



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

July 21, 2023

9:00 AM Board Meeting

MINUTES

Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves

2. Minutes of the June 9, 2023 Board Meeting

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

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

3. Policy for Distribution of Adjuvant Products

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” was approved by the Maine legislature in 2022. Dealers and growers have approached staff regarding the ability to use adjuvant products that were in their possession prior to or after the effective date of August 8, 2022. Staff are seeking guidance on enforcement discretion regarding this issue.

Presentation By: John Pietroski, Acting Director
Action Needed: Provide guidance to staff on distribution of adjuvants

- Pietroski stated that the law went into effect in August 2022 and staff began registering adjuvant products in 2023. Staff is seeking guidance on whether or not distributors can sell products that were purchased in 2022 and have proposed a policy. The policy would allow dealers to sell adjuvants that were in inventory to end users until the stock is

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depleted. Pietroski explained that adjuvants were now considered pesticides in the state of Maine and were required to be registered. He stated there had been concerns voiced by growers and dealers who have these products in stock.

- Tomlinson stated that Chapter 20 only applied to pesticide products that had been previously registered and there was not a preceding requirement of adjuvant registration. She added that this would be an exception to allow for a transition year.
- The Board discussed the pros and cons of the proposed policy and which products should be included under the definition of adjuvants. The Board decided that to be consistent with other pesticide distribution they would allow the regulated community to use the adjuvants that were already in stock.
- There was Board discussion about the registration of adjuvants with PFAS.
- Adams stated that there was confusion among the regulated community and a lot more outreach and education were required.
- Pietroski stated that staff could staff prepare a list of which products were registered and which were not for the next meeting.
 - **Carlton/Jemison: Moved and seconded to approve the proposed policy**
 - **In Favor: Unanimous**

4. 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 said that staff needed guidance on how to move forward.
- Patterson told the Board that this was an amendment from a previous reporting bill and there was still some work to do. She added that if the Board had thoughts about how to improve the current system to please let staff know.
- Bryer asked the Board if they had an idea of a timeline for when applicators could comply with this requirement.
- Bohlen noted that one issue to recognize was that there was a requirement for a report in March 2024 and that report may just state what progress had been made.
- Adams stated that wording may need to be added that there would be a period of time that staff would need to be actively educating the community.
- The Board would like to return to this topic at the October meeting.

5. Review and Discussion of Potential Rulemaking Topics

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023 Board meeting, the Board discussed several rulemaking topics that had been identified by staff. At the March 25, 2023 Board meeting, the Board narrowed the rulemaking initiatives to more urgent

items that needed to be addressed in rule. At the April 7, 2023 Board meeting, the Board discussed interest in moving forward with rulemaking concepts, but decided to postpone rulemaking until the legislature had adjourned given that some additional rulemaking initiatives were likely to pass. Staff have compiled the Board's responses to rulemaking concepts that had interest in moving forward in addition to a timetable of possible hearing dates for Board consideration. The Board will need to vote to move rulemaking forward to initiate this process. *Note: No public comments on rulemaking are being accepted at this time.*

Presentation By: Karla Boyd, Policy & Regulations Specialist

Action Needed: Discuss rulemaking concepts and possibly vote to schedule a hearing

- Boyd stated that the associated documents included the same four items that the Board had previously reviewed and included timelines for routine technical and major substantive rulemaking. She added that the first topic was regarding the responsibilities of applicators to determine the correct property.
- Adams responded that suspension of commercial licensure had been suggested and should be added to the language. He added that there should be serious consideration regarding firm license suspension for multiple offenses.
- Randlett stated that the Board would need to initiate a hearing for a license suspension. The licensee would be able to present other evidence and it would be up to the Board whether to suspend the license and that decision would be open to further appeal to a court.
- Bohlen asked if it would make a difference if there was a concrete trigger, for example, three violations in five years.
- Randlett agreed that that would be more concrete and give staff a guideline for when to trigger the process. He added that once the Board decided suspension was appropriate and moved forward then a suspension would go into effect immediately. The individual would have a right to request a sooner hearing before the Board.
- Randlett stated he had some draft language for this. It would be added to Chapter 20 as a new subsection in section 7. Suggested wording could be that 'x' number of violations of Chapter 20 Section 7 within 'x' period of time would be grounds for suspension of the applicator's and/or master's license or certificate in accordance with 22 MRSA §1471 D7.
- Adams suggested that for a first offense the operator license would be suspended, for a second offense in a five-year period the master license would be suspended, and for a third violation in a five-year period the firm license would be suspended.
- Randlett told the Board that the limit for suspension was 45 days from the receipt of notice of suspension. He stated that he thought if the Board wanted to go longer than 45 day they would need to file a complaint with district court but he needed to look into this a little more. Randlett stated that the Board could also choose to impose gradients under 45 days for suspensions.
- Boyd explained that the next item was housekeeping to combine the three current 7C license categories into one. She added that there was a new manual that covered all categories and the language added to Chapter 31 was for category description and competency standards.
- The Board approved of this item.
- Boyd stated that the next item was required by the EPA for the state certification and training plan. She noted that there would be future rulemaking that needed to be completed regarding the plan. This item would incorporate by reference 40 CFR § 171.201 requirements for noncertified applicators and their supervision by certified applicators.
- Boyd told the Board that the last item was related to plant incorporated protectants in Chapter 41, Section 5.

- Bohlen noted that there were language inconsistencies that needed to be cleaned up, specifically the mentions of plant incorporated protectants and of *Bt* corn. He stated that in Section E1 he thought the language was being changed to read as plant incorporated protectants because there was new technology on the horizon that may fall under this section.
- Jemison stated that he intended that individuals would only be required to complete one initial training and there was not a need to continue the continuing education training. He explained that the reason the Board had initially required follow-up trainings was because the planting of *Bt* corn used to be a complicated process but that had changed. Jemison suggested that a training certificate be issued after successful completion of the online training and exam.
- Boyd asked if the last sentence about the certificate remaining valid should be removed.
- Jemison stated that it should.
- Bohlen commented that under E(c)3 there were sections one and two that spoke about whether refuge was required or not and that the wording needed to be specific because it was ambiguous regarding where that requirement was coming from.
- Adams and Jemison stated that it would be required by the seed agreement.
- Patterson suggested leaving the language to refer to plant-incorporated-protectants, rather than just *Bt* corn, in case of future crops that the Board wanted prohibitions placed on.
- Bohlen stated that part of it seemed corn related because of the plant back distances due to wind pollination and that that language would not be needed with beans or other crops.
- There was discussion about the schedule for rulemaking. The Board decided on September 1 for the hearing.
 - **Carlton/Jemison: Moved and seconded to enter rulemaking**
 - **In Favor: Unanimous**

6. Maine State Certification and Training Plan for EPA

Update on continued efforts to receive EPA approval for Maine's Certification and Training Plan and implications of not receiving approval.

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

- Pietroski stated that all states, tribes and territories needed to have an EPA-approved certification and training plan in place by September 2023. He added that they were hoping to have an answer in two weeks regarding whether the plan was approved.
- Ianni asked about the areas of concern.
- Patterson explained what could be in jeopardy if the state plan was not approved. These included the ability to register restricted-use pesticides, the loss of two pesticide inspectors, half of the salary of the certification and licensing specialist, water quality funding, and commercial and applicator certification abilities.

7. Consideration of a Consent Agreement with Starbucks Bangor, 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 unlicensed application and use of a pesticide inconsistent with its label.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

- Peacock stated that the establishment had a fruit fly problem and the manager decided more mitigation was needed and discharged a fogger after the café had closed. Upon leaving a contractor showed up to do work in the building and the manager opened the building, removed the fogger and attempted to air out the premises which caused the fire alarm to sound and the Bangor Fire Department to respond. The Health Inspection Program notified BPC that pesticides had been used by an unlicensed individual. The product label also mandated a restricted entry interval of four hours.

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

8. Consideration of Consent Agreement with Amelia and Arthur Bond of St. Louis, MO

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 unauthorized application, use of a pesticide inconsistent with the label and use of a pesticide in a negligent manner.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

- Peacock stated that a homeowner noticed that their oak trees were declining and called their arborist who found that an herbicide had been used. BPC staff also took samples and received the same results. He added that the property was located very near to the water and there was a public beach right next door. The individual stated they applied an herbicide with the active ingredient tebuthiuron to the oak trees because they believed them to be dying. The label language stated that this product was not for residential use and was only for use in rangelands. Peacock stated that the material could stay active in soil for up to ten years and that the trees and the soil down to the bedrock would need to be removed.
- Ianni asked if staff had knowledge regarding the migration of this active ingredient into ground and marine water. She asked if further testing was required and commented that the fine amount was not sufficient to cover testing costs if it was needed.
- Peacock stated that the town of Camden was very interested in further monitoring the effects.
- Jeremy Martin, the Planning and Development Director and Code Enforcement Officer for Camden, said the town was concerned about down gradient movement of the herbicide especially since there was a public park and public beach down gradient. He added that the soil and trees had been removed. The town had not yet come up with a consent agreement, but Martin noted the cost would be about \$30,000 for environmental monitoring on Laike beach.

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

9. Other Old and New Business

- a. Email From Chantal Longo-Guess
- b. LD 258- “An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2023, June 30, 2024 and June 30, 2025”
 - The Board members asked how this would change the budget.
 - Pietroski said staff could bring back an updated spreadsheet.
- c. EPA Press Release, July 13, 2023: “EPA Requires Additional Mitigation Measures for Seresto Pet Collars”

10. Schedule of Future Meetings

September 1, October 13, and December 1 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

10. Adjourn

- **Jemison/Bohlen: Moved and seconded to adjourn at 11:20 AM**
- **In Favor: Unanimous**