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GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

July 13, 2018
9:00 AM

Room 118 Marquardt Building
32 Blossom Lane, Augusta, Maine

DRAFT MINUTES

Present: Adams, Bohlen, Flewelling, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves.
- Staff present: Bryer, Chamberlain, Connors, Couture, Patterson

2. Minutes of the April 6, 2018, May 18, 2018, and June 1, 2018 Board Meetings

Presentation By: Megan Patterson, Director
Action Needed: Amend and/or Approve

- **Adams/Waterman: Moved and seconded approval of April 6, 2018 minutes**
- **In Favor: Unanimous**
- Bohlen and Randlett noted multiple grammatical corrections to be made in the May 18, 2018 minutes.
 - **Waterman/Flewelling: Moved and seconded approval of May 18, 2018 minutes as amended**
 - **In Favor: Unanimous**
- Bohlen noted the last bullet point under agenda item three was incorrect.
 - **Granger/Jemison: Moved and seconded approval of June 1, 2018 minutes as amended**
 - **In Favor: Unanimous**

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3. Review of Pesticide Sign for Self-Service Areas

BPC Chapter 26 Section 7 requires that pesticide self-service sales areas include a “Board approved sign informing the public where to obtain additional information.” At the May 18, 2018 meeting the Board discussed some draft versions of an updated sign and asked the staff to provide additional drafts. The Board will now discuss and provide guidance to the staff on the revisions.

Presentation by: Amanda Couture, Certification and Licensing Specialist

Action Needed: Approve and/or Amend Proposed Sign

- Bohlen suggested staff have a graphic designer take a look at the sign.
- Patterson stated that is an option if staff is authorized to spend funds. Staff will research the cost for this.
- There was further discussion about issues with the sign standing out and how to ensure the signs are posted in color and not photocopied by retailers.
- Morrill suggested changing the wording on the sign by removing ‘whether it’s’ and adding a question mark after ‘critters’.
- Morrill stated the Board would like to receive a cost proposal from staff on how much it would cost to have a graphic designer take a look at the sign.

4. State Plan with EPA

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. Upon origination of this partnership, a “Plan for Certification of Pesticide Applicators” was developed. It is now necessary to revisit and revise this document, in part to incorporate federal changes to the section of FIFRA pertaining to certification and training rules. The most recent version of the plan is provided for consideration.

Presentation By: Megan Patterson, Director

Action Needed: None, Informational Only

- Patterson explained to the Board that staff have the responsibility of updating the state plan substantially. When the plan was developed, the Board voted on it, it was approved by the governor, and then sent to the EPA for approval. It needs to be updated to reflect new federal certification and licensing regulations that will be effective in two years.
- Patterson pointed out portions of the plan that will need updating, which included: licensing categories, pesticide registrations, applicator age requirements, certification and licensing standards. Reciprocity was exercised with other states at the time the plan was put in place but now Maine no longer does that. Patterson added that the new regulations retract the non-reader exemption as well. All individuals must be able to read and pass the exam on their own.
- Morrill asked how this works with the Americans With Disabilities Act.
- Randlett responded that as a federal licensing requirement it could be viewed as ability to do the job. He added they have had a case like this come up in the past and decided to provide applicant help but perhaps. Randlett stated that they need to maybe revisit this decision at some point as ability to do the job might be something to reconsider.

- Patterson explained to the Board that when requested staff offer tutoring to individuals that have taken and failed the exam three times or more. Staff reviews the exam with the individual and spends time on topics they were weak on. Patterson added that all exams have a label which the individual must be able to read as we cannot expect there will always be someone to read a label to them when they are out on their own.
- Morrill asked what a reasonable time frame would be for redrafting of the state plan.
- Patterson answered that staff could have a draft prepared for the October Board meeting.
- Morrill asked if this would be helpful in preparing the budget.
- Patterson responded that in part it could be and that staff does something similar annually for EPA which becomes part of the federal budget.
- Morrill stated that the Board is interested in being a part of that process when Patterson thinks the timing is appropriate.
- Adams inquired about the distinction between regulation and statute and if changing the licensing criteria was a statutory change requiring legislation.
- Randlett responded that establishing categories would likely be deemed routine technical and would not require going through the legislative process.
- Patterson offered to provide the Board with a list of what is considered major substantive changes that would require legislation.
- Randlett stated that there are seven categories the legislature has deemed major substantive. They include rules relating to: outdoor drift, notification requirements, applications made in occupied buildings, notification registry for indoor applications, broadcast applications near shorelines, use of organophosphates, and use of plant incorporated protectants.
- There was discussion about confusion regarding the category for soil fumigation. Patterson explained that there is not a category for private soil fumigation but there are label and EPA requirements that the applicator take and pass a training course from the EPA.
- Jemison asked if the Board envisions a day when farmers are using enough fumigants that they will be wanting to make these types of applications on their own instead of hiring out to have it done.
- Flewelling responded that he is already at that point.
- Adams stated that there is only a 21-day window for making these applications and an applicator can only do 60 acres a day. He added that if potato fumigation increases there are currently not enough licensed commercial applicators to do the job.
- Patterson stated that having a private fumigation category is something that will need to be considered with the new federal certification and training rule.
- Morrill stated that he would like to look into this and the training involved at the meeting after the August meeting. He suggested staff could possibly host some of the training at the 2019 Agricultural Trade Show.
- Adams stated the training takes about six hours and is done very well. He suggests the training to all of his customers.
- Jemison mentioned that he is currently doing a trial on two farms comparing conventional fumigation to what high glucose mustard can do biologically for organic farms. He will keep the Board updated on the trial's progress. Jemison stated he would like a member to discuss fumigation at the potato conference in January.

5. Review of Website

The Board's website contains a lot of very helpful information, but it can be difficult to navigate. The Board will now be given an overview of the website and some of the information available thereon.

Presentation by: Anne Chamberlain, Policy and Regulations Specialist

Action Needed: None, Informational Only

- Chamberlain explained that all new Board members used to receive a notebook detailing all BPC statutes, rules, policies, and other pertinent information. All of that information is now located on the website. She added that if any Board member wants anything printed to let staff know and we would be happy to do that for them.
- Chamberlain showed the Board where everything was located on the website.
- Jemison asked about the search bar at the top of the page and why it takes you offsite when searching.
- Chamberlain replied that it is unfortunately a statewide search instead of a department only search and it cannot be changed.
- Bohlen requested a big picture summary of how the rules and regulations work that explains what EPA does, what Maine does, and what is required of applicators.
- Patterson stated staff will put together a document for handout.
- Adams asked about a forestry tutorial. Patterson stated staff could ask Cooperative Extension if they would be willing to do a general training.

6. Annual Report to the Eastern Plant Board

The Division of Plant Health provides an annual report to the Eastern Plant Board. This report summarizes program-wide outreach, education, licensing, enforcement, and regulatory development. A portion of pesticide registration fees are used to support these efforts. The most recent report is provided for review.

Presentation By: Ann Gibbs, Director, Animal and Plant Health

Action Needed: None, Informational Only

- Gary Fish, state horticulturalist, explained to the Board that his staff create this report annually and thought it would be of interest to the Board since it summarizes many of the programs funded by the BPC dedicated revenue account. These programs include the nursery program, integrated pest management program, cooperative agricultural pest survey program, and the apiary program. Fish added that there is a lot of work done in all of those programs to spread the word about the Board.
- Fish stated there had been questions in the past about how the money is spent for those programs and if the Board would like he could have staff come speak with the Board about how they augment the Board's agenda.
- Morrill asked about the ginseng program. Fish replied that it does not get much use but there are a couple of growers.

- Bohlen commented that he really appreciated seeing this because it helps him better understand all of the things going on. He suggested, as a way to make the Board more visible, they could ask that the programs add ‘funding by BPC’ when they produce a product.
- Jemison asked who the Eastern Plant Board was.
- Gibbs explained that the National Plant Board is the liaison for state regulatory officials when dealing with the federal government. The Eastern Plant Board includes 12-13 states from Maine to New York to West Virginia. She added that it is not a lobbying association but they work closely with the federal government to inform them on plant pest issues. Gibbs stated they also work with the Animal and Plant Health Inspection Service, APHIS for plant protection and quarantine, and also with the National Association of State Departments of Agriculture, NASDA. An example of a current issue they are dealing with is how to define bio-stimulants and how they should be regulated.
- Patterson stated bio-stimulants are also a problem in the pesticide world and offered to provide the Board with a current article in the IPM Practitioner journal.
- Morrill asked Fish if emerald ash borer had been found in any other locations and if traps had been moved to the area.
- Fish replied that it was found on a small brown ash right along the river and no others had been found but he suspects it will be seen in southern Maine soon. He added that a number of ash trees had been girdled as trap trees. Fish stated they will be working with APHIS to have a quarantine in place by August and two to three different parasitoids are planned to be released which may slow down the spread.

7. Consideration of Consent Agreement with Roof Cleaning Solutions of Oakland

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 application of a pesticide by an unlicensed individual and in a manner inconsistent with the product labeling.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors stated he received a call from one of this individual’s customers stating that Roof Cleaning Solution’s website advertised environmentally friendly products and while he was setting up at her house she asked for information on the products he was using. He gave her a Zerotol 2.0 label and after reading it she asked him not to make the application. An inspector followed up on the call and the individual did not have a commercial pesticide applicator license, he also routinely used bleach, and Zerotol 2.0 was not registered for use on roofs.
- Flewelling asked what Zerotol 2.0 is labeled for.
- Connors replied that it is labeled for use to sterilize greenhouse benches.
- Patterson told the Board the active ingredient is hydrogen peroxide.
- Morrill commented that staff should reach out to roofing and painting companies to let them know they are required to have an applicator license.
- Flewelling asked if the individual had since obtained his applicator license.

- Patterson responded that he is not but staff have had several conversations with this individual and there are many other products he can use for cleaning roofs. She added that there have been similar conversations regarding mold remediation.

- **Morrill/Adams: Moved and seconded to approve consent agreement**
- **In Favor: Unanimous**

8. Consideration of Consent Agreement with Witherly's Green House & Garden Center of Hermon

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 sale of unregistered pesticides.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors stated this individual had many products in inventory that had either never been registered or the registration had long since expired. The owner was told to remove the products from the shelf. The inspector returned and the products were back on the shelf. The consent agreement was signed and paid.
- Morrill noted that the incorrect consent agreement summary had been posted online and said Board and staff apologize to the company that was named incorrectly on that consent agreement.

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

9. Correspondence

a. Email from Melissa Gugliotti re South Portland Pesticide Ordinance

- Patterson explained to the Board that staff have had many requests like this one and if the city or town directly requests staff we will provide guidance on current state regulations, IPM, pests, and pesticides.
- There followed a short discussion about municipal ordinances and state law.

b. Letter from Mark Aranson, MD to William Shane, Town Manager, Cumberland re Brown Tail Moth Infestation

- Morrill stated he was surprised to a request that browntail moth be labeled a public health nuisance, but in this instance, it almost does seem to fit the requirement.
- Patterson stated from the CDC's perspective it is not a vectored disease so it is not something they would typically work with but they knew this was an issue people needed help and guidance with. To move forward with this the public health official and the town would need to petition the BPC.
- Adams asked if a municipal ordinance would still stand if this was deemed a public health nuisance.
- Randlett replied that there are exemptions for health concerns.

10. Other Items of Interest

- a. Variance permit issued to Ron Lemin, Jr. for control of Japanese barberry and honeysuckle on Nautilus Island in Castine Harbor.
 - b. Variance permit issued to Acadia National Park for control of several invasive plants at multiple locations within the park.
 - c. Variance permit issued to Andrew Powers for control of invasive plants in Cape Elizabeth.
 - d. Variance permit issued to the Town of Newport for control of poison ivy along the Durham Bridge.
 - e. FAA Presentation at Pre-SIFREG Meeting May 15, 2018
- Riley Titus, RISE, is present to represent manufacturers and distributors. Titus stated he attended the April Board meeting to discuss local ordinances and the Board's role in that. He added that Falmouth is considering an ordinance in which they cite the Board and he does not think IPM is reflected in Falmouth's ordinance.
 - Titus asked the Board what their role was in relation to IPM and duties of the state. Titus commented that he believes IPM is eroded in many of these ordinances and that resources on the Board's site are not being taken into consideration when the ordinances are drafted. He feels that speaking about IPM to the towns would strengthen the Board's position and would like to speak more with the Board about it at their next meeting.
 - There was a discussion about the IPM Council being established in statute.

11. Schedule of Future Meetings

Wednesday, August 15, 2018 the Board will meet at Laudholm Farm in Wells. The Board will hear presentations on tick management and invasive plant control beginning at 9:00 am. These will take place outdoors, so dress appropriately. The Board meeting will begin at 2:00 pm. Directions and details about lunch will be sent via email.

The Board also indicated an interest in having a Public Information Gathering Session in the fall but a date was not determined. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- The Board set additional meeting dates for October 5, 2018; November 16, 2018; and on Wednesday, January 16, 2019, at the Annual Agricultural Trade Show in Augusta.
- The Board would also like to have a public listening session at the August meeting.
- Morrill suggested the Board meeting begin at 1:00 pm and then they could break in the middle of the meeting for the public session. He added that there be a one hour time limit set for the public listening session.

12. Adjourn

- **Adams/Flewelling: Moved and seconded to adjourn at 11:50pm**
- **In Favor: Unanimous**