



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

May 16, 2014

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

MINUTES

8:30 AM

Present: Granger, Morrill, Jemison, Stevenson, Eckert

1. Introductions of Board and Staff

- The Board and Staff introduced themselves (Assistant Attorney General Mark Randlett was not present)
- Staff Present: Bills, Connors, Fish, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the February 21, 2014 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- The minutes were not available for review.

3. Consideration of the Syngenta Crop Protection Company's Special Local Need [FIFRA Section 24(c)] Registration Request for Dual Magnum, EPA Reg. No. 100-816, to Reduce the Pre-plant Interval in Various Field Crops

Syngenta Crop Protection, Inc. is requesting a Special Local Needs Registration for Dual Magnum to reduce the pre-plant interval for various field crops grown in Maine. Certain vegetable crops grown in Maine currently lack efficacious weed management options and the 60 day pre-plant interval is an impediment in this climate. The Maine Cooperative Extension is supporting this request, which has approved for other states.

Presentation By: Mary Tomlinson
Registrar and Water Quality Specialist

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson explained that this was a request to expand the use of Dual Magnum to several additional crops. She noted there was a letter of support in the packet from Mark Hutton, University of Maine Cooperative Extension, and that a letter from Lauchlin Titus had been added after the packet had been mailed.

- In his letter to the Board, Mark Hutton explained that the main crops for which the request is being made are beets and spinach, for the control of nutsedge and hairy galinsoga. There are currently no other effective chemical controls. New York and Massachusetts have already approved the use for these crops. About half a dozen growers have requested this use, with a total of about 200–500. Eckert asked how this would change how the product is currently used; Hutton replied that it is already being used on other crops, just allowing use on additional crops, particularly beets and spinach, which are difficult crops in which to control weeds. Hicks noted that there are tolerances for all the crops requested.
- Granger noted that the active ingredient is used in the Christmas tree industry, but not a lot. He added that he had received a call from a grower in Cape Elizabeth supporting this request, and that there are no alternatives for nutsedge and hairy galinsoga.
- Jemison remarked that the fact that New York, which is very conservative environmentally, had approved the use gives him some level of comfort. He noted that this chemical is one that has been found in groundwater and would be concerned about use in sandy soils, but, in talking to Mark Hutton, he was comfortable that that would not be an issue for these uses. Hicks noted that the mixture in this request involves a lower rate than what had been used in the past on other crops
 - **Granger/Morrill: Moved and seconded to approve the request**
 - **In favor: Unanimous**

4. Consideration of a Request for Variances from Chapters 22 and 29 from Asplundh Tree Expert Company—Railroad Division, to Treat Railroad Rights-of-way in Maine

Asplundh Tree Expert Company—Railroad Division, is seeking variances from Chapter 22, Section 2(C), Identification of Sensitive Areas, and Chapter 29, Section 6, Buffer Requirements, in order to treat the St. Lawrence and Atlantic Railroad rights-of-way in Maine. Board policy indicates that first-time variance requests must be considered by the Board. Policy further stipulates that railroad variance requests need to be consistent with the Maine Department of Transportation standards.

Presentation By: Henry Jennings
Director

Action Needed: Approve/Disapprove the Variance Requests

- Jennings explained that this variance request was the first from this company for railroad rights-of-way. He noted that about 10 years ago the Board got conservative about variances for railroads, because of water quality concerns and the fact that many railroad tracks travel near water and the way tracks are constructed and maintained, there is a lack of fine soil particles and organic matter present to bind pesticides. Companies want to use very persistent herbicides; there is a legal requirement for them to maintain vegetation-free zones because of fire hazards. There is a difficult balance between track maintenance and minimizing risk of the transport of pesticides into water. The Board has been using the Maine Department of Transportation (MDOT) model as a guide to approving variances. MDOT owns about half of the track in Maine and they hire contractors. MDOT is under a high level of scrutiny, and because as a state we are very environmentally conservative, MDOT is very cautious about its use of herbicides.
- Jennings discussed this variance with Bob Moosmann, from MDOT, and he voiced some concern with the product Streamline, that Asplundh wants to use. It contains the same active ingredient as Imprellis, which was originally marketed for broad leaf control in turf; after three months on the market it was pulled by EPA because of damage to trees adjacent to treated lawns. It is still labelled for turf, but not in proximity to the root zone of trees. It is fairly persistent, and seems to have some mobility issues. Both Moosmann and Hicks expressed concern about killing

conifers along rights-of-way. They were also concerned about using Streamline within 10 feet of water.

- Jennings explained that the staff realized they had already approved a variance, for RWC, Inc., that allowed for the use of Streamline; the staff isn't sure when this product was added to the RWC variance request, but it was missed on the application. Jennings spoke with Brian Chateauvert from RWC; they use it for broad leaf control, where the persistence provides extended control. In some situations, MDOT requires contractors to change the mix when spraying near water; contractors switch to a glyphosate-only mix. Jerry Blase from Asplundh is willing to discuss using different products near water. Blase stated this is their national program and is what they do everywhere; they have three years' experience with this protocol. If they had off-target damage to trees, they would be paying for it. But water quality concerns are still there.
- Hicks noted that when the staff approves a variance, there has not been a label review. Restrictions on this label are different now than when the RWC variance was first approved. She suggested that when staff reviews a variance, the label should be checked for changes.
- Jemison asked if there was any risk from this product in compost. Hicks replied that the label states that it should not be used for mulch or compost.
- Jennings said that, according to Blase, this product is effective on weeds that are resistant to other products, and that Moosmann agrees with that, but that those weeds aren't a problem in Maine.
- Granger asked what type of equipment was being used on railroad rights-of-way. Jennings said that they use a three-part boom; they can shut off outer sections and just run the center, which is what they do when going by lawns. The equipment puts out big droplets and drift is not an issue. Granger asked about the volumes and Jennings said the variance said 25–30 gallons per acre. Jennings remarked that MDOT is using a pinolene sticker to hold the product in place; Moosmann's concern is that this herbicide has a longer half-life than the sticker. Hicks noted that the label says it is rain-fast in four hours. Jennings stated that one reason the Board has been concerned about products near water is that there is no organic matter to hold them in place.
- Granger pointed out that there was legislation proposed this year that would have restricted pesticide use near water; it was pointed out to the Legislature that pesticides can only be used within 25 feet of the water with a variance from the Board. It will look weak when the bill comes back and it's pointed out that pesticides are being used within 10 feet. Jennings said that railroads are concerned with crossings, if vegetation is allowed within 25 feet of crossings; it creates a need to manually control weeds in that zone. The railroad industry and MDOT worked with the Board and reached a compromise 10–15 years ago. Eckert noted that the Board would have liked greater restrictions near water, but felt pretty good about the MDOT standard. Jennings noted there had been some historical problems when unexpected thunderstorms occur shortly after the tracks are sprayed. It's easy to observe where material gets washed off of the tracks.
- Eckert said the Board could approve the variance with restrictions; table until they get it sorted out, which would be a time problem for this season; or let the staff work out the details. Jennings said that if the Board stated their priorities, and gave parameters, he could negotiate with Asplundh.
- Morrill said it was difficult to disapprove this variance since we've already approved another. Jennings said he would also work with RWC, that they are open to adjusting their program.
- Stevenson asked if Streamline is a new product. Jennings said that it is new for this use; relatively new chemistry. Hicks said the earliest label she could find was 2011; the Imprellis issue was in 2012–2013, and that's when the label changed.
- Granger pointed out that the legislation around lakes was not specific to any product, that it included Roundup and anything else. Fish noted that glyphosate is approved for use in water.
- Stevenson asked if MDOT didn't support the use of Streamline because they don't like it or because it's so new they haven't had the chance to review it. Jennings said they might allow it

down the road, but, being a government agency, they are very careful, and they try to set a positive example. Stevenson asked if the main reason for concern is the persistence. Jennings said that is Moosmann's concern. Hicks noted that it is very water soluble. There is a warning on the label about runoff and groundwater contamination. There is a risk assessment from the US Forest Service, but she has not had a chance to look at their methodology.

- Eckert suggested granting the variance for one year, then look at setting up guidelines, BMPs.
- Jennings suggested convening a group to look at this issue before next season. Work with Moosmann, Ron Lemin, a water quality expert, and representatives from the railroad ROW contractors. Jemison suggested a colleague of his who works at Penn State and has expertise on roadside and railroad ROW vegetation management.
 - **Morrill/Eckert: Moved and seconded to approve the variance, with the condition that Streamline not be used with 25 feet of water**
 - **In favor: Unanimous**
 - **Direct staff to develop criteria/guidelines before next season**

5. Review of Potential Rulemaking Concepts by Chapter

At the February and March 2014 meetings, the Board reviewed a series of potential rulemaking topics that had been discussed at various times over the previous year. At the March meeting, Board members narrowed the list of rulemaking chapters to 20, 22, 28, 31, 32, 33 and 41. The staff will present a summary of the rulemaking concepts by chapter in order to ensure that there is alignment over the precise nature of the proposed changes, prior to initiating rulemaking.

Presentation By: Henry Jennings
Director

Action Needed: Refine the Rulemaking Concepts

- Jennings referred to the memo and the rule excerpts provided.

Chapter 20

- Stevenson noted that policies are not part of the training for a master license, therefore someone could become a licensed master applicator and not be aware of policies.
- Morrill said he would be interested to hear from other companies about how they are handling authorization, which is already in rule.
 - **Consensus reached to propose adding a section stating that applicators must positively identify application sites in a manner approved by the Board.**

Chapter 22

- Variances have been issued since 1988 for linear ROW projects including roadsides and railroads. Variance approval always includes a requirement for companies to demonstrate that they are minimizing drift and for them to publish a public notice; it's difficult to post effectively in these situations.
- The Board felt that in some situations posting was more valuable than identifying sensitive areas when everything is a sensitive area (residential areas, etc.).
- Some discussion ensued about which category certain activities fall into, 6A or 6B.
- Discussion followed about walking trails, and whether posting at ingress and egress points was sufficient. Printing in newspapers is likely not effective. Jemison noted that most towns have a website; those interested could look for information there.

- **Consensus was reached to propose exempting ROW applications from the requirement to identify sensitive areas, provided that the applicator implements a drift management plan and publishes public notice in a newspaper of regional circulation.**
- **Consensus was reached to propose exempting category 7E from the requirement to identify sensitive areas.**

Chapter 28

- **Consensus was reached to propose adding category 7E to the list of categories that require posting, and to add category 6B to the posting requirement, except when making applications to sidewalks and trails, provided that a public notice of the proposed treatment is published.**

Chapter 31

- Three times in recent history the Board conducted emergency rulemaking to accept reciprocal licenses for out-of-state aerial applicators because the fields were too wet to apply fungicides by tractor. This concern might come into effect for mosquito control when the disease threat is high. It probably makes more sense to go over the key rules with aerial applicators than to have them take the regulations exam and struggle through all the rules that don't apply
 - **Consensus was reached to propose waiving the requirement for a written regulation exam for out-of-state aerial applicators and to allow reciprocal licensing when the staff determines there is an urgent need to control pests by aerial application, provided that a staff member reviews key BPC rules with the reciprocal licensing applicant.**

Chapters 31, 32, 33

- Granger said the wait times seem excessive.
- Jemison said if someone takes the test four days in a row, and passes on the fourth day, they haven't learned anything, they've just memorized the exam. Fish agreed that if we give tests more often, we would need to have more versions, which would be added work. He noted that growers should be doing their homework, should be prepared. Granger replied that, as a practical matter, it's not that simple for growers. A problem pops up; they may have to train new people. We talk about IPM, which sometimes involves putting things off as long as possible, but when it's necessary to spray, time is short. The idea that it is difficult for staff is not an acceptable reason.
- Jemison said that with the new Ag Basic license, this should become less of an issue for farmers. This is probably more of an issue for lawncare companies. Jennings pointed out that there are at least three chapters that contain the waiting provisions. Testing for commercial applicators is generally offered once a week. Private licenses (including Ag Basic) are mostly taken at Cooperative Extension offices. Commercial applicators pay \$10 for each exam, private applicators pay nothing. The Board has the option of treating the categories differently.
 - **Consensus was reached to change the wait period between exams to six days for all license types.**

Chapter 41

- Morrill asked if hexazinone is available off the shelf for homeowners. The prevailing viewpoint is that the smallest container was too expensive for homeowners to use. Morrill is concerned that it may become more available. Eckert suggested adding warnings about hexazinone to training. Granger noted that there is some forestry use, mostly for pine plantations.

- Morrill pointed out that blueberry sod is a growing product in southern Maine. Hicks stated that there are six products with hexazinone registered in Maine.
 - **Consensus was reached to propose amending Section 3 of Chapter 41 to require that anyone applying hexazinone in Maine be certified as an applicator, but to eliminate the requirements relative to pesticide distributors and air-assisted application equipment.**

6. Overview of the Board of Pesticides Control Software Application Development Process Underway to Improve Work Flow Efficiency and Constituent Service

In February, the Department entered into a Memorandum of Understanding with the Office of Information Technology to undertake an information technology (IT) application development process intended to modernize and integrate the Board’s IT systems and create an internet interface. Because all work processes are reviewed and analyzed as part of the development, the staff would like to provide an overview of the process to date and seek the Board’s input.

Presentation By: Gary Fish
 Manager of Pesticide Programs

Action Needed: Provide Input to the Staff

- Fish gave a brief overview of the project, and showed some of the work that has been completed in the form of “user stories.” He said that he is very optimistic about this process, because it allows more flexibility and customization for our use.
- Jennings stated that the PegaSystems option is attractive because: (1) it’s a business process management application, and not just a customized database front end; (2) development occurs with the customer and developers in the same room; (3) as each piece of functionality is developed, it’s immediately tested by the customer; and (4) there are tools to allow the customer to make minor program adjustments, queries and reports.

7. Consideration of a Consent Agreement with Remedy Compassion of Auburn, 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 use of pesticides inconsistent with the product labels.

Presentation By: Raymond Connors
 Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that a marketplace inspection had indicated that this company had bought several pesticides. An inspection was subsequently conducted with Department of Health and Human Services (DHHS), and it was determined that the facility did use a number of the products that had been purchased in the production of medical marijuana. There were also other pesticides that had been purchased elsewhere. One employee interviewed said that he had mixed two gallons of a product, used it on one leaf, and poured the remainder down the drain. There were also issues about not wearing required PPE. None of the products used were registered for that crop. Worker

Protection Standard (WPS) training had not been done. The company acknowledged some of the complaints, but not all; said they had not purchased or used some of the products.

- There were questions about whether the products used would be allowed under current law changes. The answer was that they would not.
- Jemison asked whether most marijuana facilities are likely to be aware of the rules now. Jennings said that the dispensaries are in the loop, but caregivers, who can grow up to six plants, may still be unaware. Jennings stated that he believes that the BPC does not have authority to enter medical marijuana production sites; this must be with DHHS staff.
- There was some discussion about whether a list of caregivers was available so information could be sent. Eckert suggested some information about what's legal to use be sent to all growers, if possible.
 - **Morrill/Eckert: Moved and seconded to accept consent agreement as written**
 - **In Favor: Unanimous**

8. Consideration of a Consent Agreement with Plants Unlimited of Rockport, 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 use of pesticides at a nursery/greenhouse operation in violation of certain state and federal pesticide laws.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that a routine inspection found there were no records for 2012. WPS requirements had not been met, including training and posting. A product had been used for indoor treatment that was labelled for outdoor use only, and was labelled for homeowner use only.
- Katy Green, MOFGA, said she was curious about the fine because she remembered them as having multiple violations in the past, which would normally increase the fine. Connors said that was true if they were within the last four years. He knew one fine was because they had let their general use dealer license lapse. He thought there might have been a warning about WPS, but not a consent agreement.
- Jemison suggested the staff visit again in a year or two to see if they're doing better. Connors noted that the Board does send a compliance verification which summarizes where they are out of compliance; they're supposed to sign and send it back and we track whether they send them back. When the new Pega system comes into use, we will be able to use inspection history as a criteria for determining who to inspect.
 - **Eckert/Stevenson: Moved and seconded to accept consent agreement as written**
 - **In Favor: Unanimous**

9. Review of Board Authority to Direct Staff to Participate in Legislative Hearings and Work Sessions

At the March meeting, Board members expressed the importance of having the staff represent the Board at legislative policy events. At the same time, the Administration exerts supervisory authority over executive branch employees and administers policies covering legislative functions intended to maintain efficient and consistent executive branch participation. The Board has asked Assistant Attorney General Randlett to clarify the Board's authority with respect to staff participation in legislative events.

Presentation By: Mark Randlett, Assistant Attorney General

Action Needed: None, Informational Only

- Jennings said that he had spent some time looking into this. He explained that he had not left the March meeting with an understanding that the Board had directed him to attend the Lakes bill work session. There had been a discussion and he knew that Granger and Morrill had been at the hearing regarding the Lakes bill. Senator Saviello had requested that Jennings attend the work session and that request was sent to the Governor's office via the legislative liaison. Originally Jennings was given approval to attend, but later he got the message that it wasn't necessary for him to be there. After hearing the Board's concerns about his absence, he went to Mari Wells, the DACF legislative liaison, and asked if he had made it clear that the Board had requested he attend the hearing, and that he would be representing the Board, not the Department, whether he would have received a different answer. The answer was yes. The mistake was in the communication with the legislative liaison.
- Granger stated it is important that, in the future, if Jennings gets a "no," that he report back to the Board so someone from the Board can be there to represent. He or Morrill could have done so, but they didn't have the Board authorization. Jennings said that he will make sure to do that in the future. He pointed out that Board members don't need permission to attend legislative meetings, and always have the option to go as Board members, but it is a question of whether they feel comfortable speaking on behalf of the Board. They could design some kind of system to deal with this circumstance, but generally it is a very short timeframe; it's difficult to convene a meeting quickly and the Board can't make policy decisions outside a public meeting. Maybe the Board could look at the list of bills and develop initial positions and a policy about Board members testifying on various bills.
- Granger said that is useful to have Jennings act as spokesperson because he has the historical memory and can field questions. But if he is disallowed to go, then it is important that the Board know.

10. 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: Henry Jennings
Director

Action Needed: Nominations and Election of Officers

- **Granger/Stevenson: Move and seconded to elect Morrill as Chair and Bohlen as Vice Chair**
 - **In favor: Granger, Stevenson, Morrill**
 - **Opposed: Jemison, Eckert**
- Eckert noted that she and Jemison are up for nomination this year; both expressed an interest in continuing to serve. They agreed they would write personally to the Commissioner expressing their interest.

11. Other Old or New Business

a. ERAC update—L. Hicks

- Jennings explained that there was a lot of lively discussion at the meeting. They discussed whether it should be about lobsters or all marine organisms; sampling; literature reviews. The committee agreed that the staff should do sediment sampling this

year; there was consensus around coupling water sampling with sediment sampling sites. There was no consensus on whether there should also be tissue sampling. Hicks said it's a question of whether we're doing a health risk assessment for lobsters or a dietary risk assessment for human consumption; in her opinion it should be the former. Jennings said the staff is drafting a sampling plan; The Department of Marine Resources can cooperate; they sample 1,400 sites for sediments already. Hicks has applied for assistance from Toxicology Excellence for Risk Assessment—a non-profit—to conduct a literature review relative to the pyrethroids and lobsters. The staff definitely plans to look for synthetic pyrethroids and methoprene in sediments. Tomlinson explained that there is a screen for all 14 pyrethroids. In addition, the staff would also like to look for fiprinol, because it's been an issue in sediments in California. Jennings noted that the advantage of working with the Montana lab is that they can screen for lots of things at once, so we don't have to pick and choose based on funds available.

- b. RWC, Inc. variance permits for Chapters 22 and 29 for railroad rights-of-way—H. Jennings
- c. MDOT variance permit for chapter 29 for control of phragmites—H. Jennings
 - Sherman Marsh Phragmites Control Ongoing Treatment Plan

12. Schedule of Future Meetings

June 27, August 8, and September 12, 2014, are tentative Board meeting dates. The June 27 meeting is planned to be held at Madison High School following a tour of Backyard Farms. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

- **August 8 will be the public hearing for rulemaking. October 24 and December 5 were added as meeting dates.**

13. Adjourn

- **Morrill/Granger: Moved and seconded to adjourn at 12:08 PM**
- **In Favor: Unanimous**