

**Readopt Pes 501, effective 5-10-13 (Document #10333), to read as follows:**

CHAPTER Pes 500 RESTRICTIONS ON THE APPLICATION OF PESTICIDES BY COMMERCIAL APPLICATORS AND PERMITTEES

Statutory Authority: RSA 430:31

PART Pes 501 BASIC RESTRICTIONS

Pes 501.01 Registration of Pesticides. All pesticides or formulations thereof, used or applied in New Hampshire, shall be registered with the New Hampshire department of agriculture, markets and food as provided for in RSA 430:36.

PART Pes 502 MANNER OF APPLICATION

**Readopt Pes 502.01, effective 2-28-17 (Document #12122), to read as follows:**

Pes 502.01 Use in Accordance with Labeling Instructions. Registered pesticides shall be used in strict accordance with manufacturer's current labeling instructions, except in the following instances:

(a) When the application is made in accordance with procedures or rates prescribed by a legally constituted authority where:

(1) The rates or procedures are such that they will serve to reduce the environmental risks associated with a pesticide application without compromising the effectiveness of the pesticide, or improve the efficacy of an application, without imposing any additional risks either to persons or to the environment;

(2) Said procedures or rates are in writing and are in the possession of the applicator at the time of the application; and

(3) The legally constituted authority agrees to make available to the division, on request, any documentation or other evidence that supports their prescribed application procedures or rates;

(b) Experimental work as specified in RSA 430:46, I;

(c) Use of pesticides by private applicators and on agricultural commodities by commercial applicators duly registered under Category A, as defined in Pes 302.01(b), in the following manner:

(1) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;

(2) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or the site specified on the labeling, except when the label states that the pesticide shall be used only against pests specified on the label;

(3) Employing any method of application not prohibited by the label; or

(4) Mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling;

(d) For the control of invasive species as listed within Agr 3802.01 NH Prohibited Invasive Species, New Hampshire restricted invasive species as described within RSA 430:53 IV, Common Reed (*Phragmites australis*, formerly *P. communis*), or Purple Loosestrife (*Lythrum salicaria*), in the following manner:

- (1) Applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;
- (2) Applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or the site specified on the labeling, except when the label states that the pesticide shall be used only against pests specified on the label; or
- (3) Employing any method of application not prohibited by the label; or

(e) Use of pesticides in aquatic environments by commercial applicators duly registered under Category D, as defined in Pes 302.01(e), as follows:

- (1) The pesticides are being applied at any dosage, concentration, or frequency less than that specified on the labeling;
- (2) The applicant has proposed below-the-label-rate use in a special permit application; and
- (3) The said below-label-rate use has been approved under the special permit, pursuant to Pes 600 – Aquatic Application of Pesticides.

**Readopt Pes 502.02, effective 5-10-13 (Document #10333), to read as follows:**

Pes 502.02 Copy of Label at Site. A complete copy of pesticide labeling, as it appears on the original registered product, shall accompany all service containers and pesticide application equipment in the vehicle transporting them.

**Readopt with amendment Pes 502.03, effective 5-10-13 (Document #10333), cited and to read as follows:**

Pes 502.03 ~~Applications in Protected Shoreland or Wetlands for Control of Forest Insects, Mosquitoes, or Black Flies.~~ **Applications in Waterfront Buffer, Buffer of Surface Waters Not Included in RSA 483-B, or Wetlands for Control of Forest Insects, Mosquitoes, Black Flies, or Other Biting Arthropods.**

(a) ~~“Protected shoreland” means “protected shoreland” as defined in RSA 483-B:4, XV, namely “for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, except private garden water features and ponds of less than 10 acres, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.”~~

(a) **“Buffer of surface waters not included in RSA 483-B” means the pesticide setback buffer for surface waters not included under RSA-483-B:4 XVI as established under Pes 1001.01(a) and (b).**

(b) **“Waterfront buffer” means “waterfront buffer” as defined in RSA 483-B:9 V(a)(1) namely “those protected shorelands within 50 feet of the reference line.”**

~~(b)~~(c) “Wetland” means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions, including but not limited to swamps, marshes, bogs, and similar areas.

~~(e)~~(d) No person shall make a pesticide application in a ~~protected shoreland~~ **waterfront buffer** or to wetland for control of forest insects, mosquitoes, ~~or~~ black flies or **other biting arthropods** without being in possession of a special permit issued by the division.

~~(d)~~(e) ~~Application for approval shall be made in accordance with the provisions of Pes 502.04(b) and (e).~~ **An applicant for a special permit to conduct pesticide treatments in a waterfront buffer, buffer of surface waters not included in RSA 483-B, or wetlands for control of forest insects, mosquitoes, black flies, or other biting arthropods shall supply on Form SP-WB Application for a Special Permit to Conduct Waterfront Buffer Pesticide Treatment the following:**

**(1) The applicant’s:**

- a. Name;**
- b. Business Address;**
- c. Telephone number;**
- d. Fax number;**
- e. Cell phone number, if the applicant wishes to provide it; and**
- f. Electronic mail address, if the applicant wishes to provide it; and**
- g. Pesticide license number, if the applicant is the licensed pesticide applicator;**

**(2) If the licensed pesticide applicator is not the applicant, the licensed pesticide applicator’s:**

- a. Name;**
- b. Address;**
- c. Telephone number;**
- e. Fax number;**
- f. Cell phone number, if the licensed pesticide applicator wishes to provide it; and**
- g. Pesticide applicator license number;**

**(3) If the client on whose behalf the treatment is made is not the individual identified per (1) or (2), the client’s:**

- a. Name;
- b. Address;
- c. Telephone number;
- d. Fax number; and
- e. Electronic mail address, if the client wishes to provide it;

**(4) Whether any previous special permits were issued to conduct pesticide treatments at this site;**

**(5) If applicable, the permit number and year of the most recent permit issued to conduct pesticide treatment at this site;**

**(6) The reason for the pesticide application, including:**

- a. Factors used to determine the need for treatment including:
  - i. Target species survey data; and
  - ii. Public health threat information;
- b. The name of the individual making the determination to apply pesticides;

**(7) A description of the application including:**

- a. Target organisms;
- b. Application method(s);
- c. Method and frequency of calibration of equipment used;
- d. Pesticides to be used;
- e. Application schedule; including:
  - i. Approximate number and dates of applications;
  - ii. Potential application sites and acreage;
- f. Environmental considerations, including:
  - i. Pesticide management techniques for environmental protection;
  - ii. Justification for the use of pesticides which have label precautions pertaining to groundwater or surface water, risk to pollinators, aquatic organisms, or other risks to the environment;

**iii. List any potentially affected endangered species;**

**(8) A description of the treatment and monitoring area(s) including:**

**a. If the treatment area is a wetland whether:**

**i. The wetland is less than 10 acres in area;**

**ii. The entire wetland and shoreline is owned by one person or entity;**

**1. If the wetland or shoreline is owned by more than one person or entity include the names and addresses of any other person(s) or entity(ies) that share ownership of the wetland or shoreline;**

**iii. Any other person(s) or entity(ies) that share ownership of the wetland or shoreline are in agreement with the treatment;**

**iv. There is a regularly flowing outflow;**

**1. If the wetland to be treated has a regularly flowing outflow a description of how the outflow will be controlled;**

**b. Detailed map(s) identifying the treatment and surrounding areas including:**

**i. Proposed treatment area(s);**

**ii. Survey site(s);**

**iii. Adjacent area(s);**

**iv. Wetlands, including:**

**1. The wetlands to be treated;**

**2. Inlets labeled; and**

**3. Outlets labeled;**

**v. Public water supply surface waters and wells; and**

**vi. Topographic features**

**c. A description of the treatment area(s) including:**

**i. The location and description of the treatment area(s); and**

**ii. The location of the survey site(s);**

**d. Whether there are activities in the treatment area or water uses that might be affected by the pesticide treatment;**

**e. The names and locations of any nearby public water supply wells or surface waters;**

**f. Whether a setback easement from any public water supplies is needed; and**

**g. If a setback easement from any public water supply is needed, a list of the water supplies and location of the nearest distance from the water supplies to the treatment areas.**

**(9) The applicant, or pesticide applicator if not the applicant, and if the applicable the client shall sign and date the form attesting the information provided in the application is accurate and true and acknowledging that falsification of information will result in denial of a special permit;**

**(10) The applicant shall mail, email, or hand-deliver the complete application to the division:**

**NH Division of Pesticide Control  
PO Box 2042 25 Capitol Street  
Concord, NH 03302-2042**

**Readopt with amendment Pes 502.04, effective 5-10-13 (Document #10333), cited and to read as follows:**

Pes 502.04 Applications to within Public Water Supply Watersheds.

(a) No person shall apply pesticides within 250 feet of the reference lines of surface waters or their tributaries used for public water supply for a radial distance of 5 miles as measured from the public water supply intake within the boundaries of the watershed surrounding that intake without being in possession of a special permit issued by the division upon consultation with the water division, department of environmental services.

(b) Application for a special permit shall be made on forms provided by the division.

~~(c) The applicant shall provide the following on the form(s) provided under (b) above.~~  
**An applicant for a special permit to conduct pesticide treatments within public water supply watersheds shall supply on Form SP-PW Applications within Public Water Supply Watersheds:**

(1) Name, address, telephone number and registration number of applicant;

(2) Name, address and telephone number of person(s) requesting the application of pesticides;

(3) Description of pesticide application, including:

- a. Target organism;
- b. Method of application;
- c. Pesticide(s) to be used;
- d. Rate of application; and
- e. Number of applications and approximate dates of treatment;

(4) Description of property to be treated including:

- a. Number of blocks to be treated and acreage of each; and
- b. An outline of all activities in the treatment area that might be affected by the pesticide application;

(5) The name, ~~EPA ID number~~ **PWS identification number assigned by the department of environmental services**, and location of any public water supply intakes within 5 miles downstream of the treatment area(s);

(6) Reason or need for pesticide application;

(7) Except for during a public health emergency, a statement that approval pursuant to (e) below has been obtained;

(8) An acknowledgement that all information provided is accurate and true, and that falsification of information shall result in denial of special permit; and

(9) Date and signature of the applicant.

(d) In addition to the completed form under (c) above, the applicant shall provide:

(1) Copies of the complete labels of the pesticides pursuant to (c)(3)c above; and

(2) A detailed, scale map showing:

- a. Treatment area(s);
- b. Adjacent area(s);
- c. Surface waters;
- d. Topographic features; and
- e. Land type(s).

(e) Except for during a public health emergency, the applicant shall obtain approval from the property owner(s) where the pesticide application(s) will occur;

(f) The division shall act upon the permit application in accordance with RSA 541-A:29. The decisions to grant or deny a permit shall be based upon the criteria specified in Pes 603.02(a) and (b).

(g) If an application is approved, a special permit shall be issued in writing, stating the terms and conditions under which the division granted the approval.

(h) If an application is denied, the division shall communicate the denial to the applicant in writing, stating the reasons for the denial.

(i) Any pesticide applicator having knowledge or reason to believe that contamination of surface waters or their tributaries used for public water supply has occurred shall immediately report verbally and in writing within 5 days of such contamination to the division of pesticide control.

**Readopt Pes 502.05 and Pes 502.06, effective 5-10-13 (Document #10333), cited and to read as follows:**

Pes 502.05 Applications Near Public Water Supply Wells. No pesticide application shall be made within 400 feet of gravel packed wells used for public water supply or within 250 feet of other wells so used, unless materials and methods to be employed have been approved through the issuance of a special permit according to procedures of Pes 502.04 by the division upon consultation with the water division, department of environmental services as set forth in Pes 502.04 (a). Application for approval shall be made on forms provided by the division pursuant to Pes 502.04 (b) and (c).

Pes 502.06 Application by Chemigation.

(a) No person shall apply a pesticide through an irrigation system, or a chemigation system, unless the system complies with this section.

(b) Any method used for chemigation shall comply with the state plumbing code and Env-Ws 364 "Backflow Prevention" rules.

(c) No pesticide shall be injected into a chemigation system in a manner inconsistent with label directions.

(d) Every chemigation system shall be properly calibrated to apply the pesticide at the application rate specified on the pesticide label.

(e) Every component of a chemigation system shall be resistant to corrosion, puncture and cracking. Every component of a chemigation system which might come into contact with pesticides, or with water containing pesticides, shall be chemically compatible with every pesticide used in the system.

(f) The following anti-pollution measures shall be used with a chemigation system:

(1) The water supply shall be protected against backflow by locating a backflow preventer as specified by Env-Ws 364.04(e) between the water supply and the location of chemical injection;

(2) An automatic low pressure drain shall be installed which:

a. Shall be placed on the bottom side and lowest point of the irrigation line between the irrigation pump and the water supply line check valve;



- b. Shall be level and shall not extend beyond the inside surface of the bottom of the pipe; and
  - c. Shall be placed so that drained liquid will flow away from any nearby wellhead or surface water;
- (3) An interlock shall be installed between the irrigation pump and chemical injection unit to avoid chemical flow into the irrigation line if the irrigation pump stops;
- (4) The chemical injection line shall have a check valve to stop the flow of water from the irrigation system into the chemical supply;
- (5) Pesticide container(s) used to hold pesticides for injection into a chemigation system shall not be located within 400 feet from gravel packed wells used for public water supply or within 250 feet of other wells so used;
- (6) Pesticide container(s) used to hold pesticides for injection into a chemigation system shall be located at least 75 feet horizontally from a private water supply well or the high water mark of surface water unless total amount of pesticide(s) used at the site is 5 gallons or less of liquid pesticide, or 50 pounds or less of non-liquid pesticide and secondary containment is provided; and
- (7) Secondary containment pursuant to (6) above shall be:
- a. Located so that the outside edge of secondary containment is at least 10 feet from any water supply including any well head or surface waters or their tributaries used for public water supply;
  - b. Constructed of materials compatible with the pesticide being handled; and
  - c. Capable of containing 110% of the volume of the pesticide container.

**Readopt Pes 503 and Pes 504, effective 5-10-13 (Document #10333), to read as follows:**

**PART Pes 503 PROTECTION OF PERSONS APPLYING OR OTHERWISE HANDLING PESTICIDES**

Pes 503.01 Instruction to Employees Required. It shall be the responsibility of each permit, registration or license holder to acquaint those working under him or her with the hazards involved in the handling of pesticides and the warnings or precautions on the pesticide label, and to instruct the employees on the proper steps to avoid such hazards.

Pes 503.02 Safety Equipment. It shall be the responsibility of the employer to provide for the protection of the employees, the necessary safety equipment as set forth on the labeling of the pesticide used, or by the board through rules.

Pes 503.03 Supervision.

(a) Persons registered at the supervisory level pursuant to Pes 403.01 shall, in addition to those responsibilities under Pes 101.35 or Pes 101.36, provide supervision to operational registration holders and others in the commercial business or entity handling or applying pesticides.

(b) Persons governed by (a) above shall:

- (1) Be an employee of the firm or branch office registered under Pes 307;
- (2) Be an employee of an entity or organization classified as a commercial applicator;
- (3) Be a person who has been designated by the firm or organization to be in a managerial or supervisory capacity;
- (4) Not be supervising any other business, firms or branch offices that are subject to the requirements of Pes 100 – Pes 1100;
- (5) Have daily contact with operational registration holders and others applying pesticides and be available for contact throughout the period during which operational registration holders and others in the commercial business are applying pesticides; and
- (6) Where such person holds a supervisory registration certificate-general use:
  - a. Supervise the application of any pesticides other than general-use pesticides; or
  - b. Serve as the designated supervisor of any person applying pesticides other than general use pesticides.

#### PART Pes 504 EQUIPMENT AND VEHICLES

Pes 504.01 Labeling of Service Containers. Service containers shall bear abbreviated labeling, affixed to the container, which includes:

- (a) Product name;
- (b) Signal word of original concentrate;
- (c) Common name and percentage of active ingredients;
- (d) Name, address and telephone number of pesticide application firm; and
- (e) Notation as to whether the material is dilute or concentrate.

Pes 504.02 Identification of On-Highway Vehicles.

(a) All on-highway vehicles when used for business purposes for the commercial application of pesticides by commercial applicators shall display information indicating the applicator's business name together with the firm registration number pursuant to Pes 307.04 as follows:

- (1) Letters shall be of contrasting color from vehicle or background color;
- (2) Placement of letters on the vehicle shall be in such a manner as to be unobstructed and clearly visible; and
- (3) Lettering of business name and firm registration number shall be a minimum of 2 inches in height.

(b) Those registered as "Commercial Applicators Not For Hire" shall not be required to identify their vehicles.

Pes 504.03 Use of Anti-Siphon Devices. All pest control equipment using pesticides and drawing water from the surface waters of the state as defined in Pes 101.36 shall have an effective anti-siphon device.

**Readopt Pes 505, effective 4-10-19 (Document #12756), to read as follows:**

PART Pes 505 APPLICATION TO ROADSIDES, RIGHTS-OF-WAY AND WOODLANDS

Pes 505.01 Use Along Public Road Rights-of-Way. The use of herbicide on rights-of-way shall be conducted under the supervision of a certified applicator in a manner that minimizes the extent and duration of browning foliage, such as the use of herbicides or herbicide additives designed to control discoloring.

**Readopt Pes 505.02, Pes 505.03, and Pes 505.04 effective 5-10-13 (Document #10333), to read as follows:**

Pes 505.02 Approval of Division for Rights-of-Way. No application of pesticides shall be made to rights-of-way, including but not limited to power transmission and distribution lines, gas pipeline, railroad, public road, of the state without being in possession of a special permit issued by the division according to procedures of Pes 505.05 (a) through (d). Application for approval shall be made on forms provided by the division, including information as set forth in Pes 505.05.

Pes 505.03 Woodland Areas Greater than 50 Acres. No pesticide shall be applied by any person to woodland areas exceeding 50 acres without being in possession of a special permit issued by the division according to procedures set forth in Pes 505.05 (a) through (d) and upon consultation with the state forester and the director of the fish and game department. Application for approval shall be made on forms provided by the division, by including information required in Pes 505.05.

Pes 505.04 Special Permit Required. No person, firm, corporation, any agency of state or local government, or other legal entity shall apply any pesticide to any right-of-way pursuant to Pes 505.02, or woodland areas greater than 50 acres pursuant to Pes 505.03 without receiving a special permit from the division.

**Readopt Pes 505.05 and Pes 505.06, effective 2-28-17 (Document #12122), to read as follows:**

Pes 505.05 Form Special Permit Application–Right-of-Way/Woodland Areas.

(a) Application for approval for treatment of rights-of-way and woodland areas shall be made on form Special Permit Application–Right-of-Way/Woodland Areas provided by the division.

(b) Applications shall be submitted:

(1) At least 120 days prior to the date of proposed treatment; or

(2) At least 60 days prior to the date of proposed treatment in situations where:

a. The treatment will not be made during the months of June 15 through September 30;  
or

b. The type of application pursuant to Pes 505.06(b) is not subject to the notification requirements of Pes 505.06.

(c) Applications for the control of invasive species as listed within Agr 3802.01 NH Prohibited Invasive Species, New Hampshire restricted invasive species as described within RSA 430:53 IV, Common Reed (*Phragmites australis*, formerly *P. communis*), or Purple Loosestrife (*Lythrum salicaria*), shall be exempt from (b) above.

(d) Applicants seeking approval of treatments to rights-of-way shall provide the following information and accompanying documentation:

(1) Designation of area to be treated;

(2) Name and address of contractor employed to apply pesticides;

(3) Labels for products to be utilized;

(4) The current U.S. Geological Survey map of a scale of no less than 1:24000 or 1:25000 if metric, if available, or maps of an appropriate scale and scope to allow decision-making delineating:

a. The spray area;

b. Surrounding areas;

c. The following sensitive areas:

1. Public wells within 400 feet of the proposed treatment area used for drinking or domestic purposes;

2. Surface waters or their tributaries used for public water supply;

3. Other surface waters;

4. Pasture land; and

5. Watersheds of public water supplies;

(5) Method of notification to be utilized pursuant to Pes 505.06;

(6) A copy of the notification request coupon pursuant to Pes 505.06(f)(5)g. used in the notification process; and

(7) Detailed information as to method of application, description of property, schedule of treatment, and reason or need for treatment.

(e) Information submitted in support of proposed treatment shall be complete and accurately represent the facts, and any falsification of information shall result in denial, or revocation after opportunity for a hearing, of the special permit.

(f) The division shall act upon the permit application in accordance with RSA 541-A:29, where decisions to grant or deny a permit are based upon the criteria specified in Pes 603.02(a)(1)-(7) and (9).

(g) In the event of a public health emergency, application for a special permit shall be in accordance with Pes 505.05(a), (d)(1)-(4) and (7), (e), and (h).

(h) In the event of a public health emergency the division shall act upon a special permit application in accordance with Pes 505.05(f), and:

(1) Prioritize the order of review such that those applications that are perceived to have the greatest impact on human health shall be processed first; and

(2) Transmit the permit, if granted, to the applicant by fastest practicable means such as facsimile, electronic mail, or U. S. mail.

Pes 505.06 Notification of Spraying in Rights-of-Way.

(a) “Active Railroads” means a railroad corridor where the tracks are still in place and they can be traversed by railroad locomotives, rail cars, or rail mounted inspection vehicles, or maintenance of way equipment.

(b) This section shall not pertain to the following types of herbicide applications:

(1) By the cut surface treatment where herbicides are applied directly to the cut surface of the stump after vegetation is cut, provided that:

a. The herbicide shall be applied before the end of the work day during which the vegetation has been cut or if application is impossible due to rain, during the next work day, following such weather event; and

b. The pesticides are applied according to label recommendations;

(2) To control poison ivy;

(3) For the control of invasive species as listed within Agr 3802.01 NH Prohibited Invasive Species, New Hampshire restricted invasive species as described within RSA 430:53 IV, Common Reed (*Phragmites australis*, formerly *P. communis*), or Purple Loosestrife (*Lythrum salicaria*);

(4) In conjunction with landscape plantings on roadside rights-of-way;

(5) Upon roadway pavement, active railroads, curbing, and guardrail; and

(6) Pesticide use not related to the purpose of maintaining the rights-of-way.

(c) No application of herbicides shall be made to rights-of-way in the state, including but not limited to, rights-of-way for power transmission and distribution lines, gas pipelines, and public roads, during the months of June 15 through September 30 without first providing notification to the public of intent to spray.

(d) Notification pursuant to (c) above shall not be given until such time as a special permit has been issued.

(e) Notification pursuant to (c) above shall be made by means of the following:

- (1) Through the use of notices in newspapers in accordance with (f) below;
- (2) Certified mail, return receipt requested, to the selectmen, mayor, or town manager, depending on the form of government, in the municipality where the right-of-way is located; and
- (3) Written notification to residents within 200 feet of a right-of-way.

(f) Notification by newspaper shall comply with the following:

- (1) Notice of intent to spray shall be published in both a newspaper of statewide circulation and in all locally published newspapers which have distribution principally in the area where treatment will occur;
- (2) Notices shall appear at least once a week for 2 weeks;
- (3) Notices shall be at least 2 columns wide by 3 inches high;
- (4) There shall be a minimum of 45 days between the second or last notification and the date of commencement of the seasonal herbicide application;
- (5) Notification shall contain only the following information and provisions:
  - a. A title at the beginning of the notice in 15 point bold face print which states, "Herbicide Use Notification";
  - b. A list of towns where treatment will occur;
  - c. A statement as to which herbicides, identified by common chemical name, will be applied to rights-of-way within the respective towns;
  - d. The approximate date of commencement of the vegetation control program for that year;
  - e. The name and phone number of contact person, the company he or she represents, and hours that person can be reached;
  - f. The statement, "further information may be requested by contacting" followed by the name of the contact person;
  - g. An offering in the form of a notification request coupon to individual landowners whose property abuts the right-of-way, or over whose property the right-of-way passes, of an opportunity to request and receive an individual written notification 30 days prior to any treatment; and

h. An actual clip-out, mail-in coupon for purposes of registration of the request and upon which the contracting entity shall maintain a permanent list for notification purposes.

(g) Notification to selectmen, mayor, or town manager, depending on the form of government in the municipality, shall comply with the following:

(1) Notices shall be by certified mail return receipt requested no less than 45 days prior to commencement of seasonal herbicide applications;

(2) Notification shall include:

a. A title at the beginning of the notice in 15 point bold face print which states, "Herbicide Use Notification";

b. The designation of right-of-way to be treated;

c. The approximate date of commencement of vegetation control program for that year, in that locality;

d. Common chemical name(s) of herbicide(s) to be used;

e. Name and phone number of contact person at the contracting entity, and hours that person can be reached; and

f. The name of the contracting entity; and

(3) Notification shall include the following:

a. A current U.S. Geological Survey map, of a scale of no less than 1:24000, or 1:25000 if metric, if available, delineating the right-of-way to be treated;

b. The information in Pes 505.06(i),(j) and (k); and

c. A supply of mail-in notification-request coupons equivalent to the number of landowners abutting or owning land on the right-of-way in the respective towns for use by such landowners to request specific written notice.

(h) Direct notification to residents within 200 feet of a right-of-way shall be as follows:

(1) Notice shall contain the information in Pes 505.06(f)(5)a., b., c., d., e. and f.;

(2) Notice shall be conveyed by:

a. A personally delivered written notification that is physically passed to the occupant or, if the occupant is not present, left in a conspicuous place such as attached to the door at the place of occupancy; or

b. Certified mail, return receipt requested; and

(3) Notification shall be made during the calendar year of spraying, at least 10 days prior to such application of pesticides.

(i) The applicant for the special permit shall provide the following information on the notification with the coupon, or on the coupon itself:

- (1) A method to identify the owner of a utility line by examining poles or other landmarks;
- (2) How the public would determine which particular line is to be treated;
- (3) A statement that the landowner, as specified in Pes 505.06 (f)(5)g., has a right to receive notice by mail as set forth in Pes 505.06(1);
- (4) How to contact the contracting entity for further information;
- (5) A request to each landowner or resident to make the contracting entity aware of the location of a potentially affected water supply, and of any other environmentally sensitive area where herbicide application should be further restricted;
- (6) An offering which specifically states “you have the right to request and receive the approximate date, plus or minus 5 days, that pesticides will be applied to the right-of-way in your area”; and
- (7) Where to return the coupons.

(j) The notification request coupons that accompany newspaper notices and notices to selectmen, mayors or town managers shall provide adequate space for the landowner to record the following information:

- (1) Name, address, and telephone number of the person making the request;
- (2) Town/city of affected property;
- (3) Utility subscriber account number, if applicable, to help a utility identify the location of the person requesting notification;
- (4) Name of the company that contracted for the vegetation control program;
- (5) Property of concern and sensitive areas;
- (6) Identifying notations or features found on applicable utility poles or towers, pursuant to (j)(1) and (2) above;
- (7) Any additional information requested by the contracting entity for purposes of identifying the location of the landowner in relation to the right-of-way; and
- (8) The landowner’s request for specific notification pursuant to Pes 505.06(i)(6).

(k) In order to receive individual written notification during a given year, persons requesting such notification shall provide mail-in requests to the applicant no later than 35 days prior to commencement of



the vegetation control program for that year. Requests received later than that shall be honored during the next treatment cycle.

(l) Applicants shall, upon receipt of requests for individual written notification, compile and maintain a permanent list of landowners who have made such requests, and shall provide such notification as requested to those landowners, in accordance with (k) above.

(m) Applicants shall, upon receipt of requests for approximate date of application pursuant to Pes 505.06(j)(8), provide such information.

(n) Prior to being granted final approval of a special permit by the division, the applicant shall provide written attestation to the division, at least 10 days prior to commencement of spraying, that it has complied with the provisions of Pes 505.06.

(o) The attestation required pursuant to (n) above shall include the following:

- (1) A tear sheet or the text of newspaper notices including the name of the publications, areas served, and dates the notices appeared;
- (2) A copy of the notification to selectmen including the same map that was provided;
- (3) A copy of the mail-in coupon request for specific written notification;
- (4) A copy of the list of persons who have requested written notification; and
- (5) A signed statement attesting that individual specific written notification has been made to those who have made the request.

(p) Herbicide applications due to public health emergency shall be exempt from the requirements under Pes 505.06(c)-(o).

(q) Persons applying pesticides to rights of way due to a public health emergency shall provide notification in accordance with Pes 505.06(r) and (s) to the following:

- (1) The local government official(s) such as selectmen, mayor(s), or town manager(s), depending on the form of government, in the municipalities where the application will occur;
- (2) The health officer of each municipality in which pesticides will be applied;
- (3) Owners of apiaries whose operations would be affected by the pesticide application; and
- (4) The general public, to include at a minimum, those persons who would be directly affected by the pesticide application.

(r) Notification provided under (q) above shall include at a minimum:

- (1) Proposed date(s) of treatment;
- (2) Location(s) of treatment area(s);

- (3) Pesticides to be applied, listed by common chemical name of active ingredient; and
- (4) Name, address, and telephone number of contact person.

(s) The applicant shall provide notification under (q) above at least 12 hours prior to commencement of any pesticide application, as follows:

(1) Notification to local government officials and health officers under (q)(1) and (2) above shall be in writing, by one or more of the following means:

- a. U.S. mail;
- b. Electronic mail; or
- c. Facsimile; and

(2) Notification to the public who would be directly affected by the pesticide application shall be by one or more of the following media:

- a. Television;
- b. Radio; or
- c. Newspaper.

**Readopt Pes 505.07 and Pes 506 through Pes 508, effective 5-10-13 (Document #10333), to read as follows:**

Pes 505.07 Rights-of-Way: Forestry Management.

(a) Persons applying pesticides for the establishment or maintenance of access roads designed and intended for the purpose of forestry management shall be exempt from the requirements of Pes 505.01, 505.02, 505.04, 505.05 and 505.06 where such roads:

- (1) Are unpaved; and
- (2) Are on private property owned by the person applying pesticides or contracting for the application of pesticides.

(b) The exemptions granted under (a) above shall not apply to pesticide applications made in conjunction with vegetation control on public utility rights-of-way.

**PART Pes 506 AERIAL APPLICATION OF PESTICIDES**

Pes 506.01 Special Permit Required.

(a) No application of pesticides by aircraft shall be made in the state without a special permit, issued by the division after consultation with affected agencies, including but not limited to:

- (1) The department of resources and economic development, division of forests and lands;

- (2) The department of agriculture, markets and food, division of plant industry;
- (3) The department of environmental services;
- (4) The fish and game department; and
- (5) The department of health and human services, office of health management, bureau of health risk assessment.

(b) Recommendation from the agencies specified in Pes 506.01(a) shall be obtained by the division by means of written requests, including a copy of the special permit application.

Pes 506.02 Application Procedure.

(a) Application for approval for treatment by aerial methods shall be made on forms provided by the division.

(b) Information submitted in support of proposed treatment shall be complete and any falsification of information shall result in denial or revocation of the special permit.

(c) Applications shall be completed by the applicant and be received by the division not less than 120 days prior to proposed treatment date.

(d) Applicants shall submit an original and 5 copies of the application, map of area to be treated, and other supporting information as specified in Pes 506.02(e).

(e) Applicants shall provide the following:

- (1) Name, address, telephone and fax number and pesticide license number of applicator;
- (2) Name, address, telephone and fax number of person(s) requesting the application of pesticides;
- (3) Reason why the application of pesticides, or treatment, is necessary;
- (4) Description of the pesticide application, including:
  - a. Target organism(s);
  - b. Method of application;
  - c. Method and frequency of calibration of equipment;
  - d. Name(s) of pesticides, active ingredients and amounts to be used;
  - e. Labels of pesticides to be utilized;
  - f. Number of applications to be made and approximate dates of application;
  - g. Size of area to be treated; and

- h. Sequence of applications.
- (5) Environmental considerations, including:
- a. Management techniques to protect the environment and the health and property of persons in the treatment area and adjacent notification zone; and
  - b. Justification for use of one pesticide over another;
- (6) Description of treatment area including detail maps of a scale of one inch to 1320 feet showing the following:
- a. Treatment area(s);
  - b. Surrounding area;
  - c. Location of public and private wells and other types of water supplies within the treatment area and in the surrounding area for a distance of 1320 feet from boundary of treatment area(s);
  - d. Other sensitive areas including surface waters, pasturage, residential dwellings, seasonal camps and other structures; and
  - e. Roads including access roads.
- (7) Description of activities within and around the treatment area;
- (8) A list of all property owners having property within 1320 feet of the treatment area;
- (9) Considerations being given and measures to be utilized to protect persons, who, by virtue of land use or property ownership within 1320 feet of the treatment area, might have a direct and irrefutable interest in the proposed treatment;
- (10) A statement that all information provided is accurate and true, and that falsification of information shall result in denial of the special permit; and
- (11) Date and signature of applicant.

Pes 506.03 Special Provisions Applying to Rural Area Treatment. If the proposed application of pesticide is to non-residential areas, in addition to the provisions of Pes 506.02, the following shall apply:

(a) At the same time that an application for a special permit is submitted to the division, applicants shall provide public notice of this pending application as follows:

- (1) Publication of notice in a newspaper of general circulation in the area affected;
- (2) Written notification and copy of the special permit application to the selectman, town manager or principal official of each town within which the treatment area is located;

- (3) Written notification and copy of the special permit application to the cooperative extension office in the county within which the treatment area is located; and
  - (4) Written notification directly to each property owner as listed in Pes 506.02(e)(8) who has property within 1320 feet of the treatment area;
- (b) All methods of notification in (a) above shall contain the following information:
- (1) A statement that a special permit request has been submitted;
  - (2) A summary of the proposed treatment;
  - (3) Name, address, telephone number of applicant and when applicant can be reached;
  - (4) Availability and places where application can be reviewed, including a listing of the town and cooperative extension offices that have a copy of the special permit available for review;
  - (5) A statement, "persons have a period of 15 days from the date of the public notice to submit written comments to the division of pesticide control"; and
  - (6) Mailing address of the division;
- (c) The applicant shall provide the division a copy of the notice of the pending application within 5 days of sending the notices pursuant to Pes 506.03(a);
- (d) The applicant shall provide the division a letter under the applicants signature, attesting to compliance with, Pes 506.03(a) and (b) within 5 days of sending the public notices and copies of the special permit application;
- (e) The division shall accept written comments from the public for a period of 15 days from the date of the public notice; and
- (f) The division shall provide copies of the written comments pursuant to (e) above to those agencies specified in Pes 506.01.

Pes 506.04 Provisions Applying to Aerial Application in Residential Areas. Applications for special permits for aerial applications in residential areas shall, in addition to the requirements of Pes 506.01 and 506.02, be subject to the following requirements:

- (a) A public hearing according to the procedures under Pes 602.06 shall be required prior to approval of a special permit for aerial application in residential areas;
- (b) The division shall, upon receipt of a special permit application for aerial treatment to residential areas:
  - (1) Schedule a public hearing within 30 days of receipt of the application;
  - (2) Notify the applicant of the date of the hearing;
  - (3) Instruct the applicant to have a notice of the public hearing published at least 14 days prior to the date of the hearing in:

- a. A newspaper of general circulation in the area affected; and
- b. Where newspaper notices alone will be inadequate, any trade, industry, professional or interest group publication that reaches all residents in an area to be treated.

(4) Instruct the applicant to provide notification of the public hearing, as follows:

a. By written notification sent by registered mail, 14 days prior to the date of the public hearing to:

1. Registered beekeepers, pursuant to Agr 1805.01, in the area to be treated;
2. Appropriate town officials, including town managers, selectmen and town administrators;
3. Public health officials, both the local town or city health officer and the state public health official;
4. All property owners, or a spokesman thereof in the case of condominiums, apartments or similar type dwellings, immediately adjacent to treatment area; and
5. All property owners living within the treatment area; and

(5) Inform the applicant of the requirement to submit in writing to the division at least 7 days prior to the public hearing, a statement attesting that the applicant has complied with Pes 506.04(b)(3)(4); and

(c) The public hearing notice shall contain the following information:

(1) A reference to the rules, Pes 506.04(a) and Pes 602.06, providing authority and procedures for conduct of a hearing;

(2) A statement that the purpose of the hearing is to provide the public an opportunity to present testimony that is directly related to the proposed spray project described in the special permit application;

(3) The time, date and place of the hearing and manner in which views may be submitted for consideration by the division;

(4) The place and time where relevant material may be examined and the name, address and telephone number of the person from whom further information may be obtained; and

(5) A description of the proposed treatment including the:

- a. Location of area to be treated and areas likely to be affected;
- b. Name and EPA registration number of pesticides to be used;
- c. Name and address of applicant and agent; and

d. Proposed date of treatment.

Pes 506.05 Decisions by the Division.

(a) Every decision by the division shall be in writing and shall include reasons for the decision, and a copy of the decision shall be delivered by registered mail to the applicant.

(b) Decisions of the division to issue or deny a request for a special permit shall be based on an assessment of the following:

- (1) The impact of the proposed application of pesticide on human health;
- (2) The possible effects on non-target areas and non-target organisms;
- (3) Whether the proposed application of pesticides complies with the provisions of Pes 300 - Pes 1100;
- (4) The proximity of wells, water supplies, other surface waters, marshlands and similar sensitive areas to the treatment area and whether the protective measures in the proposal are adequate;
- (5) The characteristics, toxicity, and hazards of the pesticide to be utilized and the measures proposed to minimize any adverse effects;
- (6) A review and consideration of the pesticide application equipment and its adequacy for the proposed application;
- (7) The considerations that have been given, and provisions made by the applicant to address or meet the concerns of persons, who, by virtue of land use or property ownership within 1320 feet of the treatment area, may have a direct and irrefutable interest in the proposed treatment;
- (8) The adequacy of measures proposed to protect those persons who might utilize the area for:
  - a. Recreational purposes;
  - b. A source of drinking water; or
  - c. The production of agricultural crops; and
- (9) The recommendations of other affected agencies as specified in Pes 506.01(a).

(c) After considering the special permit request and the criteria in (b) above, if the division determines that the proposal could be executed with minimal risk to human health and the environment, a special permit shall be issued.

(d) Special permits shall be issued within 90 days of receipt of the special permit application, in writing, and state the terms and conditions under which the approval was granted.

(e) The division shall stipulate restrictions or provisions on the special permit if it is determined that such restrictions are needed to protect persons and the environment from pesticide exposure and contamination, after considering Pes 506.05(b) and the following factors:

- (1) A determination of the extent and type of notification needed to adequately inform those persons who might be involved with, or affected by the treatment, or the spray operation;
- (2) An assessment of the area surrounding the target areas as to activity and situations where a buffer zone should be imposed for protection from contamination, taking into consideration such things as structures, animal feeding and watering tanks, pasturage for animals, adjacent property lines, depressions or runoff areas, and surface waters;
- (3) An assessment of the potential use by visitors for such activities as berry picking, picnicking, hiking, camping, and measures that should be taken to protect persons from any adverse effects;
- (4) The choice of pesticide proposed to be used and whether the characteristics and property of the material renders it suitable for the proposed use; and
- (5) The adequacy of ground to air communications and communications between those overseeing the spray operations.

Pes 506.06 Conditions to be Imposed on a "Special Permit". The recipient of a special permit shall be subject to conditions stipulated pursuant to Pes 506.05(e), and the following:

- (a) The recipient shall publish notice of treatment date in newspapers of general circulation in the area to be treated at least once per week during the 2 weeks preceding the treatment date to allow the general public knowledge of the treatment;
- (b) Notices of treatment date shall not be released until the special permit application has been approved;
- (c) The recipient shall notify the following, by certified mail, return receipt requested, of the date of treatment:
  - (1) Public health officials, both local town health officers and state official;
  - (2) Property owners living within the treatment area;
  - (3) Persons living immediately adjacent to the treatment areas;
  - (4) Property owners as listed in Pes 506.02(e)(8) who have property within 1320 feet of the treatment area; and
  - (5) Registered beekeepers under Agr 1805.01, within the treatment area;
- (d) The recipient shall notify the division 72 and 48 hours in advance of said treatment;
- (e) The division shall require notification to other persons or entities who are not located in the treatment area but, have provided information that indicates that their property or its inhabitants might be potentially impacted by said treatment; and
- (f) The application rate of pesticides shall not exceed the application rate written on the label of the registered product.



Pes 506.07 Conditions for Applying Pesticides by Aerial Methods in Residential Areas. The recipient of a special permit to apply pesticides to residential areas by aerial methods shall in addition to conditions imposed pursuant to Pes 506.06 be subject to the following conditions:

(a) Application shall be made during those hours when there is minimal outdoor activity. No pesticides shall be applied during those hours of the day when children are going to and from school or waiting for school buses or other means of transportation. The hours of restriction shall be determined through consultation with local school officials and the division to minimize exposure of all persons to pesticides;

(b) No application of pesticides shall be made in sensitive areas, where exposure to the pesticide(s) could have an adverse effect on human health, wildlife, and the environment;

(c) Sensitive areas shall include:

(1) School buildings and associated properties including any:

a. Playgrounds;

b. Athletic fields; and

c. Other such facilities designed for use by persons in the vicinity of school buildings; and

(2) Nurseries and daycare centers, rest homes, hospitals and clinics and associated properties; and

(d) In cases of postponement of treatment of more than 2 days from the proposed date of treatment, the applicant shall provide notification of the new date, as required in Pes 506.06(c), (d), and (e);

Pes 506.08 Modifying or Rescinding a Special Permit. The division, after a hearing pursuant to RSA 541-A where a finding is made that conditions of a special permit have not been met, shall:

(a) Change the conditions of the special permit if it is still possible for the applicant to comply and make the proposed application of pesticides; or

(b) Rescind the special permit if there is no longer sufficient time to comply with the conditions and still make the proposed application.

Pes 506.09 Emergency Provisions.

(a) "Agricultural emergency" means a state of emergency declared by the commissioner due to a sudden pest outbreak that will cause extensive damage and economic loss to a crop within a short period of time.

(b) Pursuant to RSA 430:2, the commissioner of agriculture, markets and food, after consultation with the state entomologist and the director, division of forests and lands, department of resources and economic development concerning agricultural and forestry related emergencies, and, pursuant to RSA 141-C:25,III,(b), the commissioner, department of health and human services and the state entomologist concerning public health emergencies, shall authorize the application of pesticides by aerial methods in

emergency situations provided that the person requesting the application has complied with Pes 506.09(c), (d) and (e).

(c) The applicant shall submit an application pursuant to Pes 506.02(a), (d) and (e)(1)-(5), (10), and (11), and detailed maps of a scale no less than 1:25000 showing the following:

- (1) The treatment area(s);
  - (2) Surrounding areas; and
  - (3) Sensitive areas, as listed under Pes 505.05(d)(4)c., that are inside of and within one-quarter mile of the treatment area.
- (d) The applicant shall provide information:
- (1) Regarding agricultural and forestry related emergencies, sufficient to enable the commissioner to determine crop and economic loss, including:
    - a. Size of the crop;
    - b. Economic value of the crop;
    - c. Estimated loss through potential pest damage;
    - d. Estimated impact on annual income as a result of loss of crop; and
    - e. Assessment of alternative means to control the pest; or
  - (2) Regarding a public health emergency, sufficient to enable a determination of the potential public health threat, including:
    - a. Alternative methods considered to control the pest;
    - b. Population who would be affected by the health threat; and
    - c. Assessment of potential impact on the population.

(e) The applicant shall provide notification prior to application of pesticides in accordance with the provisions of Pes 505.06~~(p)~~(q).

Pes 506.10 Compliance with Special Permit Conditions. In addition to those requirements on a pesticide label and in the administrative rules of the pesticide control board, persons applying pesticides by aerial methods shall also comply with the conditions on the special permit.

#### PART Pes 507 DRIFT, CONTAMINATION AND DAMAGE TO NON-TARGET AREAS

Pes 507.01 Prevention of Damage to Non-Target Areas. Without modifying the provisions of Pes 502.01, which requires pesticides to be used in accordance with labeling instructions, no person shall apply pesticides either in a manner that causes or might tend to cause contamination to non-target areas.

Pes 507.02 Prevention of Drift/Contamination. No application of pesticides shall be made by mechanically powered equipment at such times when the wind velocity shall cause said pesticide to contaminate a non-target area.

Pes 507.03 Conditions for the Application of Pesticides to Minimize Drift and Contamination.

(a) For the protection of the public health and the environment, following a hearing where a finding is made indicating the possibility of adverse effects of pesticides and that conditions on licenses and permits issued to commercial and private applicators would be effective in reducing contamination or the likelihood of contamination, the division shall impose such conditions.

(b) Such conditions shall include but not be limited to:

- (1) Specification of limitations as to types of application equipment which can be used;
- (2) The methods of application to be followed; and
- (3) The weather conditions which shall prevail during application.

Pes 507.04 Conditions Constituting Drift/Contamination. In situations where pesticides have been applied to a target area but have been allowed to drift to off target areas, the following shall be considered to be drift/contamination in violation of these rules:

(a) A pesticide or pesticides are present on non-target food crops or pasturage in quantities exceeding the FDA tolerance for the specific pesticide on the specific non-target food crop or pasturage;

(b) Any measurable amount of pesticides present on a non-target crop subject to FDA tolerances, but which does not have an established FDA tolerance for said pesticide or pesticides;

(c) Any measurable amount of pesticides which constitute an inconsistency with and violation of manufacturer's label recommendations and precautions for that pesticide; or

(d) The presence in the environment including air, land or water, of one or more pesticides, degradation products of pesticides or formulation constituents or combinations thereof in such concentration and of such duration as to cause, or might tend to cause, an unreasonable adverse effect on the environment, or unreasonable harm or injury to persons, as determined by the division based upon current chemical risk characterization methods and standards.

PART Pes 508 COMMERCIAL APPLICATIONS TO TURF SITES

Pes 508.01 Notification Prior to Application of Pesticides to Turf Areas. Commercial applications of pesticides to turf areas shall comply with the following requirements:

(a) Signs as required by Pes 508 shall satisfy the following requirements:

(1) They shall be 8 1/2 X 11 inches in size, be made of weather resistant materials with black letters on a yellow background;

(2) They shall contain the following information:

- a. The word "Notice" in 2 1/2 inch block letters;

- b. The pesticide(s) used expressed as common chemical name;
- c. Date of treatment;
- d. Area treated;
- e. A statement that the notice has been provided for public information and to those who may be sensitive to chemicals; and
- f. Name, address and telephone number of the person who may be contacted; and

(3) Signs shall remain posted for a minimum of 48 hours after application is made;

(b) Written notification as required by Pes 508 means a written notice which shall include the following information:

- (1) Name, address and telephone number of the contact person and the firm offering the services;
- (2) Name of the pesticide(s) to be used, expressed by common chemical name;
- (3) Form(s) of material(s) to be applied and methods of application;
- (4) A schedule of services to be provided; and
- (5) A statement which:
  - a. Grants the opportunity for those persons receiving the service to request, and receive, advanced notification, and other specific information requested, of the pesticide application which is to take place; and
  - b. States "you have the right to request and receive advanced notification of the date that each pesticide application will be made"; and
- (6) Designation of the area treated when making pesticide applications to multifamily dwellings and public and recreational properties;

(c) Without superseding or modifying any provisions or restrictions specified on a pesticide's label, in addition to label requirements, commercial applicators shall provide notification to those persons receiving their services prior to the application of pesticides to turf area, including but not limited to lawns, public and private golf courses and those areas covered under Pes 302.01(d)(2);

(d) When a commercial applicator contracts with the client or recipient of services for application of pesticides to private properties, the commercial applicator shall give written notification regarding the pesticide application which is to take place, according to (b) above, to the client, or, in a situation where the client does not reside at the property, to the persons residing at the property, including as follows:

- (1) Notification shall be given prior to the application of pesticide; and
- (2) Notification shall be given at least on an annual basis;

(e) When making applications to multifamily dwellings, notification shall be given by:

(1) Complying with Pes 508.01(d);

(2) Providing written notification to the management, owners or official spokesperson of the multifamily dwelling, according to the provision of (b) above, at least 72 hours but no more than 2 weeks prior to the pesticide application; and

(3) Providing at least one of the following:

a. Posting of signs, as specified under (a) above, at common entryways including but not limited to the main entrance ways to the multifamily dwelling complex, mail boxes, road intersections and treatment area; or

b. Prior written notification to all inhabitants according to (b) above;

(f) Prior to application of pesticides to public and recreational properties, commercial applicators shall provide notification by at least one of the following methods:

(1) Posting of signs, as specified under (a) above, around the treatment area, at access points or other places noticeable by the public when entering the treated area;

(2) Posting written notification pursuant to Pes 508.01(b), on bulletin boards that are noticeable to persons entering the area for a minimum period of 48 hours after application is made;

(3) In addition to (1) or (2) above, commercial applicators may also utilize such methods as direct mailing, newspaper notices, organizational publications and newsletters;

(g) When making pesticide applications to commercial business properties such as banks, office buildings, restaurants, and retail stores, notification shall be provided by one or both of the following methods:

(1) Posting of signs, as specified under (a) above, at points of access and egress to the building; and

(2) Posting written notification pursuant to Pes 508.01(b)(1)-(4) on bulletin boards within the building that are noticeable to everyone occupying the building for a minimum period of 48 hours after application is made; and

(h) In situations where notification would be made in compliance with the provisions of Pes 508.01(d), (e), and (g) where there are recreational or other areas with public use, such as play areas, picnic areas, or where turf areas provide some form of recreation, notification shall also comply with Pes 508.01(f).

**Readopt Pes 701.01, effective 11-5-14 (Document #10712), to read as follows:**

## **CHAPTER Pes 700 SALE AND USE OF PESTICIDES**

Statutory Authority: RSA 430:31, IV

### **PART Pes 701 PROHIBITED, PROHIBITED-LIMITED USE AND RESTRICTED PESTICIDES**

Pes 701.01 Statement of Purpose. The purpose of these rules is to list the prohibited, prohibited-limited and restricted use pesticides and the basic requirements for their sale and use in New Hampshire.

Pes 701.02 Basic Requirements For the Sale and Use of Pesticides. The sale and use of pesticides shall be prohibited or restricted as follows:

(a) All uses of pesticides restricted or prohibited by the U. S. Environmental Protection Agency shall be so classified in New Hampshire.

(b) All pesticides having labeling designating them as restricted use shall be so classified in New Hampshire.

(c) The sale and use of the compounds listed in Pes 701.04 shall be prohibited in the state of New Hampshire. No uses shall be allowed.

(d) The sale and use of the compounds listed in Pes 701.05 shall be restricted in the manner indicated. The materials may be distributed, sold, offered for sale or held for sale only by licensed dealers for the uses shown in Pes 701.05, after license requirements are met.

**Readopt Pes 701.03, effective 5-9-18 (Document #12524), to read as follows:**

Pes 701.03 Restricted Use Pesticides. For the purpose of controlling their sale, the pesticides listed in Pes 701.06 may be sold or distributed only by pesticide dealers pursuant to RSA 430:35, Pes 306, and Pes 700.

**Readopt Pes 701.04, effective 11-5-14 (Document #10712), to read as follows:**

Pes 701.04 Prohibited Compounds.

(a) None of the following compounds, listed by common chemical name, shall be sold or used:

- (1) 2,4,5-T, Salts and Esters;
- (2) Aldrin;
- (3) BHC;
- (4) Chlordane;
- (5) DDD;
- (6) DDT;
- (7) Dieldrin;
- (8) Dinoseb;
- (9) Endrin;
- (10) Heptachlor;
- (11) Mercury and its compounds;
- (12) Rothane;
- (13) Strobane;

- (14) TDE;
- (15) Tepp;
- (16) Thallium Salts, thallium acetate, thallium sulfate; and
- (17) Toxaphene, Chlorinated camphene.

**Readopt with amendment Pes 701.05, effective 11-5-14 (Document #10712), cited and to read as follows:**

Pes 701.05 Prohibited - Limited Use Compounds. These compounds, listed by common chemical name, shall be allowed for sale and use only for the uses listed below:

(a) Avitrol shall **not be sold to the general public and shall** only be used **upon issuance of a special permit** by:

- (1) ~~g~~Government agencies who have jurisdiction over federally protected birds; ~~and~~
- (2) ~~e~~Commercial pest control operators for non-protected birds; ~~upon issuance of a special permit. and~~
- (3) **Private applicators certified to use restricted use pesticides using a formulation including 0.5 percent active ingredient or less as allowed by product label.**

~~This compound shall not be sold to the general public;~~

(b) DRC 1339 Starlicide shall only be used by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public;

(c) Fenthion shall only be used by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public;

(d) Methyl Parathion Encapsulated, or any formulation thereof used in New Hampshire, shall be subject to the following restrictions and conditions:

- (1) Those provisions contained on the manufacturer's label;
- (2) Regardless of whether bees or other pollinators are known to be visiting areas to be treated, this pesticide shall not be:
  - a. Applied to any corn crop having 10% or more of its plants with spike anthers;
  - b. Applied on any field crop, orchard, vineyard or other agricultural crop listed on the manufacturer's label where there exists weeds or other non-target plants having an average of 5 or more blooms per square yard; or

c. Allowed to drift to any non-target areas where weeds or other non-target plants having an average of 5 or more blooms per square yard exist; and

(3) Use of this pesticide shall be by special permit only as follows:

a. Only applicators certified under RSA 430:33 may apply for a special permit under this subparagraph;

b. Individuals seeking special permits to use Methyl Parathion shall include the following information on application forms provided by the division:

1. Name and address of applicant;
2. Crops to be treated;
3. Location of application;
4. Maximum number of applications;
5. Target pests;
6. Approximate date of application; and
7. Method of notification of apiary owners;

c. Special permit applications under this subparagraph shall be submitted at least 20 days prior to the intended treatment date;

d. The division shall grant a special permit within 10 days of receipt of such application if the following are true:

1. The applicant has provided the information required in b. above;
2. The applicant has complied with a. and c. above;
3. The pesticide can be used without causing adverse effects on non-target organisms; and
4. The proposed use is in compliance with (d)(2) above; and

e. An applicator issued a special permit under this paragraph shall notify all beekeepers registered under Agr 1805.01, who indicated through registration they may have apiaries located within 2 miles of the area to be treated, at least 48 hours prior to each application;

(e) Ornitrol shall only be used by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public;

(f) Sodium Arsenite, and any formulation thereof, shall be used by special permit only pursuant to Pes 505.05(b)(c) and (d);

(g) Sodium Fluoroacetate, compound 1080, shall be used by a licensed pest control applicator, upon consultation with the department of health and human services; and



(h) Tergitrol shall be used only by government agencies who have jurisdiction over federally protected birds, and commercial pest control operators for non-protected birds, upon issuance of a special permit. This compound shall not be sold to the general public.

**Readopt Pes 701.06 and Pes 701.07, effective 11-5-14 (Document #10712), to read as follows:**

Pes 701.06 Restricted Use Materials.

(a) Pesticides containing the following compounds, listed in Table 7.1 Restricted Use Pesticides by common chemical name and use/concentration affected, shall be classified as restricted use:

Table 7.1 Restricted Use Pesticides

COMMON CHEMICAL NAME	USE/CONCENTRATION AFFECTED
Acrolein	all
Acrylonitrile	all
Alachlor	all
Aldicarb	all
Allyl Alcohol	all
Aluminum Phosphide	all
Amitrole	all above 2%
Arsenic (inorganic)	all above 1% as expressed as Metallic Arsenic in water soluble form; and all used as wood preservatives
Arsenic Acid	all
Arsenic Pentoxide	all used as wood preservatives
Atrazine	all
Azinphos-ethyl	all
Azinphos-methyl	all
Baythroid	all above 2%
Bis(tributyltin) oxide	all used as marine coatings
Bomyl	all
Brodifacoum	all above .05%
Bromoxynil	all
Cadmium Chloride	all
Calcium Cyanide	all
Carbofuran	all
Carbon Bisulfide	all
Carbon Disulfide	all
Carbon Tetrachloride	all
Carbophenothion	all
Chlorfenvinphos	all
Chlorophacinone	all tracking powder, dust and ready to use formulations .2% or greater
Chloropicrin	all
Chromic Acid	all except brush-on used as wood preservatives
Clonitralid	all wettable powders 70% and above; all granular and wettable powders used as molluscides
Coal Tar	all

Coal Tar Creosote	all
Coumafuryl	all
Creosote	all
Creosote Oil	all
Cyanazine	all
Cycloheximide	all
Daminozide	all
Demeton	all
Diallate	all
Dichloropropene	all
Dichlorvos	all above 1%; except 20% resin strips or others so impregnated resin products not in excess of 20%
Diclofop Methyl	all
Dicrotophos	all
Diflubenzuron	all; except feed-through fly control formulations
Dinitrocyclohexylphenol	all
Dioxathion	all
Diphacinone	all above 1%
Diquat	all concentrations labeled for aquatic use; all other formulations above 2% provided that those products containing 2% or less are labeled for terrestrial use only
Disulfoton	all above 2%
DNOC	all
Dodemorph	all
Endosulfan	all above 3%
Endothall	all
EPN	all
Ethion	all
Ethoprop	all
Ethyl Parathion	all
Ethylene Dibromide	all
Famphur	all above 1%
Fenamiphos	all emulsifiable concentrates 35% and above
Fenitrothion	all forestry uses
Fensulfothion	all
Fenthion	all above 1%
Fluorocetamide	all
Flucythrinate	all
Fonofos	all
Formetanate Hydrochloride	all
Hydrocyanic acid	all
Lambda-Cyhalothrin	all above 1%
Leptophos	all
Lethane 384	all
Magnesium Phosphide	all
Methamidophos	all
Methidathion	all
Methomyl	all above 1%

Methyl Bromide	all
Methyl Isothiocyanate	all
Methyl Parathion	all including Methyl Parathion on Prohibited-Limited Use list
Metolachlor	all
Mevinphos	all
Mexacarbate	all above 2%
Monocrotophos	all
Niclosamide	all
Nicotine Alkaloid	all
Nicotine Salts	all above 40% nicotine expressed as alkaloid
Nitrogen, liquid	all
Oxamyl	all
Oxydemeton Methyl	all
Paraquat	all above .2% cation
Parathion	all
Pentachlorophenol	all
Phorate	all
Phosacetim	all
Phosalone	all above 2%
Phosphamidon	all
Phosphorus (white & yellow)	all
Phostoxin	all
Picloram	all except for treating trees by a "cut surface" method with 5.4% or less Picloram
Pindone	all above 3%
PMP	all above 6%
Potassium Pentachlorophenate	all
Pronamide	all wettable powders 50% or above
Propetamphos	all emulsifiable concentrates 50% or greater
Propoxur	all above 3%; except impregnated type resin materials with a concentration not exceeding 10%
Pyriminil	all
Schradan	all
Selenium and its compounds	all
Simazine	all above 10%
Sodium Cyanide	all
Sodium Dichromate	all formulations except brush-on
Sodium Methylthiocarbamate	all
Sodium Pyronarsenate	all formulations except brush-on
Strychnine	all
Sulfotepp	all
Sulfuric Acid	all
Sulfuryl Fluoride	all
Sulprofos	all
Terbufos	all
TFM	all
Tralomethrin	all above 2%
Tributyltin	all used as marine coatings

Tributyltin Fluoride	all used as marine coatings
Tributyltin Methacrylate	all used as marine coatings
Triphenyltin Hydroxide	all
Warfarin	all above 3%
Zinc Phosphide	all

Pes 701.07 Lindane Classification. Notwithstanding the manufacturers' labeling, pesticides containing lindane as the active ingredient shall be classified as one of the following:

(a) Prohibited-limited use provided it shall only be used for the control of:

- (1) Bark and wood borers;
- (2) White pine weevil with single stem applications only;
- (3) Spruce gall aphids;
- (4) Leafminers;
- (5) Aphids;
- (6) Thrips;
- (7) Gall midges;
- (8) Leafrollers on trees, shrubs, and ornamental plants;
- (9) Soil insects as a seed treatment;
- (10) Symphylids in soil application;
- (11) Fungus gnats;
- (12) Sowbugs and millipedes; and
- (13) Mange mites and lice on humans in conjunction with programs to protect public health under the direction of the New Hampshire department of health and human services, office of community and public health;

(b) Those lindane products restricted by the U.S. Environmental Protection Agency pursuant to 40 CFR 152.160-152.175 shall also be restricted in New Hampshire and use shall be limited to those uses under Pes 701.07(a); and

(c) A lindane product shall be classified as general use, as defined by RSA 430:29 XIII-a, only when the product is registered, and when the formulation and labeled use is as follows:

- (1) Liquid formulations containing 20% or less lindane and packaged in containers not exceeding one pint, for control of wood boring insects;
- (2) Paste formulations for the control of wood boring insects, and containing 2% or less lindane and packaged in containers not exceeding 2 oz; or
- (3) Pet supplies containing one percent or less lindane including shampoos, flea collars, flea tags and insecticides.

**Readopt Pes 1001, effective 11-10-13 (Document #10333), to read as follows:**

**PART Pes 1001 PESTICIDE APPLICATION ALONG SHORELINE OF SURFACE WATERS**

Pes 1001.01 Restrictions on Pesticide Use by Residential Property Owners, Private Applicators and Commercial Applicators. No residential property owner, private applicator, or commercial applicator shall apply pesticides to ground, turf, or established vegetation within the following distances of the reference line of those waters not covered by RSA 483-B "The Comprehensive Shoreland Protection Act":

- (a) Within 25 feet as it pertains to surface waters; and
- (b) Beyond 25 feet in such a manner or by such methods that would result in the presence of pesticides within 25 feet of the reference line of any surface waters.

Pes 1001.02 Pesticide Applications Within 25 Feet of the Reference Line. The restrictions in Pes 1001.01 shall not apply to the following:

- (a) Pesticide applications inside structures provided there is no soil contact or soil incorporation;
- (b) Pesticide applications to control termites provided the applicator is in possession of a special permit issued by the division in accordance with the provisions of Pes 502.04;
- (c) Pesticide applications which are subject to prior approval of the division through issuance of a special permit where distances from surface water are determined on a case by case basis; and
- (d) Pesticide applications to control vegetation along the embankments of sewage lagoons of wastewater treatment facilities.

**PART Pes 1002 SITE MANAGEMENT AREAS FOR GROUNDWATER AND SURFACE WATER PROTECTION**

Pes 1002.01 Definition of a Site Management Area. "Site management area" means a pesticide use, handling, storage or distribution area which is connected to a ground or surface water source where pesticides are detected and where the following conditions exist:

- (a) There are activities which are controlled by the authority of RSA 430:28-50 and Pes 100-1100;
- (b) The site has a history of the use of the pesticide(s) that is(are) the contaminant(s), by private applicators, commercial applicators and other persons within the last 5 years; and
- (c) The division has determined that supplementary pesticide use or handling restrictions beyond those found on the pesticide label and Pes 100-1100 are necessary to minimize or prevent further pesticide contamination of surface and groundwater.

Pes 1002.02 Definition of Potentially Responsible Party(ies). "Potentially responsible party(ies)" means a landowner or anyone applying, handling, storing or distributing pesticides detected in ground or surface water in the area found to be connected to the ground or surface water source where the detection occurred.

Pes 1002.03 Division Investigation. Investigation of a potential site management area by the division for purposes of obtaining information shall be initiated based on the detection of a pesticide in at least 2 samples taken at different times from a groundwater or surface water sampling point. However, an area where pesticide use has resulted in contamination which violates state ambient groundwater quality

standards shall not be designated a site management area and shall be regulated under RSA 485:3 and Env-Wm 1403.

Pes 1002.04 Investigative Report of the Division. The division shall submit an investigative report to the site management area committee which shall contain the following:

- (a) The division's findings on water quality, potential source areas of pesticide contamination and potential receptors of the contamination;
- (b) A summary of pesticide use and handling activities at each potentially responsible use or handling site; and
- (c) A discussion on whether or not the source of contamination is a result of pesticide activity in accordance with the label, misuse or an accident.

Pes 1002.05 Site Management Area Committee. The site management area committee shall consist of 6 members, as follows:

- (a) One representative of the division of public health who is also a pesticide control board member;
- (b) One representative of the department of environmental services who has a background in chemistry and is also a member of the pesticide control board;
- (c) One representative of the department of environmental services;
- (d) One representative of the United States Department of Agriculture, Natural Resources Conservation Service;
- (e) The director of the division of pesticide control; and
- (f) The coordinator of the state pesticide management plan for the protection of groundwater.

Pes 1002.06 Responsibility of the Site Management Area Committee. The site management area committee shall review the investigative report, make recommendations and provide advice to the division.

Pes 1002.07 Site Management Area Plan.

- (a) The division shall prepare a site management plan based upon existing information.
- (b) Information to be considered for purposes of preparing the site management plan shall include the following:
  - (1) Recommendations of the site management area committee after review of the division's investigative report and findings on the source and receptors of pesticide contamination;
  - (2) Whether the source of contamination is a result of pesticide use or handling in accordance with the label, misuse or an accident;
  - (3) Name and address of the potentially responsible party(ies) of the pesticide application or use area;
  - (4) Tax assessor's information including:
    - a. Tract/map number;
    - b. Lot/parcel number;

- c. Deed book number; and
  - d. Deed page number;
- (5) Pertinent physical features such as hydrology and hydrogeology, surface water or groundwater susceptibility and other relevant subjects which support the basis for recommending a particular area as a site management area(s);
- (6) A map with boundaries as specified in Pes 1002.08, of the potential site management area which shall be one of the following:
- a. A detailed U.S. Geological Survey map at a scale of 1:24000 or 1:25000;
  - b. A copy of an assessor's map at a scale of no less than 1:1000; or
  - c. A map prepared by a New Hampshire licensed land surveyor at a scale of no less than 1:1000;
- (7) Information which shall be plotted on the map described in Pes 1002.07(b)(6) to include the following:
- a. North arrow, specified as magnetic or true;
  - b. Distinguishable landmark such as a street, boundmarker, fence line, building or the most discernable landmark available;
  - c. Ownership boundaries;
  - d. Location of water wells in the area outside of the site management area for a distance of 1000 feet from the boundary of the potential site management area including:
    - 1. Distance of each water well to the boundary; and
    - 2. An indication of whether the well is public or private; and
  - e. Location of surface waters in the area outside of the site management area for a distance of 1000 feet from the boundary of the potential site management area including the following:
    - 1. Name of the water body;
    - 2. Type of surface water such as lake, pond, river, stream, swamp, marsh or bog; and
    - 3. Whether the surface water is surface waters or their tributaries used for a public water supply;
- (8) Descriptions of restrictions recommended for the site management area as described in Pes 1002.09 and a schedule and methods for review of their effectiveness;
- (9) Reference to informational and educational programs concerned with increasing the competency of pesticide applicators;
- (10) The presence of a soil type that favors leaching or retention of pesticides;

(11) The availability of existing wells or other water sources, such as surface waters, for monitoring purposes; and

(12) The need to conduct monitoring in order to:

- a. Track the level of contaminants over time; or
- b. Track the distribution of contamination so as to assess risk to abutting areas.

Pes 1002.08 Determination and Description of Boundaries. The site management area plan recommendations by the site management area committee shall include a determination and description of boundaries based on the following:

(a) Boundaries of a site management area shall be the area where the pesticide application or use area is determined to be a source of a detected pesticide(s);

(b) To facilitate the defining of a boundary, the following legal land descriptions shall be used if they are in close proximity to the boundary as determined in (a) above:

- (1) Public roads;
- (2) Political boundaries;
- (3) Rights-of-way that appear on maps; and
- (4) Other similar descriptions;

(c) Boundaries shall encompass sufficient area to minimize the concentration of a pesticide in surface water or in groundwater to regain or maintain the water quality below regulatory detection limits as established under RSA 485-C:6, "Ambient Groundwater Quality Standards," Env-Dw 700, "Drinking Water Quality Standards," or Env-Wq 1700, "Surface Water Quality Regulations," depending on the type of water Source.

Pes 1002.09 Restrictions on Pesticide Use in Site Management Areas. The site management area plan recommendations to the division shall include suggested restrictions on pesticide use or handling for the purpose of protecting groundwater and surface water including but not limited to one or more of the following:

- (a) Prohibitions against the use or handling of a certain pesticide;
- (b) Limitations on the purpose for which a certain pesticide shall be used or handled, including limitation on the crops and target pests for which a pesticide shall be used;
- (c) Limitations on the rate at which a certain pesticide shall be applied;
- (d) Limitations on the time or frequency of use of a certain pesticide;
- (e) Limitations on the method of application of a certain pesticide;
- (f) Buffers or zones between wells, surface waters and contamination areas where pesticides cannot be used;
- (g) Reporting or permit requirements applicable to the use or handling of a certain pesticide;
- (h) Recommendations for no action stating why no supplemental action beyond compliance with RSA 430:28-50 and the administrative rules of the pesticide control board, Pes 100-1100, is necessary; and



(i) Monitoring requirements.

Pes 1002.10 Notification to Potentially Responsible Party. Notification shall be given by the division to potentially responsible parties providing the following information:

(a) The intent of the division to designate a site management area;

(b) Site management area plan recommendations;

(c) Location of the site management area; and

(d) An opportunity to request a meeting between the potentially responsible parties, the division of pesticide control, and the site management area committee.

Pes 1002.11 Request for Meeting by Potentially Responsible Party(ies).

(a) The division shall schedule a meeting provided the request is received within 21 days of the notice under Pes 1002.10.

(b) The division shall notify the potentially responsible party(ies) 20 days prior to the meeting of the following:

(1) Date of the meeting;

(2) Location of meeting;

(3) Time of meeting; and

(4) That the purpose of the meeting is to provide the potentially responsible party(ies) an opportunity to comment and direct questions concerning the committee's site management area plan recommendations to the division.

Pes 1002.12 Site Management Area Designation. The division, taking into consideration any information from a landowner meeting, the recommendations of the site management area committee contained in the site management area plan and the detection of a pesticide in at least 2 samples taken at different times from a groundwater or surface water sampling point, shall designate a site management area provided the information and recommendations support the designation.

Pes 1002.13 Notice of Designation of Site Management Area. The division shall notify the potentially responsible parties by certified mail within 10 days of the division's designation of a site management area.

Pes 1002.14 Special Permit Required. No pesticide applications shall be made in a site management area unless such applications comply with the provisions of the site management area plan and the applicator obtains a special permit within 60 days of the designation of the site management area.

Pes 1002.15 Special Permit Application Procedure.

(a) Application for approval for pesticide use or handling within site management areas shall be made on forms provided by the division.

(b) Applicant shall provide on such forms the following:

(1) An attached copy of the site management area plan;

(2) Names, addresses and telephone numbers of the following:

- a. Applicant; and
  - b. Spokesperson of group or association requesting pesticide use or handling;
- (3) Description of pesticide use procedure which includes:
- a. List of names of pesticides to be used;
  - b. Method of application of pesticide;
  - c. Identification of site to which pesticide will be applied upon or into including soil, plant, animal, structure or any other area as applicable;
  - d. Reason(s) for pesticide use and frequency of pesticide use; and
  - e. Measures to mitigate and/or prevent contamination consistent with the site management area plan;
- (4) Signature of applicant or spokesperson representing group or association; and
- (5) Date of application.

Pes 1002.16 Division Action on Special Permit Request.

- (a) Within 30 days of receiving a special permit request the division shall respond by issuance of a special permit or by letter stating reasons why the special permit request was denied.
- (b) Special permits shall be approved provided that:
  - (1) The application is filled out completely providing all of the information requested in Pes 1002.15; and
  - (2) The special permit request proposal conforms to the provision in the site management area plan and the restrictions as specified under Pes 1002.09.
- (c) Special permits shall be denied if the proposal of the applicant does not comply with Pes 1002.16(b)(1)(2).

Pes 1002.17 Termination or Revision.

- (a) The site management area committee and holders of special permits issued pursuant to Pes 1002.14 shall review the provisions of the site management area plan and the special permits annually to determine if provisions are still needed and if the plan needs to be revised.
- (b) Termination or revision shall be determined by one or more of the following:
  - (1) Testing has shown that contamination levels have changed;
  - (2) The pesticide causing the contamination is no longer used in the site management area;
  - (3) There are no longer any activities in the site management area utilizing pesticides;
  - (4) Assessment of the provisions of the site management area plan has indicated that the protective measures are not effective; and

(5) Investigation for enforcement purposes has indicated violation of the terms of the special permit.