

**TESTIMONY OF THE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BEFORE THE JOINT STANDING COMMITTEE ON AGRICULTURE,
CONSERVATION AND FORESTRY
IN SUPPORT OF L.D.s 1567, 1568 and 1569**

**"Resolves, Regarding Legislative Review of Portions of Chapter 22, 20 and 51,
Major Substantive Rules of the Department of Agriculture, Conservation, and
Forestry, Board of Pesticides Control"**

DATE OF HEARING: January 14, 2014

Senator Vitelli, Representative Dill, members of the Joint Standing Committee on Agriculture, Conservation and Forestry, I am Henry Jennings, Director of the Board of Pesticides Control speaking on behalf of the Board and the Department in support of LDs 1567, 1568 and 1569, Resolves, Regarding Legislative Review of Portions of Chapter 22, 20 and 51, Major Substantive Rules of the Department of Agriculture, Conservation, and Forestry, Board of Pesticides Control.

The three major-substantive rule amendments before you today are revisions that the Board provisionally adopted in 2013 in recognition that the growing threat of mosquito-borne diseases in Maine may eventually necessitate public-health mosquito control programs in some portion of the state—similar to those conducted in many other states in recent years. The substantive change of this group of three rule amendments is contained in Section 6 of Chapter 20. In 2007, the Board added Section 6, which requires landowner authorization for applications, in response to an ongoing problem with lawn care companies treating properties without the explicit consent of the landowner. Maine may be the only state in the country that has a provision exactly like Section 6. And in hindsight, the Board realizes they had not foreseen a potential unintended consequence resulting from the 2007 amendment: specifically, that it essentially prohibits public-health vector control programs.

The proposed amendments to Section 6 identify three potential circumstances in which a governmental agency—most likely a municipality at this point—may undertake a public-health mosquito control program and for which the landowner consent system would be modified—to be similar to what neighboring states have determined is necessary:

1. When the Maine Center for Disease Control (CDC) has determined that a vector and disease are present in a defined area of the state, a governmental agency may obtain consent by sending a notice to each property owner at least three days in advance of spraying and then allowing property owners to opt out of a ground-spraying program.

2. When the Maine CDC recommends control of disease vectors due to a critical threat level in a defined area of the state, a governmental agency may obtain consent for ground spraying by providing advance public notice to affected residents—using multiple forms of publicity—and making a reasonable effort to honor any “opt out” requests.
3. When the Maine CDC recommends control of disease vectors due to a critical threat level in a defined area of the state and a governmental entity determines that an aerial vector control program is in the public interest and necessary to save lives, the governmental entity would need to provide advance public notice to affected residents—using multiple forms of publicity—and take affirmative steps to avoid application to exclusion areas designated by the Board (see attachment).

The Board is keenly aware that the prospect of wide-area vector control programs is both foreign to Maine citizens and raises fears and concerns relating to potential health and environmental impacts. These concerns are real and vitally important to the Board and its mission. The Board does not take them lightly. And that is why the Board and its staff have invested considerable resources studying and evaluating those concerns. That research has led the Board to the same conclusions that federal and state public health officials have reached: carefully planned and executed adult mosquito control programs present significant public health benefits and minimal risks to humans and the environment. This is especially true when the latest protocols are used and programs are conducted only when the disease risks reach a critical threshold.

In addition, there is considerable ongoing research being conducted relative to determining when the need for control is urgent and there is research underway on improving the risk/benefit ratios of public health mosquito control programs. The State should and will closely monitor that research with an eye toward continuously honing mosquito control strategies to further reduce risks.

Everyone agrees that any decision to control adult mosquitoes is one that must be weighed carefully. But the bottom line is this: without these amendments, public health wide-area mosquito control programs of any type will not be possible.

That concludes my comments. I will be happy to answer any questions you may have – now or at the work session.



PAUL R. LePAGE
GOVERNOR

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WALTER E. WHITCOMB
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HENRY S. JENNINGS
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MEMORANDUM

Date: September 6, 2013
To: Board Members
From: Henry Jennings
Subject: Policy on Exclusion Areas Relative to Chapter 20, Section 6 Rulemaking Amendments

Background

The Board recently completed provisional adoption of a series of rulemaking amendments covering public-health-related, mosquito-control efforts that may be conducted by governmental agencies. During the course of that effort, the Board determined that it was preferable to identify “exclusion areas”—as they relate to potential aerial applications to control adult mosquitoes—via Board policy, as opposed to codifying them in rule. Using a Board policy allows the Board more flexibility to adjust to concerns as they arise. Adjusting requirements in rule takes several months to accomplish and costs more than a thousand dollars (not including staff time).

The staff reviewed the 2012 emergency rule, Massachusetts’s policy on exclusion areas, and comments received during the rulemaking process as a basis for proposing a Board policy. During the 2012 emergency rulemaking effort for Chapter 20, the Board identified certified organic farms and livestock operations as areas which should be excluded from aerial pesticide applications conducted for public health purposes. The 2012 Operational Response Plan to Reduce the Risk of Mosquito-borne Disease in Massachusetts specifies four types of “no-spray zones”:

1. Certified organic farms
2. Priority habitats for spray-sensitive, state-listed rare species
3. Surface-water-supply resource areas
4. Commercial fish hatcheries/aquaculture

In Maine, we have also heard concerns voiced about conventional agriculture, beehives, and lobsters. In addition, direct and intentional applications over surface water are prohibited under state law and applications which may result in aquatic residues must be covered by a waste discharge license. Information from Massachusetts indicates that state-sponsored, public-health-related, mosquito-control programs do not present significant threats to beehives or agricultural sites. Moreover, since excluding even a point from an aerial spray project results in a minimum of a 23-acre exclusion (due to the commonly used 500-foot buffers), buffering beehives would present practical challenges and result in a significant reduction in mosquito-control efficacy. Marine waters would also be appropriately buffered. This factor, combined with the extremely low application rates and short persistence of the products commonly used in state-sponsored programs, suggests that any potential risks to lobsters would be extremely low.

Board Policy

Based on the considerations described above, the Board adopted the following policy on September 6, 2013:

Government entities conducting aerial, public-health-related, vector-control programs should exclude the five areas listed below from such control programs, as long as usable information has been provided to the governmental entity with sufficient lead time (a minimum of two weeks recommended) to allow for digital mapping of such areas.

When exclusion areas are located within priority vector-control areas, as determined by the Maine Center for Disease Control and Prevention (Maine CDC) and/or the Department, and the Maine CDC and/or the Department determine(s) that exclusion of certain areas would unreasonably reduce the efficacy of the control program, thereby creating an increased risk to human life, the Board recognizes that the governmental entity may elect not to exclude such areas from the vector-control program.

1. Certified organic farms, and farms for which an application for organic certification is pending.
Digital maps of the crop or livestock areas must be provided to the Department in advance of the control program, in a file type that is compatible with Department software.
2. Other farmland for which the farm operator demonstrates that the potential for pesticide residues presents significant economic risks.
Digital maps of the crop or livestock areas must be provided to the Department in advance of the control program, in a file type that is compatible with Department software
3. Great ponds, rivers, marine waters, and public water supplies derived from surface waters, as determined by the Department.
4. Documented fish hatcheries and aquaculture sites.
5. Endangered species habitat, as described by county bulletins published by the US Environmental Protection Agency and for which the proposed application presents significant threats.