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Resolve, Regarding Legislative Review of Portions of Chapter 22: Standards for Outdoor Application of Pesticides by Powered Equipment in Order To Minimize Off-target Deposition, a Major Substantive Rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1 Adoption. Resolved: That final adoption of portions of Chapter 22: Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-target Deposition, a provisionally adopted major substantive rule of the Department of Agriculture, Food and Rural Resources, Board of Pesticides Control that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized but only if the following revisions are made:

1. The provision that a detectable pesticide residue in a sensitive area likely to be occupied is considered prima facie evidence that pesticides were not applied in a manner to minimize pesticide drift is removed and replaced with a provision that pesticide residues in a sensitive area likely to be occupied that are 1% or greater of the intended residue in the target area is prima facie evidence that the applicator did not apply the pesticides in a manner to minimize pesticide drift to the maximum extent practicable;

2. The language regarding prima facie evidence is rewritten to clarify that detection of residue is not prima facie evidence of a violation but rather evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable. The board must review the site-specific application checklist completed by the applicator and other relevant information to determine if a violation has occurred;

3. Specific distances for buffer zones must be removed from the rule, allowing site-specific buffer zones to be used; and

RESOLVE Chapter 114 LD 494, item 1, 124th Maine State Legislature
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4. That section of the rule that establishes documentation of human illness as a standard of harm must be revised to state that for this standard to be met the board must receive verification from 2 physicians that an individual has experienced a negative health effect from exposure to an applied pesticide and that the effect is consistent with epidemiological documentation of human sensitivity to the applied pesticide.

The Board of Pesticides Control is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.