



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

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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

April 11, 2024

9:00 AM Board Meeting

MINUTES

1. Introductions of Board and Staff

- Adams, Carlton, Ianni, Jemison, Lajoie
- Assistant Attorney General: Carey Gustanski
- Staff: Boyd, Couture, Peacock, Pietroski, Vacchiano

2. Board Director Appointment

A director has been selected by the department and commissioner's office. The board may vote on the appointment of the director according to Title 22 §1471-B.

Presentation By: Megan Patterson, Director of Animal and Plant Health
Action Needed: Approve/Disapprove new Board Director

- Patterson stated that Alexander Peacock was selected as the new Board of Pesticides Control Director. She added that there was language in statute stating that the Board director was required to be approved by the Board. Patterson provided background on the history of the process. She noted that Peacock had experience and aptitude in different facets of the industry and would be a great leader for staff.
- Adams suggested adopting a policy to clean up the process of appointing a new director. He asked if a Board member participating in the hiring process for future directors would satisfy the Board's desire to be involved.
- Ianni suggested there also be an alternative to the process detailed in the new policy, such as a vote, in the event that a Board member was not available to serve on the hiring committee.
- Board members agreed. Staff will bring back a draft policy.
- Patterson suggested including language stating that if a member is unavailable, the Board shall identify an alternative process.
- The Board welcomed Peacock as the new Director.
- Peacock stated that he appreciated everyone's support and thanked Pietroski for serving as acting director for the past year.

ALEXANDER PEACOCK, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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3. Minutes of the February 9, 2024 and February 23, 2024 Board Meetings

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

- **Carlton/Jemison: Moved and seconded to accept the minutes of the February 9, 2024 mmeeting**
- **In Favor: Unanimous**

- **Carlton/Jemison: Moved and seconded to accept the minutes of the February 23, 2024 mmeeting**
- **In Favor: Unanimous**

4. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Alex Peacock, Director
Action Needed: Nomination and Election of Officers

- Peacock stated that Title 22 §1471-B required the annual election of officers to select a chair and vice chair to serve the Board.
 - **Carlton/Lajoie: Moved and seconded to nominate David Adams to serve as Chair of the Board of Pesticides Control**
 - **In Favor: Unanimous**

 - **Adams/Jemison: Moved and seconded to nominate Curtis Bohlen to serve as Vice Chair of the Board of Pesticides Control**
 - **In Favor: Unanimous**

5. General Conduct Expectations of Members of the Board of Pesticides Control

Review of expectations of Board members while operating in their capacities as Board members and as private citizens.

Presentation By: Carey Gustanski, Assistant Attorney General
Action Needed: Discussion

- Gustanski reviewed general conduct expectations with Board members, including their responsibilities, issues where there may be conflicts of interest, and explained the Freedom of Access Act, FOAA. Board members may only discuss agenda items at meetings. He explained guidelines that must be followed when discussing certain topics with the public. Gustanski stated that the general guideline was that if a topic dealt with pesticides or items that were not

before the Board under decision, then discourse with the public was healthy. If a specific matter was pending before the Board, then members should direct individuals to submit questions to Board staff to make sure questions reached all Board members. Gustanski reviewed rulemaking timelines and noted the general process of submission for when comments may be received. Other than executive sessions all public proceedings must be available to the public. Gustanski stated that Title 1 § 403-B of FOAA stipulated that all votes taken during a public proceeding using remote methods must be taken by roll call vote that can be seen and heard if using video technology and heard if using only audio technology, by the other members of the public body and the public. He also explained to the Board the conditions under Title 1 § 405 for which the Board may enter executive session.

6. Consideration of a Request for Variance from CMR01-026 Chapter 29 from RWC, Inc, to Treat Railroad Rights-of-way in Maine

RWC, Inc is seeking a variance from Chapter 29, Section 6, Buffer Requirements, in order to treat the Canadian Pacific Kansas City rail tracks rights-of-way in Maine. Board policy indicates that first-time variance requests must be considered by the Board. The policy further stipulates that railroad variance requests need to be consistent with the Maine Department of Transportation standards. The last variance for this railroad, previously contracted under Davey Tree Experts, was approved at the May 6, 2022 Board meeting.

Presentation By: Alex Peacock, Director
Action Needed: Approve/disapprove variance request

- **Carlton/Jemison: Moved and seconded to approve the variance request**
- **In Favor: Unanimous**

7. Review of Chapter 60: Designation of Critical Pesticide Control Areas

Overview of criteria which the Board will use in deciding if an area should be designated a Critical Pesticide Control Area.

Presentation By: Alex Peacock, Director
Carey Gustanski, Assistant Attorney General
Action Needed: Discussion

- Peacock stated that this agenda item was a precursor to agenda item eight. The last time the Board received a request of this type that went through the entire process was in 2000. One other request in 2008 did not complete the process. Peacock explained that if approved, this process would involve rulemaking activity. He added that another important component was the allowance for local participation in Board decisions regarding this matter. The municipality affected had the ability to appoint a Board member to vote on this agenda item.
- The Board members discussed the requirements of the procedure detailed in Section 1 of CMR01-026 Chapter 60 for considering and acting upon a petition for designation of a critical pesticide control area. The current Dennys River Critical Pesticide Control Area details were also considered.

8. Request to Designate Eagle Lake Water District Wellheads as a Critical Pesticide Control Area

Staff have received a petition to designate Eagle Lake Water District Wellheads as a critical pesticide control area as outlined in Chapter 60: Designation of Critical Pesticide Control Areas. Staff has provided the information provided by the requesting party. Once received, the board shall conduct rulemaking according to 5 MRSA Ch. 375, subchapter II and allow for local representation on board decisions regarding the designation according to Title 22 § 1471-V.

Presentation By: Alex Peacock, Director
Action Needed: Discussion/amend/approve rulemaking

- Peacock explained the background to the Board on the information staff received from the Eagle Lake Water & Sewer District.
- Gerald Raymond, Superintendent for the Eagle Lake Water & Sewer District, stated that they had worked with the Maine Drinking Water Program which directed them to the BPC. He added that they have been notified by the Drinking Water Program that since pesticides are being used in the area, the district would need to begin testing the water, which is costly.
- Adams stated that the Board understood the importance of protecting the water but they were struggling with what this undertaking would look like and what precedence it could possibly set. He suggested the Board take some time to process this before making a decision.
- Ianni asked if the abutting residences received their water from the Eagle Lake Water & Sewer District.
- Raymond responded that the abutting residences had deeper groundwater wells of their own. He added that the water district tried to pass an ordinance in 2008 but it was unsuccessful. A year ago, the water district requested another ordinance and brought it to the select board, and they were told it would not go through, and that is why they brought the case before the BPC.
- Gustanski noted that a general narrative was not up for discussion during this meeting because the rulemaking process would need to play out.
- Peacock stated that when the Board was ready to move forward they needed to determine whether the criteria according to Chapter 60 were met, move to enter into the rulemaking process which included setting up a public comment period and reviewing those comments.
- There was discussion about possibly holding the public hearing in the Eagle Lake area and the process for appointing a local representative to serve as an additional board member. Lajoie asked when the additional member would join the Board if the Board chose to vote today.
- Peacock stated that the Board member would be appointed before the public hearing.
- Adams asked that staff send information to the applicants regarding registering for pesticide application notification.

- **Jemison/Ianni: Moved and seconded to break at 10:40AM**
- **In Favor: Unanimous**

- **Adams/Jemison: Moved and seconded to table this topic until the next meeting**
- **In Favor: Unanimous**

9. Potential Rulemaking on 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

At the December 1, 2023 Board meeting, the Board discussed LD 1770 and what issues might be addressed in rulemaking. There is a need for the Board to discuss rulemaking to implement LD 1770. At the February 9, 2024 and February 23, 2024 Board meetings, the Board discussed additional information they would like to include in amendments to Chapter 50: Reports and Recordkeeping. Staff have compiled a memo with draft language for the Board to consider.

Presentation By: Karla Boyd, Policy & Regulations Specialist
Action Needed: Discussion and amend/approve rulemaking

- Boyd presented the proposed rulemaking and explained that the MePERLS system currently had the capability to accept annual reports. She added that if the Board wanted to amend the language they could not vote to enter rulemaking at this time.
- There was a discussion on what information was required for sales reporting. Adams stated that he would like staff to present in writing exactly what was required for annual reports.
- Couture stated that, to her knowledge, the BPC had been collecting sales information for general-use pesticide dealers depending on whether the companies were classified as retail or wholesale distributors. Retail distributors reported the companies from which they purchased products, while wholesale distributors submitted information identifying which companies they sold to and the details and quantities of products sold to those companies. Restricted-use pesticide dealers were required to report all sales of individual products annually.
- The Board discussed the process for issuing waivers from electronic reporting.
 - **Jemison/Carlton: Motioned and seconded to enter rulemaking for Chapter 50**
 - **In Favor: Unanimous**

10. Potential Rulemaking to Implement Amendments Required by the EPA for Approval of the Maine Pesticide Certification and Training Plan

In August 2023, the Maine Pesticide Certification and Training Plan amendments were approved by EPA. In section 13 of the state plan, staff put together rulemaking that would be required for EPA to provisionally accept the plan. This includes changes to Chapter 20, Chapter 31, and Chapter 32 with several incorporation of federal rule by reference. Staff have provided a table of changes needed in a memo as well as draft language that satisfies the requirements.

Presentation By: Karla Boyd, Policy & Regulations Specialist
John Pietroski, Manager of Pesticide Programs
Action Needed: Discussion/amend/approve rulemaking

- Pietroski stated that this rulemaking proposal involved a few details that needed to be incorporated into rule by reference to be in compliance with the EPA for approval of Maine's Pesticide Certification & Training Plan. These changes were required by EPA for the purpose of clarification.
 - **Lajoie/Jemison: Motioned and seconded to enter rulemaking for Chapters 20, 31 and 32**
 - **In Favor: Unanimous**

11. Consideration of Consent Agreement for Ehrlich

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 participants on the Maine Notification Registry and failure to receive prior authorization to apply pesticides.

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

- Peacock explained that this consent agreement involved an applicator who made two applications for mosquito and tick control at residences within 250 feet of a property listed on the Maine Pesticide Notification Registry. The individual on the registry was not notified in advance of the applications. This agreement also involved an application that was made at a property without prior authorization. The individual had a previous contract for service with the company but had canceled it several years prior.
 - **Carlton/Jemison: Motioned and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

12. Consideration of Consent Agreement for Mainely Grass

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 participants on the Maine Notification Registry, unauthorized application of pesticides, use inconsistent with the pesticide label and off-target deposition of pesticides through spray drift.

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

- Peacock stated that while undergoing inspection review a number of instances showed up with Mainely Grass and involved multiple violations. As part of the consent agreement settlement the company had since instituted new policies for notification to comply with CMR 01-026 Chapter 28. Peacock added that he attended the company's spring meeting where they itemized the list of violations that occurred and how to implement practices to avoid them in the future.
- Jemison asked what the protocol would be if a complaint were filed against this company again this year. He added that these violations seemed egregious.
- Peacock said the Board was viewing a three-year span of violations in this case. If there were another drift violation that could be brought to the Board for consideration before the consent agreement was negotiated.
- There was discussion about what was in rule and statute regarding the revocation of a license.
- Adams stated that he would like staff to alert the Board if this company had further violations.

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

13. Other Old and New Business

- a. Variance Permit for CMR01-026 Chapter 29, Dubois Contracting
- b. Variance Permit for CMR01-026 Chapter 29, Damariscotta Mills Consulting, Inc.
- c. Update on LD 1537 and LD 1960
- d. Toxicologist Job Advertisement
- e. Environmental Specialist IV: Compliance Manager Job Advertisement
- f. Update on subpoenas for Paraquat
 - Gustanski stated that this was multi district litigation in which plaintiffs have sued paraquat manufacturers for health issues and other problems they claim exposure to the products have caused. The judge asked the parties to show some level of evidence that they had been exposed to the products. Gustanski added that the Department had received six subpoenas so far and staff had to research and provide any existing documents.
 - Adams had concerns about how much time it would take for Board staff to research the required information.
 - Gustanski stated that under rule, objection was permitted if the ask was an overburden. He added that his hope was that board staff would not have to be severely compromised to review these documents.

14. Schedule of Future Meetings

June 7, 2024 and July 19, 2024 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

Staff have reserved Deering Room 101 for June 7, 2024 and July 19, 2024.

15. Adjourn

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