



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

February 24, 2023

9:00 AM Board Meeting

MINUTES

Adams, Carlton, Ianni, Jemison, Lajoie

1. Introductions of Board and Staff

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

2. Minutes of the December 2, 2022 and January 11, 2023 Regular Board Meetings, and the January 20, 2023 Emergency Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Lajoie: Moved and seconded to approve the minutes of the December 2, 2022 and January 11, 2023 Regular Board Meetings, and the January 20, 2023 Emergency Board Meeting**
- **In Favor: Unanimous**

3. Report on 2022 Work Accomplished and Request for Funds for Mosquito Monitoring from the Integrated Pest Management Program

The Integrated Pest Management Program is reporting work accomplished in 2022 and requesting funds to assist with ongoing efforts for mosquito surveillance, identification, and continued outreach around vector-borne diseases.

Presentation By: Hillary Peterson, DACF IPM Specialist

Action Needed: Discussion and determination if the Board wishes to fund this request

- Peterson gave a presentation to update the Board on mosquito monitoring efforts. She briefly explained the history of the program. In 2013 legislation was passed that required the Department to develop a written response plan in case mosquito-borne diseases were found at high levels. In 2016 and 2017 there was a federal grant to conduct monitoring. Since then the BPC has been funding the program. Peterson stated that this year they were very lucky to have assistant Michael Galli, who had experience with mosquito taxonomy.
- Peterson explained that there were six monitoring sites in Kennebec and Waldo counties. Resting boxes and CO2 monitoring traps were the methods used for sampling. Department staff worked in collaboration with the Maine Medical Research Center Institute. Mosquitoes were sorted, identified, and sent weekly to the Maine Health and Environmental Testing Laboratory for analysis. From there information was entered into databases online for further analysis. No samples were positive for EEE, WNV, or Zika.
- Peterson stated that some program updates were made last year, including moving the workflow to Microsoft Teams and One Drive, which helped with communication, collaboration, and staying up to date on standard operating procedures. She added that they also took video clips about how to do each part of the sampling process and would be putting those together in a training video for the next person hired, which should help with consistency.
- The total request was for \$10,310.40 for the upcoming year. Peterson stated they would stick with the same rate and temp agency for twenty hours per week. They plan to use the Department vehicle to save money.
- Adams asked if this was the same amount that was in the 2022 budget.
- Patterson replied that it was about the same.
 - **Ianni/Lajoie: Moved and seconded to accept meeting minutes**
 - **In Favor: Unanimous**

4. Staff Memo: Status of Commercial Category 7C in Chapter 31

Demand has recently increased for commercial applicator certification in category 7C and the related subcategories. As a result of this increased demand, staff have reviewed the subcategories and the types of applications conducted under this certification—primarily powered application of disinfectants for the management of human disease. Staff have identified ways by which the category 7C and the related subcategories may be reorganized to better address current approaches to pesticide application.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Discuss and determine next steps

- Pietroski explained that the BPC had 28 categories for commercial applicators and 14 commodities for private applicators. Staff were continuously working to keep manuals and exams up to date for each of those. He said staff were hoping to combine the three 7C certification subcategories into one category since paper mill demand was decreasing and staff had not given a swimming pool exam for a long time. Pietroski stated that it would help to maintain one manual and exam instead of three.

- Patterson stated that Maine had more categories than other states in the country so consolidating the 7C subcategories would help to reduce staff workload while having little impact on the enforceability of the certification requirements. She added that this would require rulemaking.
- There was a discussion about swimming pool certification and Pietroski explained that most of those applicators became certified through a national certification specifically for swimming pools and spas.
- Patterson explained the exemption for swimming pool applicators and how it allowed for them to receive specific relevant knowledge.
 - **Jemison/Carlton: Moved and seconded to combine 7C categories into one category**
 - **In Favor: Unanimous**

5. Staff Memo: Residential Property

At its February 25, 2022 meeting, the Board discussed further defining the term “Residential Landscapes” in the context of Chapter 41, Section 6. Currently in rule, the term “sensitive areas likely to be occupied” includes residential properties, but residential is not defined. The Board requested information on all potential rulemaking concepts at its January 11, 2023 meeting. To aid in facilitating continued discussion of rulemaking concepts, staff have prepared a summary of definitions that could be used for “residential landscapes”.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Discuss and determine next steps

- Boyd explained to the Board that item number one in the memo of potential items for rulemaking discussed defining residential landscape in either Chapter 10 or Chapter 41 of rule. She stated that there were definitions from a couple of sources that the Board could consider. Staff also needed direction on defining the boundaries of a residential area.
- Ianni mentioned that the definition should clarify how to consider mixed-use properties.
- Adams brought up the question of where a residential property should begin and end.
- Jemison stated that when he thought about this it brought to mind the drift rule. He added that a residence would seem to be defined as the area owned by the said property owner, including the building, landscape, etc.
- Patterson stated that there had been a question about landowners with a significant amount of land. For example, whether the entire property of someone with 150 acres would be considered residential.
- Ianni suggested they should also discuss differentiating when the land was donated to a conservation trust.
- There was discussion about putting this item into policy or rule.
- Randlett stated that he believed it should be in rule, but the Board could do an interim policy in the meantime.

- Adams stated that he would like to see input from stakeholders on this. He said a line needed to be drawn somewhere regarding the definition of residential, but it was hard to say where.
- Patterson suggested that the Board could choose to hold a stakeholder information gathering meeting.
- Carlton said he agreed with Adams.
- Lajoie stated that he thought it was the boundary of the term residential that they needed to figure out.
- Adams asked staff to come back with additional information.

6. Review and Discussion of Potential Rulemaking Topics

At the January 11, 2023 meeting the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. Since rulemaking is expensive and time consuming the Board generally tries to group rulemaking initiatives. The staff will present a timetable of possible hearing dates and a list of rulemaking ideas which the Board or staff has previously identified.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Determine whether to initiate rulemaking and schedule a hearing

- Boyd detailed the rulemaking document submitted to the Board. She explained that the items included both routine technical and major substantive changes. The first item addressed adding a more specific definition for ‘residential landscape’ and that it would likely be a routine technical change.
- Randlett stated that it should be added in Chapter 10 if the Board decided to move forward with rulemaking for this item.
- Staff will come back with more information about defining ‘residential landscape’.
- Boyd stated that the second item was to incorporate the policy ‘Proper Identification of Proper Treatment Site by Commercial Applicators’ into rule.
- Randlett stated that this would create an enforcement option if applicators failed to satisfy one of the recommended options from the Board.
- The Board decided to move forward with this item.
- Patterson stated that they would need to clarify the section at the end of the policy.
- Randlett agreed that it would need to be tightened up. He added that they could possibly state another option for property identification would be acceptable if it were approved by the Board in writing.
- There was discussion amongst the Board about requiring the homeowner to be present or requiring a prior visit to the site before an application.
- Patterson stated that applicators were not always visiting a property before making an application.

- Lajoie suggested getting some feedback from applicators to see where they stood on this.
- Aaron Dostie, with The Turf Doctor, LLC said that they had over 6,000 customers and most identification was done online with GPS, coupled with identifying the meter box number. He added that he found the guidelines in place were sufficient to identify the correct property and since this had been Board policy it had become almost a fireable offense for their company. Dostie concluded that he felt that the current policy was good, and it came down to management within the companies.
- Adams stated that it sounded like there was not an objection to moving this to rule.
- Dostie stated that he did not have any objections and there were very few properties that did not have a meter box.
- The Board decided to move forward with moving this policy into rule.
- Boyd stated that the third item considered rodenticidal baits and the notification registry. She added that this change could be major substantive because it dealt with notification. Boyd stated that although this type of application was exempt from notification of individuals on the notification registry it was not exempted from self-initiated notification.
- Patterson stated that if an individual lived within 500' feet of a neighbor and asked for notification, the neighbor would be required to disclose this type of application.
- The Board discussed this change.
- Adams stated that he was leaning towards yes on this one but preferred self-notification.
- Randlett stated that it was not exactly clear from statute whether it would be a major substantive change. He would need to find out for sure.
- Ianni asked if Randlett could summarize the difference in timing between routine technical and major substantive rulemaking.
- Randlett stated that routine technical changes to rule did not require legislative approval, but major substantive did. He stated that routine technical changes could be adopted as rule at the end of the comment period, but major substantive rule changes could only be provisionally adopted. Major substantive changes needed to wait for legislative approval and then returned to the Board for final adoption.
- The Board expressed interest in possibly moving forward with this item.
- Boyd explained that the fourth item had to do with amending Category 7C because there was confusion regarding which category covered which types of applications.
- The Board decided to move forward with this topic.
- Boyd told the Board that topic five dealt with expanding reasons to allow for reciprocity in emergency situations, which currently was only for aerial applications.
- Adams stated that he did not see this as an important issue. If an individual needed someone to come from out of state to make an application, they could hire a local licensed applicator to be on site.
- The Board said no on this subject.

- Boyd stated that topic six concerned unmanned aerial vehicles that applied pesticides. She added that the Board might want to consider adding language requiring Federal Aviation Administration certification for both commercial and private applicators.
- Patterson noted that other states require proof that an individual is certified by the Federal Aviation Administration to do this work.
- The Board decided to move forward with this subject for rulemaking.
- Boyd stated that topic number seven was related to the state plan and the new certification and training requirements. This concerned minimum age requirements of non-certified applicators applying restricted-use pesticides.
- The Board agreed to move forward with this requirement to reflect EPA requirements.
- Boyd stated that while reviewing that state plan staff saw inconsistencies between Chapter 31 and Chapter 32 regarding requirements for hosting recertification meetings. Item number eight would require rosters for private applicator certification meetings.
- The Board decided to make this a policy rather than move forward with rulemaking.
- Patterson asked for clarification that staff should continue as they had been.
- Adams responded in the affirmative.
- Boyd stated that topic nine was major substantive and involved updating and modernizing Chapter 41 Section 5 regarding *Bt* corn.
- Jemison stated that he was in favor of moving forward on this. He added that he did not think it would be that hard and that those in the regulated community would support the change. Jemison stated that the rule was written in 2006 and things had changed so much that it no longer pertained in 2023. He stated that he could work with staff on language.
- The Board decided to move forward with this topic.
- Boyd stated that the tenth item might be considered major substantive. It was about changing how rodenticidal baits were used and possibly adding requirements to use traps that prevent non-target poisonings. She added that the EPA was also considering additional restrictions on the use of rodenticidal baits.
- Patterson stated that if the proposed language changed how bait was placed in occupied buildings it would be major substantive. She added that changes to federal law were likely coming soon and those may make several of these products unavailable to unlicensed individuals.
- Adams stated that they needed to learn more about this first. He suggested adding this topic as a maybe and asked if staff could gather information from stakeholders.
- Carlton added that he was also interested in learning a bit more about it.
- Mike Peaslee, from Modern Pest Service, offered to be a contact for further information.
- Boyd stated that topic eleven would require the submission of annual use reports by electronic means. The BPC currently has the capability to receive reports electronically but does not require them to be submitted that way.

- Adams spoke about the time it takes to enter the information through the portal and asked about how much time this would save staff from entering the information.
- Patterson stated that it was unlikely that staff would enter the information moving forward because there were no funds for a temporary worker. The BPC would likely need to cut other parts of the program to do data entry for sales and use reporting.
- Lajoie stated it would be great if possible to use artificial intelligence to snap a photo and have the data entered.
- Patterson stated that when the functionality was added, staff tried to utilize optical character recognition, which would require all applicators to use the same form for reporting.
- Ianni asked what other states did to collect this data.
- Patterson responded that last year New York enacted a law to submit reports digitally, but they have several dedicated staff that does the work. She added that California has a little bit of different model where the counties review all applicator records and correct errors before the records are sent on to the state. Both of these states have not reported data out for multiple years.
- Adams stated that he was a maybe on this and wanted to see a fiscal note put on it. He asked when the last time this information was used in-house to establish data of some point.
- Boyd noted that there was currently a legislative request for a sales and use bill titled LR 182.
- Boyd stated that the last topic was about expanding reciprocity in emergency situations and outlining what those situations would be.
- The Board decided not to move forward on this topic.

7. Discussion of Staff Report Describing the Nature of Herbicide Applications on School Grounds in Maine

In 2021 and 2022, the Board of Pesticides Control collected records from all applicators who applied herbicides on school grounds for 2020 and 2021. The provided report is a continuation of work completed to support the Board's Medical Advisory Committee and it further summarizes the data collected. Staff will present the report.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/discuss provided information, provide guidance

- Bryer stated that data in this document was taken from a Board records request. She added that the Board had seen some of this data before, but this most recent memo included the full two years of data. Bryer pointed out use patterns in the memo, including the most common products used, sites, and target pests.
- Ianni stated that her initial reaction was that the applications were not needed. They were not addressing pests that were a public health risk. Ianni asked about IPM coordinator training and how staff addressed notices of warning to schools.

- Patterson responded that training requirements for IPM coordinators were listed in Chapter 27. She added that, historically, the Board had avoided assessing financial penalties against schools given their already limited financial resources, but that was always something the current Board could make a different decision about.
- Adams stated that he felt like this completed the MAC's work on this subject matter for now.
- Patterson stated that one point that had not been addressed was a localized risk assessment about the potential for exposure, relative risk, and use patterns for each active ingredient.
- Bryer stated that they initially identified 45 ingredients and planned to do a risk assessment on all of those, but if staff focused on 15 chemicals that would reduce the effort and still give a good overview of what was being used.
- Adams stated that he was not hearing why there was a need to move forward more with this.
- Patterson suggested that the Board might consider hearing from Hilary Peterson about schools and IPM Coordinator guidance documents. She added that could help explain how applications were currently being made.
- Adams agreed to invite Peterson to a future meeting.

8. Staff Memo: Clarify the Definition of Adjuvants to Include/Exclude Colorants

In 2022, the Board's authority was expanded to include the regulation of spray adjuvants. Staff recently received a request for clarification of the definition of spray adjuvant and the inclusion or exclusion of colorants in that definition.

Presentation By: Megan Patterson, Director

Action Needed: Review/discuss provided information, provide guidance

- Patterson stated that staff received an email asking if colorants were considered spray adjuvants when used for the purpose of seeing where the product was applied.
- Adams stated his position was that they did fall under that umbrella.
- Randlett directed Board members to review the current definition to decide whether a colorant fit into the definition as a similar type of agent to a spray adjuvant.
- Jemison stated that he saw adjuvants as products used to make a pesticide more effective and that a colorant's sole purpose was to show where a product had been applied.
- Adams stated that knowing where spray landed did relate to effectiveness of a treatment because it demonstrated whether there was adequate coverage.
- Randlett stated that his job was to make sure the Board's interpretation was legally defensible. He asked to have something in the record describing the Board's interpretation.
- Ianni asked what considering colorants as adjuvants would entail.
- Adams responded that manufacturers of colorants would be required to register the product and part of that would include stating whether or not the products included PFAS.

- Patterson stated that this could potentially be a burden to applicators if they needed to keep application records on these products.
- The Board conducted an informal vote on whether a colorant would fit into the definition of an adjuvant. Carlton, Lajoie, and Jemison were of the position that it did not fit in the definition because it did not aid in the efficacy of the applied product. Ianni and Adams stated they felt it did fit the interpretation.

9. Other Old and New Business

a. BPC Letter re LD 2019 and Container Rulemaking

- Patterson outlined efforts the Board had taken and outlined some potential movements forward that might not be pre-empted by federal law. She stated that the Board should be receiving a letter of response from the ACF Committee in the near future. Patterson stated that the ACF Committee would likely require emergency rulemaking.
- Adams stated he was glad to hear the ACF Committee would be giving them specific requests and direction.

b. Update on 2023 pesticide product registration renewal progress

- Patterson stated that the BPC was still about 4,000 product registrations short of the number registered annually and many companies had sought an extension until February 28, 2023. She added that products could still be registered after that date if companies so chose. Patterson stated that companies had expressed concern about their proprietary information and that it might not be securely protected.
- Graham Zorn, representative of Crop Life America and RISE said this all stemmed from LD 264. He stated that companies started with very severe concerns about the idea of putting confidential statements of formula out into the world. Zorn stated that they had come a long way regarding the affidavit questions. He told the Board that there was a lot of concern about confidential business information (CBI) and that asking if a product contained any specific ingredient, was potentially CBI. He asked if this information would be protected under Maine's trade secrets law.
- Patterson stated that there had been changes made to the portal and the affidavit questions. Staff also provided the opportunity to provide context to the affidavit questions.
- Zorn stated that there had been technical issues getting through the registration process, particularly with entering info about the supplier of a particular component. There was not the ability to enter more than one supplier per component. Zorn stated that some members had time-out issues which made it difficult to continue the registration. He told the Board that part of the ask in the letter was for an additional extension.
- Randlett stated that the Board would not normally publish information unless they received a request through Maine's Freedom of Access Act (FOAA). He added that CSF information would be off-limits from that request. Randlett explained the two ways to protect information that might be considered trade secrets. He said if the Board made a determination to disclose affidavit answers pursuant to FOAA, they would notify the

registrants and give them an opportunity to provide additional information or to file lawsuits with the appropriate court to delay its exposure.

- There was discussion amongst the Board about whether to provide an additional extension beyond February 28, 2023. They also decided against entering emergency rulemaking to remove the CSF requirement from rule. Board members had concerns about being burdens to the agricultural community.
- Adams stated that they had no way of knowing if they took action today whether the remainder of the product registrations would be submitted.
- The Board decided to wait until February 28 and reconsider an extension.

c. Update on LD 8—An Act to Increase Support for the Modernization of the Board of Pesticides Control by Increasing the Annual Pesticide Registration Fee

d. Report from the University of Maine to BPC and ACF Committee on Pesticide Safety Education and Training in 2022

e. Other items?

10. Schedule of Future Meetings

April 7, 2023 is the next tentative Board meeting date. The Board will decide whether to change and/or add dates.

- Adams stated that he wanted to consider a March meeting.

11. Adjourn

- **Lajoie/Ianni: Moved and seconded to adjourn at 12:45 PM**
- **In Favor: Unanimous**