



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
BOARD OF PESTICIDES CONTROL  
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**Memorandum**

To: Board of Pesticides Control  
From: Alexander Peacock, Director  
Subject: Penalties

December 6, 2024

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**Background:**

During presentation and ratification of administrative consent agreements, the subject of insufficient penalties to deter future violations has often been raised. BPC penalties have also received attention in the media in connection with recent fines that have been assessed. MRS Title 7 §616-A. Penalties, outlines the BPC's penalty structure in statute. Staff has prepared sample language that may enhance the penalty provisions. This topic is brought to the board for input and discussion.

**MRS Title 7 §616-A. Penalties (CURRENT)**

**§616-A. Penalties**

**1. Informal hearing.** When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing under the Maine Administrative Procedure Act. [PL 2005, c. 620, §16 (AMD).]

**2. Civil violations.** The following violations are civil violations.

A. A person may not violate this subchapter or a rule adopted pursuant to this subchapter or Title 22, chapter 258-A or a rule adopted pursuant to Title 22, chapter 258-A. Except as provided in paragraph B, the following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine

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of not more than \$4,000 may be adjudged. [PL 2003, c. 452, Pt. B, §6 (RPR); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A private applicator, as defined in Title 22, section 1471-C, may not violate a rule regarding records maintained pursuant to section 606, subsection 2, paragraph G. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [PL 2011, c. 510, §1 (AMD).]

[PL 2011, c. 510, §1 (AMD).]

**2-A. Criminal violation.** A person may not intentionally or knowingly violate this subchapter or Title 22, chapter 258-A, a rule adopted under this subchapter or Title 22, chapter 258-A or a restriction of a registration issued pursuant to this subchapter. A person who violates this subsection commits a Class E crime. Notwithstanding Title 17-A, section 1604, subsection 1 and sections 1704 and 1705, the court may impose a sentencing alternative of a fine of not more than \$7,500 or a term of imprisonment of not more than 30 days, or both, for each violation. Prosecution under this subsection is by summons and not by warrant. A prosecution under this subsection is separate from an action brought pursuant to subsection 2. [PL 2019, c. 113, Pt. C, §1 (AMD).]

**3. Continuation.** Each day that the violation continues is considered a separate offense. [PL 1989, c. 841, §3 (NEW).]

**4. Exceptions.**

[PL 2003, c. 452, Pt. B, §8 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

**5. Criminal violations.**

[PL 2003, c. 452, Pt. B, §8 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

**6. Other relief.** Notwithstanding Title 22, section 1471-D, subsections 6 to 8 and in addition to other sanctions provided under this section, the court may order that a violator obtain recertification credits through board-approved meetings or courses as a condition of retaining, maintaining or renewing a certification or license required under Title 22, chapter 258-A.

[PL 1989, c. 841, §3 (NEW).]

**7. Considerations.** In setting a penalty under this section, the court shall consider, without limitation:

A. Prior violations by the same party; [PL 1989, c. 841, §3 (NEW).]

B. The degree of harm to the public and the environment; [PL 1989, c. 841, §3 (NEW).]

C. The degree of environmental damage that has not been abated or corrected; [PL 1989, c. 841, §3 (NEW).]

D. The extent to which the violation continued following the board's notice to the violator; [PL 1989, c. 841, §3 (NEW).]

E. The importance of deterring the same person or others from future violations; and [PL 1989, c. 841, §3 (NEW).]

F. The cause and circumstances of the violation, including:

(1) The foreseeability of the violation;

(2) The standard of care exercised by the violator; and

(3) Whether or not the violator reported the incident to the board. [PL 1989, c. 841, §3 (NEW).]

[PL 1989, c. 841, §3 (NEW).]

**8. Injunction.** The board may bring an action to enjoin the violation or threatened violation of any provision of this subchapter or any rule made pursuant to this subchapter in a court of competent jurisdiction of the district in which the violation occurs or is about to occur. [PL 1989, c. 841, §3 (NEW).]

**9. No damages from administrative action if probable cause exists.** A court may not allow the recovery of damages from administrative action taken, or for a stop sale, use or removal order, if the court finds that there was probable cause for the administrative action. [PL 1989, c. 841, §3 (NEW).]

**10. Sunset.**

[PL 1991, c. 829, §1 (RP).]

**SECTION HISTORY**

PL 1989, c. 841, §3 (NEW). PL 1991, c. 829, §1 (AMD). PL 2003, c. 452, §§B6-8 (AMD). PL 2003, c. 452, §X2 (AFF). PL 2005, c. 620, §16 (AMD). PL 2011, c. 510, §1 (AMD). PL 2019, c. 113, Pt. C, §1 (AMD).

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**MRS Title 7 §616-A. Penalties (SAMPLE D)**

**§616-A. Penalties**

**1. Informal hearing.** When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing under the Maine Administrative Procedure Act. [PL 2005, c. 620, §16 (AMD).]

**2. Civil violations.** The following violations are civil violations.

A. A person may not violate this subchapter or a rule adopted pursuant to this subchapter or Title 22, chapter 258-A or a rule adopted pursuant to Title 22, chapter 258-A. Except as provided in paragraph B, the following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$2,500 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$5,000 may be adjudged. [PL 2003, c. 452, Pt. B, §6 (RPR); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A private applicator, as defined in Title 22, section 1471-C, may not violate a rule regarding records maintained pursuant to section 606, subsection 2, paragraph G. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$2,000 may be adjudged. [PL 2011, c. 510, §1 (AMD).]

[PL 2011, c. 510, §1 (AMD).]

## **MRS Title 7 §616-A. Penalties (SAMPLE II)**

### **§616-A. Penalties**

**1. Informal hearing.** When the staff of the board proposes that the board take action on a possible violation, the board shall notify the alleged violator before discussing the alleged violation. The alleged violator may choose to address the board and may also choose to be represented by legal counsel. This requirement does not constitute and is not subject to the same procedures as an adjudicatory hearing under the Maine Administrative Procedure Act.

[PL 2005, c. 620, §16 (AMD).]

**2. Civil violations.** The following violations are civil violations.

A. A person may not violate this subchapter or a rule adopted pursuant to this subchapter or Title 22, chapter 258-A or a rule adopted pursuant to Title 22, chapter 258-A. Except as provided in paragraph B, the following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of ~~not more than \$1,500~~ may be adjudged as follows.

a. \$25,000 except as provided in subparagraph b. below; or

b. \$50,000 for unauthorized pesticide applications for which the preponderance of demonstrates that the responsible party would benefit substantially.

(a) Prima Facie Evidence. Clear and compelling evidence that only one person will benefit substantially from an unauthorized application of pesticides constitutes prima facie evidence that the person is responsible for the unauthorized application.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$4,000 may be adjudged. [PL 2003, c. 452, Pt. B, §6 (RPR); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. A private applicator, as defined in Title 22, section 1471-C, may not violate a rule regarding records maintained pursuant to section 606, subsection 2, paragraph G. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

(2) A person who violates this paragraph after having previously violated this paragraph within the previous 4-year period commits a civil violation for which a fine of not more than \$2,000 may be adjudged. [PL 2011, c. 510, §1 (AMD).]

[PL 2011, c. 510, §1 (AMD).]

## **Conclusion**

An increase in the penalty would allow the BPC to assess fines that would deter future violations. An increase to an amount as shown in Sample II would likely require staff to develop a penalty matrix. This matrix could be written into policy and create transparency for future penalties assessed. Section 7. Considerations, may be another location for possible amendments to enhance the penalty structure.

SAMPLE