical pesticides.

The Legislature finds that it is in the long-range best interest of the State to reduce reliance on chemical pest control techniques by assuring the availability of practical and economic alternatives for pest control including biological and biorational techniques.

The Legislature further finds that it is in the best interest of the State to reduce off-target movement of pesticides through air, water, soil, erosion and groundwater percolation.

§ 4002. Definitions

As used in this Part, unless the context otherwise indicates, the following terms have the following meanings.

1. **Active ingredient.** "Active ingredient" means:

A. In the case of a pesticide other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel or mitigate any pest;

B. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

C. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

D. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

2. **Adulterated.** "Adulterated" applies to any pesticide if:

A. Its strength or purity falls below the professed standard of quality as expressed on the labeling under which it is sold;

B. Any substance has been substituted wholly or in part for the pesticide; or

C. Any valuable constituent of the pesticide has been wholly or in part abstracted.

3. **Agricultural commodity.** "Agricultural commodity" means any plant, or part thereof, or animal or animal product produced by a person, including farmers, ranchers, vinyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters or other comparable persons, primarily for sale, consumption, propagation or other use by humans or animals.

4. **Aircraft.** "Aircraft" means any machine or device used or designed for navigation of, or flight in, the air.

5. **Animal.** "Animal" means all vertebrate or invertebrate species, including but not limited to, man and other mammals, birds, fish and shellfish.

6. **Antidote.** “Antidote” means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

7. **Apply.** “Apply” means the release or placement of a pesticide at or on the site where the pest control or other response is desired and may include mixing and loading, and any required supervisory action in or near the area of application.

8. **Applicator.** “Applicator” includes any person who applies pesticides:

A. As a licensed applicator. “Licensed applicator” means any individual who is licensed under section 4013 as authorized to use or supervise the use of certain pesticides;

B. As a commercial applicator. “Commercial applicator” means any person who, whether or not he is a private applicator with respect to some uses:

(1) Uses or supervises the use of restricted or limited-use pesticides for any purpose on any property other than the purposes and property provided by paragraph C;

(2) Uses or supervises the use of any pesticide on property other than that owned or rented by him or his employer for any compensation other than the trading of personal services between producers or agricultural commodities;

(3) Uses or supervises the use of any pesticides applied from aircraft; or

(4) Uses or supervises the use of any pesticide in the production of forest products except an individual who uses pesticides in the production of such products on property owned or rented by him;

C. As a private applicator. “Private applicator” means any person who uses or supervises the use of any pesticide which is classified for restricted or limited use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person; or

D. Under the direct supervision of a licensed applicator. Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied “under the direct supervision of a licensed applicator” if it is applied by a competent person acting under the instructions and control of a licensed applicator who is physically present at the time and place the pesticide is applied.

9. **Beneficial insects.** “Beneficial insects” means those insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, are commonly considered beneficial to the production of food or fiber, human health or other human interests or are otherwise defined as beneficial by the board.

10. **Board.** “Board” means the Pesticide Review Board as established pursuant to section 4003.

11. Commissioner. "Commissioner" means the Commissioner of Agriculture or his authorized agents.

12. Dealer. "Dealer" means any person, including manufacturers' sales representatives, who distribute limited-use or restricted-use pesticides.

13. Defoliant. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

14. Degradation. "Degradation" means the decomposition of a compound by stages exhibiting well-defined intermediate products.

15. Department. "Department" means the Department of Agriculture.

16. Desiccant. "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

17. Device. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than man and the bacteria, virus or other microorganisms on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom, or any other equipment which the board determines, by rule, not to require regulation under this chapter.

18. Distribute. "Distribute" means advertise, offer for sale, hold for sale, sell, barter, ship, deliver for shipment or receive and, having so received, deliver or offer to deliver, pesticides in this State.

19. Environment. "Environment" includes the land, the plants, wildlife domestic animals and people living therein, and the interrelationships which exist among these.

20. EPA. "EPA" means the United States Environmental Protection Agency.

21. Establishment. "Establishment" means any place where a pesticide or device or active ingredient used in producing a pesticide is produced or held for distribution to dealers.

22. FIFRA. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended, United States Code, Title 7, Section 136 et seq., and regulations adopted under that Act.

23. Fungus. "Fungus" means any non-chlorophyll-bearing thallophyte, that is, any non-chlorophyll-bearing plant of lower order than mosses and liverworts, as for example, rust, smut, mildew, mold, yeast and bacteria, except those on or in living man or other animals and those on or in processed food, beverages or pharmaceuticals.

24. Fungicide. "Fungicide" means any substance or mixture of substances

intended for destroying any fungus or mitigating or preventing damage by any fungus.

25. **Ground equipment.** "Ground equipment" means any machine or device, other than aircraft, for use on land or water, designed for, or adaptable to, use in applying pesticides as sprays, dusts, aerosols, fogs or in other forms.

26. **Herbicides.** "Herbicides" means any substance or mixture of substances intended for destroying any weed or preventing or mitigating damage by any weed.

27. **Highly toxic pesticide.** "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide by EPA pursuant to section 25 (c) (3) of FIFRA or by the board pursuant to section 4004, subsection 1, paragraph Q.

28. **Imminent hazard.** "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for administrative proceedings would be likely to result in unreasonable adverse effect on the environment or on human health, or involve unreasonable hazard to the survival of a species declared endangered or threatened pursuant to the United States Endangered Species Act of 1973, United States Code, Title 16, Section 1531 et seq.

29. **Inert ingredient.** "Inert ingredient" means all ingredients which are not active ingredients, including solvents such as water; baits such as sugar or starches; carriers such as talc or clay; fillers; wetting or spreading agents; propellants or emulsifiers.

30. **Ingredient statement.** "Ingredient statement" means a statement which contains:

A. The name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide; and

B. If the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

31. **Insect.** "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising 6-legged, usually winged forms, as for example, beetles, bugs, bees, flies or belonging to other allied classes of arthropods whose members are wingless and usually have more than 6 legs, as for example, spiders, mites, ticks, centipedes and wood lice.

32. **Insecticide.** "Insecticide" means any substance or mixture of substances intended for destroying or repelling any insect or mitigating or preventing damage by any insect.

33. **Integrated pest management.** "Integrated pest management" means a system in which 2 or more methods are used to control a pest. These methods may include cultural practices, use of natural enemies, selective pesticides or selected

timed applications of pesticides based in part on population levels of the target pest, prescribed damage thresholds for the crop, protection of nontarget fauna and avoidance of fixed application schedules.

34. Label and labeling. "Label" or "labeling" have the following meanings.

A. "Label" means the written, printed or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

B. "Labeling" means all labels and all other written, printed or graphic matter;

(1) Accompanying the pesticide or device at any time; or

(2) To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the United States Department of Agriculture, the United States Department of Interior, United States Department of Health, Education and Welfare, state experiment stations, state agricultural colleges and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

35. Land. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

36. Licensee. "Licensee" means any person licensed or required to be licensed pursuant to this chapter.

37. Metabolite. "Metabolite" means any of the various organic compounds produced by metabolism.

38. Misbranded. A pesticide is "misbranded:"

A. If its labeling bears any statement, design or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

B. If it is an imitation of or is distributed under the name of another pesticide;

C. If any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling, and in such terms, as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

D. If it is contained in a package or other container or wrapping which does not conform to the standards established pursuant to FIFRA;

E. If the labeling accompanying it does not contain directions for use which are necessary for affecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3 of FIFRA, are adequate to protect health and the environment;

F. If the label does not contain any warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3 of FIFRA, is adequate to protect health and the environment;

G. If, in the case of a pesticide not registered in accordance with section 3 of FIFRA and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the following: "Not Registered for Use in the United States of America;"

H. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this paragraph if:

- (1) The size or form of the immediate container, or the outside container or wrapper makes it impracticable to place the ingredient statement on the part of the retail package which is presented or displayed under customary conditions of purchase; and**
- (2) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper as permitted pursuant to FIFRA;**

I. If the labeling does not contain a statement of the use classifications pursuant to FIFRA under which the product is registered;

J. If there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing:

- (1) The name and address of the producer, registrant or person for whom produced;**
- (2) The name, brand or trademark under which the pesticide is distributed;**
- (3) The net weight or measure of the content; and**
- (4) The EPA registration number assigned to each establishment in which it was produced and the EPA registration number assigned to the pesticide, if required pursuant to FIFRA; or**

K. If it is a highly toxic pesticide or contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter or pursuant to FIFRA:

- (1) The skull and crossbones;**

(2) The word “poison” prominently in red on a background of distinctly contrasting color; and

(3) a statement of an antidote for the pesticide.

39. Nematode. “Nematode” means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated fusiform or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; which may also be called nemas or ellworms.

40. Nematicide. “Nematicide” means any substance or mixture of substances intended for destroying or repelling any nematode or mitigating or preventing damage by any nematode.

41. Permittee. “Permittee” means any person having or required to have a permit pursuant to this chapter.

42. Person. “Person” means any individual, partnership, association, fiduciary, corporation, agency of federal, state or local government or any other organized group of persons whether incorporated or not.

43. Pest. “Pest” means any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in living man or other living animals, which are commonly considered harmful to the production of food or fiber, human health or other human interests or which are otherwise defined as pests by the board.

44. Pesticide. “Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest or damage by any pest, including, but not limited to, fungicides, herbicides, insecticides, rodenticides, nematicides; and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. This intent may be expressed or implied; if a product is represented in any manner that results in it being used as a pesticide, it shall be considered as a pesticide for the purpose of this chapter. Pesticide includes:

A. General-use pesticide. “General-use pesticide” means any pesticide or pesticide use classified for general use by the board pursuant to section 4009, subsection 2, paragraph A or by EPA;

B. Limited-use pesticide. “Limited-use pesticide” means any pesticide or pesticide use classified for limited use by the board pursuant to section 4009, subsection 2, paragraph C; and

C. Restricted-use pesticide. “Restricted-use pesticide” means any pesticide or pesticide use classified for restricted use by the board pursuant to section 4009, subsection 2, paragraph B or by EPA.

45. Plant regulator. “Plant regulator” means any substance or mixture of substances, intended through physiological action, for accelerating or retarding

the rate or growth or rate of maturation or for otherwise altering the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments. The term "plant regulator" does not include any nutrient mixtures or soil amendments commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and which are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

46. Produce. "Produce" means to manufacture, prepare, compound, propagate or process any pesticide or device or active ingredient used in producing a pesticide. The dilution by individuals of formulated pesticides for their own use and according to the directions on registered labels does not of itself result in such individuals being considered "producers" for the purposes of this chapter.

47. Protect health and the environment. "Protect health and the environment" and "protection of health and the environment" mean protection against any unreasonable adverse effect on human health or the environment.

48. Registrant. "Registrant" means a person who has registered any pesticide pursuant to this chapter.

49. Rodent. "Rodent" means any member of the animal group of the order rodentia including, but not limited to, rats, mice, gophers, porcupines and squirrels.

50. Rodenticide. "Rodenticide" means any substance or mixture of substances intended for destroying or repelling any rodent or mitigating or preventing damage by any rodent.

51. Target organisms. "Target organisms" means those organisms which a pesticide is intended to inhibit or destroy pursuant to its registered labeled usage.

52. To use any pesticide in a manner inconsistent with its labeling. "To use any pesticide in a manner inconsistent with its labeling" means to use any pesticide in a manner not permitted by the labeling but does not mean:

- A. Applying a pesticide at any dosage, concentration or frequency less than that specified on the labeling or by the board;
- B. Applying a pesticide against any target pest not specified on the labeling or by the board if the application is to a crop, animal or site specified on the labeling unless EPA or the board has required that the labeling specifically state that the pesticide be used only for the pests specified on the labeling;
- C. Employing any method of application not prohibited by the labeling or by the board; or
- D. Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

53. **Unreasonable adverse effect on the environment.** “Unreasonable adverse effect on the environment” means any unreasonable risk to human health or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

54. **Use.** “Use” means any act of handling or release of a pesticide or exposure of man or the environment to a pesticide through acts such as:

- A. Application of a pesticide;
- B. Storage of pesticides or pesticide containers; or
- C. Disposal of pesticides or pesticide containers.

55. **Weed.** “Weed” means any plant which grows where not wanted.

56. **Wildlife.** “Wildlife” means all living things that are neither human, domesticated nor, as defined in this chapter, pests, including but not limited to, mammals, birds and aquatic life.

§ 4003. Pesticide Review Board

1. **Establishment of the board.** A Pesticide Review Board is established within the Department of Agriculture. The board shall consist of 7 public members, who shall be appointed by the Governor, subject to review by the Joint Standing Committee of the Legislature having jurisdiction over the subject of agriculture, and confirmation by the Legislature, for staggered 4-year terms. Of the initial appointees, 2 shall be appointed for a one-year term, 2 shall be appointed for a 2-year term, 2 shall be appointed for a 3-year term and one shall be appointed for a 4-year term. Any vacancy shall be filled by an appointment for the remainder of the unexpired term.

2. **Organization of the board.** The board shall elect its own chairman and such other officers as it deems necessary from among the the membership. The board shall meet at the call of the chairman or at the request of any 3 members. Four members shall constitute a quorum and any action shall require the affirmative vote of 4 members. The chairman and such other officers shall serve in such capacities for a period of one year following their elections.

3. **Compensation of the board.** Each public member shall be entitled to the same compensation per day as members of the Board of Environmental Protection for services at meetings or hearings and shall be entitled to payment of necessary expenses, consistent with Title 5, section 13, for attending any meetings or hearings of the board or for any other expenses in connection with the official business of the board, under the authorization of the board.

4. **Director.** The commissioner shall, after consultation with the board, and subject to the approval of the Governor, appoint a director to serve at his pleasure. The director shall be the principal administrative, operational and executive employee of the board. The director shall attend all meetings of the board and be permitted to participate fully but shall not be a voting member. The

director, with the approval of the commissioner, may hire whatever competent professional personnel and other staff he deems necessary, subject to Title 5, Part 2, and he may obtain office space, goods and services as required.

5. Staff. The board may establish standards for the delegation of its authority to staff members. Any person aggrieved by a decision of the staff has the right to a review of the decision by the board. The commissioner shall provide the board with administrative services of the department, including assistance in the preparation of the board's budget. The commissioner may require the board to reimburse the department for the use of these services.

§ 4004. Functions of the Pesticide Review Board

1. Duties of the board. The board shall implement the policy established in section 4001. Consistent with this chapter the board may adopt necessary plans, and shall:

- A. Register pesticides for use and classify them for general, restricted or limited use;
- B. Control experimental uses of pesticides;
- C. Establish categories and competency standards for licensing applicators;
- D. Establish categories and competency standards for licensing dealers;
- E. Establish standards for licensing establishments;
- F. Establish requirements for reporting of information by licensees to the board;
- G. Establish categories defining the significance of pesticide application and of other pest control techniques;
- H. Require permits for certain categories of pesticide applications;
- I. Establish performance standards for pesticide applications;
- J. Designate critical areas and control pesticide application therein;
- K. Establish standards and procedures to govern the chemical control of vertebrate animals;
- L. Institute procedures and programs including the establishment of penalty schedules, to enforce this chapter;
- M. Monitor pesticide applications, including on-site observation and sampling;
- N. Evaluate short-term and long-term impact of pesticide application on health and the environment;
- O. Review and regulate methods of pesticide storage, disposal and spill containment and cleanup;

- P. Determine whether pesticides are highly toxic and promulgate a list of such pesticides;**
 - Q. Establish standards of coloring or discoloring for pesticides for the protection of human health;**
 - R. Establish recommended integrated pest mangement techniques, practices and standards and institute programs for instruction in integrated pest management techniques;**
 - S. Accept funds or assistance from EPA or other appropriate sources;**
 - T. Prepare state plans to meet federal standards pursuant to FIFRA and otherwise cooperate in the enforcement of federal pesticide laws;**
 - U. Cooperate and, as it deems appropriate, contract with, any other agency of this State or its subdivisions, or with any agency of any other state or the Federal Government for the purposes of administering this chapter and of securing uniformity of regulations;**
 - V. On its own, or in cooperation with other persons, publish such information as it deems appropriate, including information concerning injury which might result from improper application or handling of pesticides, and methods and precautions designed to prevent such injury;**
 - W. Initiate an analysis of pesticide drift and establish maximum levels of contamination for nontarget areas;**
 - X. Maintain a data base on all pesticide uses in the State, including household and garden, by type, application method and location; and**
 - Y. Institute such other programs or take such other action as it deems necessary to implement and enforce this chapter.**
- 2. Rule-making authority of the board.** The board may, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, adopt such rules as it deems necessary to implement this chapter.
- 3. Investigatory power of the board.** The board shall have the following investigatory powers:
- A. For the purpose of carrying out this chapter, the chairman or any member of the board or any authorized employee or consultant of the board may enter upon any public or private premises at reasonable times and with reasonable notice for the purpose of inspecting any aircraft, ground equipment or device used in applying pesticides; inspecting pesticide storage and disposal areas; inspecting or investigating complaints of injury to persons or land from pesticides; observing the use and application of pesticides; sampling pesticides in use or storage; or sampling pesticide residues on crops, foliage, soil, water or elsewhere in the environment. Upon denial of access the board or its agents may seek an appropriate search warrant in a court of competent jurisdiction;**

B. The board may conduct investigatory hearings and may issue subpoenas to compel the attendance of witnesses and production of such books, documents and records, anywhere in the State, as may be relevant to any proceeding of the board. If any person refuses to obey a subpoena issued by the board under this section, the board may apply to any Justice of the Superior Court for an order compelling such person to comply with the requirements of the subpoena. The justice may issue that order and may punish failure to obey the same as a contempt of court; and

C. The board may request that the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Environmental Protection and the Department of Conservation or other agencies review programs of pesticide applications and report to the board as to the effects of such applications on their respective areas of concern.

§ 4005. Environmental Health Committee.

1. Establishment of the advisory committee. The Commissioner of Human Services shall appoint a committee of representatives of the public and private sectors to serve as an advisory body to the Pesticides Review Board. The committee shall be solely advisory in nature. The committee shall be composed of no less than 9 members and shall include individuals with training and experience in environmental medicine, epidemiology, toxicology, human genetics, biomedical research and related fields. The commissioner shall appoint the chairman of the committee.

2. Compensation of the advisory committee. Each public member of the committee shall be entitled to receive the same compensation per day as a member of the Board of Environmental Protection for services at meetings or hearings and shall be entitled to payment of necessary expenses consistent with Title 5, section 13, for attending meetings or hearings of the committee or for any other expenses in connection with the official business of the committee, under the authorization of the committee.

3. Staff and funding of the advisory committee. The Commissioner of Human Services, upon consultation with the committee, shall provide such staff and administrative services to the committee as he deems necessary. The committee may be funded by fees collected pursuant to this chapter under the terms of an interagency agreement between the Commissioner of Human Services and the Commissioner of Agriculture.

§ 4006. Functions of the advisory Committee

1. Responsibilities of the committee. The committee shall:

A. Coordinate the compilation and maintenance of health data relevant to pesticide application in the State. The board shall make available all relevant health data, which it has acquired, to the committee; but, to the extent required, the data shall be held confidential;

- B. Assist the board in the adoption of a comprehensive pest control plan;**
- C. Advise the board regarding short-range and long-range health concerns related to pesticide production, registration, classification, distribution and use;**
- D. Advise the public as to short-range and long-range health impacts related to pesticide application and issue such public health warnings or advisory opinions as it determines necessary in relation to any pesticide application; and**
- E. Take such other actions as it deems appropriate to assist the board in accomplishing the purposes of this chapter.**

2. Board proceedings. In addition to providing advice and assistance to the board, the committee may, to the extent it deems necessary, appear or seek to intervene in any proceedings of the board.

§ 4007. Comprehensive Pest Control Plan

The board may adopt a comprehensive pest control plan for the State. The plan shall guide the board and other state agencies in the accomplishment of the purposes of this chapter. The plan shall address all issues the board considers appropriate but, at a minimum, the plan shall establish short-term and long-term goals for pest management and control in the State; address research, educational and regulatory aspects of pest control and pesticide use; and provide a mechanism for interagency cooperation for accomplishment of its goals.

The Department of Agriculture and the Bureau of Forestry may, in conjunction with the University of Maine, establish programs for research and education concerning integrated pest management in agriculture and forestry, respectively. Any plan shall recognize such programs of the Department of Agriculture and the Department of Conservation as they may relate to pest control in the production of food and fiber.

Prior to the adoption of any plan, the board shall solicit the comments of the Department of Agriculture, the Department of Conservation, the Department of Environmental Protection, the Department of Human Services, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the State Planning Office.

§ 4008. Registration of pesticides

1. Registration required. No person may distribute any pesticide which is not registered with the board except that a pesticide which is not registered may be distributed if:

- A. The pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and used solely at such plant or warehouse as a constituent part of a pesticide which is registered under this chapter; or**

B. The pesticide is distributed under the provisions of an experimental use permit issued under section 4010 or an experimental use permit issued by EPA and approved by the board.

2. Application for registration. Each applicant for registration shall file a statement with the board which includes:

- A. The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than applicant's;**
- B. The name of the pesticide;**
- C. A complete copy of the labeling accompanying the pesticide;**
- D. A statement of all claims to be made for it, including the directions for use required pursuant to FIFRA;**
- E. The use classification established pursuant to FIFRA;**
- F. The requested state use classification;**
- G. The complete formula of any pesticide, with its ingredient statement, including the inert ingredients, if requested by the board;**
- H. The full description of the tests made and the results thereof upon which the claims are based for any pesticide not registered pursuant to section 3 of FIFRA or for any pesticide for which additional restrictions are being considered by the board, if requested by the board;**
- I. The citation to all data and test results concerning the pesticide that appear in the public literature, if requested by the board; and**
- J. Other information which the board may determine to be necessary.**

Registration shall be renewed annually on such schedule as the board may establish provided that, in the case of application for renewal of registration, these statements shall be required only for information which was not furnished or which is different from that furnished when the pesticide was registered or last reregistered.

3. Application fee for registration. Each application for registration and renewal of registration shall be accompanied by an annual fee based on the total value of pesticides distributed by the applicant in the State for the 12 months preceding the date of application as follows:

- A. For sales less than \$4000, a fee of \$25;**
- B. For sales more than \$4000 but less than \$7500, a fee of \$50;**
- C. For sales more than \$7500 but less than \$20,000, a fee of \$100;**
- D. For sales more than \$20,000 but less than \$50,000, a fee of \$200; and**
- E. For sales more than \$50,000, a fee of \$500.**

4. Criteria for registration. No pesticide may be registered unless the board determines that:

- A. Its composition is such as to warrant the proposed claims for it;**
- B. Its labeling and other material required to be submitted comply with the requirements of this chapter;**
- C. It will perform its intended functions.**
- D. When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effect on the environment; and**
- E. Either:**
 - (1) Need for the pesticide exists in the State; or**
 - (2) For a pesticide or pesticide use not registered pursuant to FIFRA, a special local need exists pursuant to section 24 (c) of FIFRA as enacted as of January 1, 1980; and its registration is consistent with the provisions of section 24 of FIFRA.**

The board shall consider EPA determinations pursuant to FIFRA as evidence in its registration decisions. Where 2 or more pesticides meet the requirements of this subsection, one shall not be registered in preference to the other.

5. Grounds for suspension, nonrenewal or revocation of registration. The board may refuse to renew and the Administrative Court may suspend or revoke the registration of a pesticide if:

- A. The pesticide, its label or its use no longer satisfy the applicable requirements of this section;**
- B. The registrant has failed to provide any information required by the board; or**
- C. The registrant or the pesticide is otherwise not in compliance with any provision of this chapter.**

Where the board determines that it may be necessary to suspend or revoke the registration of any pesticide registered under FIFRA, it shall provide EPA with notice of its intent and of the final determination.

§ 4009. Classification of pesticides

1. Classification required. The board shall classify pesticides for general, restricted or limited use. If the board determines that some of the uses for which the pesticide is registered should be for limited or restricted use, it may classify the pesticide for a combination of uses. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted or limited use, the directions relating to its general uses shall be clearly separated and distinguished from those directions related to its restricted or limited uses. In

addition, the board may require that the packaging or labeling of pesticides for restricted or limited uses shall be clearly distinguishable from packaging and labeling for general uses.

2. **Criteria for classification.** Pesticides shall be classified for general, restricted or limited use or a combination of uses as follows.

A. A pesticide, or a particular use or uses of the pesticide, may be classified for general use if the pesticide, when applied in accordance with its directions, warnings and cautions but without additional restrictions, for one or more of the uses for which it is registered, or in accordance with a widespread and commonly-recognized practice, will not cause unreasonable adverse effect on the environment.

B. A pesticide, or a particular use or uses of the pesticide, shall be classified for restricted use if the pesticide, when applied in accordance with its directions, warnings and cautions for one or more of the uses for which it is registered, or in accordance with a widespread and commonly-recognized practice may, without additional regulatory restrictions:

(1) Either persist in the environment, or accumulate as the pesticide per se, a pesticide metabolite, or a pesticide degradation product in plant or animal tissue or products, where the accumulation may not be excreted or eliminated within a reasonable period of time and may be transferred to other forms of life;

(2) By virtue of such persistence or accumulation, create a present or future risk of harmful effects on any organism other than the target organism; or

(3) Otherwise cause unreasonable adverse effect on the environment or potential injury to the applicator.

C. A pesticide, or a particular use or uses of the pesticide, may be classified for limited use if the pesticide, when applied in accordance with its directions, warnings and cautions for one or more of the uses for which it is registered, or in accordance with a widespread and commonly-recognized practice, may cause exceptional harm as described in paragraph B, unless each application is specifically regulated.

3. **Effect of classification.** When a pesticide has been classified for limited or restricted use, the pesticide shall:

A. Be distributed only to licensed applicators;

B. Be applied for any use to which the determination applies only by or under the direct supervision of a licensed applicator;

C. Be applied subject to classification limitations or such other restrictions as the board may provide; and

D. If classified as limited, be applied only with a permit from the board pursuant to section 4017.

§ 4010. Experimental use permits

The board may issue experimental use permits in a manner consistent with section 5 of FIFRA as follows.

1. Experimental use permit authorized. Any person may apply to the board for an experimental use permit for a pesticide which is not registered. Any person who has an experimental use permit from EPA must apply to the board for approval prior to use in the State. The board may limit or prohibit the use of any pesticide for which an experimental use permit has been issued by EPA pursuant to section 5 of FIFRA, if the board finds that the use in the State may cause an unreasonable adverse effect on the environment.

2. Application fee for experimental use permits. Each application for an experimental use permit or board approval of an EPA experimental use permit shall be accompanied by an annual fee of \$5.

3. Criteria for experimental use permits. The board may issue an experimental use permit only if it determines that:

A. The applicant:

(1) Needs the permit in order to accumulate information necessary to register a pesticide pursuant to section 4008; or

(2) Is a public or private research agency or educational institution seeking a permit for purposes of experimentation relative to the production or agricultural or forest commodities or other lawful purposes; and

B. The proposed experimental use is not likely to cause an unreasonable adverse effect on the environment.

4. Additional requirements for experimental use permits. Use of a pesticide under an experimental use permit shall be for a period of no more than one year and subject to such other terms and conditions as the board may prescribe, including the following:

A. If the board determines that the experimental use of a pesticide may reasonably be expected to result in any residue on or in human food or animal feed, it may establish a temporary tolerance level for the residue of the pesticide as part of the experimental use permit; and

B. The board may require that studies be conducted and reports made to the board concerning whether the use of the pesticide under the permit may cause an unreasonable adverse effect on the environment.

5. Grounds for suspension, nonrenewal or revocation of experimental use permits. The board may refuse to renew, and the Administrative Court may suspend or revoke, an experimental use permit if:

- A. The permittee or any other person uses the pesticide in a manner inconsistent with the permit;**
- B. The permittee or the permitted use no longer meets the requirements of this section;**
- C. The permittee has failed to provide any information required by the board; or**
- D. The permittee or the pesticide is otherwise not in compliance with any provision of this chapter or FIFRA.**

§ 4011. Licensing of pesticide applicators

1. License required. The board may adopt rules establishing such categories and standards of competency for commercial and private applicators as it deems necessary, including standards requiring adequate knowledge of pesticide use and related dangers and precautions. No person may apply pesticides in any such categories as a private applicator or commercial applicator as defined by section 4002, subsection 8, unless licensed by the board.

2. Application for private and commercial applicator's license. Any person intending to act as a private or commercial applicator shall apply to the board for a license and shall provide such information regarding his experience, qualifications, proposed operations and other relevant matters as the board may require. Licenses of commercial applicators are valid for one year from the date of issuance. Licenses of private applicators are valid for such period as may be prescribed by rules of the board.

3. Application fee for a private or commercial applicator's license. Each application for a private applicator's license shall be accompanied by a fee of \$5. Each application for a commercial applicator's license shall be accompanied by an annual fee of \$100, provided that where a corporation or other entity is licensed as a commercial applicator and its employees or agents are also so licensed, the fee for each such license after the first shall be \$10.

4. Criteria for licensing applicators. No person may be licensed as a commercial or private applicator unless he:

A. Demonstrates compliance with the standards of competency established by the board for any category for which he has applied. In the case of individuals applying for commercial license such compliance shall be demonstrated by written examination in addition to any other criteria, including performance testing, that the board may establish; and

B. Demonstrates adequate financial responsibility. Commercial applicators shall, and private applicators may, be required by the board to provide proof of financial responsibility in such form and such amounts as the board's rules may prescribe. In any case, commercial applicators shall provide the board with evidence of liability insurance and may be required to provide the board with a performance bond conditioned upon compliance with this chapter and all

regulations promulgated by the board. Any such insurance shall be in amounts established by rules of the board to reflect the scope of the applicant's commercial activities.

A license may be issued upon such terms and conditions as the board deems necessary. The board may adopt rules requiring that renewal applications include reexamination or other procedures designed to assure a continuing level of competency to use or supervise the use of pesticides safely and properly.

5. State, federal and local government employees. Any person who applies pesticides in connection with his duties as an official or employee of federal, state or local governments is subject to this chapter but is exempt from the payment of any fee for licensing.

6. Nonresident licenses. The board may issue a license without additional examination to nonresidents who are licensed by another state or by the Federal Government provided that the reciprocal licensing standards are substantially in accordance with the provisions of this chapter and the regulations of the board. Nonresident license applications are subject to the fees prescribed in subsection 3.

§ 4012. Licensing of dealers

1. Licensing required. The board may adopt rules establishing competency standards for dealers, including requirements concerning the applicant's knowledge of transportation of pesticides, of federal and state statutes and regulations and of the dangers involved and the precautions necessary for the safe storage and distribution of pesticides. No person may:

A. Distribute any restricted-use or limited-use pesticide without a dealer's license from the board;

B. Distribute restricted-use or limited-use pesticides to any person who is not licensed by the board; or

C. Provide information to other dealers or to members of the public concerning restricted-use or limited-use pesticides in his capacity as sales representative of a manufacturer without a dealer's license from the board.

2. Application for dealer's license. Any person distributing restricted-use or limited-use pesticides shall be separately licensed. The applicant shall provide such information as the board may require regarding experience, training, qualifications and other relevant matters. Each license is valid for a period of one year from the date of issuance.

3. Application fee for dealer's license. Each application shall be accompanied by a fee of \$100 provided that in the case of any application for a license where a corporation or other business entity is licensed as a dealer and separate business locations or agents are also so licensed, the fee for each location or agent after the first shall be \$75.

4. Criteria for licensing dealers. No person may be licensed as a dealer unless he:

- A. Demonstrates compliance with the board's competency standards; and
- B. Demonstrates sufficient knowledge in matters relating to pesticide use and labeling to adequately inform his customers as to the proper distribution and uses of pesticides and the related dangers and necessary precautions.

Competency of individuals shall be demonstrated by written examination and in all cases by such other means as the board deems appropriate. The license may be issued on such terms and conditions as the board deems necessary.

§ 4013. Licensing of establishments

1. Licensing required. No person may produce any pesticide or active ingredient used in producing a pesticide in this State unless the establishment in which it is produced is licensed by the board.

2. Application for establishment license. The application for licensing of any establishment shall indicate:

- A. the types and amounts of pesticides to be produced and, if applicable, active ingredients used in producing such pesticides; and
- B. if applicable, the types and amounts of pesticides produced, sold or distributed during the past year.

Each license is valid for a period of one year from the date of issuance.

3. Application fee for establishment license. Each application shall be accompanied by an annual fee of \$100.

4. Criteria for licensing establishments. No person may be licensed as an establishment unless:

- A. The establishment is registered by EPA;
- B. The establishment is in substantial compliance with all State environmental laws;
- C. The establishment has prepared an emergency plan concerning the disposition of pesticides produced, stored or handled at the establishment, the control of spills or similar events involving pesticides and the method of notification of all customers of the establishment of emergency situations; and
- D. The establishment has agreed to provide the board, upon request, for the purpose of issuing a stop order pursuant to section 4021, the names and addresses of all recipients of any pesticide produced by the establishment.

The license may be issued on such terms and conditions as the board deems necessary.

§ 4014. Suspension, nonrenewal or revocation of licenses

The board may refuse to renew, and the Administrative Court may suspend or revoke, a license issued pursuant to section 4011, 4012 or 4013 upon finding that the

applicant or licensee:

1. Not qualified. Is no longer qualified;
2. Fraudulent practices. Has engaged in fraudulent business practices in the application, distribution, production or other use of pesticides;
3. Careless use. Has used pesticides in a careless, negligent or faulty manner or in a manner which is potentially harmful to the public health, safety or welfare or the environment;
4. Careless supervision. Has supervised the use of pesticides in a careless, negligent or faulty manner or in a manner which is potentially or actually harmful to the public health, safety or welfare or the environment;
5. Careless manufacture, storage or transportation. Has manufactured, stored, transported or otherwise distributed pesticides in a careless, faulty or negligent manner or in a manner which is potentially harmful to the environment or to the public health, safety or welfare;
6. Violation of rules. Has violated any of the provisions of FIFRA, this chapter or of the rules of the board;
7. Improper recommendations. Has used, recommended or supervised the use of a pesticide inconsistent with the labeling or other restrictions imposed by EPA or the board;
8. Failure to keep records. Has failed to keep records or reports required by the board or has made false or fraudulent representations or reports to the board;
9. Subjected to criminal penalties. Has been subjected to the imposition of criminal or civil penalties pursuant to FIFRA; or
10. License revoked. Has had the license or certificate, which supplied the basis for the Maine license or certification pursuant to section 4011, subsection 6 revoked or suspended by the applicable federal or state government authority.

§ 4015. Required records

The board may adopt rules requiring licensees, except private applicators, to keep any records with respect to pesticide production, use or the like which the board considers necessary. All licensees shall keep records as required for a period of at least 2 years.

§ 4016. Establishment of categories for application of pesticides

The board shall adopt rules establishing categories of pesticide application. The board may establish such categories as it deems necessary to adequately monitor and regulate the application of pesticides in the State. In any case, the board shall establish at least 2 categories of applications as follows.

1. Significant applications. This category shall include all pesticide applications involving pesticides classified for limited use and other pesticide

applications which the board determines significant enough to require prior review and approval, such as those applications which are proximate to areas of substantial human habitation, those in which the chemical used is particularly hazardous, those which present potential for harmful cumulative impact of pesticides or those which involve a large geographical area; and

2. Nonsignificant applications. This category shall include all pesticide applications which, if application is in accordance with the performance standards of the board, do not require prior review and approval.

§ 4017. Permits for pesticide applications

1. Permits required. No person may apply pesticides in the State except in compliance with this chapter.

2. Application for pesticide permits. Any person intending to engage in a significant application shall obtain a prior permit from the board. Permit applications shall be made on the forms provided. The board may adopt rules establishing procedures to allow application for individual projects or for a group of similar projects extended either over time or area.

3. Application fee for pesticide permits. Applications for pesticide permits shall be accompanied by a fee in such amounts as the board may prescribe by rules up to an amount equal to 1% of the total cost of the pesticides to be applied, provided that any federal, state or local agency applying for a pesticide permit pursuant to this section is exempt from the payment of any fee where the pesticide is to be applied to land, including rights of way, owned or leased by the governmental agency itself.

4. Criteria for approval. The board may not issue any permit unless the applicant has demonstrated:

- A. Adequate technical and financial ability to apply the pesticide in a manner consistent with its label, with this chapter and with the regulations of the board;
- B. The necessity for the application to enhance the applicant's ability to produce food or fiber or perform other tasks in which the application is intended as an aid;
- C. The effectiveness of the proposed application, including the effectiveness relative to other available pesticides or pest management techniques;
- D. that the application will not have an undue adverse effect on the environment;
- E. that the application, together with previous and likely subsequent applications, is not likely to have an undue adverse cumulative effect on the environment; and
- F. that the application is in conformity with any comprehensive pest control plan which has been adopted by the board.

5. **Limitation of approval.** The board may approve a pesticide application subject to such terms and conditions as it deems appropriate. A permit issued pursuant to this section permits only the pesticide application set forth in the application thereof. Any change in use or application except those authorized in advance by the board is a violation of this chapter. Any approval issued pursuant to this section may not be transferred to any person, except with the prior written approval of the board.

6. **Grounds for suspension or revocation of a pesticide permit.** The Administrative Court may suspend or revoke a pesticide permit issued pursuant to this section upon finding that:

- A. The permittee or any other person has applied a pesticide in a manner inconsistent with the permit;
- B. The permittee, or the pesticide use permitted, no longer meets the requirements of this section;
- C. The permittee has failed to provide any information required by the board; or
- D. The permittee, or the pesticide use permitted, is otherwise not in compliance with any provision of this chapter of FIFRA.

7. **Exclusive jurisdiction of the board.** Any person who complies with this section, section 4016 and section 4018, is exempt from any provision of the laws of this State which require a permit from another state agency for the application of pesticides.

8. **Municipal jurisdiction.** Any municipality may by ordinance establish standards for application of any pesticides, within its boundaries, which are not less protective than those established by the board; provided that no such ordinance is effective until a copy has been filed with the board.

§ 4018. Performance standards

1. **Establishment of performance standards.** The board shall adopt rules establishing performance standards governing the use of pesticides, to accomplish the purposes of this chapter. These standards shall govern such aspects of pesticide use as drift limitations, buffer zones and public notification.

2. **Compliance with performance standards.** All pesticide use within the State shall be consistent with the board's performance standards unless otherwise provided by this chapter or by the board.

§ 4019. Critical areas

1. **Designation of critical areas.** The board may adopt rules establishing critical areas in the State and governing pesticide use therein following consultation with the Land Use Regulation Commission, the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the

State Planning Office and such other agencies as it deems appropriate. Such critical areas may include areas where pesticide use may:

- A. Jeopardize endangered species or critical wildlife habitat;
- B. Present an unreasonable threat to quality of the water supply;
- C. Be contrary to a master plan for the area if such area is held or managed by an agency of local, state or federal government; or
- D. Would otherwise result in unreasonable adverse effects on the environment of the area.

2. Prohibition. No person may use pesticides to any critical area, except to the extent the use is within the limits prescribed by the board in establishing the area.

§ 4020. Chemical control of vertebrate animals

1. Prohibition. No person may use pesticides to kill vertebrate animals without authorization from the board. Authorization may be provided as follows:

A. The board shall, as appropriate, grant permits to use pesticides for chemical control of vertebrate animals to members of its staff, and to agents of the United States Fish and Wildlife Service and the Department of Inland Fisheries and Wildlife of the State; and

B. The board may adopt rules establishing other categories of persons to whom, or pesticide use for control of vertebrate animals for which, permits may be granted.

2. Exemption. The control by pesticide application of rats and mice on public and private property, including buildings and municipal dumps, and the control of English sparrows, starlings and pigeons within buildings, is exempt from this section if performed in accordance with the regulations of the board, the pesticide label and the other provisions of this chapter.

§ 4021. Stop order

1. Issuance of a stop order. Notwithstanding any other provision of this chapter or of the laws of this State, the board, or the commissioner in any instance where he determines that an imminent hazard precludes the board from meeting, may issue to any person a stop order, which may include an order for discontinuation of use, or for condemnation, destruction or disposal of any pesticide or device.

2. Criteria for issuance of a stop order. A stop order may be issued only when there is reasonable cause to believe that:

A. A pesticide or device is being manufactured, distributed, stored, transported or used in violation of any of the provisions of this chapter or of any of the regulations of the board, or in any manner inconsistent with its label; and

B. Such violation may cause an unreasonable adverse effect on the human health or environment.

3. Procedures for stop orders. Whenever the commissioner or the board issues a stop order pursuant to this section, it shall notify the owner, custodian or user in the most expeditious manner practical and shall also issue a written stop order. If the owner or custodian is not available for delivery of the order to him, the order may be attached to the pesticide or device, and such other notice as is possible shall be provided the owner, custodian and the registrant. The initial issuance of a stop order is not subject to the Maine Administrative Procedure Act, Title 5, chapter 375, provided that:

A. If the order contemplates suspension or revocation of registration issued pursuant to section 4008; of licenses issued pursuant to section 4011, 4012 or 4013; or of permits issued pursuant to section 4010, 4017 or 4020, the board shall institute appropriate proceedings in the Administrative Court within 7 business days; or

B. In all other cases, the board shall provide an opportunity for hearing to any person affected by the order as soon as possible but in any case within 5 business days of its issuance.

The board may then amend, continue, modify or terminate the order.

4. Effect of stop orders. No person may apply, use, sell, transport, dispose or remove any pesticide or device, subject to a stop order, until the board or a court of competent jurisdiction determines that the violations of the provisions of this chapter have otherwise been satisfactorily corrected. The pesticide or device may then be released under conditions specified in writing by the board or the court.

§ 4022. Procedures of the board

Actions and decisions of the board shall be in accordance with the following requirements.

1. Maine Administrative Procedure Act. To the extent applicable and except as otherwise specifically provided in this chapter the board shall be governed by the Maine Administrative Procedure Act.

A. Title 5, chapter 375, subchapter II applies to the adoption of:

- (1) Agency rules pursuant to section 4004, subsection 2;**
- (2) The comprehensive pest control plan pursuant to section 4007;**
- (3) Classifications of pesticides pursuant to section 4009; and**
- (4) Designation of critical areas pursuant to section 4019.**

B. Title 5, chapter 375, subchapter IV, applies to:

- (1) Registration pursuant to section 4008; except that applications for renewal of registration, where no new information is provided, do not require**

the provision of additional notice or opportunity for hearing;

- (2) Experimental use permits pursuant to section 4010;
- (3) Pesticide application permits pursuant to section 4017;
- (4) Vertebrate control permits pursuant to section 4020;
- (5) Stop orders pursuant to section 4021, subsection 3, paragraph B;
- (6) Assessment of penalties pursuant to section 4024; and
- (7) Any other permit required by the board.

The board shall provide opportunity for hearing in all proceedings under this paragraph.

C. Title 5, chapter 375, subchapter V applies to:

- (1) Applicator licenses pursuant to section 4011;
- (2) Dealer licenses pursuant to section 4012; and
- (3) Establishment licenses pursuant to section 4013.

2. **Burden of proof.** Unless otherwise provided in this chapter, any person applying to the board for any registration, license or permit shall bear the burden of proving by substantial evidence that the applicable criteria of this chapter and the rules of the board have been met.

3. **State departments.** Any department of the State Government may appear or seek to intervene as a party in any proceeding of the board.

4. **Judicial review.** Judicial review of the decisions of the board shall be in accordance with Title 5, chapter 375, subchapters II and VII and other applicable provisions of the laws of the State.

5. **Continuing responsibility.** If at any time after an application has been made to the board for any registration, classification, license or permit, any applicant, registrant, licensee or permittee has information which indicates a potential adverse effect on the environment or health, he shall immediately submit such information to the board.

6. **Time for decisions.** Notwithstanding any other provision of law, the board shall issue or deny licenses and permits within 30 days following the submission of complete applications by applicants, except when and for such period of time as the board and the applicant mutually agree in writing.

§ 4023 Unlawful acts

1. **Unlawful distribution.** It is unlawful for any person to distribute to any other person:

- A. Any pesticide which is adulterated as defined in section 4002, subsection 2;

- B. Any pesticide or device which is misbranded as defined in section 4002, subsection 38;**
- C. Any pesticide which has not been properly colored or discolored, pursuant to section 4004, subsection 1, paragraph R;**
- D. Any pesticide which is not registered pursuant to section 4008;**
- E. Any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration pursuant to section 4008;**
- F. Any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration pursuant to section 4008;**
- G. Any registered pesticide without proper indication of its restricted classification pursuant to section 4009; or**
- H. Any restricted-use or limited-use pesticide without a dealer's license pursuant to section 4012.**

2. Exemptions. Subsection 1 does not apply to any carrier while lawfully shipping, transporting or delivering for shipment any pesticide or device if such carrier upon request of any officer or employee duly designated by the board permits that officer or employee to review all of its records concerning such pesticide or device.

3. Other unlawful actions. It is unlawful for any person:

- A. To use any pesticide not registered pursuant to section 4008 or to violate an order revoking such registration;**
- B. To use any registered pesticide in a manner inconsistent with its labeling or with the regulations of the board;**
- C. To detach, alter, deface or destroy, in whole or in part, any labeling required under this chapter or pursuant to FIFRA;**
- D. To add any substance to, or take any substance from, a pesticide in a manner that may diminish its efficacy or otherwise defeat the purpose of this chapter or the regulations adopted thereunder;**
- E. To advertise a product registered under this chapter for restricted or limited use without giving the classification of the product assigned to it pursuant to section 4009;**
- F. To use, or to make available for use, any pesticide classified for restricted or limited use for some or all purposes other than in accordance with FIFRA, this chapter and the rules of the board;**
- G. To use any pesticide which is under an experimental use permit pursuant to section 4009 contrary to the provisions of such permit;**

- H.** To use any pesticide as a private or commercial applicator unless licensed by the board pursuant to section 4011;
- I.** To operate an establishment unless licensed by the board pursuant to section 4013;
- J.** To refuse to keep or provide the board with any records required pursuant to section 4015, or to refuse to allow the inspection of any records, premises, establishments, pesticides or devices subject to this chapter, or to otherwise refuse to allow an officer or employee of the board to inspect pursuant to section 4004, subsection 3;
- K.** To knowingly falsify all or part of any application, record or report required to be maintained or to be submitted to the board pursuant to this chapter;
- L.** To apply any pesticide for which a permit is required pursuant to section 4016 or 4017 without such permit or in a manner inconsistent with the permit;
- M.** To use any pesticide to which performance standards are applicable pursuant to section 4018 in a manner inconsistent with such standards;
- N.** To apply any pesticide in a critical area in a manner inconsistent with section 4019;
- O.** To use any pesticide to control vertebrate animals except as authorized by the board pursuant to section 4020;
- P.** To violate any order issued by the commissioner or the board pursuant to section 4021;
- Q.** To use any pesticide in tests on human beings unless such human beings:
- (1) Are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom; and
 - (2) Freely volunteer to participate in the test;
- R.** To handle, transport, store, display or distribute pesticides in such a manner as to endanger humans or their environment or to endanger food, feed or any other products that may be transported, stored, displayed or distributed with such pesticide;
- S.** To dispose of, discard or store any pesticide, pesticide devices or containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or to pollute any water supply or waterway;
- T.** To use for his own advantage or to reveal, other than as provided in this chapter and by rule of the board, any information acquired by authority of this chapter which is confidential under the laws of this State;
- U.** To commit any of the actions described in section 4014, subsection 2, 3, 4, 5 or 7; or

V. To otherwise fail to comply with this chapter, the regulations or any order of the board.

§ 4024. Penalties

1. Civil penalties. The board may assess civil penalties consistent with the following.

A. Any person who violates any provision of this chapter or the rules of the board may be assessed a civil penalty by the board of not more than \$10,000 for each offense.

B. Each day that any person operates unlawfully shall be considered a separate violation.

C. In determining the amount of the penalty, the board shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business and the gravity of the violation. Whenever the board finds that the violation occurred despite the exercise of due care or that the violation did not cause significant harm to health or the environment, the board may issue a warning in lieu of assessing a penalty.

D. When construing and enforcing this chapter or the rules of the board, the act, omission or failure of any officer, agent or other person acting for or employed by any person shall in every case be deemed also to be the act, omission or failure of such person, as well as that of the person so acting or employed.

2. Criminal penalties. The board may also seek criminal penalties as follows.

A. Any registrant, commercial applicator, wholesaler, dealer, retailer, permit holder or other distributor who knowingly violates any provision of this chapter is guilty of a Class C crime.

B. Any private applicator or other person not included in paragraph A who knowingly violates any provision of this chapter is guilty of a Class D crime.

C. When construing and enforcing this chapter or the rules of the board, the act, omission or failure of any officer, agent or other person acting for or employed by any person shall in every case be also deemed to be the act, omission or failure of such person as well as that of the person so acting or employed.

§ 4025. Disposition of funds

All moneys received by the board pursuant to this chapter, except moneys received in payment of penalties, shall be deposited in the State Treasury to the credit of a special fund to be used only for carrying out this chapter. Moneys received in payment of penalties shall be deposited in the General Fund. The board shall make a written report on or before the 30th day of each first regular

session of the Legislature to the Legislature, or such committee as it appoints, containing a complete accounting of the income and expenditures of the board during the biennium ending on the 31st day of December next preceding the first legislative day of January of such session or for such other period of time as the Legislature by order may direct.

Sec. 3. 12 MRSA § 8405, sub-§ 1, 4th sentence, as enacted by PL 1979, c. 545, § 3, is repealed.

Sec. 4. 22 MRSA c. 258-A, as enacted by PL 1975, c. 397, § 2, and as amended, is repealed.

Sec. 4-A. PL 1975, c. 764, § 7 is repealed.

Sec. 5. Transition clause. Any licenses, certification or the like issued by the Board of Pesticides Control pursuant to the Revised Statutes, Title 22, chapter 258-A or the Commissioner of Agriculture, pursuant to Title 7, chapter 103, subchapter II-A, shall remain in effect according to their terms. Any money in any accounts established pursuant to Title 22, chapter 258-A or Title 7, chapter 103, subchapter II-A, shall be transferred to the accounts of the Pesticide Review Board consistent with Title 7, section 4025.

The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which is already in existence on the effective date of this Act.

Sec. 6. Federal expenditure limit. The Governor is authorized to adjust the federal expenditure limit to carry out the purposes of this Act.

Sec. 7. Effective date. Sections 1, 2, 3 and 4 of this Act become effective upon appointment and qualification of not less than 4 members of the Pesticide Review Board created pursuant to Title 7, section 4003, except that those sections may not take effect sooner than 90 days after adjournment of the Legislature. Title 7, section 4017 becomes effective on January 1, 1981. All other provisions of this Act become effective 90 days after adjournment of the Legislature.

STATEMENT OF FACT

Sound pest management is essential to the existence of the agricultural and forestry industries which comprise a very substantial proportion of the economy of this State. With current technology, chemical pesticide use is essential to pest management programs. Certain pesticides, however, may cause environmental harm, including adverse effects on human health, if not used carefully, in accordance with prescribed directions. Because of past events and of increasing public concern, the State has an interest in assuring that human health and the environment is protected against the misuse of pesticides. The State also has an interest in the long-term viability of our forestry and agricultural industries which may require a move to pest management systems which rely less on synthetic chemicals.

This bill creates a seven-member Pesticide Review Board to replace the existing Board of Pesticides Control.

The board would have overall and comprehensive responsibility for regulating pesticide use, including the responsibility to implement a state policy of minimizing reliance on chemical pesticides and to adopt a long-term comprehensive pest control plan for the State. The board has authority for registering of pesticides, licensing applicators, issuing permits for significant uses, monitoring the application of pesticides, evaluating the environmental and human health impacts of pesticides and enforcing distribution and application rules.

Essentially, this board is modeled after the Board of Environmental Protection, but is restricted to the narrow area of pesticides. It would have the same authority to issue licenses for specific pesticides, applicators and projects on terms which are reasonably calculated to protect human and environmental health. It would have the responsibility for investigating compliance and enforcing its judgments. The board must make its decisions within 30 days of the submission of applications, except by mutual consent, in view of the very specific times within which some insects must be targeted. Most of the board's directives will be carried out by staff in the Department of Agriculture. In addition, the proposal creates an Environmental Health Committee in the Department of Human Services to evaluate and advise on human health aspects of pesticide use. It also authorizes municipalities to adopt their own, more stringent ordinances concerning application of pesticides within their boundaries.

Substantial improvements of the character provided herein are necessary if the board is to have any meaningful role in monitoring the use of pesticides and safeguarding human and environmental health.

This bill provides for a major increase in capability for pesticides review for the State. Of a projected budget for Fiscal Year 1980-81 of \$319,155, for approximately 15 positions, General Fund moneys total \$34,355 (already appropriated to the Board of Pesticides Control). The remainder of the funding for the Pesticides Review Board and its staff will come from federal funds (approximately \$60,000) and from fees on manufacturers and users of pesticides (approximately \$225,000).