



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

June 17, 2022

9:00 AM Board Meeting

MINUTES

1. Introductions of Board and Staff

- Adams, Carlton, Ianni, Jemison
- Boyd, Brown, Bryer, Connors, Couture, Nelson, Pietroski, Tomlinson

2. Minutes of the May 6, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Carlton: Moved and seconded to approve the minutes as amended**
- **In Favor: Unanimous**

3. Public Hearing on Proposed Rule Amendments to Chapter 41

The Board will hear testimony on the proposed amendments:

Chapter 41—Two amendments are proposed:

1. Add a new section pertaining to neonicotinoids (dinotefuran, clothianidin, imidacloprid or thiamethoxam) to restrict registration and prohibit use in outdoor residential landscapes for the purposes of managing pests in turf and ornamental vegetation and emergency permitting process.
 2. Add a new section prohibiting the use of chlorpyrifos, except for licensed applicators who obtain a use permit from the Board to apply chlorpyrifos products purchased prior to December 31, 2022.
- The public hearing was opened and closed with no public comment.

4. Report on Annual Funding to Maine CDC for Mosquito Monitoring

The Maine Center for Disease Control and Prevention (Maine CDC) coordinates state activities around preventing vector-borne diseases. As part of its responsibilities, the CDC coordinates mosquito and disease monitoring in Maine. The presence of mosquito-borne diseases and the species of vector mosquitoes present in Maine have been on the rise in recent years. Maine CDC and BPC entered into a Memorandum of Understanding in 2013 to establish cooperation to conduct surveillance for mosquito-borne diseases to protect public health. At the April 16, 2021 meeting Sara Robinson of the Maine CDC provided an overview of the trends and the state's monitoring program. At the April 16, 2021 meeting, the Board voted to approve funding in the amount of \$50,000 for Maine CDC's mosquito monitoring efforts. The Board will now review a report on work accomplished in the previous year and work projected for the current year.

Presentation By: Sara Robinson, Infectious Disease Epidemiology Program Director

Action Needed: Review work accomplished and determine if the Board wishes to fund the proposed work

- Sohail Haris, Vector-borne and Zoonotic Epidemiologist for the Maine CDC, presented on behalf of Sara Robinson.
- Patterson stated that the Board had a memorandum of understanding with the CDC that, at a minimum, if funds were available, the BPC would allocate at least \$25,000 annually to mosquito monitoring. She added that in recent years the Board had chosen to support this initiative in the amount of \$50,000. Patterson noted that it was the Board's choice to allocate anywhere from \$25-50,000 but cautioned that they might be facing a budget shortfall in the upcoming two years.
- Haris stated that COVID impacted 2021 mosquito monitoring and it was mainly due to funding obtained from BPC that allowed them to continue monitoring in 2021. Maine Medical Center Research Institute did most of the trapping, and they also subcontracted to Swamp, Inc. Haris stated that 1,025 mosquito pools were tested at the Maine Health and Environment Testing Laboratory, and zero were positive for West Nile virus, WNV, or Eastern Equine Encephalitis, EEE. He added that 27 humans were tested for arboviral diseases, one was positive for WNV on a blood donation, and one tested positive for Jamestown Canyon virus, JCV.
- Haris told the Board that federal funding was sporadic, and BPC funding allowed them to have consistency in trapping sites from year to year. He mentioned that another service they would like to offer was mosquito pesticide resistance monitoring.
- Jemison asked for more information about JCV.
- Haris stated that JCV originated in the 1950s in the Jamestown area of Colorado and sporadically spread around the country. He added that in 2017 and 2018, there were three cases in Maine, and one was fatal. There were no cases in 2019 and 2020. Haris said New Hampshire had an active season last year with seven or eight mosquito pools that tested positive and a couple of human cases. He added that they would like to be able to test mosquitoes for JCV to bring further awareness to it. Haris stated that there were usually low numbers in Maine, but they partner with BPC because if there were an outbreak, they would need to be involved if spraying was warranted.

- Adams asked what the resistance management study looked like and if the CDC was the place to initiate that study.
- Haris stated that the CDC received the funds in 2019 to begin an insectary to house colonies of mosquitoes at the University of Southern Maine, USM. However, USM closed due to COVID, which took out the capacity to conduct pesticide resistance monitoring. The plan was to do monthly testing on mosquitoes, but they could not restart the program since the insectary had been closed. Cornell University offers pesticide resistance monitoring, and they planned to send mosquitoes to them, but they had not developed a plan yet, mainly because of not knowing where funding would be coming from.
- Adams commented that if the insectary was a strong tool for resistance management that should be something the Board should consider funding. He added that a lot of product was being put into the environment to control mosquitoes, and if certain products were becoming ineffective, they should be aware of that.
- Patterson asked if Haris had an idea about the level of funding needed to open the insectary and if the infrastructure was still available.
- Haris said he was not sure what would be needed and that he only knew that they had received \$50,000 to open the insectary. He added that he had no reason to suspect they got rid of the equipment but would need to follow up on that.
- There was discussion amongst the Board to defer this agenda item until the next meeting to get more detail about the amount of funding needed.
- Sarah Robinson joined the meeting and said they were fine to get started next month because the current contract went through the end of July. She added that pesticide resistance was an interesting topic but they had not done much with it due to the pandemic and USM closing. Robinson told the Board that previously they were using wild-caught mosquitoes and a CDC bio bottle assay coated with an active ingredient and would check how many mosquitoes were still alive every 15 minutes. She stated that they now planned to partner with Cornell for resistance testing, but they had not yet seen a cost estimate. Robinson explained that they would like to bring the testing back to Maine when possible but USM was not able to host them this year.
- Adams stated that he would like to hear more next meeting about specific needs related to mosquito resistance monitoring.
- Robinson responded that she would be happy to bring that information back to the Board.

5. 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

On April 28, 2022, LD 2019 became law without the Governor’s signature. This law permits the Board, beginning August 8, 2022, to begin regulating adjuvants in the same manner as pesticides. It also prohibits, beginning August 8, 2022, the distribution of pesticides contaminated by PFAS. It further prohibits, beginning January 1, 2030, distribution of pesticides containing intentionally added PFAS in accordance with Title 38, section 1614, subsection 1, paragraph D. Finally, it directs the Board to adopt rules regulating pesticide containers no later than January 1, 2023.

Presentation By: Megan Patterson, Director

Action Needed: Discussion of next steps

- Patterson explained to the Board that due to the new law a pesticide contaminated by PFAS was unlawful to distribute, and the Board needed to discuss and settle on a definition for ‘contaminated’. She added that they did have reference to the term ‘adulterated’ in rule and it was also a term used often at the federal level. To enforce the new law, staff needed a definition for ‘contaminate’. She added that the second part of LD 2019 was that rules needed to be adopted regulating pesticide containers that made it unlawful to use any pesticide container that did not match with rules created by the Board. Patterson stated that there were fairly extensive federal regulations regarding pesticide containers and staff could bring back more information on that for the Board. Ultimately, it was up to the Board on how to take on these two rulemaking items and what information they needed to make a decision.
- Randlett stated that he thought it was important for staff to gather up federal regulations on pesticide containers because there was potential to have rules adopted by the Board that were preempted by federal law. He added that there might be some areas where the Board would be prevented from rulemaking.
- Adams said that it would first be good to see what came out of the federal residue study.
- Patterson noted that part of the delay on the study might be coming from the need to develop methodologies for extracting PFAS that were being introduced by fluorinated containers. Massachusetts and Vermont assessed the level of PFAS being produced and it may be good to look at their assessments on this.
- Ianni asked about defining the term contaminate.
- Patterson stated that it was in statute, but the legislature did not define it.
- Ianni stated that it seemed like it should include any chemical or compound that was not intended to be in the product, no matter how it got there. Regarding the issue of regulating containers, she did not know if they had the luxury of waiting until they received the EPA’s info.
- Patterson stated that there were already significant sections of FIFRA that pertained to containers that the state had regulatory authority over, and she thought this was going to be a complicated issue.
- Adams stated that drafting a rule that would specifically identify something in a container that we do not have a way to test for seemed like a difficult task.
- Randlett stated that the deadline of January 2023 for final adoption did not leave a lot of time. He added that if the Board did not meet the deadline there was no consequence written in LD 2019, but they could risk angering the legislature. Randlett said that as long as the Board acted in good faith and kept the legislature informed about what they were doing, he thought that would be sufficient.
- Patterson asked if it would be sufficient to supply the legislature with a report about what the Board had been doing.
- Randlett responded that he suggested providing the legislature with a report about steps the Board had taken in response to LD 2019.
- There was discussion amongst the Board about the difficulty of creating rules without more information. Carlton stated it was unwise to make a decision based on the limited information they currently had and said that this would likely change the whole world of packaging, not just pesticides.
- Adams asked if there was a way staff could work on laying the foundation for a working session, either as part of the next meeting or as a separate meeting.
- Jemison commented that this issue was so challenging because there was not enough known about it and suggested approaching the problem by taking the majority of a Board meeting to understand the topic.

- The Board asked staff to bring back information on this topic for the next meeting.

6. Consideration of a Consent Agreement with Caribou Country Club, Caribou, 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 insufficient records and multiple unlicensed and unsupervised pesticide applications made to an area open to use by the public—thus requiring commercial licensure.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Review and/or approve

- Connors stated that Caribou Country Club made 22 unlicensed applications and kept incomplete records. He added that a new president of the club had since taken over and followed through with a solution of contracting with a commercial applicator. Connors told the Board that the consent agreement was sent and a fine of \$800 was paid.
- There was discussion amongst the Board about the amount of this and other recent consent agreements. Carlton stated that he thought the fines were insufficient to be an incentive to correct the action. Adams added that this was the fourth consecutive meeting where at least one Board member stated that the fines needed to be raised. Ianni noted that the penalty for this consent agreement came out to approximately \$36 per unlicensed application, which did not seem like a deterrent.
- Randlett explained that \$1500 per violation was the maximum allowed for a first-time violation. He added that consent agreements were complex because staff needed to consider several factors, including the seriousness of the violation(s), the kinds of penalties assessed in the past for similar violation(s), the degree to which a violator would be impacted, whether the violator derived income from unlicensed applications, and more. Randlett stated that there was no set formula for this and there had been an attempt to create a penalty matrix in the past, but it had been unsuccessful. He said that other agencies do have matrices. If the Board wanted to discuss appropriate guidelines for staff to take into account when assessing penalties, that would be a good idea.
- Jemison stated that he agreed that \$800 was not a sufficient penalty, but he appreciated that assessing these fines was not an easy thing to do and would like the opportunity to discuss the topic more.
- Adams asked that the next meeting agenda include a discussion about how these consent agreement amounts were reached.
- Carlton added that it would be good to look at the matrixes from other state agencies.
- Ianni agreed and stated that she would like to see how DEP assesses their consent agreements because they seemed more analogous to the Board's role. She added that she did not think they could also ignore the cumulative impact of these violations.
- Randlett said that he did not think DEP had a rule that established penalty ranges, but that they may have a policy and he would try to find that. He added that DEP's statutory authorization for amounts of fines was much larger than BPC's penalty authority.
- Patterson suggested that staff could also survey other states about their matrices.

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

7. Other Old and New Business

a. Chlorpyrifos Use Permit Policy for Applicators Intending to Use Existing Stocks of Chlorpyrifos

b. Press Inquiry about SLN Decision

- Patterson stated that an inquiry came to the department with the intent of forwarding it to the Board. She said that the main component of inquiry was asking how that process for Special Local Needs registration worked and what information was used to make those decisions.

c. Other items?

- Jemison noted that he believed his term officially ended in July, but he was happy to continue serving until he heard otherwise.
- Patterson noted that the Board was facing a potential budget shortfall and flat funding at the federal level. She added that she intended to put in a bill or budgetary request for additional funding, and that would likely come in the format of increasing registration fees. Patterson explained that they had an obligation to maintain the budget at a certain level to support legislative directives.

8. Schedule of Future Meetings

August 5, 2022, September 9, 2022, and October 21, 2022, are the next tentative Board meeting dates.

- Randlett stated that there was new legislation pertaining to remote meetings that would allow for Board members to participate remotely as long as there was a policy, but that there may be a need for the Board to have a space available where members of the public could attend in person.
- Adams suggested hosting the August meeting remotely and trying to meet in person in September.

10. Adjourn

- **Carlton/Ianni: Moved and seconded to adjourn at 11:30 AM**
- **In Favor: Unanimous**