



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

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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

August 5, 2022

9:00 a.m. Board Meeting

MINUTES

1. Introductions of Board and Staff

- Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

2. Minutes of the June 17, 2022 Board Meeting

Presentation By: Henry Jennings

Action Needed: Amend and/or approve

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

3. Continuing Discussion on Annual Funding to Maine CDC for Mosquito Monitoring

At its June 17, 2022 meeting, the Board entertained a report from the Maine CDC relative to its use of mosquito monitoring funds for 2021 and its plans for the use of funds in 2022. Board members had questions about the status of the insectary and efforts to monitor for insect resistance to insecticides. The Maine CDC agreed to research the Board's questions and report back at the next meeting.

Presentation By: Sara Robinson, Infectious Disease Epidemiology Program Director

Action Needed: Report Back Relative to Board questions; Determine Grant Funding for 2022

- Robinson explained that mosquito monitoring acted as an early warning for viruses coming into the state and mosquito resistance monitoring allowed the state to make informed decisions about control products. She stated that the insectary was closed in 2020 due to the pandemic. Robinson told the Board that Maine CDC was currently using

the Northeast Regional Center for Excellence in Vector-Borne Diseases, NEVBD, for resistance testing, which was funded through December 2022 by the federal CDC. In 2023 the testing would be moved from Cornell to Massachusetts and the focus would shift to ticks rather than mosquitoes. Robinson stated that for 2023 they would need to secure funding for any resistance management testing to be conducted. The current estimate she received from Cornell's lab was \$15-20,000 per season, which included Cornell rearing and testing mosquito resistance against approximately 14 active ingredients.

- Adams stated that last meeting there were questions about the insectary in Maine and what the cost would be to reopen it. He asked if this was still a consideration.
- Robinson responded that right now the amount of work needed to reopen and maintain the insectary did not seem to be worth it when there was already a regional option.
- The Board inquired if there was a budget line item for the traditional funding for monitoring.
- Jennings responded that he had conversations with Patterson, and they felt that \$25,000 was the amount the department could fund at this time.
- Robinson stated that the funds could flow into the monitoring program and samples could be sent to NEVBD for resistance testing for free this year.
- Jemison stated that it sounded like funds would be sufficient for this year but not for next year. He added that when considering raising fees for pesticide registration BPC staff should factor in this funding.
- There was discussion about the protocol for distributing documents that were received after the deadline.
- Randlett stated that the Board always had discretion about accepting documents after the deadline and something like this may be important to decision making.
- Robinson thanked the Board for their continuing support.
 - **Adams/Bohlen: Moved and seconded to fund the CDC mosquito monitoring program in the amount of \$25,000**
 - **In Favor: Unanimous**

4. 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

At its June 17, 2022 meeting, the Board discussed LD 2019. The Board requested that the staff provide information on existing regulations relative to pesticide containers and to research options relative to defining what “contamination” means in the context of the bill.

Presentations By: Andrew Smith, State Toxicologist, Department of Health and Human Services

Action Needed: Review/Discuss Provided Information, Determine Next Steps

- Jennings told the Board that State Toxicologist, Andrew Smith developed a conflict and would not be able to present as expected.
- Ianni asked if they should be keeping the deadline stated in LD 2019 in mind when scheduling this deeper dive workshop.
- Randlett responded in the affirmative and said it was unlikely the Board would meet the deadline, but the important point was to keep the legislature informed that they were

- making a good faith effort to complete it. He added that it was highly likely any container regulations passed by the Board would be pre-empted by federal law since EPA had the sole right to regulate containers and labeling. Randlett told the Board that one option would be to adopt the federal regulation by reference, which would satisfy the legislative directive and bring the federal rule into state law.
- Adams commented that the way the bill was written it was not very specific but that there was a general sense of the underlying intent. He asked if the Board would be sidestepping the legislative intent if they adopted the federal regulations into state law.
 - Randlett said that in a sense that might be true, but the Board only had so much authority and any rules they made might not be legal and that this should have been caught at the LD level. He stated that the Board also had the options of going back to the legislature and letting them know they were running into legal issues with federal preemption or to delay and do the research and try to find a tiny slice that might be available for state regulation.
 - Ianni stated that she looked through handouts of federal regulation and asked if there was anything that covered container specifications in regard to PFAS for adjuvants. She asked who the Board would inform at the legislature, so they understood that the Board had been working on this topic.
 - Randlett spoke about federal standards and regulations for PFAS. He said that the only other thing the Board could do would be to require registrants to state whether products are stored in containers that contain PFAS. He added that they could possibly create laws about the handling of containers. Randlett stated that it was usually someone from the department who would inform the legislature of what the Board was working on.
 - Gibbs explained that sometimes the legislature mandated the Department to do something without knowing all that may be involved and the deadline they set can occasionally be unrealistic. She added that staff normally would relay information to Emily Horton who was constantly in touch with legislators, and they could also put together an interim report or some written documentation if needed.
 - Bohlen commented that he supported moving forward with the education piece because this topic was going to keep coming back.
 - Jemison stated that he supported that and asked if there was any word on the EPA leachate study which was a key piece of information the Board needed to review to move forward.
 - Gibbs told the Board that staff was also trying to get someone from DEP to talk about containers.
 - Jemison stated that there was a program leadership team in extension that has been focused on PFAS and that they would benefit from attending this as would several people in the public. He said he thought it would be beneficial and informative to many people, including DEP, DACF, and extension staff if the Board opened up part of the meeting to comments and questions from attendees.
 - Adams agreed and said the more people involved, the better.
 - The Board decided to cancel the September meeting due to scheduling conflicts.
 - The Board asked to have the October Board meeting in the morning and a work session in the afternoon.
- **Carlton/Jemison: Moved and seconded to table this agenda item until the next meeting**
 - **In Favor: Unanimous**

5. Adoption of Proposed Rule Amendments to Chapter 41

On June 17, 2022, the Board held a public hearing to solicit comments relative to proposed amendments to Chapter 41 of its rules. No comments were received on the proposal. The Board will consider whether to adopt the proposed amendments, together with the basis statement, response to comments, and the statement of impact on small business.

Presentation By: Karla Boyd

Action Needed: Determine Whether to Adopt Amendments to Chapter 41

- Boyd stated that at the last meeting the Board held a public hearing, and no comments were received. The Board could now determine if they would like to adopt the rule.
- Jennings explained that the small change to the wording highlighted in Section 6B was for clarification purposes.
- Ianni asked about the definition of residential use and if a rental property would be considered residential.
- Jennings responded that it could not be added to the rule at this juncture, but the Board could develop a policy about what residential entails and then incorporate it during the next round of rulemaking.
- Jemison noted that he still had a desire to revisit this rule soon to make changes to address the plant-incorporated protectant section that needed updating.
- Ianni noted a small typo in item two of the ‘Identification of the Types and an Estimate of the Number of the Small Businesses Subject to the Proposed Rule’ section that needed to be corrected.
 - **Jemison/Ianni: Moved and seconded to adopt the proposed rule, basis statement, response and summary of comments and the statement of impact on small business**
 - **In Favor: Unanimous**

6. Consideration of a Consent Agreement with Nervous Ticks, Edgecomb, 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 company making commercial applications of a FIFRA Section 25B exempt pesticide to residential properties.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Review and/or Approve

- Connors stated that staff was made aware of this violation via an article in a newspaper. He said that the first inspection confirmed that the company was making unlicensed pesticide applications for hire. They had made approximately 49 applications.
- Jemison asked if the individuals knew about the requirement for licensure.
- Connors stated that one of them had taken applicator exams but had not passed. The applicator stated that they did not think they needed to be licensed to apply 25b exempt products.
- Ianni noted that it would be useful if the consent agreements stated the pesticide that had been used. She asked if the company still maintained a website claiming their product was all natural and if staff go back and check with cases like this to make sure they are posting appropriately.
- Connors stated that there was a follow-up inspection after this, including putting a Stop-Sale-Use-Removal Order (SSURO) on the product they were using because they were not licensed to use it. He added that staff could also review the website.
- Tomlinson commented that the company does still have false and misleading claims on its website but since they are not the company that produces the pesticide it limited BPC authority. She added that a report could be made to the Federal Trade Commission.
 - **Jemison/Carlton: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

7. Board Discussion/Review of Penalties and Assessment Rationale

At its June 17, 2022 meeting, Board members voiced questions relative to how fines are calculated and whether some fines should be higher. The Board requested that the matter be placed on a future agenda for discussion and review.

Presentation By: Raymond Connors/Henry Jennings

Action Needed: Provide Guidance to the Staff

- Jennings stated this question had come back frequently over the years and it is not an easy one to solve.
- Randlett stated that the Board had looked at this before and it was extremely difficult to create a penalty schedule for these types of violations. He gave an example to show the natural inequity that can be created using a penalty schedule to take in the seriousness of the offense. Randlett stated that the goal was to create a significant enough penalty to create a deterrent in the regulated community.
- Randlett noted that the penalty structure had not been changed in many years. He said that if the Board had issues with the current amounts in statute they would need to be raised by the legislature.
- Connors stated that they needed to consider toxicity of the product, what its impact was and what could have been the impact.
- Adams thanked Randlett for the explanation and asked if what they were charging was really a deterrent.
- Ianni asked how old the provision was establishing the current penalty amounts.

- Jennings stated that he was almost positive that the \$1,500 amount went back to 1989.
- Ianni suggested that at some point maybe the Board could do a session on impact to health and the environment. She would like to know how staff does that assessment.
- Adams responded that if the current fee structure went back to 1989 then that alone was justification for approaching the ACF committee and asking them to look at it. He stated that staff should consider sending a letter to the ACF committee asking them to take a look at the penalty schedule.

8. Consideration/Adoption of Board Policies Relative to Invasive Invertebrate Pests and Emergency Uses of Neonicotinoids

Recent amendments to the Board’s statutes required the Board to conduct rulemaking to place limitations on the use of certain neonicotinoid active ingredients on residential landscapes. Once the Board finally adopts those rule amendments, it will need to adopt two policies relative to the operation of the rule, including: 1) a list of invasive invertebrate pests; and 2) a policy on the issuance of emergency use permits. The staff has developed two policies and a draft permit application form for the Board’s consideration.

Presentation By: Karla Boyd

Action Needed: Amend and/or approve

- Boyd explained the proposed policies related to Chapter 41 and told the Board they could add to the list of invasive vertebrate pests if they desired.
- Bohlen stated that the list of three was very short and he could think of others that could be added. He told staff that he would like to take a look at this and add some additional species and that the list should be reviewed at least annually. Bohlen suggested staff create a schedule for revisiting the list.
 - **Bohlen/Jemison: Moved and seconded to approve adoption of Board policies relative to invasive invertebrate pests and emergency uses of neonicotinoids**
 - **In Favor: Unanimous**

9. Other Old and New Business

- a. Variance Permit Issued to Basswood Environmental, LLC.
- b. Variance Permit Issued to Midcoast Conservancy
- c. Variance Permit Issued to Dubois Contracting
- d. Other items?

10. Schedule of Future Meetings

October 21, 2022 and December 2, 2022 are the next tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Jennings stated that Andy Smith replied that he could attend the October 21 meeting.

- Adams stated that he would like to hear from UMaine extension folks, DEP and Andy Smith.
- Ianni noted that the discussion should be focused on PFAS that are potentially in pesticides through chemical reactions that are occurring between the pesticides and the containers that they are in.
- Bohlen stated that there were a number of pesticides that were themselves PFAS under certain definitions so he would like to hear more about that topic. He added that he would like to get a little bit of the larger context to understand how it all fits together and to get an idea of what percent of the PFAS problem pesticides and containers were.
- Carlton noted that they would need a well-defined scripted agenda to ensure the meeting did not go off-topic.

11. Adjourn

- **Jemison/Carlton: Moved and seconded to adjourn at 11:28 AM**
- **In Favor: Unanimous**