



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

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Disclosure Statement Regarding The Application of Aquatic Herbicides (including Pond Dyes)

The Maine Board of Pesticides Control (BPC) and the Maine Department of Environmental Protection (DEP) have requested that pesticide dealers present this statement to all persons who purchase an herbicide that is labeled for use in surface waters. The two agencies want to ensure that every purchaser is clearly aware of the restrictions on aquatic herbicides (including pond dyes) as outlined below.

Permits Required for "Waters of the State"

The DEP requires anyone applying any pesticide to "Waters of the State" to first obtain a Maine Waste Discharge License (WDL). Maine statutes define "Waters of the State" as:

"...any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce."

This means that only private ponds contained entirely on a single property and without an inlet or outlet can be treated without a permit.

Purchase and Application of Aquatic Herbicides

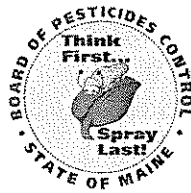
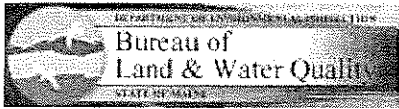
Persons wishing to purchase and apply an aquatic herbicide—except for the pond dyes listed below—must first obtain a pesticide applicator's license from the BPC. **Best Management Practices (BMPs)** have been developed that **must be followed** by those planning to treat private ponds with any aquatic herbicide (including pond dyes)—see "*Best Management Practices for The Application of Aquatic Herbicides in Private Ponds*" below.

Purchase and Application of Certain Pond Dyes

Persons wishing to purchase and apply pond dyes such as Aquashade, Admiral or Pondmaster Blue (containing the active ingredients erioglaucine [Acid Blue 9] and tartrazine [Acid Yellow 23]) are exempt from applicator licensing requirements. However, while these products are exempt from licensing requirements, the requirement for obtaining a WDL still applies, if applicable (see "*Waters of the State*" definition above).

Purchasers should be aware that the State has a policy of minimizing reliance on pesticides and that herbicides used to control common aquatic weeds may have adverse effects on the environment. Purchasers are therefore encouraged to learn more about aquatic weed identification and nonchemical control measures by visiting <http://www.state.me.us/dep/blwq/topic/invasives/index.htm>.

Information on invasive aquatic plants, permits and aquatic herbicides may also be obtained by contacting the DEP at 207-287-3901. Information on pesticide applicator licensing may be obtained from the BPC at 207-287-2731 or go to <http://www.thinkfirstspraylast.org/cert/questions.htm>.



Best Management Practices for The Application of Aquatic Herbicides in Private Ponds *Effective: June 15, 2007*

Common algae and plants can thrive in private Maine ponds when ideal conditions are provided. Ample sunlight, fertilizers and nutrients from surrounding areas and—especially for algae—groundwater recharge can hasten growth, creating a nuisance that compromises recreation, aesthetics and other pond uses.

Pond owners faced with algae or plant infestation may consider using products, namely pesticides, which claim to control these species. Maine laws place conditions on how these products may or may not be used because of the risks they pose to human health, as well as to nearby streams, wetlands, lakes or groundwater that are legally regarded as “Waters of the State.”

Pesticides that claim to kill or control vegetation in water—algae and other aquatic plants—are called *aquatic herbicides*. Pond dyes or colorants are aquatic herbicides that prevent algae and weed development by limiting light and restricting photosynthesis.

Generally, aquatic herbicides, other pesticides or any pollutant may not be discharged into any water of the state without a WDL from the DEP.

Further, the BPC restricts the sale and application of aquatic herbicides to BPC-licensed applicators. Initially this restriction also included pond dyes.

In March 2007, the BPC relaxed regulations affecting the sale and use of pond dyes only if used within a private pond contained on one person’s property. While BPC sale and use restrictions for other aquatic herbicides and DEP discharge licensing requirements remain in force, the private pond owner may now purchase and use BPC-registered pond dye products for private pond use.

The rationale for easing rules on pond dye purchase and use is that these products are able to meet algae and plant control needs of private pond owners while posing minor risk to Maine’s aquatic habitats.

Minor risk, however, is not the same as zero risk. Pond dye products can have biological and other environmental consequences in the event they escape from the pond and move into waters of the state. The DEP prohibits the discharge of any material to waters of the state that change the color, clarity, chemistry or temperature of the receiving waters without a WDL.

Therefore, application of pond dye products must be conducted in a manner that demonstrates the highest standards of conduct, namely in accordance with the BMPs.

The following BMPs must be followed by both licensed and unlicensed pond dye users. Licensed pesticide applicators certified for aquatic vegetation control who intend to treat private ponds with any aquatic herbicide must also follow these BMPs. While close attention to these BMPs will prevent an illegal discharge in most cases, good judgment should always prevail.

Maine BMPs for Use of Aquatic Herbicides In Private Ponds for Control of Algae and Other Aquatic Plants

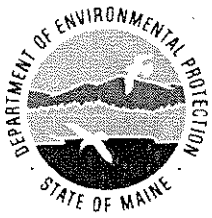
- Aquatic herbicides and pond dyes may be used *without a WDL* only under the following conditions:
 - Use of aquatic herbicides and pond dyes must not result in a discharge to groundwater or surface waters of the state (such as ponds, lakes, wetlands, streams and rivers).
 - Aquatic herbicides and pond dyes may only be used in private ponds contained wholly on a single property.
 - Aquatic herbicides and pond dyes may only be used in ponds that have no outflow while these products are active.
 - Aquatic herbicides and pond dyes may only be applied after any seasonal high water outflow has ceased.
 - Aquatic herbicides and pond dyes may only be used in ponds that generally have a seasonal high water outflow if:
 - there is no defined channel exiting the pond such as a drainage swale or a mineral bottom channel;
 - there is no year-round surface water body (such as lakes, ponds, streams and rivers) within 100 feet down gradient of the pond;
 - any seasonal outflow does not occur as channeled flow, but occurs only across a dense vegetated area at least 50 feet in length, as measured along the gradient.
 - Aquatic herbicides and pond dyes may only be applied during the months of May, June, July and August.
 - Aquatic herbicides and pond dyes may only be applied after spring runoff and when the water level has stabilized or has been drawn down at least 6 inches below the point of discharge.
 - Aquatic herbicides and pond dyes should not be applied when weather forecasts predict significant rainfall during the five-day forecast period following application.
 - Aquatic herbicides and pond dyes must be applied at the minimum effective rate and in accordance with label instructions.

For more information, contact the following:

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Maine Department of Environmental Protection
State House Station 17, Augusta, ME 04333
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MAINE DEP FACT SHEET

USE OF HERBICIDES IN WETLANDS IN MAINE

Date: April 2006

Contact: Bob Stratton (207) 287-3901

Increasing numbers of people are concerned with the spread of invasive plants in Maine and want to know what they can do to manage infestations. This Department of Environmental Protection (DEP) document outlines the current guidance and regulatory implications of herbicide treatments in wetlands. Other non-herbicide treatment methods may also be appropriate and effective means of control. Efforts to chemically control invasive plants have the potential to cause far reaching environmental effects. Therefore, when considering using herbicides, you must proceed cautiously to avoid causing adverse impacts to aquatic life and habitats.

State law governs aquatic pesticide applications. If the area to be treated is a water of the State or if the treatment will potentially result in a discharge to a water of the State, you must first obtain a Maine Waste Discharge License (WDL). From State Law:

► *Aquatic pesticide is defined as any substance applied in, on or over waters of the state or in such a way as to enter those waters for the purpose of inhibiting the growth or controlling the existence of any plant or animal in those waters (06-096 CMR Chapter 514).*

► *Waters of the State means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this state or any portion of the state...except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the state...(38 MRSA, §361-A(7)).* By definition, waters of the State include streams, rivers, lakes, ponds, marine waters, coastal and freshwater wetlands and ground water. In Maine, almost all wetlands are connected to either surface or groundwaters, and some are connected to both.

► *No person may directly or indirectly discharge or cause to be discharged any pollutant (to a water of the state) without first obtaining a license...from the department (38 MRSA, §413(1)).* However, Department rules limit such licenses in freshwaters in Maine to *aquatic pesticide or chemical discharges...conducted by the department or an agent of (the) agency for the purpose of restoring biological communities affected by an invasive species...*

The Maine DEP has identified some activities that can be conducted under specific conditions without Department approval. These are outlined below. And, in some fresh and marine waters, a Waste Discharge License may be possible for very limited specific treatment programs that substantially adhere to these same conditions. This guidance is intended to apply to short term treatment programs addressing small areas of such invasive plants as purple loosestrife and phragmites to prevent colonization. It is not intended to apply to long term or large scale eradication programs or programs targeting native plants such as cattails.

To be exempt from Waste Discharge Licensing, an herbicide treatment plan must include:

- Use of non-persistent herbicides that are rapidly absorbed by or bound to the target plants and the surface soil beneath the target plants, thus containing the herbicide to a small area.
- Treatment in areas with no standing water or treatment in private, constructed ponds and wetlands, contained on one person's property with no surface water connections to waters of the State during the herbicide's active period.
- Treatment only during low wind conditions to reduce drift (<15 mph).
- Treatment only when there is no rainfall predicted within 24 hours to allow plant and soil assimilation, thereby reducing the potential for runoff and contact to other waters.
- Targeting applications to individual plants instead of broadcast spraying.
- Applying with moderation, to minimize drift and effects on non-target species.
- Use of a certified applicator.
- A treatment project of limited size and duration such as treating small areas of new growth of invasive plants to keep them from colonizing. Since risks increase with long term or widespread use, additional concerns would be associated with eradicating large, dense, existing stands or long term maintenance projects with unlimited time frames.

Effective invasive plant treatment programs are typically conducted in late summer when ground conditions are at their driest and plants are robust and more susceptible to herbicide effects, but have not yet released seeds. Adhering to these conditions will greatly reduce or eliminate the potential for pollutant discharges to surface or groundwaters. Many treatment programs combine carefully removing flower/seed heads with targeted herbicide treatment of the plant. A treatment program conducted pursuant to these conditions and label instructions does not require a Waste Discharge License.

For all herbicide treatment programs, the following criteria (Ch. 514) must be adhered to:

- A. The pesticide must be registered for the intended use by USEPA and the Maine Dept. of Agriculture.
- B. The applicant or agent must be certified and licensed in aquatic pesticide control by the Maine Board of Pesticide Control (BPC) pursuant to BPC rules.
- C. The applicant must provide adequate protection for non-target species.
- D. The applicant must demonstrate a significant need to control the target species and that the pesticide offers the only reasonable and effective means.
- E. The application must not result in violations of State Water Quality Laws (such as causing a receiving water to not attain its designated classification.)

Items C, D, and E require significant attention. Although glyphosate products such as Rodeo are desirable for herbicide programs, published studies indicate that they are toxic to aquatic life in both short term (acute) and long term (chronic) applications. This is a concern for all herbicides, therefore care must be exercised to avoid adverse impacts.

According to the Maine BPC, a commercial Pesticide Applicator's License is required if:

1. The work involves a contract (fee for services) to apply a pesticide.
2. It involves an area open to the public.
3. It will be applied by a government employee at any level including water districts, schools, etc.

Removal of wetland vegetation may require approval under the Natural Resources Protection Act (38 M.R.S.A., § 480) or Permit by Rule Section 12 (Ch. 305). If you have additional questions, please contact Maine DEP at (207) 287-3901, 17 State House Station, Augusta, Maine 04330-0017.