

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

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Legislative Document

No. 1547

H.P. 1089

House of Representatives, December 21, 2009

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

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 17, 2009. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative O'BRIEN of Lincolnville.
Cosponsored by Representative BERRY of Bowdoinham and
Representatives: KENT of Woolwich, MAZUREK of Rockland, McCABE of Skowhegan,
PIEH of Bremen, PIOTTI of Unity, SAVIELLO of Wilton, SMITH of Monmouth.

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

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

5 **Whereas,** revisions are needed to facilitate implementation of the established
6 notification and registry provisions in the laws governing pesticides applications; and

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

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

12 **Sec. 1. 22 MRSA §1471-Y.** as enacted by PL 2009, c. 378, §1, is amended to
13 read:

14 **§1471-Y. Notification of outdoor pesticides application using aircraft or air-carrier**
15 **equipment**

16 A land manager may not apply pesticides using aircraft or air-carrier equipment
17 unless the notification requirements of this section are met.

18 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
19 following terms have the following meanings.

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

25 B. "Land manager" means the owner of the land, a person leasing the land, or a
26 person, firm, company or other legal entity designated by the owner to manage the
27 land, vegetation on the land or pests occurring on the land.

28 C. "Neighbor" means an owner, lessee or occupant of a property that abuts or lies
29 within 1,320 feet of an the intended spray area.

30 D. "Sensitive area likely to be occupied" means an area where humans are likely to
31 be present, including:

32 (1) Residential buildings, together with any associated maintained areas likely to
33 be occupied by humans, such as lawns, gardens, recreational areas and livestock
34 management and housing areas;

35 (2) School buildings, together with any associated maintained areas likely to be
36 occupied by humans, such as playgrounds and athletic fields and courts;

1 (3) Commercial, institutional or other structures likely to be occupied by
2 humans, together with any associated maintained areas such as lawns, gardens,
3 parking and recreational areas; and

4 (4) Maintained recreational areas, including campgrounds, picnic areas, marked
5 roadside rest areas, marked hiking trails, park and recreation facilities, athletic
6 fields and other areas for organized sports or recreation, but not including trails
7 located on privately owned lands that are used by permission of the landowner.

8 **2. Notification.** A Except as provided in section 1471-AA, a land manager
9 intending to conduct application of pesticides using aircraft or air-carrier equipment shall
10 provide written notification to residents and managers of buildings on abutting property at
11 least 90 days prior to the first date of pesticides application make a good faith effort to
12 notify an owner, lessee or manager of a sensitive area likely to be occupied that abuts and
13 lies within 1,320 feet of the intended spray area on or before March 1st of the first year in
14 which a pesticide application occurs and every 3rd year thereafter. The notification must
15 be provided in accordance with subsection 5 and include:

16 A. A general description of the method of application that is likely to occur;

17 B. ~~The pesticides application schedule and circumstances under which the~~
18 ~~application is likely to take place~~ An approximate schedule of when pesticide
19 applications generally occur;

20 C. ~~The commercial and scientific names~~ types of pesticides likely to be applied; and

21 D. Reference to the registry of citizens developed and maintained by the board under
22 section 1471-Z and a description of how to be placed on the registry.

23 Notification in compliance with this subsection ~~fulfills~~ fulfills the notification requirement
24 for 3 years ~~unless the information provided under paragraph A, B or C changes.~~

25 **3. Obligations to provide information to neighbors on registry.** A Except as
26 provided in section 1471-AA, a land manager intending to conduct an outdoor application
27 of pesticides using aircraft or air-carrier equipment shall access the registry of citizens
28 under section 1471-Z to determine any neighbors on the registry of citizens and shall
29 provide those neighbors with notification in accordance with subsection 5 and at least 24
30 hours but not more than 7 days in advance of the application of. Notification must be
31 provided no later than the day before and no earlier than 7 days before the day of the
32 application and must include:

33 A. The date and approximate time of application;

34 B. The type of equipment to be used and the manner in which the pesticides will be
35 applied;

36 C. ~~The commercial and scientific~~ brand names and the United States Environmental
37 Protection Agency's registration numbers for the pesticides to be used ~~and, upon~~
38 ~~request, the material safety data sheets for the pesticides or copies of pesticides~~
39 ~~labels; and~~

40 D. Contact information for the land manager.

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

5 **4. Records maintained.** A land manager shall maintain current records of
6 communications with neighbors regarding an outdoor application of pesticides using
7 aircraft or air-carrier equipment and the dates and means by which the notification
8 required under subsection 2 was provided. Such records must be maintained for 3 years
9 and must be available for inspection by the board or its staff at reasonable times for the
10 purposes of investigating a complaint. The board shall supply forms for recording this
11 information and the land manager shall use these forms. A land manager shall maintain a
12 list of people receiving notification under subsection 2 or information under subsection 3
13 who ask not to be contacted in the future. A land manager may refrain from sending
14 future notifications to these individuals.

15 **5. Means of notification.** A land manager conducting or contracting for a pesticides
16 application using aircraft or air-carrier equipment shall make a good faith effort to convey
17 the information required in subsections 2 and 3. Acceptable means of notification
18 include:

19 A. Personal delivery of notification forms;

20 B. Mailing notification forms through the United States Postal Service; or

21 C. Electronic mailing of notification forms.

22 Telephone calls, either personal or automated, are an acceptable means of notification
23 under subsection 3. To the extent possible, the land manager shall use the preferred
24 means of communication identified by registrants under section 1471-Z, subsection 1,
25 paragraph F.

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

28 **§1471-Z. Registry of citizens requesting additional information**

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

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

39 A. The person's full name;

40 B. The person's telephone number;

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

7 D. The person's mailing address at which the person prefers to receive notification;
8 and

9 E. The person's e-mail address, if available, regularly used and acceptable for
10 notification purposes; and

11 F. The person's preferred means of communication.

12 Any resident, owner or lessee of property in the State is entitled to be placed on the
13 registry of citizens. A fee may not be charged to register. Persons remain on the registry
14 until they notify the board in writing that they want to be removed from the registry or
15 until the board staff determines that the contact is no longer valid.

16 **2. Registry updates.** The board shall annually update the registry and no later than
17 April 1st of each year distribute or otherwise make available to land managers an updated
18 registry.

19 A person requesting that that person's property be placed on the registry must submit the
20 information required in subsection 1 no later than March 15th of a given year to receive
21 notifications under section 1471-Y, subsection 3 in that year.

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

23 **§1471-AA. Waiver from notification requirements**

24 Upon receipt of a petition from the Commissioner of Conservation, the
25 Commissioner of Agriculture, Food and Rural Resources or the Commissioner of Health
26 and Human Services, the board may waive the notification requirements under section
27 1471-Y for pesticides applications when the board determines that severe pest outbreaks
28 or weather conditions conducive to severe pest outbreaks:

29 **1. Public health emergency.** Present a public health emergency; or

30 **2. Threat.** Threaten significant natural resources or economic loss.

31 The board may waive the notification requirements under this section only when
32 immediate, wide-scale aerial applications are necessary.

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

35 **SUMMARY**

36 This bill:

- 1 1. Excludes backpack sprayers from the definition of "air-carrier equipment";
- 2 2. Adds a definition for "sensitive area likely to be occupied" and requires land
3 managers to make a good faith effort to inform owners, lessees and managers of these
4 areas of intended pesticides applications when the sensitive area abuts and lies within
5 1,320 feet of the intended spray area;
- 6 3. Requires that notifications be sent by March 15th rather than 90 days prior to the
7 first application;
- 8 4. Clarifies that an approximate schedule of when applications are likely to occur
9 suffices for notification and removes the obligation to update the notification information
10 more than once every 3 years;
- 11 5. Allows the information sent to participants in the pesticide information registry to
12 be provided at any time the day before an application rather than a minimum of 24 hours
13 before an application;
- 14 6. Specifies that brand names rather than commercial and scientific names of
15 pesticides be provided to registry participants;
- 16 7. Specifies that a registrant's request for material safety data sheets or a pesticide
17 label does not require a land manager to postpone an application;
- 18 8. Directs a land manager to use the registrant's preferred means of communication
19 when providing required information;
- 20 9. Revises the information required to be provided by registrants with respect to the
21 locations of their properties;
- 22 10. Provides that the registry contain a registrant's preferred means of
23 communication;
- 24 11. Establishes a deadline of March 15th for registrants who want to receive
25 information during the upcoming spray season and a deadline of April 1st for the board to
26 make the updated registry available to land managers; and
- 27 12. Authorizes waivers of notification requirements when public health or natural
28 resources are threatened.