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BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

November 4, 2016

Room 118 Marquardt Building
32 Blossom Lane, Augusta, Maine

DRAFT MINUTES

Present: Bohlen, Flewelling, Granger, Morrill

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Connors, Couture, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the September 23, 2016 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- Connors stated on page two, five bullets down, the sentence reads, 'Thornton made a statement to the BPC inspector on April 23, 2016 that no signs were posted'. It should read 'Thornton made a statement to the BPC inspector that on April 23, 2016 no signs were posted'. Connors added that the sentence following, which read 'A photo taken on April 23...' should read 'A photo taken on April 26...'
- Granger pointed out that on page seven, three bullets from the bottom, Kathy Murray's name was incorrectly recorded as Kathy Murphy.

- **Granger/Flewelling: Moved and seconded to adopt as amended**
- **In Favor: Unanimous**

3. Update on the Browntail Moth Population Trends in Maine

Based on 2016 Maine Forest Service surveys, in 2017 browntail moth is projected to see a population surge across a broad swath of southern Maine. Staff from the Maine Forest Service Insect and Disease Laboratory will update the Board with the most recent information.

Presentation By: Charlene Donahue
Forest Entomologist

Action Needed: None – Informational Only

- Donahue, an entomologist who has worked at the Maine Forest Service for about 20 years, explained the browntail moth (BTM) is a caterpillar that may negatively impact human health and forests. In humans BTM can cause a rash and respiratory effects; in trees branch dieback and sometimes mortality can occur. Donahue passed around a cocoon she picked off an ornamental tree in front of the Marquardt building before the meeting.
- Donahue summarized the history of BTM in Maine. The moth first came to Maine in 1897 and spread rapidly. In 1920, the BTM population collapsed, possibly due to a fungus, remaining on only a few coastal islands until the 1980s when it returned to the mainland. The population expanded in 2015 and in 2016 exploded to the point where Donahue was receiving multiple requests from towns to come talk with residents. She spoke in Bowdoinham, and with only two days' notice 60 people attended. In Brunswick, 200 people showed up. Donahue stated that in 2017 the footprint of the BTM area will be similar to 2016, but impact will be much more intense.
- Donahue explained there have been extensive efforts in the past made to control BTM and gypsy moth, including spray projects, bio-control projects and a federal quarantine that was in place until the mid-80s. In 2015, an aerial survey project found that about 64,000 acres of trees were defoliated by BTM, primarily in Sagadahoc and Cumberland counties. Donahue added that BTM is having a significant impact on tree health. BTM adults were collected in light traps located as far away as Eliot, Skowhegan, Exeter, and Topsfield.
- Donahue gave the board a quick overview of the BTM life cycle. The larvae overwinter in webs on the tips of branches from September until about April, depending on the temperature and weather. They forage between April and June, and then begin to make cocoons again in July. Traditionally chemical control takes place in the spring as soon as the caterpillars come out of the webs, but there is some consideration of trying treatments in August during 2017. If webs can be reached in winter they can be clipped, and some arborists with bucket trucks have been cutting webs for people. Donahue always advises people that they need to contract with commercial applicators to do any kind of chemical treatment.
- Donahue stated that the hairs that cause rashes and respiratory problems in humans are microscopic and the chemicals in the hairs remain toxic for one to three years. Individuals do not need to come in contact with the caterpillars to be affected, just being in the area is enough. Cold temperatures do not kill BTM, but wet, cool spring weather when they have high population densities allows disease to spread more easily resulting in higher rates of mortality.
- Donahue is involved in a number of upcoming efforts to inform the public about BTM: Along with Kathy Murray, she will be creating a free webinar for schools to teach them how to deal with BTM; She will be meeting with the town of Topsham next Monday; She recently discussed BTM on the news; She will participate in a round-table discussion with commercial applicators and BPC staff to discuss BTM and the fact that many applicators in Sagadahoc County already have all the clients they can take.
- Granger asked if Safari is restricted use, or if it would be an option for a homeowner to buy and use it. Staff will find out.
- Flewelling asked whether BTM affects conifers. Donahue responded that it targets hardwoods primarily, and oaks and apple are favored, but it will go onto other hardwoods. Struble, from the Maine Forest Service, added that they will often attack shorter shrubs as well.
- Granger asked if lawn mowing stirs up the hairs, and if someone with a lot of BTM in the area would benefit from wearing personal protective equipment when mowing. Charlene answered that mowing was definitely an issue and they have info on their website about what precautions to take when doing yard work.

- Granger asked when the hairs are at their most reactive. Morrill responded that fall and spring cleanup and turning up mulch beds stirs up a lot of residual hairs. Donahue agreed and added that there are many hairs in the cocoons.
- Bohlen asked if the BTM population boom is heading south as well as north. Donahue answered yes, and added that it is worse in Sagadahoc and into Cumberland, but it is also in Kittery and Kennebunk and inland in Turner and Monmouth.
- Morrill asked Donahue how she was able to tell in an aerial survey in August that the tree defoliation was caused by BTM and not something else. Donahue replied that the signal is a rusty skeletonized looking tree that can be easily picked out from the air and there are not a lot of other large scale defoliators right now.
- Flewelling asks if the web is easy to recognize. Donahue responded that BTM makes small, tight webs in the fall at the tips of branches, which are different from the large filmy webs of the fall webworm, which are native and do not cause mortality. Morrill added that winter is the easiest time to see them when—if you look at a tree in January and February and it looks like it still has leaves at the top. Donahue stated that the white film is shiny and also easy to spot.

4. Discussion of Board Approved Products for Control of Browntail Moth within 250 feet of Marine Waters

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates the use of insecticides used to control browntail moth within 250 feet of marine waters. Section 5 limits insecticide active ingredients to those approved by the Board. The Board agreed with its Environmental Risk Advisory Committee recommendations on a list of acceptable products. Since that time, a number of newer chemistries are now registered for use and far more data is available on the efficacy of many products. Consequently, the Maine Forest Service has suggested that it is appropriate to review the list of acceptable active ingredients.

Presentation By: Charlene Donahue
Forest Entomologist

Action Needed: Determine Which Products Are Acceptable for Browntail Moth Control

- Hicks stated that the exemptions in Section 5 of Chapter 29 of the regulations do not apply to biological treatments, but there is no definition given for biological. She said that what was available for chemistries when the rule was written are outdated and there are new chemistries now, some of which may work more effectively. Hicks created a list of all new chemistries currently available for trees and moths, and also developed a summary of the methods. She would like to add language around what constitutes a biological. She said that when applicators ask what to use in the spring, we need to have something to tell them.
- Hicks asked if the rule needs to be changed to either allow or not allow some of the newer chemistries.
- Bohlen asked about the process used for collecting data in the efficacy column on the ‘Summary of Products Registered in Maine in 2016 for Use for Moths’ table that Hicks provided. Donahue replied that the basis of the efficacy data was accumulative wisdom gathered from applicators that had used the pesticides.
- Bohlen stated that it is not clear to him whether Section 5 requires a change or just a consensus on interpretation. He asked Randlett to provide guidance on interpreting rather than changing the rule. Randlett responded that standards intended to be enforceable should be incorporated into rule. The same principle would apply to the definition of biological. He stated that policies are suitable for guidance and as short-term solution.

- Hicks asked about establishing an Environmental Risk Advisory Committee. There was a discussion around setting up an advisory committee and whether time and resources are available to do that. Randlett stated an Environmental Risk Advisory Committee is not a legal requirement for rulemaking.
- Donahue noted that the area 0' to 50' from the high water line is a concern because when the rule was created the only biological was *Bt*, but now other materials are available which could be considered biological but the environmental fate and toxicity profiles in reference to crustaceans has not been evaluated by the Board.
- Jennings stated that it may be prudent to conduct rulemaking in the long term, but in the short term the priority is to give the regulated community clear guidance about what they should and should not be doing. The top priority is to make a list of acceptable chemistries to use in the 50' to 250' zone and clarify the definition of biologicals for the 0' to 50' zone that we can publish on the website. This would allow for a more methodical approach to rulemaking if it's deemed appropriate.
- Bohlen requested a copy of the old Environmental Risk Advisory Committee report. Hicks stated she would email it to Board members.
- Morrill proposed the Board move forward with policy discussion at the next meeting, noting that there would be two discussions—one around a definition for biological and the other to develop a list of pesticides acceptable for use in the 50' to 250' zone.
- Patrice McCarron, Executive Director of the Maine Lobstermen's Association, was present and thanked the Board and staff for their diligence. She added that this is a huge issue and we all need to make sure our lobsters are protected. They will continue to monitor progress and really appreciate efforts to keep this resource safe.

5. Discussion of Pesticide Sales and Use Data Submitted to the Board

At the September 23, 2016 meeting, the Board watched two presentations related to Maine pesticide sales and use data reported to the Board. Gary Fish delivered a presentation explaining the methodology used by Board staff to estimate Maine lawn and landscape use trends. Megan Patterson delivered a presentation detailing current pesticide sales/use reports, current sales/use reporting requirements and the nature of the information that is received by the Board.

Presentation By: Henry Jennings
Director

Action Needed: Determine next steps

- Jennings recounted the history of the staff compiling pesticide sales reports for the legislature.. The reports covered only 500 products, had taken an enormous amount of staff time and the legislature had not found the information useful, so they repealed the requirement for the report. At that time there were about 7,000 registered products in Maine and now there are over 12,000. Jennings stated he did not want to reiterate data summarization information and challenges covered at the previous Board meeting. The mandatory legislative functions we already have take up most of the staff's time and the remaining time is spent focusing on the Board's priorities. If the Board would like staff to switch gears they will, but there will need to be a discussion about what will no longer be getting done.
- Jennings commented on the suggestions staff has received about creating an online database for collecting pesticide sales info. He explained that there would need to be money to do this, it would need to be maintained, and there are no laws requiring that pesticide sales be reported in this manner. Most of the larger companies already have an application they use to generate the sales totals.

- Granger stated that trying to figure out what pesticides are being used is very difficult and the data is not easily interpreted. If the Board is going to do this, it needs to be a fairly well thought out system. Even with the best system there's no way to know if the data is accurate and we would be better off spending our energy finding better methods for reducing reliance on pesticides. He concluded that he is skeptical about spending staff time on it at this time.
- Bohlen said it sounds like the entire system needs a fairly significant redesign; the staff would need to start on the back end and redesign the forms that are being used to provide the data. He stated that this information is important and does not want to give up on it, but asked staff if we are collecting this info that is not being used, then why are we collecting it? The information is only useful if it is informing some decision. He asked how the data that is collected informs the staff and Board.
- Jennings stated the historically the data has been used in a qualitative sense for a variety of purposes. The data has been used for estimating agricultural pesticide use in the state which was then used to guide groundwater surveys. When pollinators and neonics became a hot topic, it was relatively easy to look at the applicator summaries, in a qualitative sense, to estimate the amount of neonics used. Jennings added that—when developing public policy—a logical goal is to attempt to maximize the public benefit while minimizing the private burden. He knows many people are interested in this data for their own particular reasons, especially around municipal ordinances, but he is unsure about what policy decisions this information would help guide. Also, we would have to have a change of law regarding how and what businesses are required to report pesticide sales data.
- There was a discussion about using UPC codes on products as a source of pesticide sales data and whether that would be feasible. Tomlinson stated she thought those would not be reliable because they reassign codes to other products.
- Bohlen asked if collecting pesticide sales data is a conversation the Board should continue to pursue. Granger felt there was no interest in pursuing it at this time. Flewelling stated he is not interested in pursuing it if they have to compromise other programs.

6. Consideration of Consent Agreement with Plants Unlimited, Inc., Rockport, Maine

The Board's Enforcement Protocol authorizes 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 involves a private applicator's failure to maintain sufficient application records, failure to provide Worker Protection Standard (WPS) training for agricultural workers, failure to post pesticide application information at a central location, and use of a pesticide in a manner inconsistent with its label directions.

Presentation By: Raymond Connors
 Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors stated Plants Unlimited, Inc. is a fairly large greenhouse and nursery operation. In August of 2015 an inspector conducted a records check and WPS inspection, and it was determined that the facility had multiple issues. Plants Unlimited, Inc. had not maintained any pesticide application records for 2015 and had insufficient records for 2014. Pertaining to the WPS inspection, the facility did not have a central information display or a safety poster.

Additionally, workers had not received any of the mandatory WPS training. There was also a pesticide used that was labeled for residential use only. This facility had similar issues in 2012, for which they entered into a \$250 consent agreement. This latest infraction resulted in a \$500 consent agreement, which the owner acknowledged and paid.

- **Flewelling/Bohlen: Moved and seconded to approve the consent agreement negotiated by staff**
- **In Favor: Unanimous**

7. Consideration of Consent Agreement with TruGreen Lawncare, Westbrook, Maine

The Board's Enforcement Protocol authorizes 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 involves the failure of a commercial applicator to notify an individual listed on the registry prior to conducting an outdoor, non-agricultural pesticide application within 250 feet of the property boundary of the listed residence.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors stated this violation occurred in Cape Elizabeth where a TruGreen Lawncare customer's property abutted the property of an individual on the notification registry. TruGreen failed to notify the individual on the registry. The individual stated she was outside with her friend and her child at the time of the application. She asked the applicator if he was applying a pesticide and he said yes and continued with the application.
- Flewelling asked Connors the reason for the large fine amount on this consent agreement. Connors replied it was because of other violations by the company resulting in consent agreements in the last four years. Specifically there had been two prior registry violations and an unauthorized application. The company had previous consent agreements for \$2,000 and for \$2,500. The current consent agreement was set at \$2,750.

- **Flewelling/Bohlen: Moved and seconded to approve the consent agreement negotiated by staff**
- **In Favor: Bohlen, Flewelling, Morrill**
- **Opposed: Granger**

8. Other Old or New Business

a. BPC Obsolete Collection Overview

- Couture said this year's obsolete collection went smoothly and we collected over 1.5 tons of obsoletes from across the state.

b. Update on Homeowner Education Activities

- Patterson explained that she and Couture had met with Courtney Marchelletta, the Department's website coordinator, and received a tutorial on using GovDelivery, which will help put our information directly into the hands of the public. Patterson told the Board that staff will be including Board information and also homeowner tips and information on

seminars and recertification meetings. The first one to be sent will be a summary of this year's obsolete pesticide program.

- Patterson said that in February Donahue will be leading a discussion at the Audubon Center about browntail moth.
- Patterson has been invited to present at a MELNA meeting and will doing so this month.
- Patterson stated that the staff has been invited to give a number of Master Gardener talks, which is a great opportunity to educate people who have a hand in educating the public.
- Patterson will also be giving a presentation about pollinators at an adult education program.
- Morrill stated the plan sounded great.
- Bohlen added that there is a growing master naturalist program and it would be good to try to partner with them.

c. City of South Portland Pesticide Use Ordinance

- Granger asked about wording regarding what a sign must include on page nine of the Portland Ordinance under Item (D)(iii), that reads, 'the Board of Pesticides Control designated symbol'. Granger asked if this means the Board endorses the ordinance and if there are restrictions on anyone using the Board's symbol. Patterson responded she believed they were referring to the image of the Board-approved sign, and not our logo.

d. Paul Schlein's letter

- Jennings said that Schlein asked that the Board discuss the bullet points in his letter. The first bullet is about the second ducky ad.
- Bohlen told the Board his daughter had seen the ducky ad recently on television, so someone is paying to air it, which he was not aware of. Morrill responded that someone had mentioned to him they had seen it also.
- Jennings stated that even if the Board voted to run the ad, and could pay to run the ad every day, it is not really in the Board's hands. It needs to be decided by the Administration.

e. Board Meeting location

- Jennings asked the Board about the discussion last meeting to move the meetings to Fairfield, and if there is a consensus to do that. If there is a consensus staff needs to check with the department and make sure it is ok. Jennings also asked the Board about the discussion of moving the meeting time from 8:30am to 9:00am.
- Morrill stated the Board should take into consideration that moving would mean all staff would have to travel to the meetings. Morrill added the Board should discuss the pros and cons of moving to Fairfield at the next meeting.
- Flewelling and Granger stated they prefer meeting in Augusta
- Granger noted that now meetings are shorter than they used to be and he favors a meeting time of 9:00 a.m. Bohlen agreed. Morrill stated they will move the meeting time to 9:00 a.m.

9. Schedule of Future Meetings

December 16, 2016; January 11, 2017; and February 17, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

10. Adjourn

- **Granger/Morrill: Moved and seconded to adjourn at 10:40 am**
- **In Favor: Unanimous**