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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

February 17, 2016

**Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine**

MINUTES

9:00 AM

Present: Bohlen, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Patterson, Tomlinson

2. Minutes of the January 11, 2017 Board Meeting

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

- Several minor amendments were suggested.
 - **Granger/Flewelling: Moved and seconded to adopt minutes as amended.**
 - **In Favor: Unanimous**

3. Dow AgroSciences Request for 24(c) Registration for GoalTender™ Herbicide

At the request of Maine Cooperative Extension and broccoli growers, Dow AgroSciences is requesting an extension of the Special Local Need [24(c)] Registration ME090002 to continue the use GoalTender™ herbicide (oxyfluorfen, EPA #62719-447) for post-emergent weed control on broccoli. Where the number of herbicides available to manage weeds in broccoli is limited, this product remains the only alternative for post emergence control of broadleaf weeds that escape preemergent herbicide treatment.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson stated that Emily Smith and Jim Dyer both expressed the need to continue this use because it is effective and the products available for this use in broccoli are limited.
- Jemison asked if they had discovered what the most effective rate is, and if they are direct spraying the plants or shielding them and spraying between plants. Granger inquired as to what stage of growth the plants were being sprayed at. Tomlinson replied that the supplemental label stated to apply when crop reached a minimum of four leaves for direct seeded crop.
- There was further discussion about how the product was being applied, how long it has been in use, and about whether the applications were being made according to the supplemental or regular label.
- Tomlinson said that she would send the Board's questions to Emily Smith and Jim Dyer and forward their responses to the Board members.
 - **Flewelling/Jemison: Move and seconded to approve extension of 24(c) registration for GoalTender™ herbicide.**
 - **In Favor: Unanimous**

4. Gowan Company, Inc., Request for FIFRA Section 24(c) Registration for Malathion 8 Flowable on Cane Berries

Gowan Company, Inc., is requesting a Special Local Need [24(c)] Registration to increase the number of allowable applications of Gowan Malathion 8 Flowable agricultural insecticide to control spotted wing drosophila (SWD) on cane berries. This request is supported by University of Maine Blueberry Extension Specialists David Handley and David Yarborough. Research indicates that Gowan Malathion 8 Flowable is highly effective against the SWD and the extra application will be critical to controlling this invasive pest. In addition, Gowan Malathion 8 Flowable offers growers the advantage of very short preharvest and reentry intervals. Available data indicate that residues are expected to be below the established tolerance.

Presentation By: Mary Tomlinson
Pesticides Registrar/Water Quality Specialist

Action Needed: Approve or disapprove the request

- Tomlinson stated the Board approved this 24(c) a couple years ago, but this registration and another were mailed to the EPA at the same time and for unknown reasons they did not get recorded in EPA records. The product is already in use in Maine. This request is for cane berries only.
- Flewelling asked if this increased the maximum number of applications allowed per year. Tomlinson replied it would increase the maximum number of applications allowed per year from three to four.
- Jemison asked what other means of management are being tried besides increasing the number of applications per year. He hopes this to be a short term solution, because the chance of developing resistance is greater if they are using this product four times a year. Tomlinson stated that Handley's request was to use it in rotation with other products.

- Granger commented that spotted wing drosophila (SWD) is a tough insect to control and he is in favor of supporting this request to protect their ability to grow this crop.
- Tomlinson stated that of the number of products available with a preharvest interval this short is limited. Tomlinson added that if the request is approved, the expiration date would be December 31, 2021. Morrill asked if there was an option to shorten the duration of this SLN registration. Tomlinson replied that they could do that.
- A discussion followed regarding the effect of SWD on cane berries during the last couple of growing seasons. Jemison said that it is difficult to understand numbers and impact with SWD and he would have liked Handley, Yarborough, or both, to have attended to answer some of those questions.
- Granger stated SWD has a quick life cycle and, depending on the season, a late season spray may be required. He added that hot weather makes the need for an extra application more likely.
- Bohlen stated the letters expressed a need for resistance protection methods and asked if anyone was aware how berries relate to resistance development and if the Board needs to be concerned about that or if one more application per year would not be a problem.
- Jemison located the last update the Board received from Handley about SWD, which was from November 4, 2016. Jemison read the update aloud to Board. At the time of update the number of SWD being caught per day ranged from 11 in Freeport to 11,500 in Limerick. Those numbers led them to a five to seven day spray schedule.
- Jemison said he wants to ensure there are high enough numbers to warrant spraying, and added that finding an alternative, such as a natural predator, would be ideal. Randlett responded that pest population cannot be a consideration of registering a pesticide for special local need and cited Title 7 § 607(8-A)(D) “The board may not make any lack of essentiality a criterion for denying registration of any pesticide.” Morrill stated there are five criteria in the regulations that Board members are directed to consider when registering a pesticide.
- Jemison stated he would lean towards approving for two years and waiting to see what alternative methods, besides continually increasing the number of applications, are tried. Bohlen added that he is also in favor of a shorter registration period.
- Tomlinson stated that the SLN for Gowan Malathion 8 Flowable for use on blueberries will expire on December 31, 2018. Bohlen suggested it would make sense to align the calendars so the products expire at the same time.
- Morrill announced that when SLNs come to the Board in the future it would be desirable to have someone come to represent them. Tomlinson replied that she would inform Handley and Yarborough.
- Tomlinson said that she would send the Board’s questions Yarborough and Handley and forward their responses to the Board members.

- **Morrill/Flewelling: Moved and seconded to approve the SLN registration through to December 31, 2018.**
- **In Favor: Unanimous**

5. Board Discussion about the Use of Unmanned Aircraft to Conduct Aerial Pesticide Applications

The Board’s staff has received an inquiry about the potential use of an unmanned aircraft (drone) to conduct aerial pesticide applications to control browntail moths. To date, drones have never been permitted to apply pesticides in Maine and the Federal Aviation Administration has only permitted use in a few locations nationwide. This is a completely new type of application equipment and many questions have arisen about the safety, efficacy and propriety of the use of drones. The Board will discuss the use of aerial drones to apply pesticides in Maine.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Provide Direction to the Staff

- Patterson asked the Board for guidance on how to respond in regards to the potential use of UAVs to make aerial pesticide applications. She added that much research is currently being conducted around drone conducted pesticide applications. The drones are commonly referred to as unmanned aerial vehicles (UAV), or an unmanned aerial system (UAS).
- Patterson stated the Board has been approached by the City of Bath about making applications with UAVs for browntail moth. Patterson consulted the Federal Aviation Administration, FAA, about federal regulations in regards to UAVs making pesticide applications. Anyone looking to make an application to apply via UAV must first apply to the FAA for permission, and there are a number of regulations they must comply with. Patterson added that vehicle weight and size of payload are also considerations.
- Patterson also consulted multiple companies that are using UAVs to scout with; none have applied pesticides with them. Water applications have been made to find out if the technology meets their needs.
- Flewelling asked if aerial applicators require a special license from us. Patterson responded that they need to be a commercial operator or master and have the aerial category. Flewelling stated that this could open the door for private applicators to be able to use drones on their own property, not just commercially.
- Morrill asked if our current regulations are adequate to govern applications made by UAVs. Patterson replied that our rules do not make the distinction between manned and unmanned aircrafts. Some other states are considering using their aerial regulations to cover this method of application, but Asplundh has a difference of opinion on the Board considering that. Bohlen added that he appreciated the Asplundh letter to put things into a solid reality.
- Bohlen stated the Board needs to take some time and figure out what kind of information they need to allow them to make some wise decisions about regulating UAVs. For example, he inquired whether applications made by drone should be considered a ground or an aerial application. Bohlen asked staff to figure out what can be done within the existing rules. Bohlen added that this method of application may be a good fit for browntail moth and allow applicators to make more targeted applications than with the current technology. Jemison stated he feels fairly comfortable with the idea of drones because the Board has a very strict drift rule and solid ground level regulations in place.
- Randlett commented that the aerial pest control category and the drift rule would apply to these types of applications, which gives it good coverage, but as to whether other issues will arise in the long run, that will have to be determined
- Jesse Gibbons, Coutts Brothers, was present for the UAV discussion. Coutts Brothers provides high-voltage asset inspections, and Gibbons told the Board the company has recently branched into mapping and surveying with drones. He explained that they create a photometric three-dimensional map using GIS and then program the drone's path. Once programmed, the DJI Agras MG-1 Agricultural Drone they are using sprays unpiloted while maintaining a height of one meter above crops and also has the ability to adjust droplet size. Gibbons added that one drawback currently is that the battery needs to be recharged every 45 minutes.
- Stevenson inquired about getting points at the tips of tree branches where browntail moth is located. Gibbons responded that they would first pilot the drone to create a three dimensional map of points and then use the points from the map to program the drones with exact flight patterns for applications. This allows the pesticide to be applied very precisely.

- Jemison asked Gibbons if he considered UAV applications to be aerial applications. Gibbons answered that Coutts Brothers treats them as aerial applications and they hire pilots to fly their drones. The FAA requires and issues Remote Pilot Certificates to commercial UAV operators.
- Heather Spalding, MOFGA, asked if this was something Coutts Brothers could work with the Board on to do reconnaissance of drift damage and to determine where drift is happening. Gibbons stated that those could be great applications, as could many others they have not worked on yet because of the newness of the platform.
- Tim Hobbs, Maine Potato Board, stated that UAVs are becoming more frequently used in agriculture, performing multiple tasks, and are inevitably going to become mainstream. He added that the Board needs to get rules in place so when the time comes they are not playing catch-up, or hindering the use of the new technology because rules are not in place.
- Bohlen added that it would be good to learn about how this tech is evolving to avoid putting rules in place that make it impossible to use. Bohlen also suggested an interim approach of applying applicable aerial and drift rules for now while the Board gathers information needed to make educated decisions.
- Patterson added that there are many individuals who would like to share their perspective on this issue and possibly it would be advantageous to hold a public information meeting. Morrill agreed and said in addition to that he would like staff to submit a chart showing what current regulations would apply and if they are sufficient or if there are gaps that will not work with unmanned aircraft. Morrill asked staff to add that to the agenda for next meeting
- Morrill suggested pushing the public information meeting to the May Board meeting to give the Board some time to educate themselves on the topic at the next meeting. The Board agreed. Morrill stated the Board should see if current regulations can be applied before coming up with new ones.
- Bohlen added that it would be great to have a couple speakers at the public meeting with specific expertise, such as how drones are being used in agriculture right now. Patterson asked the Board if they would like someone from the FAA if possible. Morrill replied that would be good if someone could attend.

6. Review of the BPC Budget

At the January 11, 2017 the Board discussed the annual operating budget. Several questions were raised that required further clarification. The staff will present information pertaining to those questions.

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

Action Needed: None—Informational Only

- Gibbs stated she has done some research to get answers to the Board's questions from last meeting. The pest control fund runs on the calendar year, as opposed to the state fiscal year, which runs from July 1 to June 30. This difference affects how they need to run the budget, because most of the money comes in in November, December and January, but it has to sustain the program for the rest of the year. Currently it looks like the account has a lot of money, but that needs to last until next October, and dedicated accounts like this cannot run at a negative balance. They are supposed to have a 10% reserve to cover ongoing expenses.
- Gibbs told the Board that the total budget is a little over 2 million per year. About \$138,000 is generated from licensing application fees and \$1.9 million from product registration fees annually. The EPA also grants the Board \$300,000 per year.

- Gibbs explained that DICAP takes up about \$200,000 per year, and goes toward department administration fees, technology, and other expenses that benefit programs in the department. That funding is administered through the Commissioner's office and we have no say over it.
- Expenditures exceeded revenue by \$700,000 in 2016 because of Pega.
- The line for Personnel Service funds 10 permanent full time positions and four full time seasonal positions. It also funds five full time positions in the Plant Health division. All funded positions are currently filled except for the Director's position. The non-dedicated BPC funds line item covers Plant Health costs. Gibbs detailed other budget line items for the Board and what they represented.
- Gibbs reminded the Board that there is currently \$900,000 on hand, but that it needs to last until next October and there is now the additional expense associated with maintenance for Pega, which will be about \$82,000 per year.
- Gibbs informed the Board that the current forecast predicts a remaining cash balance of approximately \$200,000 next November after paying all the bills. That amount would have to be kept in the account because it is approximately the required 10% out of the two million dollar budget.
- Morrill asked Gibbs to provide, in written format, what she just explained to the Board, so they can see the numbers in front of them. Stevenson stated that a flow chart showing the positions and where the money goes would be good. He added that they would like to use some of the money to promote education and to make sure current monies are being used effectively.
- Morrill stated the Board should consider which line items are required by statute and requested info at next meeting showing what is and what is not in statute.
- Granger asked what the role of the Board is, if any, in providing guidance on how the money should be distributed, and how is that done. He also stated that in past years the Chair of the Board would be with Henry at ACF committee hearings, and that it seems like someone should be presenting the Board's position on how they should proceed. Gibbs stated she is not sure but will find out, and that there is some flexibility in the budget, but not much. Morrill stated that Granger's question encompasses the entire discussion—they want to know what their role as a Board is in the budget, who prepares it, and what say do they have in it. Bohlen commented that if they are going to be successful as a Board they need to know their budget well enough to make informed decisions as a Board.
- Bohlen commented that learning about the difference of the budget in regard to the calendar and fiscal years was very helpful and he wondered if it may influence how the Legislature interprets their budget. Morrill agreed and told Gibbs that at the next meeting the Board would like to see fiscal year, calendar year, projections, and the previous rolling 12 months. He added the Board definitely wants to meet with the commissioner next budget season.
- Granger asked for an update on the vacant BPC Director position. Gibbs replied that the application acceptance period closed on February 15 and she has received applications, but has not reviewed them yet. Morrill asked for a timetable on hiring. Gibbs responded she would review applications and conduct interviews in early March. If all goes well hiring will take place at the end of April.
- Flewelling asked about filling the empty Board member position. Gibbs replied that the Commissioner has forwarded a request to the Governor's office and they are waiting for a response.

7. Rulemaking Timeline and Potential Rulemaking Topics

At the December 16, 2017 meeting the Board expressed interest in initiating rulemaking around Chapter 29, Section 5 regarding browntail moth. Since rulemaking is expensive and time-

consuming the Board generally tries to group rulemaking initiatives. The staff will present a timetable of possible hearing dates and a list of rulemaking idea which the Board or staff has previously identified.

Presentation By: Anne Chamberlain
Policy & Regulations Specialist

Action Needed: Determine Whether to Initiate Rulemaking and Schedule a Hearing

- Chamberlain stated she does not recommend holding a public hearing at the next meeting, but one does need to be held by September to allow for a meeting in November to review comments and a meeting in December to adopt amendments. Much of the rulemaking to be done involves clarifications and incorporating policies.
- Regarding Chapter 29 Section 6, Chamberlain noted that currently the Board issues variances for control of invasives and control of plants with dermal toxicity. If the requirement for a variance is removed the Board will no longer receive the information it currently receives unless they add a requirement for notification. Stevenson suggested the Board go through the proposed changes and rate what they would like to discuss in order of importance rather than going through the entire list in one meeting.
- Bohlen asked staff to group together ones that are simple housekeeping and put ones the Board needs to discuss into another group. Morrill agreed. Chamberlain stated she could group them and that there are a total of eight chapters.

8. Consideration of Consent Agreement with Alfred Fugazzi, Stone Wall Farms of Lincoln, 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 use of a pesticide to kill crows in a manner inconsistent with the label.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors stated that this is a continuation of a discussion from a previous meeting, and that this consent agreement stemmed from a misuse of Lannate. Connors added that the consent agreement was for \$1500, which Fugazzi has paid.
 - **Flewelling/Morrill: Moved and seconded to approve consent agreement.**
 - **In Favor: Unanimous**

9. Other Old or New Business

- a. Policy—Definition of Biological Pesticide as it Relates to Chapter 29 Section 5
- b. Policy on Allowable Pesticides for the Control of Browntail Moth Within 250 feet of Marine Waters
- c. Variance for control of invasive plants on the Maine Audubon East Point Sanctuary property in Biddeford Pool.
- d. LD 174 An Act To Limit the Use of Pesticides on School Grounds

- e. LD 418 An Act To Educate the Public on the Proper Use of Pesticides and To Promote Integrated Pest Management Using Existing Resources
 - Flewelling stated he did not see any radical changes in the two bills. Chamberlain replied that our department and the Department of Education are opposed to the proposed school bill and Kathy Murray spoke on behalf of the Board at committee for that it.
 - Jemison asked for an explanation of a concept bill. Chamberlain replied that it basically means they are going to write the bill in committee. They take comment at a public hearing and then go into a work session and draft the language. She added she has not seen one go through.
- f. Email from Jody Spear
- g. Letter from Wendell Caler

10. Schedule of Future Meetings

March 31, 2017, May 12, 2017, June 23, 2017, and August 4, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- The March 31, 2017 meeting will be at the Portland Flower Show
- The Board moved the August 4, 2017 meeting to Fairfield because Room 118 in Marquardt is not available on that day.

Adjustments and/or Additional Dates?

11. Adjourn

- **Granger/Stevenson: Moved and seconded to approve consent agreement.**
- **In Favor: Unanimous**