

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 577

H.P. 403

House of Representatives, February 12, 1991

Reported by Representative LORD for the Commission to Study the Use of Herbicides pursuant to Resolves 1989, chapter 98.

Reference to the Joint Standing Committee on Energy and Natural Resources suggested and printing ordered under Joint Rule 18.

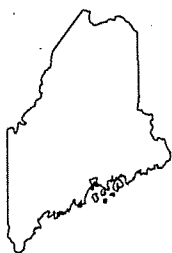
A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Regarding the Use of Pesticides and Placing the Board of Pesticides Control under the Authority of the Department of Environmental Protection.



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

2
4 Sec. 1. 5 MRSA §12004-D, sub-§3, as enacted by PL 1987, c.
786, §5, is amended to read:

6 3. Board of Legislative 22-MRSA-§1471-B
8 Pesticides Control Per Diem 38 MRSA §490-B

10 Sec. 2. 7 MRSA §310 is enacted to read:

12 §310. Agricultural Pesticide Research Fund

14 1. Fund created. The Agricultural Pesticide Research Fund,
16 referred to in this section as the "fund," is established within
18 the Department of Agriculture, Food and Rural Resources for the
20 purpose of funding research by the University of Maine System or
the Cooperative Extension Service relating to the agricultural
use of pesticides and alternatives to agricultural pesticide
use. The commissioner shall use the fund for research in the
following areas:

- 22 A. Integrated pest management;
24 B. Integrated crop management;
26 C. Low input sustainable agriculture; or
28 D. Best management practices.

30 2. Administration. The fund is a nonlapsing fund and
32 unexpended balances may carry forward into subsequent years. The
34 commissioner may credit funds received from any source to the
36 fund if these funds are used for the purposes established under
38 this section. The commissioner shall report to the Governor, the
joint standing committee of the Legislature having jurisdiction
over agricultural matters and the Executive Director of the
Legislative Council on the use of the funds every 2 years,
beginning on September 15, 1992.

40 3. Rules. The commissioner shall adopt rules to implement
42 this section by January 1, 1992.

44 Sec. 3. 7 MRSA §530-A is enacted to read:

46 §530-A. Prohibition on sales

48 A person may not offer for sale any produce treated with a
50 pesticide for which the board has refused, cancelled or suspended
52 registration under section 608, subsection 3 or section 609. A
person violating this section is guilty of a civil violation
under section 616-A.

2 **Sec. 4. 7 MRSA §611, sub-§3**, as amended by PL 1989, c. 878,
Pt. E, §10, is further amended to read:

4 **3. Repeated violations.** The board shall record all
violations of this chapter and Title 22 38, chapter 258-A 3,
6 subchapter I-A, including the name of the owner of the land on
which the pesticides were intended to be applied, the name of the
8 licensed pesticides applicator and the name of the person who
contracted the pesticide application services. The board shall
10 identify persons who repeatedly violate provisions relating to
pesticide use and recommend to the Attorney General methods to
12 prevent these repeated violations.

14 **Sec. 5. 7 MRSA §616-A, sub-§§2, 4, 5 and 6**, as enacted by PL
1989, c. 841, §3, are amended to read:

16 **2. Violations.** Except as provided in subsection 4, a
18 person violating any provisions of this subchapter or Title 22
38, chapter 258-A 3, subchapter I-A or rules adopted pursuant to
20 this subchapter or Title 22 38, chapter 258-A 3, subchapter I-A
commits a civil violation for which the following ~~forfeitures~~
22 civil penalties may be adjudged:

24 A. For the first violation, a ~~forfeiture~~ penalty not to
exceed ~~\$1,500~~ \$5,000; and

26 B. For each subsequent violation within a 4-year period, a
28 ~~forfeiture~~ penalty not to exceed ~~\$4,000~~ \$10,000.

30 **4. Exceptions.** A forfeiture against a private applicator,
as defined in Title 22 38, section ~~1471-C~~ 490-C, may not exceed
32 \$500 for a first violation, or \$1,000 for any subsequent
violation within a 4-year period, of:

34 A. Title 22 38, section ~~1471-Q~~ 490-Q or any rule adopted
36 pursuant to Title 22 38, section ~~1471-Q~~ 490-Q; or

38 B. Any rule regarding records maintained pursuant to section
40 606, subsection 2, paragraph G.

42 **5. Criminal violations.** Any person who intentionally or
knowingly violates any provision of this subchapter or Title 22
44 38, chapter 258-A 3, subchapter I-A, any rules adopted under this
subchapter or Title 22 38, chapter 258-A 3, subchapter I-A or any
46 restriction of a registration issued pursuant to this subchapter
commits a crime punishable by a fine not to exceed ~~\$7,500~~ \$25,000
and is subject to imprisonment not to exceed ~~30-days~~ 6 months, or
48 both, for each violation. Prosecution under this subsection is
by summons and not by warrant. A prosecution under this
50 subsection is separate from any action pursued under subsections
2 and 4.

52

2 6. Other relief. Notwithstanding Title 22 38, section
4 1471-D 490-D, subsections 6-to-8 9 to 11 and in addition to other
6 sanctions provided under this section, the court may order that a
8 violator obtain recertification credits through board-approved
meetings or courses as a condition of retaining, maintaining or
renewing a certification or license required under Title 22 38,
chapter 258-A 3, subchapter I-A.

10 Sec. 6. 7 MRSA §616-A, sub-§10, as enacted by PL 1989, c. 841,
§3, is repealed.

12 Sec. 7. 7 MRSA §621, as amended by PL 1989, c. 878, Pt. E,
14 §20, is further amended to read:

16 **§621. Disposition of funds**

18 All moneys received by the board under the provisions of
20 this subchapter shall must be deposited in the State Treasury to
22 the credit of a special fund to be used for carrying out the
provisions of this subchapter and Title 22 38, chapter 258-A 3,
subchapter I-A, Board of Pesticides Control.

24 Sec. 8. 7 MRSA §625, first ¶, as enacted by PL 1987, c. 702,
§1, is amended to read:

26 Any public utility or the Department of Transportation,
28 which maintains a right-of-way through a municipality shall offer
a no-spray agreement, with reasonable provisions, for the
30 municipality to consider if it desires. Any agreement negotiated
32 may include, but is not limited to, the responsibilities of the
parties, ~~the allocation of costs~~ and the rights and remedies of
34 the parties in the event of default and may apply to all or any
part of the right-of-way within the municipality. Any agreement
36 reached under this section must be negotiated in good faith,
written and signed by all parties. As part of the no-spray
38 agreement, the municipality may either perform the vegetation
control work to standards as provided in the agreement, or else
40 contract with the public utility or the Department of
Transportation to conduct the work. If a municipality agrees to
perform the vegetation control work under a no-spray agreement,
the utility or the Department of Transportation shall pay the
municipality an amount equal to the utility's or the Department
of Transportation's costs of maintaining vegetation control using
pesticides in the area specified in the agreement. If the
municipality contracts with a utility or the Department of
Transportation to conduct vegetation control work under a
no-spray agreement, the utility or the Department of
Transportation shall discount the cost of the vegetation control
service provided to the municipality by an amount equal to the
utility's or the Department of Transportation's cost of
maintaining vegetation control using pesticides in the area
specified in the agreement. Payment under this section must be

2 made at least annually if vegetative management maintenance has
3 been performed according to the conditions of the agreement.

4 **Sec. 9. 12 MRSA §8876, sub-§§4 and 5, as enacted by PL 1989, c.**
5 **875, Pt. J, §10, are amended to read:**

6
7 **4. Potential shortfalls.** Identify potential shortfalls in
8 forest resources and the management actions necessary in the
9 public and private sector to avoid shortfalls; and

10
11 **5. Recommendations.** Recommend to the Governor and the
12 Legislature the administrative and legislative policies or
13 actions needed to refine or redirect state agency programs and
14 stimulate or remove obstacles to private sector action in a
15 manner that contributes to an adequate supply of natural
16 resources; and

17 **Sec. 10. 12 MRSA §8876, sub-§6 is enacted to read:**

18
19 **6. Research.** Identify and fund research relating to the
20 use of pesticides in the forest.

21
22 **Sec. 11. 12 MRSA §8877-A is enacted to read:**

23 **§8877-A. Forest Pesticide Research Fund**

24
25 **1. Fund created.** The Forest Pesticide Research Fund,
26 referred to in this section as the "fund," is established within
27 the Forest Resource Assessment Program for the purpose of funding
28 research needs identified by the council in the following areas:

29 **A.** The long-term response of preferred tree species to
30 chemical release and chemical site preparation;

31
32 **B.** The comparative costs and yields of forestry harvesting
33 systems, with and without chemicals, over a rotation;

34
35 **C.** The persistence of pesticides in the State forest
36 environment;

37
38 **D.** The impact of clear-cutting and chemical release on the
39 forest nutrient cycle; or

40
41 **E.** The immediate and long-term direct and indirect impacts
42 of pesticide use on wildlife and wildlife habitat diversity.

43
44 **2. Administration.** The fund is a nonlapsing fund and
45 unexpended balances carry forward into subsequent years. The
46 Commissioner of Conservation may credit funds received from any
47 source to the fund if these funds are used for the purposes
48 established under this section.

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2 the Legislature having jurisdiction over natural resource matters
4 and confirmation by the Legislature. To provide the knowledge
6 and experience necessary for carrying out the duties of the
8 board, one person must be appointed who has practical experience
10 and knowledge in chemical use in the field of agriculture, one
12 who has practical experience and knowledge in chemical use in the
14 field of forest management, a trained ecologist, a person from
16 the medical community, a scientist from the University of Maine
18 System specializing in agronomy or entomology having practical
20 experience and knowledge of integrated pest management and 2
22 persons appointed to represent the public. Members must be
24 selected to represent different geographic areas of the State.
26 The term is for 4 years, except that of the initial appointees, 2
28 shall serve 4-year terms, 2 shall serve 3-year terms, 2 shall
30 serve 2-year terms and one shall serve a one-year term. Any
32 vacancy must be filled by an appointment for the remainder of the
34 unexpired term.

2 2. Conflict of interest. Members of the board are governed
4 by the conflict of interest provisions of Title 5, section 18.

2 3. Members; suspension and removal. The director shall
4 immediately notify the board of any investigation of an alleged
6 violation of this subchapter or rules adopted under this
8 subchapter that involves a member of the board. Upon
10 notification, if the member involved in the investigation has
12 previously been found guilty of 2 or more civil violations of
14 this subchapter or if the allegations may involve a criminal
16 violation of this subchapter, the member under investigation is
18 suspended from the board and may not attend any meeting of the
20 board or participate in any matter before the board until:

2 A. The director notifies the board that the investigation
4 has been terminated without referral to the board; or

2 B. The board, upon completion of an investigation by the
4 director, determines whether or not a violation occurred.

2 A member found guilty of a criminal violation or 3 or more civil
4 violations of this subchapter or rules adopted under this
6 subchapter is removed from the board.

2 4. Organization of the board. The board shall elect a
4 chair and any other officers it determines necessary from among
6 the membership. The board shall meet at the call of the chair or
8 at the request of any 3 members. Four members constitute a
10 quorum and, except as otherwise provided in this subsection, any
12 action requires the affirmative vote of the greater of either a
14 majority of those present and voting or at least 2 members. Any
16 action by the board requesting that the Attorney General pursue a
18 court action against an alleged violator of any law or rule
20 requires an affirmative vote by 3 members or a majority of those

2 present and voting, whichever is greater. The chair and any
3 other officers shall serve in those capacities for a period of
4 one year following their elections.

5 5. Compensation of the board. Each public member is
6 entitled to compensation according to the provisions of Title 5,
7 chapter 379.

8
9 6. Director. The commissioner shall appoint a director,
10 with the approval of the board. The director is the principal
11 administrative, operational and executive employee of the board.
12 The director shall attend and participate in all meetings of the
13 board, but may not vote. The director, with the approval of the
14 commissioner and the board, may hire whatever competent
15 professional personnel and other necessary staff. All employees
16 of the board are subject to Title 5, Part 2. The director may
17 obtain office space, goods and services as required.

18
19 7. Staff. The board shall establish standards for the
20 delegation of its authority to the director and staff. Any
21 person aggrieved by a decision of the director and staff has a
22 right to a review of the decision by the board. The Commissioner
23 of Environmental Protection shall provide the board with
24 administrative services of the department, including assistance
25 in the preparation of the board's budget. The commissioner may
26 require the board to reimburse the department for these services.

27
28 8. State contracts. Notwithstanding any other provisions
29 of law, members of the board are eligible to contract with the
30 State when the contracts are awarded consistent with normal
31 bidding procedures of the Department of Administration. Members
32 are also eligible to receive grants when grants are awarded
33 consistent with normal state procedures. In no case may any
34 member vote on the award of a contract or grant for which that
35 member has submitted a bid or proposal.

36
37 9. Meetings. The board shall periodically meet in various
38 geographic regions of the State. When considering an enforcement
39 action, the board shall attempt to meet in the geographic region
40 where the alleged violation occurred.

41 §490-C. Definitions

42
43 As used in this subchapter, unless the context otherwise
44 indicates, the following terms have the following meanings.

45
46
47 1. Agricultural commodity. "Agricultural commodity" means
48 any plant, or any part thereof, or animal or animal product
49 produced by a person, including farmers, ranchers, vineyardists,
50 plant propagators, Christmas tree growers, aquaculturists,
floriculturists, orchardists, foresters or other comparable

2 persons, primarily for sale, consumption, propagation or other
3 use by humans or animals.

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

6
7 3. Applicator. "Applicator" means any person who is a
8 certified commercial applicator or a certified private applicator.

9
10 4. Board. "Board" means the Board of Pesticides Control as
11 established in section 490-B.

12
13 5. Certified applicator. "Certified applicator" means any
14 person who is certified pursuant to section 490-D and authorized
15 to use or supervise the use of any pesticides.

16
17 6. Commercial applicator. "Commercial applicator" means
18 any person, except a government pesticide supervisor, whether or
19 not the person is a private applicator with respect to some uses,
20 who use or supervises the use of any limited or restricted-use
21 pesticides on any property other than as provided by subsection
22 33, or who uses general-use pesticides in custom application on
23 such property. "Commercial applicator" also includes individuals
24 who apply any pesticides in connection with their duties as
25 officials or employees of federal, state or local governments.
26 The board may by rule provide for exemptions from licensing
27 requirements and for reduced licensing requirements for classes
28 of commercial applicators of general-use pesticides applied by
29 hand or nonpowered equipment, provided that the board finds that
30 applications by those classes do not pose a significant risk to
31 health or the environment and the requirement of licensing does
32 not serve a meaningful public purpose.

33
34 7. Commissioner. "Commissioner" means the Commissioner of
35 Environmental Protection.

36
37 8. Custom application. "Custom application" means any
38 application of any pesticide under contract or for which
39 compensation is received or any application of pesticide to a
40 property open to use by the public.

41
42 9. Defoliant. "Defoliant" means any substance or mixture
43 of substances intended for causing the leaves or foliage to drop
44 from a plant, with or without causing abscission.

45
46 10. Desiccant. "Desiccant" means any substance or mixture
47 of substances intended for artificially accelerating the drying
48 of plant tissue.

49
50 11. Distribute. "Distribute" means to offer for sale, hold
for sale, sell, barter, ship, deliver for shipment or receive

2 and, having so received, deliver or offer to deliver pesticides
3 in this State.

4 12. EPA registration number. "EPA registration number"
5 means the registration number assigned to a pesticide product by
6 the United States Environmental Protection Agency pursuant to its
7 authority under FIFRA.

8 13. FIFRA. "FIFRA" means the Federal Insecticide,
9 Fungicide and Rodenticide Act, 7 United States Code, Section 135,
10 et seq., PL 92-516.

11 14. Fungi. "Fungi" means all nonchlorophyll-bearing
12 thallophytes, that is, all nonchlorophyll-bearing plants of a
13 lower order than mosses and liverworts, including but not limited
14 to rusts, smuts, mildews and molds, except those on or in living
15 man or other animals or those on or in processed food, beverages
16 or pharmaceuticals.

17 15. Fungicide. "Fungicide" means any substance or mixture
18 of substances intended for destroying or repelling any fungi or
19 mitigating or preventing damage by any fungi.

20 16. Government pesticide supervisor. "Government pesticide
21 supervisor" means any federal, state or local government agency,
22 official or employee, whether or not the person is a private
23 applicator with respect to some uses, that, in the course of its
24 duties, responsibilities or employment, supervises the use of any
25 pesticides. For the purposes of this subsection, "supervise"
26 means any and all activity other than the direct application of
27 pesticides.

28 17. General-use pesticide. "General-use pesticide" means
29 any pesticide that has been registered by the United States
30 Environmental Protection Agency as evidenced by a registration
31 number on the label and that is not a restricted-use or
32 limited-use pesticide as defined in this section. Pesticides
33 restricted by the United States Environmental Protection Agency
34 are so identified on the label. Pesticides restricted or limited
35 by the Board of Pesticides Control are listed by the board.

36 18. General-use pesticide dealer. "General-use pesticide
37 dealer" means any person who distributes general-use pesticides.

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

42 20. Herbicides. "Herbicides" means any substance or
43 mixture of substances intended for preventing, destroying,
44 repelling or mitigating any weed.

2 **21. Household-use pesticide product.** "Household-use
pesticide product" means any general-use pesticide product that
4 contains no more than 3% active ingredients and that is applied
undiluted by homeowners to control pests in and around the family
6 dwelling and associated structures. For the purposes of this
definition and section 490-U, subsection 5, petroleum solvents
8 are not considered active ingredients.

10 **22. Insect.** "Insect" means any of the numerous small
invertebrate animals generally having the body more or less
12 obviously segmented, for the most part belonging to the class
insecta, comprising 6-legged, usually winged forms, including but
14 not limited to beetles, bugs, bees, flies and other allied
classes of arthropods whose members are wingless and usually have
16 more than 6 legs, including but not limited to mites, ticks,
centipedes and wood lice.

18 **22. Insecticide.** "Insecticide" means any substance or
mixture of substances intended for destroying or repelling any
20 insect, or mitigating or preventing damage by any insects.

22 **23. Limited-use pesticide.** "Limited-use pesticide" means
any pesticide or pesticide use classified for limited use by the
24 board.

26 **24. Major forest insect aerial spray application.** "Major
forest insect aerial spray application" means a project to apply
28 pesticides against a forest insect pest by aerial application
over an area containing at least 1,000 acres in the aggregate.

30 **25. Minor forest insect aerial spray application.** "Minor
forest insect aerial spray application" means a project to apply
32 pesticides against a forest insect pest by aerial application
over an area containing less than 1,000 acres in the aggregate.

34 **26. Monitor.** "Monitor" means a person working on a public
or private forest insect aerial spray application project whose
36 primary responsibilities are to observe and record meteorological
conditions during spray operations, observe and record spray
38 deposition and prepare the spray period report and who has the
authority to cease spray applications when conditions require it.

40 **27. Person.** "Person" means any individual, partnership,
association, fiduciary, corporation, governmental entity or any
42 organized group of persons whether incorporated or not.

44 **28. Pest.** "Pest" means any insect, rodent, nematode,
fungus, weed or any other form of terrestrial or aquatic plant or
46 animal life or virus, bacteria or other microorganism, except
viruses, bacteria or other microorganisms on or in living man or
48 50

2 other living animals, which the commissioner declares to be a
3 pest.

4 29. Pesticide. "Pesticide" means any substance or mixture
5 of substances intended for preventing, destroying, repelling or
6 mitigating any pest, and any substance or mixture of substances
7 intended for use as a plant regulator, defoliant or desiccant.

8 30. Pesticide dealer. "Pesticide dealer" means any person
9 who distributes limited-use or restricted-use pesticides.

10 31. Pesticide user. "Pesticide user" means any person who
11 applies any pesticide except a household-use pesticide product
12 while under the direct supervision of a certified applicator.

13 32. Plant regulator. "Plant regulator" means any substance
14 or mixture of substances intended, through physiological action,
15 for accelerating or retarding the rate of growth or rate of
16 maturation or for otherwise altering the behavior of plants or
17 the produce thereof, but does not include substances intended as
18 plant nutrients, trace elements, nutritional chemicals, plant
19 inoculants and soil amendments. Also, the term "plant regulator"
20 does not include those nutrient mixtures or soil amendments
21 commonly known as vitamin hormone horticultural products, which
22 are intended for improvement, maintenance, survival, health and
23 propagation of plants and not for pest destruction and are
24 nontoxic and nonpoisonous in the undiluted packaged concentration.

25 33. Private applicator. "Private applicator" means any
26 person who uses or supervises the use of any pesticide classified
27 for restricted or limited use for purposes of producing any
28 agricultural commodity on property owned or rented by that person
29 or that person's employer or, if applied without compensation
30 other than trading of personal services between producers of
31 agricultural commodities, on the property of another person.

32 34. Restricted-use pesticide. "Restricted-use pesticide"
33 means any pesticide or pesticide use classified for use only by
34 or under the direct supervision of a certified applicator by the
35 Administrator of the United States Environmental Protection
36 Agency or by the Commissioner of Environmental Protection.

37 35. Spotter. "Spotter" means a person working on a public
38 or private forest insect aerial spray application project who is
39 responsible for ordering the cessation of spraying over water
40 bodies and other nontarget areas.

41 36. Spray contracting firm. "Spray contracting firm" means
42 a person, as defined in this section, employed or contracted to
43 conduct a public or private pesticide application. This term
44 does not include the owner or lessee of land to be sprayed,
45 employees of that landowner or lessee, the Bureau of Forestry,
46

2 the employees of the Bureau of Forestry or individuals who are
certified as commercial applicators.

4 37. Spray period. "Spray period" means any period of a
forest insect aerial spray application project during which
6 pesticides are applied and that is demarcated from another spray
period by at least a 2-hour cessation in pesticide application.

8
10 38. Under the direct supervision of a certified
applicator. "Under the direct supervision of a certified
12 applicator," unless otherwise prescribed by its labeling, means
the act or process by which a pesticide is applied by a competent
14 person acting under the instructions and control of a certified
applicator who is available, if and when needed, even though such
16 certified applicator is not physically present at the time and
place the pesticide is applied. In the case of an application
18 made by a commercial applicator, the certified applicator must be
physically present at the time and on the site of the application.

20 39. Weed. "Weed" means any plant that grows where not
22 wanted.

24 §490-D. Certification and licenses

26 1. Certification required; commercial applicators and spray
contracting firms. Certification is required for commercial
28 applicators and spray contracting firms as follows.

30 A. A commercial applicator may not use or supervise the use
of any pesticide within the State without prior
32 certification from the board, provided that a competent
person who is not certified may use such a pesticide under
34 the direct supervision of a certified applicator.

36 B. A spray contracting firm may not use or supervise the
use of any pesticide within the State without prior
38 certification from the board.

40 2. Certification required; private applicators. A private
applicator may not use or supervise the use of any limited-use or
42 restricted-use pesticide without prior certification from the
board, provided that a competent person who is not certified may
44 use such a pesticide under the direct supervision of a certified
applicator.

46 3. Certification required; government pesticide
supervisor. A government pesticide supervisor may not supervise
48 the use of any pesticide without prior certification from the
board. The person who actually uses the pesticide must also be
50 certified.

2 4. Certification required; spotters and monitors. A person
may not act as a:

4 A. Spotter without prior certification from the board; or

6 B. Monitor without prior certification from the board.

8 5. Certification required; pesticide users. After January
1, 1993 a person may not apply a pesticide that is not a
10 household-use pesticide product unless that person:

12 A. Is a certified pesticide applicator; or

14 B. Has been certified as a pesticide user by the board.

16 The board shall adopt rules governing the training and
certification standards for pesticide users by January 1, 1992.
18 Rules adopted by the board may allow qualified agencies or
institutions to train and certify pesticide users, if the board
20 approves the training standards to be used.

22 6. License required; pesticide dealers. A pesticide dealer
may not distribute:

24 A. Any limited-use or restricted-use pesticide without a
26 distributor's license from the board; or

28 B. Limited-use or restricted-use pesticides to any person
30 not licensed or certified by the board.

32 7. Application. Application for licenses or certification
must be accompanied by such a reasonable fee as the board may
establish by rule. The applicant shall provide such information
34 regarding the applicant's qualifications and proposed operations
and other relevant matters as required by the board. Commercial
36 applicators and spray contracting firms must provide proof of
financial responsibility in custom application as to such amounts
38 as the board may, by rule, designate; private applicators may
also be required to provide such proof. All applicants to the
40 board for certification or licensing must comply with such
standards of competency as are established by the board
42 concerning adequate knowledge of pesticide distribution or use
and the related dangers and necessary precautions. In the case
44 of applicants for commercial certification and pesticide dealers'
licenses, such compliance is demonstrated by written examination
46 in addition to such other criteria, including performance
testing, as the board may establish.

48 8. Issuance. A license or certification may not be issued
50 by the board unless the board determines that the standards for
licensing and certification have been met as to those categories
52 for which the applicant has applied and qualified. In the case

2 of the spotter and the monitor, the board shall set minimum
4 proficiency requirements with the understanding that the board
6 may choose to change these standards from time to time. The
8 enforcement personnel of the board must be certified to meet at
10 least the minimum proficiency requirements required of spotters
12 and monitors. If a license or certification is not issued as
14 applied for, the board shall provide written notice to the
16 applicant of the reasons for not issuing the license or
18 certification. The license or certification may be issued upon
20 such terms and conditions as the board determines necessary for
22 the protection of the public health, safety and welfare and for
24 enforcement and administration of this subchapter and the rules
26 promulgated pursuant to this subchapter.

16 9. Renewal. Certification of commercial applicators,
18 government pesticide supervisors, spotters, monitors and spray
20 contracting firms and licenses of pesticide dealers are valid for
22 one year from the date of issuance. Certification of private
24 applicators is valid for such period as prescribed by the board
26 by rule. Application for renewal must be accompanied by such
28 reasonable fee as the board may by rule require. The board may,
30 by rule, require that the renewal application include
32 reexamination or other procedures designed to assure a continuing
34 level of competence to distribute, use or supervise the use of
36 pesticides safely and properly.

28 If the board fails to renew a license upon application of the
30 licensee or certificate holder, it shall afford the licensee or
32 certificate holder an opportunity for a hearing in conformity
34 with Title 5, chapter 375, subchapter IV.

32 10. Suspension. License and certification suspensions are
34 governed by the following provisions.

36 A. If the board determines that there may be grounds for
38 revocation of a license or certificate, it may temporarily
40 suspend the license or certificate pending inquiry and
42 opportunity for hearing. The suspension may not extend for
44 a period longer than 45 days.

42 B. The board shall notify the licensee or certificate
44 holder of the temporary suspension, indicating the basis
46 therefor and informing the licensee or certificate holder of
48 the right to request a public hearing.

46 C. If the licensee or certificate holder fails to request a
48 hearing within 20 days of the date of suspension, that right
50 is deemed waived. If the licensee or certificate holder
52 requests a hearing, notice of the date of the hearing must
be given at least 20 days prior to the hearing to the
licensee or certificate holder and to appropriate federal
and state agencies. In addition, public notice must be

2 given by publication in a newspaper of general circulation
3 in the State and such other publications as the board
4 determines appropriate.

5 D. This subsection is not governed by the provisions of
6 Title 4, chapter 25 or Title 5, chapter 375.

7 11. Revocation. The Administrative Court may suspend or
8 revoke the certification or license of a licensee or certificate
9 holder upon a finding that the applicant:

10 A. Is no longer qualified;

11 B. Has engaged in fraudulent business practices in the
12 application or distribution of pesticides;

13 C. Used or supervised the use of pesticides applied in a
14 careless, negligent or faulty manner or in a manner
15 potentially harmful to the public health, safety or welfare
16 or the environment;

17 D. Has stored, transported or otherwise distributed
18 pesticides in a careless, faulty or negligent manner or in a
19 manner potentially harmful to the environment or the public
20 health, safety or welfare;

21 E. Has violated the provisions of this subchapter or the
22 rules issued under this subchapter;

23 F. Has made a pesticide recommendation, use or application
24 or has supervised the use or application inconsistent with
25 the labelling or other restrictions imposed by the board;

26 G. Has made false or fraudulent records or reports required
27 by the board under this subchapter or under rules pursuant
28 to this subchapter;

29 H. Has been subject to a criminal conviction under Section
30 14 (b) of the amended FIFRA or a final order imposing a
31 civil penalty under Section 14 (a) of the amended FIFRA; or

32 I. Has had the license or certificate that supplied the
33 basis for the State license or certification pursuant to
34 subsection 13 revoked or suspended by the appropriate
35 federal or other state government authority.

36 12. State, federal and local government employees.
37 Individuals who apply pesticides in connection with their duties
38 as officials or employees of federal, state or local governments
39 are subject to this subchapter concerning licenses and
40 certification, but are exempt from the payment of any fee.
41

2 13. Nonresident licenses. The board may issue a license or
3 certificate without examination to nonresidents who are licensed
4 or certified by another state or the Federal Government
5 substantially in accordance with this subchapter. Licenses or
6 certificates issued pursuant to this subsection may be suspended
7 or revoked in the same manner and on the same grounds as other
8 licenses or certificates issued pursuant to this subchapter.
9 Licenses and certificates issued pursuant to this subsection may
10 be suspended or revoked pursuant to subsection 11, paragraph I.

11
12 14. Arborists. In the case of persons licensed under Title
13 32, chapter 29, subchapter II, the board may waive the
14 application fee and may consider the arborist license as prima
15 facie evidence of qualification to use pesticides in the
16 categories of use provided by Title 32, chapter 29.

17 **§490-E. Aquatic application; permit required**

18
19 A person may not apply or cause to be applied a pesticide to
20 the waters of the State without obtaining a waste discharge
21 license from the Department of Environmental Protection pursuant
22 to subchapter I, article 2.

23 **§490-F. Critical areas**

24
25 A person may not apply pesticides to any area of the State
26 that the board has determined to be a critical area, except to
27 the extent the application is within the limits prescribed by the
28 board in establishing the area.

29 **§490-G. Reports**

30
31 1. Pesticide dealers to maintain certain records. All
32 pesticide dealers shall maintain records of pesticide
33 distribution for a period of at least 2 years and shall provide
34 such reports and information as the board may, by rule, require.

35 2. Applicators and firms to keep records. All applicators
36 and spray contracting firms shall keep contemporaneous records of
37 each pesticide application. A record must include:

38 A. The product name and EPA registration number of each
39 pesticide used;

40 B. The amount of each pesticide used by weight;

41 C. The date and location of the application;

42 D. The number of acres of each crop type treated during the
43 application;

44 E. The method of application; and

2 F. Any other appropriate information required by the board
3 by rule.

4
5 An applicator shall retain a pesticide application record for a
6 period of at least 6 years.

7 3. Applicators and firms to report to the board. All
8 commercial applicators and spray contracting firms shall submit
9 quarterly pesticide application reports to the board by the 15th
10 day of January, April, July and October of each year. All
11 private applicators shall submit annual pesticide application
12 reports to the board by the 15th day of January of each year. A
13 pesticide application report must include, but is not limited to,
14 the following:

15 A. The name, certification number and business address of
16 the applicator or spray contracting firm;

17 B. The beginning and ending date of the reporting period;
18 and

19 C. For each pesticide used during the reporting period:

20 (1) The name and EPA registration number of the
21 pesticide;

22 (2) The total quantity of the pesticide used during
23 the reporting period, by weight; and

24 (3) The total acres of each crop type treated with the
25 pesticide during the reporting period.

26 The board shall prescribe the report form to be used by
27 applicators and spray contracting firms. When reporting to the
28 board, applicators or spray contracting firms shall use the form
29 prescribed by the board.

30 By January 1, 1992, the board shall adopt rules to implement this
31 section. The board may, by rule, require that additional
32 information be included in pesticide application records or
33 reports.

34 4. Report to the Legislature. The board shall prepare a
35 comprehensive biennial report on pesticide use in the State. The
36 report must be submitted to the Governor, the joint standing
37 committee of the Legislature having jurisdiction over natural
38 resource matters and the Executive Director of the Legislative
39 Council by September 15th of each biennium, beginning in 1992.
40 The report must include:

2 A. A summary of reported pesticide use by sector and by
3 crop type during the previous 2 years;

4 B. A summary of significant regulatory actions taken by the
5 board during the previous 2 years;

6 C. A summary of significant pesticide regulatory actions by
7 Congress or the United States Environmental Protection
8 Agency during the previous 2 years; and

9 D. A summary of the progress of programs developed and
10 implemented by the board.

11 The report may include recommendations to the Legislature on
12 pesticide control policies including specific recommendations for
13 any legislative actions necessary to implement those policies.

14 **§490-H. Inspection**

15 Upon presentation of appropriate credentials, the chair or
16 any member of the board or any authorized employee or consultant
17 of the board may enter upon any public or private premises at
18 reasonable times for the purpose of inspecting any equipment,
19 device or apparatus used in applying pesticides; inspecting
20 storage and disposal areas; inspecting or investigating
21 complaints of injury to persons or land from pesticides;
22 observing the use and application of pesticides; sampling
23 pesticides in use or storage; and sampling pesticide residues on
24 crops, foliage, soil, water or elsewhere in the environment.
25 Upon denial of access to the board or its agents, the board or
26 its agents may seek an appropriate search warrant in a court of
27 competent jurisdiction. Notwithstanding other provisions of this
28 section, a board member or any authorized employee or consultant
29 of the board may enter public or private premises without
30 notification if an emergency exists. The need to take a residue
31 sample in a timely manner constitutes an emergency under this
32 section.

33 **§490-J. Penalties**

34 A person who violates this subchapter or any order, rule,
35 decision, certificate or license issued by the board or commits
36 any act constituting a ground for revocation, except acts
37 punishable under section 490-D, subsection 11, paragraphs A and
38 H, commits a civil violation subject to the penalties established
39 in Title 7, section 616-A.

40 **§490-K. Appeal**

41 Any person aggrieved by any action of the board may obtain a
42 review of the action by filing in the Superior Court, within 30
43 days of notice of the action, a written petition that the action

2 of the board be set aside. A copy of the petition must be
3 delivered to the board, and within 30 days the board shall
4 certify and file in the court a transcript of evidence received.
5 The court shall have jurisdiction to affirm, set aside or modify
6 the action of the board, except that the findings of the board as
7 to the facts, if supported by substantial evidence, are
8 conclusive.

9 **§490-L. Subpoenas**

10
11 The board may issue subpoenas to compel the attendance of
12 witnesses and production of such books, documents and records
13 anywhere in the State in any hearing affecting the authority or
14 privilege granted by a license or permit issued under this
15 subchapter, as may be relevant to proceedings of the board. If
16 any person refuses to obey a subpoena issued by the board under
17 this section, the board may apply any Justice of the Superior
18 Court for an order compelling the person to comply with the
19 requirements of the subpoena. The justice may issue the order
20 and may punish failure to obey the order as a contempt.

21 **§490-M. Powers of board**

22
23 1. Establishment of categories and standards. The board
24 shall, by rule promulgated in conformity with Title 5, chapter
25 375, subchapter II:

26
27 A. Establish categories, and where applicable
28 subcategories, of commercial pesticide applicators and
29 government pesticide supervisors depending upon the nature
30 and extent of the pesticide use, the type of pesticide
31 equipment, the degree of knowledge or skill required in
32 their application and such other factors as the board
33 determines relevant. The categories must be consistent
34 with, but not limited to, the categories established by the
35 United States Environmental Protection Agency;

36
37 B. Establish competency standards for the established
38 categories for the certification and renewal of
39 certification of commercial applicators. The standards must
40 require, as a minimum, that the applicant demonstrate, by
41 written examination and, as appropriate, performance
42 testing, knowledge of pests, formulation and labelling of
43 pesticides, equipment and application techniques, safety
44 precautions, potential harmful effects on the environment
45 and applicable federal and state laws, rules and regulations;

46
47 C. Establish standards for the certification and renewal of
48 certification of private applicators. Such standards must
49 require that the private applicator indicate satisfactory
50 knowledge of pest problems and pest control practices,
51 including as a minimum the ability to recognize common pests
52

2 and the damage they cause, to understand the pesticide
4 label, to apply pesticides in accordance with label
6 instructions and warnings, to recognize local environmental
8 situations that must be considered to avoid contamination to
10 recognize poisoning symptoms and corrective procedures and
12 to understand applicable federal and state laws, rules and
14 regulations;

16 D. Establish the standards for issuance and renewal of
18 licenses of pesticide dealers. These standards must
20 include, but are not limited to, requirements concerning
22 transportation of pesticides, the applicant's knowledge of
24 applicable federal and state laws, rules and regulations,
26 and the applicant's understanding of the dangers involved
28 and the precautions necessary for the safe storage and
30 distribution of pesticides;

32 E. Establish guidelines and requirements for reporting of
34 information by commercial applicators, pesticide dealers,
36 spray contracting firms and monitors to the board;

38 F. Establish standards for the certification and renewal of
40 certification of government pesticide supervisors. These
42 standards may require that the applicant demonstrate, by
44 written examination and, as appropriate, performance
46 testing, knowledge of pests, formulation and labeling of
48 pesticides, equipment and application techniques, safety
50 precautions, potential harmful effects on the environment
and applicable federal and state laws, rules and regulations;

G. Establish standards for the certification and renewal of
certification of spotters and monitors; and

H. Establish standards for the certification and renewal of
certification of spray contracting firms.

2. Designation of critical areas; cooperation; promulgation
of rules and regulations. The board may:

40 A. Cooperate with any other agency of this State or its
42 subdivisions, or with any agency of any other state or the
44 Federal Government for the purpose of administering this
46 subchapter and of securing uniformity of regulations;

48 B. On its own or in cooperation with other agencies or
50 persons, publish such information as it determines
appropriate, including information concerning injury that
might result from improper application or handling of
pesticides, and methods and precautions designed to prevent
the injury; and

2 C. Promulgate such other rules and regulations and take
4 such other actions as it determines appropriate to control
6 the use and distribution of pesticides within the State and
 to otherwise provide that the purposes and policies of this
 subchapter are insured.

8 3. Chemical substance identification. To the extent
10 permitted under federal law, the board shall have primary
12 enforcement responsibility for inspection of any workplace
14 subject to the provisions of Title 26, chapter 22, solely because
16 of the presence of a pesticide. The board shall have primary
 enforcement responsibility for training programs to be provided
 by employers under Title 26, chapter 22, in those instances where
 the employer is subject to the provisions of that law solely
 because of the presence or use of a pesticide.

18 The board shall assist the Director of the Bureau of Labor
20 Standards in providing education and training in accordance with
22 Title 26, section 1720, to aid agricultural employers in
24 complying with the federal requirements for hazard communication
 and shall assist the responsible state agencies in providing
 education and training to aid agricultural employers in complying
 with the federal requirements for emergency and hazardous
 chemical inventory forms and community right-to-know reporting.

26 4. Designation of critical areas. The board may designate
28 critical areas that must include, but are not limited to, areas
30 where pesticide use would jeopardize endangered species or
32 critical wildlife habitat, present an unreasonable threat to
34 quality of the water supply, be contrary to a master plan for the
36 area where the area is held or managed by an agency of the State
38 or Federal Government or would otherwise result in unreasonable
 adverse effects on the public health, welfare or the environment
 of the area. The designation of a critical area may prohibit
 pesticide use or may include such limitations on use as the board
 determines appropriate. The proceedings to designate a critical
 area under this section shall conform to Title 5, chapter 375,
 subchapter II.

40 The board, by rule, shall establish criteria for designation of
42 critical areas.

44 In addition to the provisions of the Maine Administrative
46 Procedure Act, Title 5, chapter 375, any municipality and, for
48 the purpose of representing unorganized territory, any county may
50 petition the board for establishment of a critical area within
 their boundaries. If the board designates a critical area, the
 board shall develop a pesticide management plan for that area
 after receiving comments from the municipality or, for
 unorganized territory, the county, the volunteer medical advisory
 panel as established through the board, local applicators, owners

2 of land within the critical area and other interest parties and
3 agencies.

4 5. Disclosure of rights. When issuing a license, the board
5 shall provide to each licensee a written statement outlining the
6 enforcement process and the process of negotiating agreements in
7 lieu of court action that may occur in the event enforcement
8 action is pursued. The Department of the Attorney General and
9 the Department of Environmental Protection shall assist the board
10 in developing an appropriate written statement. The board shall
11 make this information available to all existing licensees within
12 30 days of the effective date of this section.

14 6. Notification. When the board or its staff investigates
15 a complaint alleging a violation of rules adopted pursuant to
16 Title 7, section 606, subsection 2, paragraph G, the staff shall
17 make all reasonable efforts to notify the alleged violator, if
18 identity is known, prior to collecting samples.

20 **§490-N. Chemical control of vertebrate animals**

22 It is unlawful to use poisons to kill vertebrate land
23 animals except as provided in this section.

24 1. Chemical control of vertebrate animals. The board may
25 grant permits to use poisons for chemical control of vertebrate
26 animals to members of its staff and to agents of the United
27 States Fish and Wildlife Service.

30 2. Use poisons to control wild dogs. The board, its staff
31 or agents may in emergencies use poisons to control wild dogs or
32 other wild animals.

34 3. Control of rats and mice. The control of rats and mice
35 on public and private property including buildings and municipal
36 dumps and the control of English sparrows, starlings and pigeons
37 within buildings are exempt from this section, provided that the
38 control is performed in accordance with this subchapter, the
39 rules of the board and the directions on the label of the
40 registered pesticide employed.

42 **§490-O. Exercise of powers by Board of Pesticides Control**

44 The board established by section 490-B shall exercise the
45 powers established under the Maine Pesticide Control Act of 1975,
46 Title 7, chapter 103, subchapter II-A.

48 **§490-P. Storage of illegal and obsolete pesticides**

50 1. Board to accept illegal and obsolete pesticides. Within
51 the limits of resources made available to it for the storage or
52 disposal of illegal and obsolete pesticides purchased for use in

2 the State, the board shall accept, store and dispose of
3 pesticides from persons who purchased them with the intent of
4 applying them.

5 2. Board may adopt rules and fees. The board may adopt any
6 rules necessary to implement this section, including rules
7 limiting the quantity and nature of pesticides it accepts for
8 storage or disposal. The board may adopt and charge fees for
9 storage or disposal of pesticides presented to it when the amount
10 of pesticides or special treatments necessary for safe storage or
11 disposal will require a substantial cost to the board, provided
12 that the fees charged are close to the actual cost incurred by
13 the board.

14 **§490-O. Return and disposal of limited-use and restricted use**
15 **pesticide containers**

16 1. Purpose. The purpose of this section is to ensure the
17 triple rinsing or equivalent of limited-use and restricted-use
18 pesticide containers in accord with the board's rules and to
19 provide an incentive through a deposit system for the return of
20 triple-rinsed pesticide containers. All limited-use and
21 restricted-use pesticide containers must have a sticker supplied
22 by the board. That sticker identifies those limited-use and
23 restricted-use pesticide containers for which a deposit is
24 required.

25 2. Scope. This section applies to all limited-use and
26 restricted-use pesticide containers, excluding those packaged in
27 a cardboard, fiberboard or paper container, sold, bartered or
28 traded within the State, or, though purchased out-of-state, held
29 for use or used within the State.

30 3. Deposit established. The board shall by rule establish
31 a deposit for restricted-use and limited-use pesticide containers
32 within the scope of this section sold, bartered or traded within
33 the State, or, though purchased out-of-state, held for use or
34 used within the State. The deposit amount should be sufficient
35 to promote the return of the limited-use and restricted-use
36 pesticide containers.

37 These rules adopted by the board in accordance with the Maine
38 Administrative Procedure Act are in effect until 90 days after
39 the date of adjournment of the next regular session of the
40 Legislature, unless the next regular session adopts by
41 legislative enactment that rule.

42 4. Deposits collected. For pesticide containers within the
43 scope of this section and purchased within the State, pesticide
44 dealers shall, at the time of purchase, collect the deposit
45 established by the board for each such pesticide container. For
46 pesticide containers within the scope of this section that,

2 though purchased out-of-state, are held for use or used within
3 the State, deposits established by the board must be collected
4 and held by the board or its agent, as provided by the board in
5 its rules.

6 5. Stickers required. Upon the sale, trade or barter of
7 any pesticide containers subject to this section and purchased in
8 the State, the pesticide dealer shall affix a sticker supplied by
9 the board to identify those containers. For pesticide containers
10 subject to this section that, though purchased out-of-state, are
11 held for use or used within the State, the person who has
12 ownership or control of the container within the State shall
13 obtain and affix a sticker supplied by the board or its agent and
14 shall pay a deposit to the board or its agent in accordance with
15 procedures prescribed by the board by rule. The sticker shall
16 indicate that the deposit has been paid and must be designed in
17 accord with the board's rules.

18 The board may charge a reasonable fee, in addition to the
19 required deposit, to pay for the cost of producing and
20 distributing stickers.

21 After April 1, 1985, it is unlawful for any person to possess a
22 limited-use or restricted-use pesticide container subject to this
23 section without a properly approved and affixed sticker, except
24 that pesticide dealers and distributors may hold containers if
25 they are for sale and not for personal use.

26 6. Deposits refunded. Deposits must be refunded by
27 pesticide dealers on all pesticide containers bearing the board's
28 stickers at the place of business of the pesticide dealer who
29 sold, bartered or traded the restricted-use or limited-use
30 pesticide, or if purchased out-of-state, by the board or its
31 agent, or at a place otherwise established by rule, provided that
32 the containers have been triple-rinsed or the equivalent in
33 accord with the board's rules prior to return.

34 7. Authority to adopt rules. The board may promulgate
35 rules and take such other actions as it determines necessary to
36 carry out the provisions of this section.

41 §490-R. Notification and monitoring

42 1. Purpose. The purpose of this section is to protect the
43 public health and safety by requiring a system of notification to
44 the public and to the board for forest insect aerial spray
45 projects and by improving the monitoring of these projects.

46 2. Scope. The requirements of this section apply to public
47 and private forest insect aerial spray pesticide applications.
48

2 3. Notification to the public. Prior to the commencement
of a forest insect aerial spray application, notice must be given
to the public as follows.

4
6 A. If the project is a major forest insect aerial spray
application, as defined in section 490-C, the notification
must be as follows.

8
10 (1) Notice must be conspicuously posted at each point
of major ingress and egress of the public into the area
to be sprayed, including, without limitation, marked
12 foot trails known to be used by the public and roads
accessible to 4-wheeled vehicles and open to the
14 public. The board shall determine the time period the
notice must be posted prior to the commencement and
16 following the completion of the spray project.

18 B. Notice must otherwise be provided as required by rule or
order of the board when that board determines additional
20 notification procedures to be necessary to reach the
affected public.

22
24 4. Notification to the board. Written notice must be given
to the board:

26 A. At least 15 days, but not more than 30 days, prior to
the commencement of a major forest insect aerial spray
28 application; or

30 B. At least 5 days prior to the commencement of a minor
forest insect aerial spray application.

32
34 The notice must conform with subsection 3, paragraph A,
subparagraph (1), and must also include any other information
36 required by the board. The notice must be on such form as the
board may prescribe

38 5. Reports. The following reports must be prepared.

40 A. Following the completion of each spray period, a written
spray period report prepared by the monitor, as defined in
42 section 490-C, must be made available to the board within a
reasonable time period established by the board.

44
46 The report must describe the spray activity and certify the
area actually sprayed and the pesticide used, weather
48 conditions at the time, a map showing where spray booms were
turned on and off and any nontarget areas that were sprayed,
50 and the date and time on which spraying took place. The
report must be on such form and filed in accordance with
52 such procedure as the board may prescribe.

2 B. In the event that a reportable spray incident occurs, a
3 spray incident report must be telephoned to the board
4 immediately following the completion of each spray period.
5 A reportable spray incident is a misapplication that may
6 result in a potential threat to public health or the
7 environment, including, without limitation: failure to turn
8 off spray booms over sensitive areas such as water bodies or
9 human habitation; aircraft accidents involving chemical
10 spills; and accidental discharge of insecticide, causing
11 risk to human health. The report must be on such form and
12 filed in accordance with such procedure as the board may
13 prescribe.

14 The spray contracting firm or applicator is responsible for
15 complying with the requirements of this section.

16 C. A project report as described in the board's rules must
17 be filed in accordance with such procedure as the board may
18 prescribe.

19 6. Responsibility. The following parties are responsible
20 for complying with the requirements of this section, unless
21 otherwise noted:

22 A. In the case of a forest insect aerial spray program
23 administered pursuant to Title 12, chapter 803, the Bureau
24 of Forestry; and

25 B. In the case of any other forest insect aerial spray
26 activities, the landowner of the landowner's representative,
27 or, if the land is leased, the lessee.

28 **§490-S. Requirement for spotters and monitors**

29 Major public and private forest insect aerial spray projects
30 shall employ spotters and monitors, as defined in section 490-C.
31 These personnel must be certified pursuant to the section 490-D,
32 subsection 3. At least one spotter and one monitor must be with
33 each spray aircraft or spray aircraft team during all spray
34 application activities. A spotter or monitor may not serve as
35 the pilot of any aircraft involved in the spray project.

36 **§490-T. Exemption**

37 The board may exempt a person from compliance with one or
38 more of the requirements of sections 490-R and 490-S, if the
39 board finds that the exemption will not result in any
40 unreasonable risk to the public's health, safety or general
41 welfare and is otherwise in the public interest. Any request for
42 exemption must be made in writing to the board and must state the
43 reasons for the request. The board may not grant any exemption,
44 except following notice to the public and opportunity for
45 comment.

2 hearing. Notice and opportunity for hearing must be in such
4 manner as the board may prescribe and may be at variance with the
6 requirements of the Maine Administrative Procedure Act to the
8 extent that the board determines necessary under the
10 circumstances.

12 **§490-U. Municipal ordinances**

14 1. Centralized listing. The board shall maintain for
16 informational purposes, for the entire State, a centralized
18 listing of municipal ordinances that specifically apply to
20 pesticide storage, distribution or use.

22 2. Existing ordinances. The clerk of any municipality
24 that, on the effective date of this section, has an ordinance to
26 be listed under subsection 1 shall file a copy of that ordinance
28 with the board by December 31, 1988.

30 3. New ordinances. The clerk of the municipality shall
32 provide the board with notice and a copy of any ordinance to be
34 listed under subsection 1 at least 7 days prior to the meeting of
36 the legislative body or the public hearing at which adoption of
the ordinance will be considered. The clerk shall notify the board within 30 days after adoption of the ordinance.

40 4. Intent. It is the intent of this section to provide
42 information on municipal ordinances. This section does not
44 affect municipal authority to enact ordinances.

46 5. Failure to file. For any ordinance not filed with the
48 board with notice given to the board in accordance with this
section that is otherwise valid under the laws of this State, any provision that specifically applies to storage, distribution or use of pesticides must be considered void and of no effect after the deadline for filing and until the board is given proper notice and the ordinance is filed with the board.

50 **§490-V. Local participation**

52 1. Representation. When the board, under section 490-M,
considers the designation of a critical area or the establishment of a pesticide management plan for a critical area, the municipal officers of any affected municipality, or county commissioners in the case of unorganized territories, must be given the opportunity to select a local representative to serve as an additional board member. For a given action, there may be only one local representative who shall represent the affected municipality or unorganized territory.

2. Participation and voting procedure. A local
representative appointed under this section may participate officially and vote in deliberations on the designation of a

2 critical area or on the establishment of a pesticide management
4 plant only for a critical area in the municipality or unorganized
6 territory represented. A local representative may participate on
8 the board until final designation of the critical area or final
10 establishment of the pesticide management plan, including any
12 administrative or judicial appeals. When the board considers a
14 proposed critical area or pesticide management plan that affects
16 more than one municipality, the board shall take separate action
18 on the portion in each municipality.

20 3. Compensation. Local representatives are reimbursed by
22 the board only for expenses as regular board members during the
24 period of their service.

26 §490-W. General-use pesticide dealers

28 1. License required. Unless exempted under subsection 4, a
30 person may not distribute general-use pesticides without a
32 license.

34 2. Issuance of license. The board shall issue a license to
36 distribute general-use pesticides to any person upon payment of a
38 fee of \$20 for a calendar year or any part of a calendar year.
40 Any person licensed to distribute restricted-use pesticides are
42 considered licensed to distribute general-use pesticides without
44 any additional fee. All fees collected under this section must
46 be deposited in the special fund of the board.

48 3. Records; reporting. Any person licensed to distribute
50 general use pesticides shall keep and maintain records of annual
pesticide sales for all liquid products sold. Those records must
include the name of the pesticide, the EPA registration number of
the pesticide and the quantity sold, and must be kept on a
calendar year basis. The records must be kept for 2 years after
the end of the calendar year. The board may not require record
keeping on the sale of household-use pesticide products. All
general-use pesticide dealers shall submit annually a report to
the board showing total sales volumes and weights of each
pesticide required to be recorded under this subsection. Reports
must be submitted on forms prescribed by the board.

4. Exemptions. The following situations are exempt from
the provisions of this section.

A. Any person may distribute the following products without
a general-use pesticide dealer license:

(1) Household-use pesticide products with no more than
3% active ingredients;

2 (2) The following products, which have limited
3 percentage of active ingredients:

4 (a) Dichlorovos, DDVP, impregnated strips with
5 concentrations not more than 25% in resin strips
6 and pet collars; and

8 (3) The following products with unlimited percentages
9 of active ingredients:

10 (a) Pet supplies such as shampoos, tick and flea
11 collars and dusts;

12 (b) Disinfectants, germicides, bactericides and
13 virucides;

14 (c) Insect repellents;

15 (d) Indoor and outdoor animal repellents;

16 (e) Moth flakes, crystals, cakes and nuggets;

17 (f) Indoor aquarium supplies;

18 (g) Swimming pool supplies;

19 (h) Pediculocides and mange cure on man;

20 (i) Aerosol products; and

21 (j) General use paints, stains and wood
22 preservatives and sealants.

23 B. The board may promulgate rules to exempt the sale of
24 additional general-use pesticide products from the dealer
25 licensing provisions of this section.

26 §490-X. Posting of areas treated with pesticides

27 Any area treated with a pesticide by a pesticide applicator
28 must be posted by the applicator prior to treatment. Any area
29 treated with pesticides by aerial application methods must be
30 posted by the applicator in accordance with the provisions of
31 section 490-R, subsection 3. Any other area treated with
32 pesticides must be posted in accordance with rules adopted by the
33 board under this section.

34 The board shall adopt rules to implement this section by
35 January 1, 1992. Rules adopted by the board under this section
36 must establish reasonable timetables and standards for posting
37 any area treated with pesticides if the timetables and standards

2 ensure that a person entering a treated area is informed by the
posting that the area is subject to treatment with pesticides.

4 Any application of a pesticide product listed in section
6 490-W, subsection 4 is exempt from the posting requirements of
this section.

8 **§490-Y. Pesticide ground water protection plan**

10 In cooperation with the Department of Environmental
12 Protection, the Department of Conservation and the Department of
14 Human Service, the board shall prepare a pesticide ground water
16 protection plan. The plan must be consistent with section 401
18 and must provide for ongoing monitoring for pesticide residues in
ground water aquifers susceptible to pesticide contamination from
the proximate and heavy use of pesticides or the proximate use of
pesticides with high leaching potential.

20 The board shall submit the plan to the Governor, the joint
22 standing committee of the Legislature having jurisdiction over
energy and natural resource matters and the Executive Director of
the Legislative Council by January 1, 1992.

24 1. Ground Water Monitoring Fund. The Ground Water
26 Monitoring Fund, referred to in this section as the "fund," is
28 established within the board to carry out the purposes of this
30 section. The fund is a nonlapsing account and unexpended
balances carry forward into subsequent years. The commissioner
may credit funds received from any source to the fund if the
funds are used for the purpose established under this section.

32 2. Report. The board shall include a summary of receipts
34 and expenditures from the fund in its biennial report to the
Legislature under section 490-G.

36 **Sec. 15. Transition.** Notwithstanding any other provision of
38 law, the following provisions apply to the Department of
40 Agriculture, Food and Rural Resources and the transfer of
pesticide regulatory authority and programs under the Board of
Pesticides Control to the Department of Environmental Protection.

42 1. All accrued expenditures, assets, liabilities, balances
44 of appropriations, allocations, transfers, revenues or other
46 available funds in any account or subdivision of any account of
48 the Board of Pesticides Control under the Maine Revised Statutes,
Title 22, chapter 258-A must be transferred to the proper
accounts in the Department of Environmental Protection by the
State Controller upon the request of the State Budget Officer.

50 2. All agreements, leases, contracts or licenses issued
under Title 22, chapter 258-A prior to the effective date of this

2 Act continue to be valid under the terms of issuance until they
expire or are rescinded, amended or revoked.

4 3. All rules adopted under Title 22, chapter 258-A that do
not conflict with the provisions of this Act remain in effect
6 until rescinded or amended by the Board of Pesticides Control or
overturned by a court of law.

8
10 4. This Act has no effect on the terms of appointment of
members of the Board of Pesticides Control except that, on the
12 effective date of this Act, the member of the Board of Pesticides
Control appointed as a commercial applicator is removed, to be
14 replaced by the Governor with a trained ecologist under the
provisions of this Act.

16 5. Employees of the Board of Pesticides Control under Title
22, chapter 258-A are transferred to the Board of Pesticides
18 Control under Title 38, chapter 3, subchapter I-A and shall:

20 A. Retain their accrued fringe benefits, including vacation
and sick leave and health and life insurance benefits;

22
24 B. If members of collective bargaining units on the
effective date of this Act, remain as members in their
26 respective bargaining units and retain all rights,
privileges and benefits provided by their collective
28 bargaining agreements with respect to state service while
employed with the Board of Pesticides Control; and

30 C. Remain as members of the Maine State Retirement System.

32 6. The Commissioner of Environmental Protection and the
Commissioner of Agriculture, Food and Rural Resources shall
34 determine the best method of resolving any legal, fiscal,
personnel or operational conflict created as a result of this Act
36 and shall submit necessary statutory recommendations to correct
any conflict to the Second Regular Session of the 115th
38 Legislature.

40 **Sec. 16. Department of Transportation; pesticide research.** The
Commissioner of Transportation shall fund research conducted
42 under the Maine Revised Statutes, Title 38, section 480-L,
subsection 1, from funds allocated to the Highway Fund under
44 Title 23, section 1651.

46 **Sec. 17. Public utilities to research alternatives to right-of-way
pesticide use.** Public utilities organized under the Maine Revised
48 Statutes, Title 35-A shall conduct research on alternatives to
utility right-of-way pesticide use for vegetation control
50 including, but not limited to, research on the environmental and
economic costs and benefits of mechanical vegetation control and
52 substitution

planting. A decision by a utility to conduct research under this section is deemed to be prudent. The Public Utilities Commission shall review public utility expenditures under this section.

Sec. 18. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
10 AGRICULTURE, FOOD AND RURAL		
12 RESOURCES, DEPARTMENT OF		
Agricultural Pesticide Research Fund		
All Other	\$300,000	
Provides funds to establish the Agricultural Pesticide Research Fund.		
22 DEPARTMENT OF AGRICULTURE, FOOD		
AND RURAL RESOURCES		
TOTAL	<u>\$300,000</u>	
26 ENVIRONMENTAL PROTECTION,		
DEPARTMENT OF		
28 Ground Water Monitoring Fund		
All Other		\$75,000
Provides funds to establish the Ground Water Monitoring Fund.		
36 Board of Pesticides Control		
Positions	(4.5)	(4.5)
Personal Services	\$92,060	\$134,080
All Other	6,750	9,000
Capital Expenditures	7,500	
Total	<u>\$106,310</u>	<u>\$143,080</u>
Provides funds for a toxicologist, an assistant toxicologist, a programmer analyst, a data entry specialist, a part-time data entry specialist, general		

2	operating expenses and		
	computer equipment.		
4			
6	DEPARTMENT OF ENVIRONMENTAL		
	PROTECTION		
	TOTAL	<u>\$106,310</u>	<u>\$218,080</u>
8			
10	CONSERVATION, DEPARTMENT OF		
	Forest Pesticide Research Fund		
12			
14	All Other	\$300,000	
16	Provides funds to establish		
	the Forest Pesticide Research		
	Fund.		
18			
20	DEPARTMENT OF CONSERVATION		
	TOTAL	<u>\$300,000</u>	
22			
24	TOTAL APPROPRIATIONS	<u>\$706,310</u>	<u>\$218,080</u>
26	Sec. 19. Allocation. The following funds are allocated from		
	Other Special Revenue to carry out the purposes of this Act.		
28		1991-92	1993-94
30	AGRICULTURE, FOOD AND RURAL		
	RESOURCES, DEPARTMENT OF		
32	Agricultural Pesticide Research Fund		
34			
36	All Other	\$300,000	
38	Provides funds for		
	contractual services to the		
	University of Maine System or		
40	the Cooperative Extension		
	Service for research relating		
42	to the agricultural use of		
	pesticides.		
44			
46	DEPARTMENT OF AGRICULTURE, FOOD		
	AND RURAL RESOURCES		
	TOTAL	<u>\$300,000</u>	
48			
50	ENVIRONMENTAL PROTECTION,		
	DEPARTMENT OF		
52	Ground Water Monitoring Fund		

2 All Other \$75,000
 4 Provides funds for
 6 contractual services to
 8 monitor for pesticide
 residues in ground water
 aquifers.

10 DEPARTMENT OF ENVIRONMENTAL
 PROTECTION
 12 TOTAL \$75,000

14 CONSERVATION, DEPARTMENT OF
 16 Forest Pesticide Research Fund

18 All Other \$300,000
 20 Provides funds for
 22 contractual services for
 24 forest pesticide research
 needs in conjunction with the
 Forest Resource Assessment
 Program.

26 DEPARTMENT OF CONSERVATION
 28 TOTAL \$300,000

30 TOTAL ALLOCATIONS \$600,000 \$75,000
 32

34 FISCAL NOTE

	1991-92	1992-93
36		
38 Appropriations/Allocations:		
General Fund	\$706,310	\$218,080
40 Other Special Revenue	600,000	75,000
42 Revenues:		
Other Special Revenue funds	\$600,000	\$75,000
44		

46 This bill transfers the Board of Pesticide Control from the
 Department of Agriculture, Food and Rural Resources to the
 Department of Environmental Protection. This transfer will
 48 require additional appropriations, deappropriations, allocations
 and deallocations. The exact amounts can not be determined at
 50 this time.

2 Also, this bill appropriates funds from the General Fund to
the Department of Environmental Protection and the Department of
4 Conservation to establish 3 Other Special Revenue Funds and
provided funding for 4 1/2 positions. The General Fund
6 appropriations used to establish the new dedicated funds result
in an increase in Other Special Revenue. These Other Special
8 Revenue funds are also allocated in this bill for contractual
research services.

10
12 **STATEMENT OF FACT**

14 This bill is the minority report of the Commission to Study
the Use of Herbicides, established by Resolves 1989, chapter 98.
16 The bill moves the Board of Pesticides Control from the
Department of Agriculture, Food and Rural Resources to the
18 Department of Environmental Protection and would prohibit the
sale of produce treated with pesticides banned in Maine; increase
20 penalties for pesticide violations; require the Department of
Transportation and utilities to pay municipalities their avoided
costs when entering into no-spray agreements; require research
22 into agricultural, forestry and right-of-way alternatives to
pesticides use; require ground water protection planning and
24 establish a pesticide ground water monitoring fund; amend the
State's pesticide regulatory policy; change the membership of the
26 Board of Pesticides Control and establish procedures for
suspending and removing members who violate pesticide
28 regulations; require pesticide applicators to report to the board
and require the board to report biennially to the Legislature;
30 require training and certification of pesticide users; and repeal
the exemption for pesticide dealer reporting of pesticides sold
32 in small containers.