



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

April 1, 2022

9:00 AM Board Meeting

MINUTES

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Board: Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie, Waterman
- Staff: Boyd, Brown, Bryer, Connors, Couture, Patterson, Pietroski, Tomlinson

2. Minutes of the February 25, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Carlton: Moved and seconded to approve the minutes as amended**
- **In Favor: Unanimous**

3. Overview of Board Member Responsibilities

It is beneficial to periodically review the legal framework within which the Board operates, particularly for new Board members.

Presentation By: Mark Randlett, Assistant Attorney General

Action Needed: None, information only

- Randlett explained to Board members their responsibilities as a public board, which include ensuring that all members of the public had the right to be notified of meetings and an opportunity to hear and understand what decisions the Board was making. He noted that it would be inappropriate for members to discuss any agenda items outside of a formal meeting. Randlett stated that except for during an executive session everything the

Board did must occur in public. He described the process for rulemaking and the provision in the law that allowed for a judiciary proceeding to terminate a registration or revoke a license. Randlett also discussed how Board members should disclose any conflicts of interest in regard to specific agenda items and recuse themselves if need be. He concluded that he was always available to provide legal counsel to Board members or staff.

4. Review and Potential Adoption of Proposed Amendments to Chapters 20 and 41

(Note: No additional public comments may be accepted at this time.)

On December 22, 2021, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20 and 41. A public hearing was held on January 14, 2022, by remote meeting on the Microsoft Teams platform and the written comment period closed at 8:00 AM on January 24, 2022. The Board reviewed the rulemaking record on February 25, 2021, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. The Board will now review the changes to the proposed amendments, the Response to Comments for Chapters 20 and 41. The Board will also review the Basis Statement and Statement of Impact on Small Business for Chapter 20. The Board will then determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation By: Megan Patterson, Director

Action Needed: Provide direction to the staff on further refinements or adopt the amendments

- Patterson gave Board members a quick overview of where they were in the rulemaking process and noted that more information would be added to the basis statement. Patterson told the Board that in accordance with rulemaking deadlines they had until May 23 to either finally adopt the language presented at the May 6 meeting and stick with revisions that were made or make additional revisions which would require going through the rulemaking process again.
- Adams asked that Patterson go through the sections of rule that had been changed.
- Patterson began with Chapter 20 Section 1(A) and explained that it had been decided to use the definition of PFAS associated with one fully fluorinated carbon, which was pulled from existing state statutory language.
- Randlett stated that changing the PFAS definition would be considered a substantial change because it could significantly change the scope of products to which the rule would apply. He added that the Board could change this and go back for public comment without starting all over but that they would need to do so within 14 days after the end of public comment.
- Adams stated that leaving the PFAS definition as it was at this time would probably be best.
- Ianni asked which definition of PFAS was more inclusive and who was currently using the two-carbon definition.
- Patterson stated that the one-carbon definition was more inclusive, and EPA was using a definition very similar to the two-carbon definition.

- Bryer noted that she conducted a search on the PubMed database and there were roughly 6,250,000 compounds that contained one fully fluorinated carbon atom.
- Patterson explained that there was one difference between the two copies of Chapter 20 included in the Board packet and that was the inclusion and the exclusion of the term HDPE in relation to containers that pesticides are stored, distributed or packaged in.
- Jemison asked what percentages of HDPE plastic containers were fluorinated.
- Patterson responded that about 20% of all HDPE containers for agricultural chemicals (fertilizers, adjuvants and pesticides) were fluorinated, but that did not mean they were all introducing PFAS. She added that EPA was still studying the impact of container fluorination on PFAS in agrichemicals, but that there was some thought that the presence of PFAS might be related to how the container was fluorinated.
- Ianni added that in this state of not having all the information on which containers were producing PFAS she would rather air on the side of being more inclusive in rule.
- The Board came to the consensus to remove HDPE and keep all fluorinated containers.
- Patterson stated that EPA was expected to have a report on their fluorination study coming out next month which assessed a variety of container types.
- Randlett commented that a basis statement was a requirement under the Administrative Procedures Act and needed to state the policy reason for why the rules were being adopted. He added that it needed to explain that they were adopted pursuant to a legislative directive and staff may want to include other reasons for why this was important as a policy matter. Randlett added that it also needed to note that the term HDPE was removed and that the change was made because the Board agreed to include a wider variety of containers.
- Patterson noted that staff would add additional info to the basis statement.
- Patterson discussed Chapter 41 changes with the Board. She stated that the definition of emerging invasive invertebrate pest under section 6(A)(I) had been changed as requested from the last meeting. Patterson noted that there were several comments about this definition, including editing it to make it more specific. She noted that clause (a) came from bill sponsor Representative Grohowski's public comments, and clause (b) came from department staff conversations about how to delineate areas of emergence, which resulted in the term eco-region being included. Eco-region was a term used by the EPA and there were specific eco-regions with delineated areas. Patterson stated that clause (c) was changed to allow for the management of pests specified on a board-approved list that would be included in policy. This would allow the Board to be able to add or remove species from that list during regular Board meetings which occur approximately every six weeks.
- Bohlen commented that eco-region was a good basis to go on, but the challenge was it was hierarchical and possibly they should add the level they were referring to. He added that he tripped over language in clause (c) because it made him think it was referring to a list of ornamental plants.
- Jemison agreed with Bohlen on the confusion regarding clause (c)
- There was further Board discussion about the term eco-region.
- Patterson stated that there was a suggestion to go with level three ecoregion during discussions with the State horticulturist.
- Jemison asked if the Board chose to leave the term eco-region as it currently was if they could move forward with the rule.

- Randlett responded that it seemed to be a different definition than what was originally proposed. He added that it restricted the number of species significantly and was not sure if it would be a substantial change but it was ultimately up to the Board to decide.
- There was consensus among the Board regarding the main body of the definition.
- Patterson suggested they could change clause (c) to read ‘species specified on the board-approved list’ and that Asian long-horned beetle, hemlock wooly adelgid and emerald ash borer were already suggested for the list.
- Patterson told the Board the next part of rule with changes addressed dates for the Board publication of the two lists, a list of pest species exempted, and a list of the products prohibited. She explained that there had been discussion about avoiding delays, so the language had been changed from the proposed date to ‘within 30 days of adoption’ of the rule. She stated that regarding Section 6(C)(IV) staff proposed changes that pertained to pointing back to the list in 6(A)(I)(c).
- Adams asked if keeping the list and eliminating the permit process would be ok.
- Randlett responded that if the Board was striking the permit process he thought that could be important. He stated that he was not prepared to give an answer or guidance on it right now until after he had time to look at it.
- Adams commented that the instruction of the legislation was to be as prohibitive as possible.
- Patterson stated that she was not sure how a permit would be much more expedient than using the list and that the Board had the option to have an emergency meeting to change the list if that was needed.
- Bohlen commented that he was one of the people pushing for a permitting process because of concern about responding to a new invasive in a timely manner and when it was still a small population. He added that the specific permit language did not say it was for an ‘emergency’ so that may open staff up to other types of requests.
- Patterson stated that the initial date of adoption was January 1, 2023, but that language had been struck and the rule would become effective when it was finally adopted. Patterson explained to the Board that chlorpyrifos tolerances on all agricultural commodities grown in the U.S. and intended for human consumption had been canceled by the EPA.

5. Consideration of a Consent Agreement with Caleb Bell, Senior of New Limerick, Maine

On June 3, 1998 the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine to resolve the matter. This case involved an outdoor terrestrial broadcast application of pesticides within twenty-five feet from the high-water mark of a lake.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Amend and/or approve

- Connors stated that this complaint was initially reported to the Maine DEP, who then contacted BPC staff. He added that someone saw an individual making applications on four different occasions within 25 feet of the water. Connors stated that it appeared clear that an herbicide had been used for over 130 feet along the shoreline on a man-made

berm. He told the Board that a BPC inspector had collected samples that came back positive for glyphosate and its metabolite. Connors concluded that the \$300 consent agreement that has been signed.

- Waterman asked what the cost was to run the soil analysis.
- Connors responded that it could vary but was typically around \$300.
- Waterman questioned whether this fine really affected the expense and efforts that staff had gone through to prove this happened. Carlton seconded this same sentiment.
- Patterson told the Board that all payments from consent agreements go to the General Fund, from which the BPC does not receive any monies.
- There was discussion about the lapse in time from the report of the violation to the issuance of the consent agreement.
- Connors responded that there was some time lag and ideally closure would have occurred much quicker.
- Ianni asked if the Board weighed in on mitigating the erosion potential due to the barren soil that had now been created.
- Connors stated that DEP's shoreland zoning regulations stated not to remove trees, understory or groundcover and BPC staff would make it known to DEP what their findings were.
- Adams stated that he would be interested in taking a future look into the costs of BPC investigations and the parameters of consent agreement amounts. He added that he agreed with Ianni about the erosion problem that was caused.
- Bohlen commented that part of the problem was how to find routes to educate homeowners because we have a responsibility to do that.
- Adams stated that he wanted this particular issue to be discussed in a future meeting.
- Jemison suggested they might be able to use costs analysis towards settling consent agreements for enforcement actions to state that an individual or company willing to hire someone to correct the problem they created may face a lesser fine.

- **Jemison/Carlton: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

6. Other Old and New Business

- a. LD 2019—An Act To Require the Registration of Adjuvants in the State and To Regulate the Distribution of Pesticides with Perfluoroalkyl and Polyfluoroalkyl Substances
 - Patterson told the Board that hearings for LD 2019 took place on March 15 and the work session was held on March 16. She added that ultimately this and LD 2021 were both voted out of committee. Patterson stated that staff had been asked to provide estimates of fiscal impact to be used by the ACF Commissioner's Office in developing a fiscal note.
- b. LD 2021—An Act To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public
- c. EPA Letter to Various Parties about Fluorinated Polyolefin Containers

d. Variance Permit for CMR 01-026 Chapter 29, Vegetation Control Services, Inc.

- Patterson stated that the Board delegated the authority to review variances to staff for the management of invasive plants within 25 feet of water. Patterson reviewed the process that staff followed each time a variance application was received. She added that specific clauses were added to this variance, including the stipulation that two of the pesticides proposed for use were not to be used within 25 feet of water.

6. Schedule of Future Meetings

May 6, June 17, August 5, and September 16 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- There was discussion about whether meetings would continue to be held remotely. The Board decided to hold the next meeting remotely and discuss how the June 17 meeting would be held at that time.

8. Adjourn

- **Jemison/Bohlen: Moved and seconded to adjourn at 11:50 AM**
- **In Favor: Unanimous**