



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

October 25, 2024

MINUTES

1. Introductions of Board and Staff

- Board members: Adams, Bohlen, Carlton, Fanning, Gray
- Staff: Boyd, Couture, Peacock, Pietroski, Vacchiano

2. Welcome New & Reappointed Board Members

On September 9, 2024, the ACF Committee confirmed the appointments of two new Board members and reappointed two existing members to the BPC. The Senate accepted these appointments on October 10, 2024.

Presentation By: Alex Peacock, Director
Action Needed: Discussion

- Peacock welcomed newly appointed Board members Phillip Fanning and Justin Gray. He also noted the reappointment of Curtis Bohlen and Robert Carlton. Peacock thanked Dominic Lajoie for his service on the Board.

3. Minutes of the September 6, 2024 Board Meeting

Presentation By: Alex Peacock, Director
Action Needed: Amend and/or Approve

- **Carlton/Bohlen: Moved and seconded to approve the September 6, 2024, minutes**
- **In Favor: Unanimous**

4. Groundwater Monitoring Plan Revision

The BPC Generic State Management Plan for Pesticides and Groundwater has not been updated since 2006. Staff is suggesting updates and revisions to the plan to ensure it remains relevant and effective.

Presentation By: Julia Vacchiano, Pesticide Registrar/Water Quality Specialist
Action Needed: Discussion

- Vacchiano provided the Board with the 1994 Groundwater Monitoring Plan, which had not been revised in eighteen years. The plan called for groundwater monitoring every five to seven years to assess potential pesticide contamination problems and the extent of any identified problems. Pesticide management practices would then be implemented in response to identified pesticide contamination trends. Vacchiano asked the Board for feedback on updating the plan.
- Gray asked if Vacchiano had specific concerns.
- Vacchiano said she was currently working to complete the aerial forestry report and planning the 2025 water quality study, but updating the Groundwater Monitoring Plan was also on the list of projects for next year. She stated that she was hoping for the Board's initial thoughts and wanted them to begin thinking about water quality as a regular part of what the BPC does by introducing this plan most may have never seen.
- Bohlen stated that there were a lot of outdated procedures in the plan. He added that they needed to think about how the committees that oversaw the drafting and revision were structured.
- The Board said more time was needed to carefully review the plan. They asked that staff bring it back at the next meeting.

5. Service & Secondary Container Labeling Policy

Staff have drafted a policy based on EPA recommendations for labeling Secondary and Service Containers.

Presentation By: Alex Peacock, Director
Action Needed: Amend and/or Adopt

- Peacock explained that staff occasionally encountered companies buying products in higher concentrations and breaking them down into secondary containers. Staff had encountered several unlabeled secondary containers. He detailed suggested language of data that would be required to appear on these containers to achieve compliance, and especially to protect human and environmental health.
- Carlton asked what would constitute a label for a secondary container.
- Peacock said it could be a sticky label or information written with an indelible marker on the container.
- There was discussion about considering the requirement that anything left at the end of the day in a batch mix tank must be labeled.
- Adams thought it was a tall order to require the dilution rate on the secondary label.
- Bohlen asked if this had any implications for enforcement and, if not, what was the purpose that made it necessary.
- Peacock replied that as a policy, there would not be any enforcement, but depending on the level of compliance, the Board may consider adding it to the rule. He added that the policy's purpose was to reduce the number of times staff came across unlabeled pesticides.
- Adams asked if it would be major substantive to incorporate this language into Chapter 29.
- Gustanski replied in the affirmative but would need to review Title 7 Sec. 610 to confirm.
- Adams said that he had experienced this over the years and thought it would be a good idea to put it into rule.

- There was discussion about what information should be required on the secondary label, the policy's limit, and who it should apply to.
- Peacock suggested that staff could add language so that it only applied to licensed applicators.
- Gray stated that it seemed redundant to require that 'follow all label directions' be written on the secondary label.
- Deven Morrill, Regional Manager, Lucas Tree Expert Co, Inc., stated that they were in opposition to the proposed policy because the Occupational Safety and Health Administration (OSHA), as well as the US Department of Transportation (DOT) already regulated how pesticides were transported and labeled and had the authority to cite for an unmarked container. He added that Chapter 29 standards also discussed transportation standards. Morrill stated that he felt that the BPC already had the authority to enforce this, and a policy that went above and beyond federal standards would only further confuse and complicate interstate travel.
- Adams asked staff to bring back draft language for incorporation into the rule.

6. Enforcement Protocol

During previous presentations of enforcement actions through consent agreements, the Board has asked Staff to alert them prior to settlement of a consent agreement when certain factors of an enforcement case exist, such as harm to human health or the environment and repeat offenders. Draft language has been added to the existing enforcement protocol for the Board's consideration.

Presentation By: Alex Peacock, Director
 Action Needed: Amend and/or Adopt

- Peacock stated that the Board expressed interest in hearing why certain violations occurred. There should be language for certain violations that trigger staff to bring the case before the Board before entering into a consent agreement.
 - **Carlton/Bohlen: Moved and seconded to adopt the draft language**
 - **In Favor: Unanimous**

7. Report on repeat violations by Mosquito Squad of Southern Maine

During several inspections in 2024, it was determined that the Mosquito Squad of Southern Maine had committed several violations. The BPC has previously accepted consent agreements with the Mosquito Squad of Southern Maine on 11/19/2021 and 2/9/2024. This report is being presented pursuant to the Board's request to be notified of repeat offenders prior to finalizing a consent agreement.

Presentation By: Alex Peacock, Director
 Action Needed: Discussion/Guidance

- Peacock summarized the violations that Board staff had identified. These included application to an unauthorized property, non-compliance with label required PPE, and indication of off-target deposition. Additionally, the labels each had language to avoid blooming crops and weeds, but no effort was made to avoid them. The label of a specific lambda-cyhalothrin product being used

said not to apply the product in residential areas, such as homes. Mosquito Squad of Southern Maine was alerted, and the company switched to another lambda-cyhalothrin product.

- Adams asked if part of the reason this was on the agenda was because of the history of violations.
- Peacock replied that a consent agreement was settled with Mosquito Squad of Southern Maine in 2021 for multiple infractions. There were no further infractions in a three-year period. In 2023 there were additional violations.
- Adams explained that over the past year, the Board had a lot of discussion on how to take action that would have a more lasting impact on preventing repeat offenses. Adams asked Gustanski what the process was for license suspension or revocation.
- Gustanski replied that pursuing revocation would require going to the district court and the Board had the authority to temporarily suspend for up to 45 days.
- There was discussion about penalties that could be levied for repeat violations within a four-year period. For the 2024 infractions the penalty could be up to \$4,000 per violation, plus the \$2,000 which had been suspended from the 2021 consent agreement.
- Carlton stated that this number of violations over the last few years was very concerning. He said that, as a Board, they needed to act because it seemed like monetary penalties were not working. Carlton added that for some companies, it seemed like the penalties were the cost of doing business.
- Gray stated that the company's track record leading up to these latest violations was worrisome.
- There was further discussion about how to proceed. The Board recommended that staff go forward with negotiating a consent agreement.

8. Other Old and New Business

- a. Variance Permit for CMR01-026 Chapter 29, Abenakee Golf Club, Parterre Ecological/Parterre Garden Services, Invasive Species Management, Biddeford
- b. New active ingredient: Pethoxamid, preemergent for turf care submitted for registration.
- c. EPA Finalizes Rule to protect farmworkers, Families and Communities from Pesticide Exposures
- d. EPA Updates Mitigation Menu Website with Options to Protect Nontarget Species from Pesticide Runoff
- e. EPA Releases Pesticide and Endangered Species Educational Resources Toolbox
 - Peacock talked about some of the outreach and education that staff had planned to inform the regulated community.
- f. Through an EPA grant BPC will be hosting 50 attendees from EPA Region 1 and Maine for National Certified Investigator/Inspector Training (NCIT) provided by The Council on Licensure, Enforcement & Regulation (CLEAR) in Augusta on November 13, 14, 15, 2024.
- g. E-Commerce Update & Brief Discussion
 - Peacock stated that many pesticides used in Maine were purchased online and delivered. He said that all companies that sell or distribute pesticides in the state of Maine are required to be licensed, both general use and restricted use pesticide dealers. Peacock said that many companies may not be aware of the number of Maine state restricted use pesticides, such as aquatic herbicides, Dylox, and others. He told the Board that staff would be looking into this and outlined how some other states were managing licensure compliance with online vendors.
 - Adams cautioned about spending a lot of staff time on this since it was a very large issue.

9. Schedule of Future Meetings

The next scheduled Board meeting date is December 6, 2024. The Board will decide whether to change and/or add dates. January 15, 2025 (ATS), Projected future dates: February 28, 2025, April 11, 2025.

Maine Agricultural Trade Show, January 14, 15 & 16, 2025. Board meetings typically occur on Wednesday of the ATS with a public forum. Augusta Civic Center v. Deering 101?

- Pietroski stated that staff could facilitate the Board meeting at the Augusta Civic Center.
- Bohlen replied that he would like to have the meeting at the civic center, and other Board members agreed.

10. Adjourn

- **Carlton/Gray: Moved and seconded to adjourn at 10:42 AM**
- **In Favor: Unanimous**