



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

September 1, 2023

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

2. Public Hearing on Proposed Rule Amendments to Chapters 20, 31, 32 and 41

The Board will hear testimony on the proposed amendments:

Chapter 20 – Two amendments are proposed

1. Adopting current policy language into rule to make “Proper Identification of Treatment Sites” methods enforceable. Adding language from this policy under subsection 1-4 and creating a new subsection 5 that allows master applicators to submit their own methods for identifying treatment sites.
 2. Adding a section B that outlines penalties if violations occur over a 5-year period.
- Mike Peaslee, Technical Director, Modern Pest Control- Peaslee stated these were the most stringent proposed regulations in New England and other states held the applicator responsible for misapplication. He added that the proposed rule was excessive and unnecessary. Peaslee asked whether the Board had looked into applications regarding property disputes and if those would be considered unauthorized applications even if the company followed all procedures. He told the Board that in the rare instance a misapplication occurred it was because the technician failed to follow procedure. Peaslee explained that the company gave applicators very detailed training and they took this extremely seriously, up to and including termination, but it was always up to the license holder to identify the correct location. He stated that he looked at past consent agreements on the website and this did not seem to be a problem that occurred often. Peaslee stated that under the proposed rule changes there was the opportunity that a disgruntled employee could make unauthorized applications on purpose to close down a business. He concluded that property owners already had legal recourse against companies.

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- Scott Conrad – VP Operations, Mosquito Squad- Conrad stated the language as proposed had grey areas that needed clarification. As outlined, the current rules did not specify if multiple offenses must be made by the same applicator or if it pertained to any employee misidentifying property in the company.
- Deven Morrill – Regional Manager, Lucas Tree Experts, Morrill stated that the only way to avoid this scenario was by education and not punishment. He summarized the background of this policy and stated it was added as a policy to allow for amendments and changes with the times. Morrill stated that these enforcement actions were already in statute and putting them in rule only muddied the water. He stated that if the Board chose to implement the proposed language closure should only be for seven days so that small businesses would not suffer. Morrill noted that \$200,000 was earmarked for an education campaign that was never carried out or implemented by staff. He said an education campaign would have much more impact than putting a fourteen year old policy into rule.
- Jesse O’Brien – Maine Ornamental Horticulture Council and IPM Council- O’Brien stated that applicators were concerned by the proposed regulations and the BPC should enforce what was already outlined in regulation. He stated that the Board needed to do more outreach and education. Reaching applicators that do not participate with the Board should be a priority and misapplications to treatment sites were outliers in the industry.
- Heather Spalding – Deputy Director, Maine Organic Farmers and Gardeners Association (MOFGA)- Spalding stated that MOFGA often worked with growers who called about offsite spraying complaints and directed those calls to the BPC. She added that Section A(5) was vague, and phrasing could be changed to include a waiver. Spalding told the Board that Section B was a good measure and keeping licensure at risk would ensure compliance.
- Kyle Kent – Owner, North East Pest Solutions – Kent stated that this seemed like an overreach and that it could cause bargaining issues with commercial master applicators and contractors. He commented that he had never known the BPC to be an entity to take a person’s job and ability to eat away, but that seemed like what was being proposed. Kent said that taking a CMA license away opened the door to malice for intentional error.
- Greg England – Owner, Green Shield Pest Solutions- England said he understood the challenge the Board was facing but felt this was an overreach and would have some devastating and unintended consequences. He stated that their company would make this a fireable offense, ending the employee’s job and career, which would make it harder to hire individuals. He also echoed the risk from disgruntled employees. England stated that at the end of the day it was a human making that application and people occasionally made mistakes. England suggested the BPC look at what other states have done and said that education would be a better option.
- Patrick Vaillancourt – Owner, Northern Turf Management- Vaillancourt stated that treating the wrong address/property was not acceptable but was also not common among all companies, only a select few repeat offenders. He said the penalty should be harsher on those companies and not all companies. Vaillancourt told the Board that Maine had a short turf/pest management season and closing a company for 45 days during the peak season would be devastating to both the company and the applicators who would be out of work. He also mentioned the feasibility of enforcement action for these infringements, given the already heavy workload on staff. Vaillancourt stated that these proposed regulations would place a heavier burden on large companies that make more applications.

Chapter 31 – Two amendments are proposed

1. Combining categories 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one category 7C Disinfectant and Biocide and retaining language from the other categories under this new category.

2. Combining competency standards for 7C(1) Disinfectant and Biocide Treatments, 7C(2) Swimming Pool & Spa, and 7C(3) Mold Remediation into one competency standard 7C Disinfectant and Biocide and retaining language from the other competency standard categories to align with language from the category descriptions in Section 2.

Chapter 32 – One amendment is proposed

1. Adding requirements for certified applicators supervising noncertified applicators that align with federal standards outlined in 40 CFR 171.201 (2023). These standards are required by EPA for certification and training program updates.
- Deven Morrill – Regional Manager, Lucas Tree Experts- Morrill stated that Maine should adopt the language that incorporated federally restricted use pesticides from the federal code. He said that this could be incorporated by policy and rulemaking efforts should only be used when needed for enforcement.

Chapter 41 – One amendment is proposed

1. Amend grower requirements and product-specific requirements to broaden the scope from Bt corn to all plant incorporated protectants and delete or amend language regarding refuges that is not relevant to current plant incorporated protectant growing practices.
- Heather Spalding – Deputy Director, Maine Organic Farmer and Grower Association- Spalding stated that MOFGA opposed the use of genetically modified organisms, GMOs, and would like the term GMO used in rule instead of plant-incorporated protectants, PIPs. She added that the notification responsibilities should be on the PIP grower instead of the neighbor.
 - Ben Gilman – Drummond Woodsum/Biotechnology Innovation Organization (BIO)- Gilman stated he was delivering comment submitted by Gene Harrington. He commented that the need for this rule was questioned altogether. Gilman said Maine was the only state in the country with the requirements outlined in this chapter for the planting of *Bt* corn, and that *Bt* corn had not adversely impacted public health and safety or the environment in Maine or any state. Gilman said BIO also supported a repeal to Section E(II), which required dealers distributing PIP sweet corn to sell the seed in quantities large enough to plant one acre or more.

End hearing at 9:40

1. Minutes of the July 21, 2023 and July 27, 2023 Board Meetings

Presentation By: John Pietroski, Acting Director
Action Needed: Amend and/or approve

- **Jemison/Bohlen: Moved and seconded to approve July 21, 2023 minutes as amended**
- **In Favor: Unanimous**

- **Carlton/Jemison: Moved and seconded to approve July 27, 2023 minutes**

○ **In Favor: Unanimous**

4. State of Maine Certification & Training Plan

Since 1974, the Maine Department of Agriculture has been receiving funds from EPA in the form of a program partnership grant. This money supports the regulation of pesticide use in the state. This is an update on efforts to obtain EPA approval for Maine's Certification and Training Plan. While Maine's plan was approved, EPA did provide remarks on the need for ongoing discussion of some plan details.

Presentation By: John Pietroski, Acting Director
Action Needed: Information only

- Pietroski stated that Maine's Certification and Training plan had been accepted by EPA.
- Patterson noted that staff were involved nationally to help get Maine's plan accepted and there would be EPA required rulemaking coming in the next year that needed to be completed.
- Adams thanked the staff for their diligent work on this.

5. LD 1770 Sales & Use Reporting

At the May 10, 2023 work session the Agriculture, Conservation and Forestry Committee voted this bill ought to pass as amended as a resolve directing the Board to act to enter into rulemaking to require applicators and dealers to submit their annual use reports electronically.

Presentation By: John Pietroski, Acting Director
Action Needed: Discussion

- Pietroski stated that the Board needed to report back to the legislature by March 2024 on efforts to implement mandatory electronic sales and use reporting. He added that commercial applicators and general use pesticide dealers had the ability to enter end of year sales and use reports into MePERLS. This functionality allowed for all data points to be queried. Restricted use pesticide dealers could currently upload a static document into MePERLS which did not allow for data points that could be queried. Pietroski stated that there needed to be consideration about how individuals without access to the internet could report electronically. He explained that the Board would need to enter into rulemaking to incorporate this requirement.
- Boyd stated that staff would also need time to complete outreach to the regulated community about this new requirement.
- There was Board discussion about what constituted an electronic entry. If a document was uploaded into MePERLS would that be considered as fulfilling the electronic submission requirement.
- Spalding commented that the purpose of this legislation was to be able to analyze and report on individual data points. She added that this was scaled back so that some information would be received to help the Board and legislature understand what chemicals were being used and what alternatives may exist.
- There was also discussion amongst the Board regarding the timeline of the resolve and that the transition may take some time.
- Adams agreed that the data needed to be captured but posed the question as to whether it should be mandated through MePERLS or entered into the system by a hired staff member.

- Bohlen stated the Board needed to consider how the data would be used, the cost for upgrades, and what was practical. He added that he would be willing to help out with the software solution.
- Adams raised concerns about recording both use and sales reports for identical products and how that data could be inaccurate or duplicative.
- Patterson stated that the Board may consider changing language in rule regarding reporting. She suggested they could have 'site' set to the actual certification category, which might help with classifying the data. Patterson said the Board and staff needed to consider what information was desired and how to make it easier for applicators to report and staff to interpret. She suggested that staff work with applicators already using the system and those who have used other reporting systems.

6. Funding Request for DACF IPM Program

The Integrated Pest Management Program is requesting funds to assist with ongoing efforts for the advancement of IPM in Maine. The Maine IPM Program works closely with the BPC to educate and promote IPM across the entire State of Maine, including giving talks annually for applicator credits across several categories, updating the GotPests website with new factsheets and research, and referring to the BPC website in all presentations and educational materials. While the IPM Program is supported, in part, by grant funding this funding is insufficient to support all outreach opportunities. The IPM Program is requesting a grant of \$24,521 to support outreach and education in calendar year 2024.

Presentation By: Hillary Peterson, Ph.D., IPM Specialist

Action Needed: Discussion and decision to amend/approve/disapprove funding

- Peterson proposed a blanket request for 2024 funding for the DACF IPM program. She detailed the events and outreach that the IPM coordinator spearheaded and went over the details in the memo, including the three grants she applied for and received.
- Lajoie asked if this had been funded in the past or if it was new.
- Peterson responded that it had been funded in smaller amounts in the past.
- Adams noted that mosquito monitoring for DACF had been funded back in February 2023.
- Gary Fish, DACF State Horticulturalist, stated that the IPM Coordinator position was created by the first director of the BPC in the early 1980's and the funding had always been attached to the budget of the BPC. He added that it had been part of that Board budget for many years, including the salary, which would now be coming from the general fund.
- Adams brought up the last discussion regarding the budget and stated that at this moment the Board there was not a 2024 budget adopted. He added that they could not say for certain at this time whether there was money to fund the request until the 2024 budget was finalized. Adams asked Pietroski to put together a budget workshop for the next meeting.
- Bohlen agreed with Adams and stated there were several requests before the Board and the only way to make sense of them was in the context of the budget.
- Fish suggested the Board look back and see what the BPC had been funding all along. He added that this was attached to Board expenses for 30 years and it was not a new request.
- Bohlen asked where on the budget this was getting charged.
- Patterson stated that in her time as BPC Director there had been specific asks brought forward, such as mosquito monitoring and the rodent academy. She added that Murray had worked on a shoestring budget and this request was an attempt to enable Peterson to spend more time on

outreach. A lot of what Murray worked from was grant money and that was what Hillary was also working toward. Patterson said she was not sure what could be pulled out of the budget to specifically point to what had been allocated to the IPM program.

- The Board would like to see where specific expenses were coming out of the budget.

7. Endangered Species Act (ESA) Changes Approaching for Pesticide Registration and Labeling

In the past few months, EPA has released documents detailing upcoming changes to the Office of Pesticide Program's (OPP) handling of pesticide registration and subsequent labeling practices. OPP is moving to quickly incorporate ESA obligations in pesticide regulation. Presented here are the basic frameworks that describe two of OPP's new approaches: the Vulnerable Species Pilot (VS) and the Herbicide Strategy (HS).

Presentation By: Pamela Bryer, Ph.D., Pesticides Toxicologist

Action Needed: Discussion to determine the need for ongoing conversation

- Bryer stated that the deadline was coming up for the Herbicide Strategy, HS, public comment and the Vulnerable Species Pilot, VS, comment period had ended. The Board could view what other entities had said on docket. Bryer explained it was going to come down to details about how the Board was going to enforce this. She explained ambiguity of interpreting map lines as they translate to fields and stated they needed to decide how to approach drawing the lines on the ground.
- EPA's proposed HS is focused on mitigation measures to reduce movement of herbicides off treated areas and will consider each herbicide's chemical properties, effects on plants in toxicity studies, and the exposure profile for each agricultural use. The current VS prohibits pesticide use in key areas inhabited by species that the U.S. Fish and Wildlife Service has categorized as species with high vulnerability and small defined ranges.
- Adams stated that the HS framework was specifically directed toward agricultural applications.
- Bryer responded that the VS applied to almost all outdoor pesticide applications but HS applied only to agriculture uses. Herbicide use in agriculture by volume is one of the largest pesticide uses, so lowering agricultural herbicide usage potentially effects the greatest magnitude of change in the shortest time.
- Carlton stated that this seemed like a broad brush approach to try to fit as many applications as possible and left the states to answer questions about how to enforce it. He asked Lajoie about the impact of the HS in the county.
- Lajoie estimated it would impact 50,000 to 100,000 acres of farmland.
- There was further Board discussion about HS and VS.
- Bohlen stated that this was a lot of information about practices but he was not clear about legal structure and whether the Board needed to adopt regulations at the state level, and if not would like to know what the Board's role would be.
- Patterson stated that it seemed most changes would be in label language, so enforcement would be on label violations. She added that EPA was still trying to figure out all of the issues.
- Ianni asked if there was any idea on the timeline for implementation once the comment period closed.
- Patterson responded that the comment periods for some parts had closed, but there were several parts to comment on and EPA continued to take feedback and comment.

- Bohlen stated he had concerns about this type of policy at a national level and asked if there were new tasks this would require the Board to take on.
- Carlton agreed.
- Patterson went over some of the proposed mitigation measures and requirements. She noted there was a lot to unpack and it would affect all of agriculture.
- Bryer stated there was a contact at USDA Office of Pest Management Policy, Dr. Cameron Douglas, who might be willing to address the Board. This would allow the Board to pose questions about specific scenarios.
- Patterson said this individual could speak from the federal perspective.
- Adams stated there was a larger amount of content unknown and up for discussion than what was known. He questioned how the Board could be proactive about changes that were not yet spelled out. Adams suggested that if EPA was still fielding questions and asking for comments maybe the Board should be developing their own questions to ask.
- Bryer told the Board she would be attending a meeting about ESA and could bring back other states' perspectives at a later Board meeting.
- Carlton suggested this may be a less daunting task and easier to digest if they took aspects of HS and VS and saw how they would specifically apply to the state of Maine.
- Bryer agreed that a couple of case examples would be helpful.

8. Discussion About Registration of Repellent Clothing

Staff is requesting the Board's guidance in developing a policy for registering or exempting permethrin treated repellent products. Staff have prepared a memo outlining the history of the issue and two possible approaches.

Presentation By: Amanda Couture, Certification and Training Specialist
 Action Needed: Discussion and determination of the need for registration

- Adams asked whose job it was to ensure what was being claimed was accurate and enforceable and also who was protecting the wearer. He stated he was currently of the opinion that these products should have a label and be registered.
- Ianni asked what the pros and cons were of lumping these products together. She suggested that a pro would be that it was more efficient to just register the fabric but the cons somewhere down the line were that the message may not get communicated to the end buyer that permethrin was incorporated into these products.
- Tomlinson explained that the clothes were supposed to have a hang tag that let consumers know that it was a permethrin-treated product. The company producing the product would have their label and then the hang tag from the primary registrant, and the labels were very minimal.
- Ianni asked if the Board currently required registration of other downstream products.
- Tomlinson stated that it was required.
- Bohlen stated he wondered what information was getting to the consumer and who was overseeing that. He asked if registering the products would help enforce that the product would have the hang tag.
- The Board needed more information about this to make a decision.

9. Other Old and New Business

- a. Revised BPC Budget

- Bring back budget with details on IPM program funding.
- b. Obsolete Pesticides Collection Press Release
 - Adams asked about the current landscape in Maine of agricultural container recycling.
 - Patterson stated that the Ag Container Recycling Council's, ACRC, mission was to coordinate the recycling of agricultural containers across the country. She noted there was currently question about containers being accepted due to the cleanliness of the containers being submitted. ACRC felt the standard of container cleanliness was not being met. Patterson explained that an interim solution was trying to work with distributors to provide collection points for their own customers but not for all of agriculture. She added that last she knew this was still unresolved.
 - Adams said staff should try to put energy into promoting this in the coming season.
 - Patterson suggested the Board could entertain a conversation with Mark Hudson, Executive Director for ACRC, about the issues.
- c. Update on 2023 Adjuvant Registration
- d. Variance Permit for CMR01-26 Chapter 29, Kennebec Estuary Land Trust
- e. Variance Permit for CMR01-26 Chapter 29, Top Leaf, LLC

10. Schedule of Future Meetings

October 13, 2023, December 1, 2023, January 11, 2024, February 23, 2024 and April 5, 2024 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

- The Board stated they would like to have the meeting at the Civic Center during the 2024 Agricultural Trade Show if possible.

10. Adjourn

- **Lajoie/Carlton: Moved and seconded to adjourn at 11:45 PM**
- **In Favor: Unanimous**