



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

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

July 16, 2021

9:00 AM Board Meeting

Video conference hosted in MS Teams

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: Boyd, Brown, Bryer, Connors, Couture, Kelley, Patterson, Peacock, Saucier, Tomlinson

2. Minutes of the April 16, 2021 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Bohlen: Moved and seconded approval of minutes as amended**
- **In Favor: Unanimous**

3. LD 155—Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use

On June 10, 2021 LD 155 was signed into Maine law. This resolve directs the Board to prohibit the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam used for application in outdoor residential landscapes such as on lawn, turf, or ornamental vegetation. The resolve directs the Board to provide exemptions for certain applications related to wood preservation, structural pests, pets, and emerging invasive insects.

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson told the Board that this was a resolve directing the Board to take action to manage use in certain settings of certain pesticides containing neonicotinoids.
- Patterson asked the Board how they would like to handle creating a definition for emerging invasive pests and how to prohibit these active ingredients in some settings but not in others. She noted the importance of doing this in a way that would be easy for the public and general pesticide dealers to understand and easy to enforce.
- Bohlen asked if the resolve changed the Board's existing legal authority in anyway.
- Patterson stated that it did not.
- There was discussion of how this could be handled. Patterson suggested that adding the additional prohibitions in Chapter 41 may be the simplest way to address and make it less confusing for compliance and enforcement
- Jemison stated that seemed like a good approach and asked if the Board needed to make these active ingredients restricted use or just add limitations to use.
- Randlett responded that the Board could just limit use on specific sites.
- Patterson asked about how to functionally manage the sale of these products at general pesticide dealers if they are not made state restricted.
- Randlett stated that it would be a matter of enforcement if staff find out any of the products had been used in a manner outside of what is described as acceptable.
- There was discussion about a possible homeowner permit and Adams added that a possible additional prohibition could be added in Chapter 41 that only for commercial applicators may purchase these products.
- Randlett commented that the state could be more restrictive than federal law but not less restrictive so the board could prohibit sale of products to homeowners for these purposes.
- Morrill suggested possibly holding a stakeholder information gathering meeting first before going through these products individually.

4. LD 264—Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

On June 10, 2021 LD 264 was signed into Maine law. This resolve directs the Board to amend its rules governing pesticide product registration to require manufacturers and distributors to provide affidavits stating whether the registered pesticide has ever been stored, distributed, or packaged in a fluorinated high-density polyethylene container. It further directs the Board to require manufacturers to provide an affidavit stating whether a polyfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide. This resolve also directs the board to conduct a study and report back on the distribution and use of fluorinated adjuvants in Maine, how to regulate adjuvants, and how to prohibit

distribution and use pesticides and adjuvants containing perfluoroalkyl or polyfluoroalkyl substances in Maine. A report back is required by January 15, 2022.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson stated this was a resolve directing the Board to act and was signed into law on June 10, 2021. Staff must determine whether pesticide products that are registered have ever been stored in a fluorinated high-density polyethylene (HDPE) container. The bill requires manufacturers and distributor to supply an affidavit stating whether or not a pesticide has ever been stored, distributed or packaged in a fluorinated HDPE container. Manufacturers must provide an affidavit stating whether a pesticide formulation contains PFAS.
- Flewelling asked if there were steps being taken to eliminate the potential of PFAS contamination, and if containers with PFAS are all pesticide containers.
- Patterson responded that EPA is researching the issue and right now it was unclear the extent of PFAS contamination in pesticide packaging and production. She added that EPA recently revised its definition of PFAS over 9,000 compounds.
- Flewelling asked why manufacturers are using the fluorination process that is causing the PFAS leaching.
- Patterson explained the process of fluorination and the reasoning behind it was to make a container more durable, less permeable, and less likely for products to bind to plastics. She noted that the reason this began was that EPA adopted U.S. DOT standards into their laws that require containers to be durable for two years.
- Bohlen stated that PFAS were in multiple other products and wanted to move forward making sure staff were looking at and really recognizing what was rationally the additive risk.
- Granger asked if we knew how many pesticide products were packaged in HDPE containers and if there were other products packaged in these containers.
- Patterson responded that fluorination was used in many types of products and early comments from EPA suggested that approximately two thirds of agrochemicals, including fertilizers and adjuvants, might be packaged in fluorinated containers but it was not clear what the level of fluorination was and whether that made a difference in formation of PFAS in those products.
- Adams asked if staff had the time or resources to start investigating every product and surfactant.
- Patterson responded that staff have started looking into most of the bills that were discussed. Staff have looked at what it will take to build a tool to compare CAS numbers of PFAS compounds and the confidential statement of formula. She stated there was also the need to know what PFAS definitions are relevant and which PFAS would be of greatest concern.

- Bohlen commented that it was worth remembering that the resolve suggested a very concrete rule about affidavits and did not think staff needed to answer everything we have discussed here.
- Morrill agreed with Bohlen that staff should focus on the specific ask of the resolve.
- Bryer told the Board that the highest level of PFAS found in pesticide containers was around the 250 ppt which is 250 ppt lower than found in rainwater in a recent study in Illinois.

5. LD 316—An Act To Prohibit the Use of Chlorpyrifos

On June 8, 2021 LD 316 was signed into Maine law. This law prohibits, beginning January 1, 2022, the distribution of pesticides containing chlorpyrifos as an active ingredient. The law allows the Board to grant temporary permits from January 1, 2022 to December 31, 2022 authorizing licensed pesticide applicators to use pesticides containing chlorpyrifos, as long as the product was in the State and in the possession of the applicator before January 1, 2022. The law directs the Board to post on its website a list of the temporary permits issued.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson stated that this law would become effective in 90 days but it allowed the Board to issue temporary permits until January 1, 2022 as long as the product held by applicators was in their possession and in the state before this time. She added that rulemaking would likely be necessary for Chapter 40 for prohibition of use and/or Chapter 41 for the issuance of permits. Patterson added that the bill required issued permits to be listed on the BPC website.
- The Board discussed what this is used for in the state. It was noted that there were about 20-30 products currently registered with this active ingredient. There was a discussion about the board's past practice regarding the issuance of temporary permits and how it might be accomplished.

6. LD 519—An Act To Protect Children from Exposure to Toxic Chemicals

On June 14, 2021 LD 519 was signed into law. This law prohibits the use of glyphosate and dicamba on school grounds and within 75 feet of school grounds. Exempted from this prohibition are residential property and land used for commercial farming. The law directs the Board to convene a medical advisory committee to evaluate the potential impact of herbicides used on school grounds on human health. A report back is required by February 1, 2022.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson told the Board that this was adopted into law on June 14, 2021 and prohibited the use of glyphosate and dicamba on school grounds and within 75 feet of school grounds. She noted that the Board must direct the medical advisory committee to evaluate the impact of herbicides on school grounds and report back by to the legislature by February 2022.
- There was a discussion about standing contracts with schools, especially regarding ballfields, fuel tanks, school perimeters and what alternatives may be used.

7. LD 524—Resolve, Directing the Board of Pesticides Control To Research Workable Methods To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public

On June 14, 2021 LD 524 was signed into law. The resolve directs the Board to research workable methods to collect pesticide sales and use records for the purpose of providing information to the public. The resolve also directs the Board to research the best methods for collecting information from schools, private applicators, and commercial applicators. The Board is further directed to research the best methods for collecting information on pesticide sales in the State. A report back is required by January 1, 2022.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson stated that staff were required to report back on this by January 1, 2022. She added that functionality to collect summary use reports for commercial applicators and summary sales reports for dealers was added into MePERLS and staff were currently entering historical use data.
- Bohlen commented on the ability to get good data and that it was a very high call for effort which may likely cause data quality to decrease.
- Patterson told the Board that California currently required weekly reporting of application records, but they went to county offices first and were brought back to the farmer if there were issues before the records went to the state. She added that this process was very costly, approximately \$15 million annually.
- Morrill commented that it seemed like the resolve was really asking to research sales and use methods to provide info to the public, including use of pesticides in schools.
- Patterson noted that this would also add private applicators who were currently not required to provide annual use reports.

8. Executive Order 41 FY 2021

On June 30, 2021, the Governor issued Executive Order 41 FY 2021. This EO directs the Board, in consultation with the Maine Forest Service and other stakeholders and interested parties, to review and amend rules related to the aerial application of glyphosate and other synthetic herbicides for the purpose of silviculture. The EO identifies a specific process for this review which includes a review of existing BMPs for aerial application of herbicides, development of a water quality monitoring effort, a review of the existing regulatory framework related to buffers and sensitive areas, and a series of public meetings. A report back is required by January 2, 2022.

Presentation By: Megan Patterson, Director

Action Needed: Information only

- Patterson told the Board that this was related to the SCS Global work on aerial application in forestry and whether or not existing regulations were working as intended. She added that staff had already taken 10 samples with money left from existing federal grant, focusing on buffers around bodies of water, sensitive areas likely to be occupied, and natural resources.
- Morrill said that it seemed like there were two asks in this and both of them require a working group of BPC and the Maine Forest Service, MFS.
- Patterson stated that she has been in constant communication with MFS about the responsibilities outlined in the executive order and they have suggested repeatedly that they have no staff to assist on this work but would provide guidance and attend joint meetings. MFS has also reached out to the Cooperative Forestry Research Unit, but that effort had not produced any leads.
- There was discussion amongst the Board regarding where staff could receive assistance in obtaining the information. University of Maine and the research center at Durham NH USDA were discussed. Bohlen commented that a consulting firm may be able to move more quickly.

9. Review of 2021 Legislative and Governor Directives

The Board has been tasked with responding to a number of new laws, resolves and an executive order. Staff have compiled these directives and are seeking the Board's guidance in prioritizing these efforts.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and approve/disapprove next steps

- Patterson stated there were some items that needed to be identified when thinking about implementing LD 155, for example the definition of an emerging invasive insect pest.
 - Morrill stated to consider if an information gathering session is needed and if we do not the Board will look to staff to draft the rule.
 - Patterson stated she felt staff needed a little more guidance for this one.
 - Morrill suggested scheduling a stakeholder information gathering session at the next board meeting.
- Morrill suggested moving towards hosting a stakeholder information gathering session for LD 264.
 - Patterson agreed but stated she was on the fence about the scope and would look for direction from the Board.
 - Morrill stated that manufacturers have knowledge of their products but did not think a distributor would have the same depth of knowledge
- Patterson asked how the Board would like to advertise the stakeholder information gathering sessions.
- Morrill responded that it could be included as part of the meeting and the information could be sent to the list of commercial applicators as well.
- Morrill stated that LD 316 seemed pretty straightforward
 - Patterson agreed and noted that the Board would likely need to go through rulemaking process for it.
 - Adams asked if there was any understanding of how much inventory was in State.
 - Patterson responded that it was currently pretty low compared to what it had been historically, and that use had been declining. She noted that staff had bumped up obsolete collection money by \$10,000 to account for possible additional demand for disposal services.
 - There was discussion of whether a stakeholder information gathering meeting was required for this and it was decided that it was not needed.
 - Patterson stated she thought there was language in statute that allowed the Board to ban the use of a product if it was causing undue harm.
 - Randlett confirmed that legislation in place gave the Board that authority.
 - Morrill asked that staff draft rule to bring to the next meeting for the Board to review.
- Patterson asked if the Board wanted a MAC to take up the directive in the LD 519 resolve.
 - Randlett commented that he generally advised against replicating statutory language in rule to make sure intent of statute was not altered. He stated the Board could make a reference to the statutory prohibition in the rule.

- Morrill stated a stakeholder information gathering session should be scheduled for LD 524.

10. Medical Advisory Committee Policy Revision

In 2008, the Board adopted its current policy related to the Medical Advisory Committee (MAC). This policy details the purpose of the MAC as well its standing membership. The present policy indicates that one standing member is the State Toxicologist or their designee. At this time, the State Toxicologist and his staff are unable to participate due to ongoing demands. While the State Toxicologist did suggest other individuals, who might serve in this role, if the State Toxicologist or their staff are not serving on the MAC, the current MAC policy is now out of date and should be revised.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and approve/disapprove a policy revision

- Patterson stated that the MAC policy had not been revised since 2008 and the Board needed to identify how to amend the standing membership section to accommodate the state toxicologist's absence. She stated that Lebel Hicks had expressed interest in serving in this position.
- Patterson asked if the MAC would be able to start work before the next Board meeting or if they need to wait for a finally adopted policy.
- Randlett stated that the Board could vote to approve an ad hoc member and amend Board policy. The Board would need to hold another meeting to conduct the vote for the selected ad hoc member.
 - **Morrill/Bohlen: Moved and seconded to revise policy to allow for a third member to be a scientist with a background in toxicology with the first choice being the state toxicologist**
 - **In Favor: Unanimous**

11. Consideration of Consent Agreement with Orkin Exterminating Company Inc., Portland

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 poisoning of a dog and a spray contracting firm directing an unlicensed/unsupervised applicator to make pesticide applications.

Presentation By: Raymond Connors, Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors stated that this consent agreement involved an unlicensed applicator who left bait stations unsecured which resulted in a dog being poisoned.

- **Jemison/Granger: Moved and seconded to approve consent agreement**

- **In Favor: Unanimous**

12. Other Old and New Business

a. Email from Asher Putterman

b. Letter from Conservation Law Foundation and Public Employees for Environmental Responsibility

c. Letter from Versant Power

d. Variance Permit for CMR 01-026 Chapter 29, Maine Department of Transportation, Bureau of Maintenance & Operations

e. Variance Permit for CMR 01-026 Chapter 29, RWC, Inc.

f. Variance Permit for CMR 01-026 Chapter 29, Asplundh Tree Expert Co.- Railroad Division

g. Variance permit for CMR 01-026 Chapter 29, Acadia National Park

h. LD 226—An Act To Limit the Use of Hydrofluorocarbons To Fight Climate Change

i. LD 771—An Act To Amend the Laws Governing Wastewater Treatment Plant Operator Certification

amends process of certification- gives dep additional authorities to pursue violations

j. LD 1159—An Act to Amend the Membership Requirements of the Board of Pesticides Control

k. Other items?

- Randlett stated that the governor's executive order ended on June 30th and the ability to hold public meetings remotely would expire on July 30th. He added that LD 32 enacted by legislature did allow some ongoing remote meetings, but it was very limited. Randlett said that to continue to have remote meetings the Board would need to adopt a policy stating when they could hold meetings remotely and that they must provide the ability for the public to attend. He told the Board that Board members must be present at all meetings unless there was an emergency.

13. Schedule of Future Meetings

August 27, and October 8, 2021 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

14. Adjourn

- **Waterman/Jemison: Moved and seconded to adjourn at 12:00 PM**
- **In Favor: Unanimous**