



# Wild Blueberry Commission OF

MAINE

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## ACTIVITIES, ISSUES, AND NEWS SUMMER 2009

### SUMMARY OF RULES ADOPTED FOR AGRICULTURAL POWERED APPLICATION OF CROP PROTECTANTS AT THE LEGISLATURE

In the spring the Agriculture, Conservation, and Forestry Committee of the 124<sup>th</sup> Legislature considered major substantive rule changes submitted by the Board of Pesticides Control (BPC). The changes revised three chapters of the Maine Pesticide Regulations that focus on all outdoor powered agricultural pesticide applications and revised standards for aerial application methods.

Chapter 10 *Definitions and Terms* as related to “sensitive areas;” and Chapter 22 known as the *Drift Rule*, that sets *Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition* and Chapter 28 *Notification Provisions for Outdoor Pesticide Applications* which involves how a grower will notify neighbors and/or the public about pesticide applications were provisionally adopted by the Board and subject to Legislative Committee review before passage into law by the Legislature.

Chapter 10 *Definitions and Terms* was passed as an emergency bill and went into effect when it was approved May 14<sup>th</sup>. Changes will delete the reference to “within a 100 ft.” of any of the currently listed sensitive areas and the sensitive area groupings will be subdivided into two areas, 1) those likely to be occupied by people, and 2) all other sensitive areas. An amendment was adopted to “Remove explicit expansion of the definitions” of sensitive areas likely to be occupied by people so that the introductory sentence reads “Sensitive Area Likely to Be Occupied” is an area where humans are likely to be present including the following” – 4 areas – Primary areas and any associated areas around residential buildings, school buildings, commercial buildings, and maintained recreational areas. Go to <http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280031067> and click on “Bill Text” for more. Testimony provided to the Legislature and to the BPC pointed out that the new definitions are ambiguous making them difficult to comply with and enforce. The BPC and the Legislature chose not to address these concerns in their deliberations.

Chapter 22 known as the *Drift Rule*, that sets *Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition* has been updated to include a standards section for all aerial spray applications and changes have been made to the general standards for off-target pesticide discharge and residue. At the BPC’s June 12<sup>th</sup> meeting the Board took a vote and decided to enforce the rule as of January 1, 2010. The final resolve for Chapter 22 was signed on June 9<sup>th</sup> by Governor Baldacci. Go to <http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280031079> and click on “Bill Text” for more.

Growers/applicators using aerial applications will be required to have written records that: positively identifies the target site; includes a pre-spray checklist; and a site map and plan that depict sensitive areas within 500 ft. and sensitive areas likely to be occupied within 1,000 ft. of the target area. Additional recordkeeping will be required. Though significant changes in Chapter 22-LD 494 were not made to how applicators using all other types of powered equipment for agriculture document their work, for all types of applications annual updates to identify and record sensitive areas will be required.

In the BPC adopted Chapter 22 rule change, applicators using all types of powered equipment must meet the new “standard of harm” for off target deposition and “prima facie evidence” of violation of drift (see below). Additionally, a redefined “Standard of Harm” section is in place that states a violation occurs if there is –1) Documented illness to humans, 2) Illegal crop (off target) residues, 3) Residues on certified organic crops that cause the crop to no longer qualify to be sold as organic, and 4) Residues on persons or vehicles using public roads.

Some specific changes to the proposed rule include:

1. In the aerial applications standards section predetermined buffer zones of 200 feet were eliminated and instead Best Management Practice of the applicator is in place where the applicator determines the site specific buffer in order to minimize drift.
2. Prima facie evidence of violation definition is modified in a way that prima facie evidence of residues in sensitive areas likely to occupy indicates that the application may not have been in accordance with the general standard to minimize drift. The prima facie evidence is now “drift of pesticides from a nearby application that is 1% or greater than the residue in the target area.”
3. According to BPC discussions June 12<sup>th</sup>, the Board will review the site application checklist and staff will take samples to determine if a violation has occurred.
4. The Standard of Harm section that refers to documented human illness must have evidence from two physicians that the negative health effect is from exposure to the applied pesticide and be backed by data indicating a epidemiological documentation of human sensitivity to the pesticide applied.

Chapter 28 – Notification Provisions for Outdoor Pesticide Applications. The BPC provisional rule that was submitted to the Agriculture, Conservation and Forestry Committee for review was not adopted which means that Chapter 28 as written is currently in effect. However, LD 1293 “Pesticide Applications Using Aerial Spray or Air Carrier Equipment” was adopted and signed into law on June 12<sup>th</sup>, but will not go into effect for 90 days. The BPC needs to determine if they will combine the current rule and LD 1293 to propose a new rule that creates a citizen opt in registry for all outside powered applications for submission to Legislature in 2010 or to have two systems of notification for outdoor powered agriculture notification. In the meantime, BPC implementation of Public Law, Chapter 378 (LD 1293) while the current Chapter 28 is in effect presents a number of challenges and BPC is in process on how the law will be applied in the field. As of this writing the next BPC meeting is in Fairfield on Friday, August 28<sup>th</sup>.

For information about LD 1293 See

<http://janus.state.me.us/legis/LawMakerWeb/summary.asp?ID=280032375> and click on “Bill Text.”

LD 1293 supplements Chapter 28 referring specifically to aerial and air carrier applications. The definition of air-carrier equipment “means any application equipment that uses a mechanically generated airstream to propel spray droplets. ‘Air Carrier equipment’ does not include air-assisted application equipment in which the airstream is directed downward into the target canopy.” More information is at the link above but other requirements of this bill include:

1. Makes notification mandatory for abutters (residents and managers of buildings on abutting property) to be notified about an aircraft or air carrier pesticide application 90 days before the application at least once every 3 years unless method of application, chemicals, or application schedule changes.
2. This is a written notification but can be transmitted in person by email, mail, or by telephone. Though telephone is not written notification, records need to be kept on all methods of delivery on notifications, those not wanting notifications, and those growers tried to notify but did not get in touch with directly.
3. Requests for notifications are to be made available to abutters and neighbors located 1,320 feet from the application – use of the word “neighbors” here includes those who reside within 1,320 feet of an area as defined in the law.
4. The bill also includes the development of a citizen registry that lists people who want to know about “outdoor applications of pesticides using aircraft or air-carrier equipment.”

Based on BPC staff and Board discussions at the July 10<sup>th</sup> meeting, notification and details of implementation is likely to change prior to next summer.

### **WBANA LAUNCHES NEW PREMIUM BRAND IDENTITY**

The Wild Blueberry Association of North America (WBANA) unveiled a new marketing campaign at the Institute of Food Technologists Food Expo in Anaheim, California in June. The trade ingredient campaign includes an updated logo and tagline “Antioxidant Rich Wild Blueberries: Premium by Nature,” and emphasizes the distinct advantages of Wild Blueberries.

Maine and eastern Canada’s natural growing conditions and unique geography make this “The Land of the Wild Blueberry.” Our smaller berries deliver more berries per pound, perform better in recipes and products, and provide a unique burst of sweet and tangy flavor. Nutritional value and content of the Wild Blueberries is kept intact by the Individually Quick Frozen (IQF) process. Nature endowed Wild Blueberries with more antioxidant capacity per serving than most other fruit ingredients and they are known worldwide as an antioxidant rich health icon. WBANA is updating promotional materials to help sellers of Wild Blueberries further establish the fruit as a premium food ingredient.

### **COMMISSION RESPONDS TO TRANSPORTATION PERMITTING ISSUES**

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The Wild Blueberry Commission revamped the Maine Wild Blueberry Transport Permit last year to address the need of law enforcement to effectively enforce laws concerning field theft of Wild

Blueberries in 2008. Growers and law enforcement officials requested the Commission to review and change the permits in order to cut down on the number of permits issued and required for 2009. There are several requirements that are still in place to reduce field theft. Please review Title 36, Chapter 701 Blueberry Tax at: <http://www.mainelegislature.org/legis/Statutes/36/title36ch701sec0.html>

Provisions include:

1. Harvesters must have written permission to harvest from the landowner.
2. Growers of Wild Blueberries must issue transportation permits to first haulers.
3. Shippers and processors must have certification from the State Tax Assessor.
4. Shippers and processors must inspect the transportation permit of any driver who delivers berries to the station and keep permanent records for each lot and load for 6 years.

The 2008 crop year system reduced theft in the field but required that each driver and each field have a permit for transport of more than 25 pounds of berries. This 2009 crop year, the permits have additional fill-in spaces for different fields and different drivers. This means that a driver who loads berries from three different fields will require only one permit. Likewise it means that more than one driver can haul Wild Blueberries from one larger field. Requests for permits are being taken by calling the Wild Blueberry Commission office at 207-581-1475. Permits are available and requests have been mailed out as of the week after the 4<sup>th</sup> of July.

### **WBANA-USA OFFSHORE MARKETING PROGRAM**

The first half of 2009 was busy with WBANA – U.S. overseas travel and promotion of Wild Blueberries. In the summer of 2008, the WBANA-U.S. Board approved participation in an Offshore Promotion Market Access Program in conjunction with Food Export-U.S. Northeast (FEX); a state regional trade group who's Board is made up of Commissioners of Agriculture from the 10 northeastern states. FEX administers USDA offshore promotion cost share funds for export of U.S. produced food products.

The Wild Blueberry Association is focused on Middle East and Asian markets in the United Arab Emirates and China. WBANA received market research reports from in-country market representatives who work with FEX and the USDA-Agriculture Trade Office (ATO) in each of these prospective countries. Each of the market research reports provided information about the availability and use of frozen Wild Blueberries and representatives recommended participation in trade shows to introduce and increase awareness about Wild Blueberries forms and uses.

WBANA-U.S. shared a trade show booth with Food Export at Gulfood 2009 in Dubai, United Arab Emirates in February and had a booth at the SIAL China Trade Show in Shanghai, China in May. The Dubai trade show hosts about 40,000 attendees and is the largest trade show in the Mideast. For WBANA this trade show was introductory in nature because most people there know little about Individually Quick Frozen (IQF) Wild Blueberries. Because there is a great influence of ex-patriots in Dubai there is great demand for western style foods. Dubai is an Emirate with population of 2 million people and in fact, there are more foreigners in Dubai than the native people of this UAE city. The Gulfood Trade Show in Dubai is considered to be the gateway to the Middle East because most of the products that are imported are so-called re-exports – products that go to Dubai and are transferred with little to no change at all and are then sent to other markets. It is estimated that re-exports account for 50% to 70% of all Dubai imports.

In May WBANA-U.S. participated in SIAL China Shanghai Trade Show and buyers missions that were sponsored by Food Export- USA Northeast and the Shanghai based USDA-Agriculture Trade Office (ATO). Along with WBANA representatives, Dr. Vivian Wu, Professor from the University of Maine, Orono - Food Science Department attended the trade show to provide attendees with additional information about the value and health benefits of Wild Blueberries. Dr. Wu graciously translated questions in Chinese for the English speakers attending on behalf of WBANA.

SIAL China is one of the bigger trade shows in the People's Republic of China with over 28,000 visitors attending. The USA Pavilion had a lot of traffic – Some said WBANA-U.S. was the busiest booth in the Pavilion, and we introduced Maine Wild Blueberries to the Chinese trade market distributing over 2,000 samples. Attendees' response to our product was very positive and WBANA drew a lot of interest and inquiries. Because of the success of this show WBANA-U.S. will pursue additional opportunities in China by working with Food Export U.S. Northeast on marketing and promotional activities in the next 4-5 months of 2009. WBANA-U.S. has also submitted a proposal for 2010 activities in foreign markets. Market research completed for Dubai, and China confirmed the potential for developing market access for Wild Blueberries in this part of the world. The success at each of the trade shows demonstrates that there are good opportunities in these foreign markets though it will take a focused 4 to 5 year effort to realize the full potential. WBANA and sellers in the Wild Blueberry industry are committed to pursuing these opportunities.

## **124<sup>TH</sup> LEGISLATURE FLOODED WITH WATER REGULATION BILLS**

The 124<sup>th</sup> Maine Legislature was flooded with over a dozen bills related to ground water regulation in the most recent session. This high level of activity was driven by groups and individuals who are against the bottled water business in Maine. Water policy has been an active issue in recent Legislative sessions resulting in significant changes to surface water and bottled water permitting and regulation by the Maine Department of Environmental Protection (DEP) and the Department of Health and Human Services (DHHS). Public and private entities involved in these recent changes believe that Maine is adequately regulating large water bottlers, however, based on the number of bills submitted one can assume that the public perceives there is a big problem and/or groups and individuals are working to increase concern to affect policy change.

Multiple bills were introduced that would have transferred the ownership of ground water from the landowner to the State of Maine. Currently Maine is an "absolute dominion" state which means the landowner owns the water under their lands. Proponents of these bills portray the issue as neighboring water users and rivers and streams are at risk because a landowner could intercept and use all the water. However, this is not true as Maine has used its state police powers to pass laws and regulations. For example, a landowner cannot use groundwater under your property to such an extent that it dries up your neighbor's domestic well. Additionally, the recently passed DEP flow rules protect the input to rivers and streams by groundwater. It would be a violation of the flow rules to use a large well that dries up these base flows. When passed, these rules were acknowledged by DEP staff and advocacy groups as being highly protective of water quality. So while Maine landowners still own the water under their lands, they cannot adversely affect these other water uses around them.

The Wild Blueberry Commission and Maine Farm Bureau together with groups such as the Water Utilities and campground owners worked with the Legislature to defeat these bills and maintain the groundwater ownership interests of landowners. Maine has very high quality groundwater thanks in large part to the stewardship of Maine's farm and forest landowners. Water quality and water ownership interests should be protected.

A legislator from Portland proposed to tax bottled water and when questioned why the tax did not include other large water users such as agriculture, his response was that it might make sense in the future. Other bills proposed to give municipalities more authority to regulate groundwater. Though they already have that authority most small towns do not have the technical expertise of groundwater hydrologists that is necessary to make the best decisions. These and other bills were defeated by the Legislature; however, similar bills are likely to be introduced in the future.