



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

April 7, 2023

9:00 AM Board Meeting

MINUTES

Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves

2. Minutes of the February 24, 2023 and March 15, 2023 Board Meetings

Presentation By: Megan Patterson
Action Needed: Amend and/or approve

- **Jemison/Carlton: Moved and seconded to approve the minutes of the February 24, 2023 Board meeting as amended**
- **In Favor: Unanimous**

- **Carlton/Jemison: Moved and seconded to approve the minutes of the March 15, 2023 Board meeting as amended**
- **In Favor: Unanimous**

3. Review of the Board Budget

In early 2017, the Board reviewed the budget with the goal of identifying potential resources that could be allocated to Board priorities. At that time the Board requested ongoing annual updates on the status of the Pesticide Control Fund.

Presentation By: Megan Patterson, Director

Action Needed: Provide guidance to the staff on Board budget priorities

- Patterson reviewed the summary of the budget with the Board. Most of the money for the program is spent on salaries and fringe. The budget synopsis covered all expenses from

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March 2023 projected through June 2023. The projections were based on ten years of data which is usually fairly accurate but this year was a massive departure from normal so it made it more difficult to predict. The program received approximately \$155,000 in applicator fees, \$1.67 million in registration fees, and \$378,000 from the program partnership grant from EPA which runs on the federal fiscal year. Patterson stated that this funding was needed to sustain the program through December. There are also legislative transfers that the Board is responsible for which include \$200k to UMaine extension and approximately a \$238,000 DICAP transfer which is assessed as a percentage of each dollar and is used by the department to fund multiple things like administrative staff, technology needs and other expenses.

- Adams asked when the calculation was made for DICAP and on what dollar amount. He asked if the amount was 1.125%.
- Patterson said the amount changes every year and she thought it was assessed monthly. She said she could give them additional information on that. Patterson went on to explain expenses and that they were a little lower than normal this year and projected through to the end of the year would be approximately \$1.7 million. The Board needs to have a minimum of \$200,000 in December to cover all costs. Patterson explained the positions in BPC and the five positions the BPC funds in the plant health division. She stated that there was an effort to move those positions back to general fund monies but that did not seem to have been successful.
- Adams stated that he assumed the Board had the right to decide what they funded and did not fund. He suggested creating a subcommittee to work on a multiple-year projection for the budget.
- Patterson stated that the Board had capacity to think about the way they assess fees and that engaging a subcommittee and inviting folks that are directly affected by the fees would be beneficial. She noted that the majority of revenue came from product registration.
- Adams stated that he would like to see the worst case scenario. There may be difficult decisions that need to be made on what does and does not get funded in the coming year.
- Patterson replied that staff could certainly provide that.
- Adams stated they are preparing for a meeting with the ACF committee. They had a previous meeting with the committee and discussed fiscal impact and requested general fund monies but it did not seem to get consideration. He added that the Board needed an understanding of how bad it could get so that Board members could bring that to the upcoming discussion.
- Patterson said staff could provide them with historical financial information to see how that compares with the current budget.
- Adams said that they needed to get an idea of what the asks would be before they came in.
- Bohlen noted that what the Board was funding was not where the majority of dollars are. It was salaries that were the issue and at some point the discussion needed to focus on people and which people the Board could afford to support with a lot less money. He said

that these different pools of money had different levels of flexibility and he did not understand those relationships.

- Patterson said that in the past the Board had met with Aimee Carlton, the Business Operations Manager for the Department, and she would be able to explain the intricacies of the budget in greater detail.
- Adams asked for Board members that would be willing to serve on a subcommittee to dig into the budget.
- Bohlen said he would be happy to be part of the team.
- Patterson said if the whole Board was interested in meeting with Carlton and the folks over at the Commissioner's office staff could set it up so that would occur after a Board meeting.
- Jemison said that he would be happy to be a part of this as well but he usually recuses himself from voting on the budget due to any conflict about the money that goes to UMaine Extension.
- Adams asked Patterson to come up with a plan to discuss the budget He added that for purposes of the upcoming ACF meeting he wanted to get as much accurate information as possible and hoped the meeting would happen before the end of April. Adams suggested possibly scheduling a budget workshop after the next regular meeting.

4. Review and Discussion of Potential Rulemaking Topics

At its January 11, 2023, meeting, the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023, meeting, staff provided a list of rulemaking ideas identified by Board members and staff. At the March 15, 2023 meeting the Board engaged in further discussion about prioritizing rulemaking concepts, but did not vote to move to rulemaking. The staff will present a summary of the March discussion, additional information on some rulemaking concepts, and a timetable of possible hearing dates for Board consideration.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Discuss rulemaking concepts and possibly vote to schedule a hearing

- Boyd stated that there were four rulemaking initiatives that the Board had indicated they were interested in moving forward with. She added that they needed to have an official vote on which to proceed with.
- Adams said at the last meeting there was discussion to move forward with topics two, four, seven and nine but the Board didn't take a formal vote.
- Patterson stated that on the bright side that gave the Board time to have discussion about the text. She added that Chapter 41 had some draft language for the Board's consideration.

- There was Board discussion about consent agreements and some unique options for making them more meaningful. There was a discussion of possible license revocation for infractions. Adams stated that he would be in support of a second offense suspension.
- The Board discussed language changes for rulemaking on Chapter 41. Patterson stated that Section D(I)(a) made it so that *Bt* growers did not have to keep a map showing crop location. Additionally, there was no longer a discreet refuge. Growers are using refuge in a bag. Patterson stated that the change in Section D(I)(c) may not be necessary. She noted that in Section E(I)(a) the proposed language would change the rule to expand the requirement to all plant-incorporated protectants. Patterson stated that it might be better to consider a *Bt* corn certificate rather than a license.
- Bohlen stated he did not have enough information on which way to move forward and would like to keep both the licensure and certificate option open.
- Adams asked if having an applicator license would fulfill this requirement and that obtaining a license gives them a much broader base of knowledge. He suggested maybe adding a caveat that individuals do not need to undergo recertification if they are licensed.
- Jemison stated that would work as long as the individuals received the initial training the first time.
- Adams said it would be ideal if there was a portion of the core manual that covered *Bt* corn or GMOs.
- There was discussion about changing the *Bt* corn wording to plant-incorporated protectant.
- Patterson noted that in Section E(c)(1)&(2) the edits may not be necessary.
- Boyd pointed out that the changes to this rule would be major substantive and would need to go in front of the ACF committee.
- The Board decided to wait to vote to enter rulemaking at the next scheduled meeting formally. Adams stated that he did not see an urgency to move forward today because it would not have an impact on spring planting.

5. Staff Memo on Proposed Water Quality Monitoring Related to Aerial

Executive Order 41 FY 20/21 directed the Board to develop a surface water quality monitoring effort to focus on the aerial application of herbicides in forestry to be conducted in 2022. In an effort to be responsive to this request and to accommodate what was a changing timeline for the completion of the EO request, staff conducted a small preliminary surface water quality monitoring pilot study in 2021. Staff proposed an expanded monitoring project for completion in 2022, but in the absence of additional funding chose to develop standard operating procedures and scout potential sampling sites. At the December 2, 2022, meeting staff provided an update on the progress on and challenges to completing the EO 41 water quality monitoring project. Following the completion of preliminary field assessments, staff propose a modified water quality monitoring project to be completed in 2023.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/discuss the project proposal; approve/disapprove the project proposal

- Bryer brought this proposal forward a couple of meetings ago. The BPC was asked by the Governor's office to undertake water quality monitoring around areas with aerial forestry applications to assess off-target movement of pesticides. This monitoring was not completed in 2022 because it was not funded. Bryer explained how the monitoring would be conducted. She said this proposal was for a two-pronged approach, assessing drift during an application and also over time including after rain events. She stated that the project would require a lot of coordination with landowners. This study evaluates the current setbacks from water and if they are sufficient.
- Ianni asked if other states with similar topography, stream prevalence and tree species had conducted any similar studies.
- Gary Fish, Maine State Horticulturalist, stated that it might be advantageous to contact Bob Wagner who conducted significant work in Ontario in the 1990s on this topic.

6. Staff Memo on Clarification of Distribution

Chapter 20, Section 1(D) of the Maine pesticide rules, permits retailers and end users of pesticides no longer registered in Maine to continue to sell and use those items provided they were properly registered when obtained, and such distribution and use is not prohibited by FIFRA or other Federal law. Recent inquiries have highlighted confusion as to who qualifies as a retailer, and what "obtained" means when selling and using products that are no longer registered. Staff proposes clarifications of the rule for consideration by the Board.

Presentation By: Mary Tomlinson, Registrar and Water Quality Specialist

Action Needed: Discuss the memo; approve/disapprove adoption by interim policy

- Tomlinson explained the issues with the past renewal season She said that staff had received calls from companies with products that were not renewed asking if they could distribute product into the State. The companies also asked what the rules were if the product was already purchased but not yet shipped. Questions were posed about the definition of a retailer. Tomlinson said that Chapter 20 reads that retailers and end users of pesticides no longer registered in Maine may continue to sell and use those products provided they were properly registered when obtained and such distribution and use is not prohibited by FIFRA or other federal law. She asked the Board for clarification on what obtain means in this context and what entities would qualify for this. Tomlinson stated that staff surmised the rule was likely written to reduce the number of unregistered pesticides in Maine.
- Tomlinson suggested for clarification purposes to define a retailer as a store or warehouse in Maine that sells directly to the end user. If the company does not have a storefront or warehouse in the state, it would not be considered a retailer. A company with a warehouse out of state that is storing unregistered products for distribution into Maine would not be allowed to send the product.

- The Board discussed this issue and agreed product needed to physically be in Maine to fit the intent of Chapter 20. There was also discussion about putting this policy into rule sometime in the future to make it enforceable.
 - **Carlton/Bohlen: Moved and seconded to incorporate the memo into policy**
 - **In Favor: Unanimous**

7. Staff Memo on Potential Cancellation of Special Local Need (SLN), Section 24(c) Registrations

For a Special Local Need (SLN), Section 24(c) registration to be approved and remain active through its registration period, the EPA Section 3 pesticide product on which the SLN is based must maintain current registration in Maine. In addition, the SLN application must also be submitted through the registration portal with the payment of the annual renewal fee. To date, seven SLNs are in jeopardy of cancellation either because they were never submitted through the registration portal and have not paid the renewal fees or because the product was not renewed for 2023.

Presentation By: Mary Tomlinson, Registrar and Water Quality Specialist

Action Needed: Informational only

- Tomlinson explained she was bringing forward this memo for informational purposes. There were multiple SLNs that were canceled or not renewed. Some of the products were in the process of renewal.
- Adams stated that an SLN was essentially worthless if the product was not registered. Lajoie agreed. The Board thanked Tomlinson for bringing this information forward.

8. Staff Memo on Possible Addition of Elongate Hemlock Scale to the Board's Policy on *Approved Invasive Invertebrate Pests On Ornamental Vegetation In Outdoor Residential Landscapes For Neonicotinoids Exemption*

Staff have received a request to add the Elongate Hemlock Scale to the Board's existing policy on the use of neonicotinoids for the management of invasive invertebrate pests in outdoor residential landscapes.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Discuss the memo; approve/disapprove amendment of the interim policy

- Pietroski told the Board that staff received a request from an applicator in midcoast Maine to add Elongate Hemlock Scale (EHS), to the neonicotinoid policy that included three other invasive species.
- There was a discussion about the type of application and the extent of the infestation.
- Gary Fish commented that EHS was an emerging invasive that was often found paired together with HWA. He added that it was established in New Hampshire and was

infesting hemlocks in the forest. Fish stated that it was not a state or federally-regulated pest.

- Adams asked about alternative treatments for EHS.
- Pietroski responded that from the reading he had done alternate treatments appeared to be horticultural oils or insecticidal soaps.
- Jeff Gillis, from Well Tree, Inc, stated that he saw EHS most often as a solitary infestation and it was commonly on fir trees. He brought in bagged samples he showed to Board members.
- There was discussion about working with nursery stock to keep invasives out.
- Gillis commented that even during a nursery inspection there would really be no way of seeing EHS if it is in the crawler stage until it had developed its waxy coating.
- The Board discussed the original logic of creating the specialized list of invasives. It was intended for invasives where the species was between the moments of initial spread and before it became established. They were unsure if this species was in that space or too far along.
- Mike Parisio, of Maine Forest Service, said he could not say for sure but he thought he could safely say entire eradication was out of the question. He added that treatment may be appropriate on a local level. Parisio shared a document showing current known areas where EHS had been identified.
- Fish spoke to the difficulty of using horticultural sprays and oils which would require fine spray and a greater ability to drift. He added that oils could cause more damage to beneficials than a systemic injection.
- Adams stated that the whole point of the rule was to stop using these products in residential areas.
- Patterson mentioned the emergency use policy.
- The Board requested Gillis apply for a variance through the emergency use policy.

9. Consideration of Consent Agreement with BD Grass & Sons, Blaine, 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 failure to notify the Board of a spray incident.

Presentation By: Alex Peacock, Manager of Compliance

Action Needed: Review and/or approve

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

10. Consideration of Consent Agreement with Mosquito Deleto, Sandown, New Hampshire

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 an unlicensed applicator, failure to maintain pesticide application records, and failure to post applications.

Presentation By: Alex Peacock, Manager of Compliance

Action Needed: Review and/or approve

- Peacock stated that the original penalty was for \$10,000 but it was revised to \$1,500 with a ten-year no violation clause to bring the consent agreement to a close.
- Ianni stated that there did not seem to be a rational reason for dropping the fine that much.
 - **Carlton/Lajoie: Moved and seconded to approve the consent agreement as written**
 - **In Favor: Adams, Carlton, Lajoie**
 - **Against: Ianni, Jemison**

11. Other Old and New Business

a. Update on 2023 pesticide product registration

- Patterson stated that the BPC was still missing about 2,680 registrations compared to last year. There were a few large companies and some smaller ones that had not submitted renewals.

b. Variance Permit for CMR01-26 Chapter 29, Maine Department of Transportation

c. Variance Permit for CMR01-26 Chapter 29, RWC, Inc.

d. Letter from Maine Organic Farmers and Gardeners Association (MOFGA) regarding recently collected pesticide product registration related affidavits and confidentiality

e. Possible bill on use and sales reporting

f. Update on container barrier treatments

g. Other?

12. Schedule of Future Meetings

- Adams said to hold open April 28 as a meeting date if the Board received instruction from the ACF Committee by April 17. If the Board had not heard from the committee by then, staff could send out a statement that the meeting is off.
- Three Board members stated they could not meet at the end of April.
- June 9 and July 21 were the next two scheduled meeting dates.

13. Adjourn

- **Lajoie/Carlton: Moved and seconded to adjourn at 12:05 PM**
- **In Favor: Unanimous**