



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

October 21, 2022

9:00 a.m. Board Meeting--Hybrid
MINUTES

1. Introductions of Board and Staff

- Adams, Carlton, Ianni, Jemison, Lajoie
- Assistant Attorney General, Mark Randlett
- Boyd, Brown, Bryer, Couture, Nelson, Patterson, Peacock, Pietroski, Tomlinson

2. Minutes of the August 5, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

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

3. 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 reviewed/discussed LD 2019. It 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. Staff has provided two memos, one summarizing the August 5, 2022 Board discussion of possible rulemaking pathways and federal preemption and a second summarizing relevant technical information prepared in response to Board member questions. The second memo also addresses the recently published EPA container leachate study.

Presentations By: Megan Patterson, Director

Pam Bryer, Pesticides Toxicologist

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

MEGAN PATTERSON, DIRECTOR
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- Patterson explained two memos were included in the Board meeting materials and were meant to address two different aspects of relevant to the discussion of LD 2019 and related rulemaking. Staff memo, *Summary of the August 5, 2022 Board Discussion of Pesticide Container Regulation*, discussed policy points made during the last meeting and staff memo, *PFAS Container Contamination Updates*, discussed technical points made. She also explained the purpose of the EPA memo, “EPA Analytical Chemistry Branch Laboratory Study of PFAS Leaching from Fluorinated HDPE Containers” [referred to as the “EPA container study”] and the published article “Targeted Analysis and Total Oxidizable Precursor Assay of Several Insecticides for PFAS” by Steven Lasee et al. included in the packet.
- Bryer stated that most of the technical information included in her memo would be discussed during the afternoon Board training. She told the Board that staff did try to get a speaker from EPA but were unable to. Bryer explained that the ‘EPA Analytical Chemistry Branch Laboratory Study of PFAS Leaching from Fluorinated HDPE Containers’ found that HDPE containers would lead to PFAS generation in novel and unexpected ways. She stated that in general there were higher concentrations in oily-based matrices, but there were also levels found in water-based fluids. She explained some of the analytical challenges of measuring PFAS in these products. The EPA only ran the study for 20 weeks, and they did not see a perfect increase over time but generally, the longer the product was in the container, the higher the concentration of PFAS. They have not yet reached a plateau where there is no increase of PFAS over time. Bryer stated that the concentrations they are finding when storing a product in a fluorinated HDPE container are in the part per billion range and in the lab they are finding fairly consistent part per trillion contamination. She explained that product contamination occurs at a low concentration, however, given that it occurs at an order of magnitude higher rate than background PFAS contamination this PFAS is clearly linked to the containers. Bryer stated that in conversation with the Director of EPA’s Analytical Chemistry Laboratory (Fort Meade, MD) she learned that background contamination could not be ruled out as the cause for levels below the 30 parts per trillion range. She explained how a very tiny contamination event could lead to a part per trillion contamination of a product. In the Fort Meade lab, they do not use sharpies, post-it notes, or wear make-up because those items can all lead to contamination. Bryer added that she believed they would be finding other items that caused contamination for some time.
- Bryer noted that the ‘EPA Analytical Chemistry Branch Laboratory Study of PFAS Leaching from Fluorinated HDPE Containers’ also found PFOA and its analogs, which have been prohibited for use in the United States for approximately 20 years. If a manufacturer discovers they have an EPA-defined PFAS [EPA’s definition of PFAS differs from the State of Maine definition in that EPA’s definition requires two fluorinated carbons adjacent to one another, and one of the carbons must be fully fluorinated] in their product at quantifiable levels, they will be required, under FIFRA, to report that to EPA within 30 days of the finding. The EPA considers the detection of quantifiable levels of PFAS as evidence of a reportable contamination event because the presence of PFAS represents “toxicological significance.”
- Adams asked about the PFOA that was found and if it was somehow introduced into the product prior to the fluorination process.
- Bryer stated that EPA tested the methanol and the water before testing for PFAS. The producers’ affirmed that the containers had no PFAS in them, so these contaminants were

being generated at some time. EPA has tested for the compounds for which they have developed analytical methods. She explained that EPA also used split samples sent to different labs to rule out spurious results. Bryer stated that staff reached out to the Ag Container Recycling Council, ACRC, and asked if they knew what percent of agricultural containers were fluorinated. ACRC said 20-30% of agricultural containers (which includes pesticides, fertilizers, and adjuvants) were fluorinated.

- Bryer also spoke to the Board about PFAS contamination standards in drinking water being lowered. She stated that the scientific community had a reasonable amount of human health data on about seven different PFAS, and each one has its own unique effects at specific concentrations. Bryer said we saw a large drop in the standards for PFOA and PFOS in drinking water, largely because those are the two chemicals on which there is the most data.
- Bryer also provided the Board with a list of pesticide active ingredients in products currently registered in Maine that would be considered PFAS by Maine's definition. She explained the differences between the EPA, Maine and OECD definitions of PFAS. Bryer noted that based on recent conversations with Maine DEP, a few active ingredients may be removed from the list because they would not be considered PFAS.
- Bryer explained to the Board that all inert ingredients for pesticides had to be vetted by EPA before they could be used in a pesticide product. Bryer stated that EPA had proposed the removal of twelve inerts considered PFAS by the EPA definition, but none of those inerts were currently in use. After a cursory look, Bryer found six or seven other inerts that are still in use that would meet EPA's definition of PFAS.
- Ianni asked about the status of the inerts EPA had proposed to remove and if they had gone through and been recorded in the federal register after the public comment period.
- Patterson said she would find out.
- The Board members thanked Bryer for the valuable information she provided.
- Patterson summarized the discussion from the last Board meeting. She noted that the Board had concerns about meeting the statutory deadline, and she stated that they could not meet it at this point, but they could still keep the legislature informed that they had been working on this effort. Patterson added that federal law preempted the Board from creating container regulations, and that likely should have been caught during the legislative process. She told the Board they may be able to pursue a narrow avenue of regulation around the storage of containers, or they could choose to adopt federal law directly into statute. Patterson said the Board could have staff research to find some small foothold where they could pursue regulation, but they should consider whether that would be meaningful. She stated that the Board had already done some of the work by implementing affidavits requiring manufacturers/registrants to state whether their products were stored in fluorinated containers. Patterson stated that staff assumed LD 2019 meant to treat adjuvants the same as pesticides, so adjuvant distributors must also answer the affidavits.
- Adams said he had no problem with staff assuming adjuvants be treated the same as pesticides. Other Board members agreed.

- Randlett stated that all existing laws and statutes regarding pesticides now included adjuvants. He added that even though the Board could not require different kinds of containers or labeling, there might be the ability to consider rules relating to container storage, handling and disposal.
- Jemison asked if applicators would now be required to record adjuvants in their applicator records.
- Patterson stated that the Board would have the authority to determine whether adjuvants needed to be recorded and reported on.
- Randlett concurred that rulemaking did allow flexibility on this.
- The Board discussed whether adjuvants should be part of the annual use and sales reporting and other rules that may apply to adjuvants.
- Adams said he did not have an idea of what number of additional products they would be considering. He asked if, at the next meeting, staff could give the Board an idea of what level of additional work would be added to staff if the Board implemented use and sales reporting for adjuvants.
- Bryer replied that it would be difficult to do since it is a use pattern that has not been tracked.
- Patterson stated that typically there would be a phase-in period for those kinds of changes due to the level of education that would need to go into it. She added that this was the first year with these requirements, and she does not think everyone will have gotten the message. Patterson stated that even a year out we may not be able to determine the full scope of impact on Maine, but we could get an estimate of the number of adjuvants registered in another state, such as Washington.
- Carlton asked about the extra work and how that would affect the budget.
- Patterson responded that they may need to hire staff but would need approval from the legislature to hire anyone other than temp staff at this time. If the BPC did not have the funds to pay additional staff they would have to try to allocate work to current staff members. About 90% of staff time is used to implement what is required by EPA and about 10% is discretionary time left to work on requests from the Board and other entities.
- Adams stated his opinion was that the ultimate goal was to remove products with intentionally added PFAS or contaminated with PFAS. He said the best way to capture information about them would be to regulate them as pesticides and get affidavits from the manufacturer stating what is in the product. Adams added that many products that do not contain adjuvants have labeling that requires conditioners and other adjuvants for application.
- Bryer asked if the water used in a pesticide mix would be considered an adjuvant.
- Adams replied that water was the wetting agent added into a dry flowable, so he would say that it is.

- Patterson stated that it might be useful to ask other states how they handle adjuvants as pesticides. Staff could find out if they require end-of-year use reporting, what level of reporting, specific storage requirements and any other applicable regulations.
- Board members agreed that would be helpful.
- Adams asked staff to send a memo to the legislature about the progress they have made.
- There was a discussion about durability standards and why barrier treatments were being used.
- Patterson asked the Board if the memo should include reference to federal laws that appear to preempt state regulation.
- The Board agreed.

4. Invasive Invertebrate List Discussion

At its August 5, 2022 meeting, the Board finally adopted a policy on invasive invertebrate pests on ornamental vegetation in outdoor residential landscapes that may be managed with neonicotinoids. Also at that time, Board members discussed amending the list and developing a revision schedule. Members proposed continuing the relevant conversation at a subsequent meeting.

Presentations By: Karla Boyd

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

- The Board did not have changes to the list at this time and plans to review the list annually in the spring. The Board decided that if there was an urgent need to amend the list they could call an emergency meeting.

5. Other Old and New Business

a. EPA Memo--EPA Analytical Chemistry Branch Laboratory Study of PFAS Leaching from Fluorinated HDPE Containers

b. Variance Permit Issued to Green Thumb Lawn Services—poison ivy in Eddington

c. Variance Permit Issued to Green Thumb Lawn Services—poison ivy in Glenburn

d. Variance Permit Issued to Green Thumb Lawn Services—poison ivy in Newagen

- Ianni inquired if staff asked applicants if there were alternative methods considered or implemented without success before chemical treatment was considered. She added that we might want to consider adding that to the permit application to implement IPM in the true fashion that the state has declared is the Board's goal. Ianni also suggested asking why there was a concern regarding the plants in the variance applications. For example, was there human contact, was the poison ivy on a very small parcel of land, or was there not another egress towards the water.
- Patterson stated that while it was not outlined in the policy staff does communicate to applicants other IPM methods for managing pests. They are also often directed to fact

sheets on GotPests? and from the Maine Natural Areas Program. Patterson stated that those items could certainly be added to policy by the Board at any time.

- There was further discussion about requirements for erosion control if the plants were close to the water's edge. Adams said he was comfortable asking variance applicants what other methods they tried in the spirit of IPM.
- Patterson stated that if the Board wanted to do so there was room to add language about requiring IPM methods and asking how much of a problem the pest is that the applicant is trying to control.
- Bryer asked if staff could have an explanation of what adequate reasons for control would be. She asked about invasives and how that fit into how the Board wanted to see the form and the process go.
- Ianni stated that if it was deemed by the customer that control was necessary then the first steps taken should be other means based in IPM and she wanted to make sure that IPM was included in the control method.
- Patterson stated that staff could certainly make it a standard practice to provide the IPM-based guidance that comes from the Department and has been vetted.
- Carlton mentioned that one example that comes to mind was with the large honeysuckle plants, leaning towards a cut-stump application rather than a foliar application.

e. Remote meeting policy

- Patterson suggested the Board may want to discuss reasons they would choose to meet remotely and went over the previously identified reasons for joining remotely. She noted that if they do have a hybrid meeting the Board needs to make that meeting equally accessible to folks online including their ability to participate and see the Board members.
- Randlett pointed out that the statute that controlled remote meeting policies was in Title 1 §403-B and Patterson had accurately described the requirements that pertain to public participation.
- Patterson asked if both public participation options needed to be offered if meetings are all remote or all in person.
- Randlett said the Board can have a policy that provides for remote meetings, but there needs to be a location for the public to attend and participate in person. The only exception is if there is an emergency meeting or other urgent situation in which the Board Chair makes a determination that it is essential for the Board to meet fully remotely, then the public may be limited to remote participation only.

f. Adopted--Policy on Emergency Permitting for Neonicotinoids Exemption

g. Adopted--Policy on Approved Invasive Invertebrate Pests on Ornamental Vegetation in Outdoor Residential Landscape

- h. EPA Memo--EPA Proposes to Stop Authorized Use of Certain PFAS In Pesticide Products
- i. Published Article—Targeted analysis and Total Oxidizable Precursor assay of several insecticides for PFAS
- j. Maine Department of Environmental Protection Webpage: PFAS in Products

k. Other items?

- Adams asked about Raymond Connor’s retirement after 42 years of state service.
- Patterson told the Board that staff was currently in the process of finding a replacement. She also mentioned that she believed someone had submitted an application to the Governor’s Office Department of Boards and Commissions to apply to fill the position of Board member with a medical background. Patterson told the Board that several positions were coming up for re-appointment and that those decisions were made by a combination of efforts between the Governor’s office and the legislature.

6. Schedule of Future Meetings

December 2, 2022, January 11, 2023, February 24, 2023, and April 7, 2023 are the next tentative Board meeting dates. The Board will decide whether to change and/or add dates.

7. Adjourn

- **Carlton/Jemison: Moved and seconded to adjourn at 11:04 AM**
- **In Favor: Unanimous**