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GOVERNOR

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

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

**November 16, 2018
9:00 AM**

Room 118 Marquardt Building
32 Blossom Lane, Augusta, Maine

MINUTES

Present: Adams, Bohlen, Flewelling, Granger, Jemison, Morrill

1. Introductions of Board and Staff

- The Board, and Staff introduced themselves
- Staff Present: Bryer, Chamberlain, Connors, Couture, Patterson, Pietroski, Tomlinson

2. Minutes of the August 15, 2018 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

- Jemison and Connors noted a few grammatical errors in the minutes.
 - **Adams/Granger: Moved and seconded approval of minutes as amended**
 - **In Favor: Unanimous**

3. Review of Potential Rulemaking Concepts

Amendments to the Federal Certification and Training Requirements necessitate amendments to BPC Chapters 10, 31, 32, and 50. Previous Board discussions have indicated necessary amendments to Chapters 26, 27, 28, and 19, as well as the repeal of Chapter 36. The Board will now discuss the amendments.

Presentation By: Megan Patterson, Director

Action Needed: Refine the Rulemaking Concepts and Schedule a Public Hearing

MEGAN PATTERSON, DIRECTOR
32 BLOSSOM LANE, MARQUARDT BUILDING



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- Patterson explained to the Board that Chapters 10, 31, 32, and 50 are required to be opened for rulemaking because of federal Certification and Training Requirement updates.
- Bohlen inquired what the consequences would be if the Board chose not to adopt some of the federal updates.
- Patterson responded if the Board chose not to implement any of the required items it could mean the BPC would potentially lose their authority as state lead agency, their right to register pesticide products, and to enforce pesticide regulations.
- Patterson went through each item listed in the Rulemaking memo (see attached memo) and discussed them with the Board.
 - **Morrill/Jemison: Moved and seconded approval to move forward with all items on the memo, except for numbers: 2, 14-16, 23, 24, 29, and 30.**
 - **In Favor: Unanimous**

4. Review of Pesticide Self-Service Sign

BPC Chapter 26 Section 7 requires that pesticide self-service sales areas include a “Board approved sign informing the public where to obtain additional information.” The Board reviewed various drafts and discussed improvements at the May 18, 2018 and July 13, 2018 meetings. At the August 15, 2018 meeting the Board authorized the staff to hire a graphic designer to improve the layout. The Board will now review the first drafts provided by the graphic designer.

Presentation By: Amanda Couture, Certification & Licensing Specialist

Action Needed: Provide Input

- The Board discussed the three draft signs created by the contracted graphic designer.
- Adams commented that these signs are really targeted to homeowners using pesticides on lawns because there are many individuals who do not realize that they are using a pesticide when they purchase a weed and feed product.
- The Board selected the sign with the ‘insects, weeds, and critters’ wording, and they want the grass clip art from another sign to be moved to that selected template.
 - **Morrill/Adams: Moved and seconded approval of sign as discussed.**
 - **In Favor: Unanimous**

5. Discussion of Board Priorities Staff Planning Session

In recent years, there has been considerable turnover in Board membership and Board staff. Staff is currently juggling the usual tasks of Board operation, but is also working toward full public implementation of the Maine Pesticide Enforcement, Registration and Licensing System (MEPERLS), conducting water quality testing, updating licensing exams, conducting training for the revised Worker Protection Standard, and preparing for adoption of new federal Certification and Training requirements. In addition, the new Certification and Training requirements make it necessary to revise the State Plan and conduct rulemaking. Staff would like input on which future projects are most important to the Board when discretionary staff time arises. Staff held a planning session and discussed potential projects.

Presentation By: Megan Patterson, Director

Action Needed: Provide guidance to the staff on Board priorities

- Patterson stated that historically the Board has met with staff outside of the regular meetings to brainstorm and prioritize issues and projects they would like to take on. This type of planning session has not occurred in some time and Patterson suggested scheduling a time to have one.
- Patterson said Board staff had met and discussed issues they felt were pertinent to address, such as, water quality, compiling pesticide use data, public outreach, updating the GotPests website, a kiosk for agricultural fairs, the Maine Science Festival, and other items.
- Granger stated that planning, to some extent, will be set by what comes out of the legislature. He added this may be a little premature and difficult in this environment to pin down what we should really be focusing on.
- Patterson responded that rather than respond to what the legislature wants, we should forge ahead around areas where we have noticed emerging issues such as glyphosate outreach, rulemaking, and other areas.
- Morrill asked what this planning session would look like and if Patterson envisioned it as a Board meeting in the morning followed by a planning session.
- Patterson responded that in the past an entire day was devoted to the planning session.
- Bohlen stated that his memory from various rounds of planning sessions was that there was a lot of staff preparation beforehand and information disseminated to the Board members. He added that holding a planning session is not a trivial undertaking and it is not worth doing unless the work is done ahead of time and the Board has some concrete choices in front of them.
- Randlett stated that the planning session needs to be open to the public.
- There was discussion among the Board regarding holding the planning session at a site north of Augusta. The town of Orono and the Black Bear Inn were suggested.
- Tomlinson mentioned the 2019 water quality item needed to be decided before the planning session would be held.
- Bohlen stated he would like to have that as an agenda item for the next Board meeting. He would like to know the purpose of the testing, set objectives for it, and discuss if we are going to obtain some info that will answer a specific question.

6. Review of Budget

In early 2017, the Board reviewed the budget with a 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: None—Informational Only

- Morrill stated it is the goal of the board to have a much more intimate involvement in the budget before it is submitted.
- Patterson stated that the fiscal year for the state runs from July 1st to June 30th and that is the timeline the submission follows.

- Patterson discussed the details of the budget with the Board. Five permanent positions in the Plant Health division are funded by the BPC budget, and \$20 from each pesticide registration fee goes to help subsidize that.
- Patterson informed the Board that there have been several staff vacancies over the last year so that expense is lower than usual. She added that John Pietroski was recently promoted to Manager of Pesticide Programs. Additionally, the UMaine Cooperative Extension Manual Writer/Pesticide Safety Education Professional position through cooperative extension was vacant through 2018 but has since been filled and those expenses will appear in subsequent budget summaries.
- Bohlen asked about the amount spent on technology and if that amount will be decreasing moving forward.
- Patterson responded that, due to investment in technology, the board's annual operating costs were substantially higher in 2016 and 2017. In 2018 operating costs were lower as technological development was nearing completion. She added that there will be continued costs for hosting the BPC's software system but, due to staffing changes, total operating costs will not be substantially higher than prior to the development effort.
- Bohlen asked why the amount for in-state travel for last year was only \$2,000.
- Patterson explained that state cars for inspectors is located under the 'Rents' column and it is approximately \$12,000. She added that some of those costs are also covered by the federal EPA grant, as well as extra contractual monies for enforcement, water quality, and some other items.
- Morrill asked that, as part of the planning session, the Board receive a wish list of items from staff to fund through the budget. He stated that the list can include anything from technology to items that the staff feels would help them do their job better.
- Flewelling asked if the State of Maine contributed any money into the BPC budget.
- Patterson replied that the state does not contribute money to the BPC budget.

7. Consideration of Consent Agreement with Wise Acres Farm, Kenduskeag

The Board's Enforcement Protocol authorizes 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 involves using a pesticide in a manner inconsistent with the label, insufficient records, and lack of required information at central information display.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors stated that it was determined that the applicator exceeded the maximum rate for the fungicide on strawberries. There were also violations regarding respiratory protection and application records. Connor stated that the owner signed and settled the \$175 consent agreement.
 - **Jemison/Flewelling: Moved and seconded approval of consent agreement.**
 - **In Favor: Unanimous**

8. Consideration of Consect Agreement with Paul Finden and Emily Rogals, Belfast

The Board's Enforcement Protocol authorizes 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 involves a pesticide application to a property without the property owners' authorization.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors explained to the Board that this case originated with a call on October 5, 2018, from a Belfast resident, who suspected his neighbor had applied herbicide to a professional landscape planting that had been done. At that time, the caller stated that they had noticed the damage a couple weeks prior to calling.
- Connors stated that a BPC inspector went to the caller's residence and noted the damage appeared too systematic to be of natural origin. There was damage high up on the trunk to individual trees of multiple species and there were corresponding spots of dead grass behind each damaged tree. The inspector collected soil and foliage samples. Additionally, a plant pathologist from the Maine Forest Service ruled out natural causes for the dead vegetation.
- The inspector also spoke with the abutting property owners, Finden and Rogals, who stated they were organic and had never purchased or used herbicides. Through further investigation, the inspector discovered they had purchased Round-up, on at least four occasions, from a local hardware store.
- Connors told the Board that both the soil and foliage samples tested positive for glyphosate and metabolites of glyphosate.
- Connors added that a consent agreement was mailed and, following receipt of the agreement, Finden requested a meeting with Connors at the BPC office in Augusta. At that time, Finden stated that his wife had sprayed the neighbor's trees due to concerns of the trees growing and eventually shading her gardens and causing icing on the driveway.
- Adams asked what the lab charged per sample. Connors responded that it was about \$300 per sample.
- Granger asked approximately how long after the incident was the soil tested, and if only metabolites were found in it. He added he was interested to learn glyphosate could be detected in the soil that long after the application.
- Connors stated it would have been approximately three months after the application had been made. He added that glyphosate and metabolites were found in both the foliage and the soil but the amount of glyphosate in the soil was a little lower than what was detected in the foliage.
- Jemison commented that glyphosate can have a half-life of up to a year after but it does lose its pesticidal properties.
- Adams stated it is concerning that the individual lied to the inspector about buying and spraying the product initially. He added that the person had also used the product off label and he had no problem at all with levying a \$1500 fine against them.
- Randlett told the Board that the maximum fine that can be assessed in a civil case is \$1500. He added that the inspector did an excellent job going to the hardware store to inquire about purchases of glyphosate. Randlett told the Board he discussed the

possibility of criminal charges with the Attorney General Office's Criminal Division, but that a decision was made that the evidence would not support proof of a criminal violation by the beyond a reasonable doubt standard. Randlett added that the complainants may still take further action on their own as a private civil matter.

- Morrill commended John Pietroski for doing a great job with this case.
 - **Morrill/Adams: Moved and seconded approval of consent agreement.**
 - **In Favor: Unanimous**

9. Correspondence

- a. Email and article from Jody Spear

10. Other Items of Interest

- a. Updated brochure *Licensing Requirements for Pesticide Applicators in the State of Maine*
- b. New BPC magnet
- c. Article *Field Evaluation of Commercially Available Small Unmanned Aircraft Crop Spray Systems*
- d. Press Release: EPA Announces Changes to Dicamba Registration
- e. *A National Road Map For Integrated Pest Management* Revised September 2, 2018, USDA, EPA
- f. Oregon Temporary Rule: Limitations on Pesticides Containing Aminocyclopyrachlor
- Morrill inquired as to why this article was included.
- Patterson stated as a general interest item because the product use resulted in tree deaths and a lawsuit at the national level.
- Tomlinson added that the pesticide was used for right-of-way applications and migrated to the roots of desirable trees causing damage.
 - g. Chlorpyrifos Court Ruling
 - Ninth Circuit Court Opinion On Petition for Review of an Order of the Environmental Protection Agency—Chlorpyrifos Tolerances
 - Lulac v Wheeler – Petition for Rehearing
 - Summary

11. Schedule of Future Meetings

January 16, 2019 are proposed meeting dates. The January meeting will be at the Agricultural Trades Show and will include a Public Listening Session. There will be a public hearing on March 8, 2019. Additional Board meeting dates are: April 19, 2019 and May 24, 2019

12. Adjourn

- **Flewelling/Granger: Moved and seconded to adjourn at 11:53am.**

- **In Favor: Unanimous**