



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

July 15, 2019

**5:00 PM Board Meeting
5:30 PM Listening Session
Resumption of Board Meeting**

7 Minden Street, Greenville, Maine

AGENDA

1. Introductions of Board and Staff

2. Minutes of the June 7, 2019 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

3. Continued Discussion About an Education Campaign Around IPM

At the April 19, 2019 meeting, the Board discussed funding an education campaign on IPM. Staff will provide an update on progress made with this effort.

Presentation by: Megan Patterson, Director

Action Needed: Discussion

4. Overview of AAPCO Board of Directors Meeting with the US Forest Service about Aminocyclopyrachlor Damage in Deschutes National Forest

During the annual American Association of Pesticide Control Officials board of directors meeting, the USFS provided a tour of Ponderosa pines impacted by applications of

aminocyclopyrachlor. The USFS plans to harvest the standing dead and dying trees to prevent risk of dead trees from falling on roadways. A summary of meeting and the ongoing issue will be provided.

Presentation By: Megan Patterson, Director

Action Needed: None, Informational Only

5. Request from Integrated Pest Management Program for Funds for Rodent Academy

The Integrated Pest Management Program is requesting funds to assist with a two-day rodent management training event for pest management professionals. Increased rodent pressures result in increased demand for rodent management services. This training offers local applicators an opportunity to learn cutting edge rodent IPM from national experts. Requested funds will help offset the cost of speaker honorariums, space rental, and provision of lunch each day.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

6. Other Items of Interest

- a. Chapter 243 Public Law—An Act To Ensure Funding for Certain Essential Functions of the University of Maine Cooperative Extension Pesticide Safety Education Program (LD 1273)
- b. Chapter 84 Resolves—Resolve, Directing the Board of Pesticides Control To Work with the Forest Products Industry to Monitor Aerial Herbicide Applications (LD 1691)

7. Schedule of Future Meetings

August 30, 2019 is the next proposed meeting date.

Adjustments and/or Additional Dates?

8. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in

writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.

- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the Board's office or pesticides@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.



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BOARD OF PESTICIDES CONTROL

**June 7, 2019
9:00 AM**

Room 101 Deering Building
32 Blossom Lane, Augusta, Maine

DRAFT MINUTES

Present: Bohlen, Flewelling, Granger, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves
- Staff Present: Bryer, Chamberlain, Connors, Patterson, Pietroski, Tomlinson

1a. Introduction of Dr. Hannah Carter, Dean, University of Maine Cooperative Extension

2. Minutes of the April 19, 2019 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

- Bohlen noted that Mary Cerullo is Associate Director of Friends of Casco Bay, not Director.
 - **Granger/Flewelling: Moved and seconded to accept minutes as amended**
 - **In Favor: Unanimous**

3. Workshop Session to Review the Rulemaking Record on the Proposed Amendments to Chapters 10, 26, 27, 28, 31, 32, 36, and 50

(Note: No additional public comments may be accepted at this time.)

MEGAN PATTERSON, DIRECTOR
32 BLOSSOM LANE, MARQUARDT BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG

On February 5, 2019, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 10, 26, 27, 28, 31, 32, 36, and 50. A public hearing was held on March 8, 2019 at the AMHI Complex, Marquardt Building, in Augusta, and the written comment period closed at 8:00 AM on March 25, 2019. No one spoke at the public hearing and no written comments were received by the close of the comment period. The Board will now review the rulemaking documents and determine how it wishes to proceed with the rulemaking proposals.

Presentation by: Megan Patterson, Director

Action Needed: Discussion and determination on how the Board wishes to proceed with the rulemaking proposals

- Randlett explained the process of rulemaking. At this time the Board would adopt the rule as proposed and approve the basis statement and response to comments. The rule adoption forms would later be signed and sent to the Secretary of State for filing. Only minor, non-substantive changes could be made to a rule at this time, although the Board can vote to not adopt the proposed rule.
 - Chapter 10
 - **Flewelling/Waterman: Moved and seconded to adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**
 - Chapter 26
 - **Granger/Flewelling: Moved and seconded to adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**
 - Chapter 27
 - **Bohlen/Flewelling: Moved and seconded to adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**
- A discussion ensued about whether some of the rules should be considered major substantive and therefore provisionally adopted instead of finally adopted. Randlett determined that Chapters 26, 27, and 28 are major substantive and should be provisionally adopted.
 - Chapter 28
 - **Waterman/Granger: Moved and seconded to provisionally adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

- **Morrill/Granger: Moved and seconded to revisit Chapter 26 and adopt provisionally.**
- **In Favor: Unanimous**
 - Chapter 26
 - **Flewelling/Bohlen: Moved and seconded to provisionally adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

- **Morrill/Bohlen: Moved and seconded to revisit Chapter 27 and adopt provisionally**
- **In Favor: Unanimous**
 - Chapter 27
 - **Morrill/Bohlen: Moved and seconded to provisionally adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

 - Chapter 36
 - **Flewelling/Waterman: Moved and seconded to repeal the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

 - Chapter 31
 - **Flewelling/Waterman: Moved and seconded to adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

- Morrill noted that most of the amendments to Chapters 31 and 32 resulted from federal rules and asked whether there would be training. Pietroski replied that there would.
 - Chapter 32
 - **Bohlen/Flewelling: Moved and seconded to adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

 - Chapter 50
 - **Waterman/Granger: Moved and seconded to adopt the rule as proposed and approve the basis statement and response to comments.**
 - **In Favor: Unanimous**

4. Consideration of a Consent Agreement with Tick Talk 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 failure to notify an individual on the registry and drift.

Presentation By: Raymond Connors Manager of Compliance

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

- Connors gave an overview. He said the company makes commercial applications to control ticks. Last May an individual called, said she was on the notification registry and did not receive notification but she came home to find the applicator just finishing on the property across the street from her home. She alleged she was sprayed with a mist. The BPC Inspector took wipe samples from the mailbox and her van; both came back positive for pesticide residue. The Consent Agreement was signed. The applicator was cooperative through the entire process, acknowledged that he had dropped the ball on notification; he is concerned about representing the industry in a respectful manner.
- Flewelling asked what the detection number means. Connors replied that usually there is a comparison of target and off-target sites; in this instance there was not. The individual alleged that there was drift near the mailbox; the test results confirm her assertion that residue did get on her property.
- Flewelling asked if it was a windy day. Connors replied that the applicator was using a hose and gun, which has less likelihood of drift than a motorized backpack sprayer. The drift was due to proximity, there was approximately 28 feet between the application site and the mailbox.
- Granger asked if there was any attempt to determine if there was more than 1% off target. Connors said there was not. Randlett explained that the 1% is prima facie evidence of drift, but there is a separate section about detections in roadways and on vehicles. In this case there was also a finding of negligent use and possibility of causing harm
 - **Flewelling/Granger: Morrill/Adams: Moved and seconded approval of consent agreement.**
 - **In Favor: Unanimous**

5. 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: Megan Patterson, Director

Action Needed: Nominations and Election of Officers

- **Flewelling/Granger: Moved and seconded to elect Morill as Chair and Bohlen as Vice-Chair**
- **In Favor: Unanimous**

6. Other Items of Interest

- a. CMP 2019 Foliar Herbicide Plan
 - Bohlen asked about the process of approving these plans as he has some questions. Patterson replied that they are submitted voluntarily.
- b. Letter from Emera Maine
- c. Letter from ACF Committee re Government Evaluation Act Review
 - Morrill and Bohlen asked about the Board's responsibility in this process. Patterson replied that staff would draft the program evaluation report and provide it to the Board for input.
- d. IPM Council suggestion to consider re-establishing its Plant-Incorporated Protectants Technical Review Committee
 - Patterson explained that the IPM Council had suggested re-opening the Plant Incorporated Protectant ERAC. The new PIP ERAC would be tasked with assessing Bt resistance in insect populations feeding on corn. She asked that the Council to come back with some specific questions or expected outcomes for the ERAC. The IPM Council will hold their regular biannual meeting in the fall and will discuss the results of summer Bt resistance research and subsequent needs. The Council will return to the Board with a request.
 - Lauchlin Titus volunteered information on *Bt* corn. Seminis is one of the few companies that sells *Bt* sweet corn. Last year Titus received calls from almost all Seminis growers that they were having trouble with corn earworm. Essentially everyone had some degree of pressure. Titus contacted Seminis and they took immediate action. In the last week of August they came and collected insects and sent them to a lab for Bt resistance testing. The larvae will be raised to adults and bred to check for Bt resistance. Titus has not yet heard about the results of the testing. One of the insects collected was tentatively identified as a western bean cutworm, but Titus has not yet received confirmation. Western bean cutworm has not been a problem in Maine, but is present in Vermont.
 - Titus noted that no one knows if there is a Bt resistance issue with field corn, because it is not monitored as carefully as sweet corn. Growers generally assess stand quality at harvest, so if there was a pest infestation, larvae have matured and are no longer present. Corn earworms don't overwinter in Maine and there is no European corn worm in Maine, which is fortunate, because they do overwinter.
 - Morrill asked where they come from. Titus replied that it used to be thought that they overwinter in Georgia, but now they think maybe Virginia, and because they move north with stormy weather they are arriving in Maine a bit earlier. They are never seen until late in the season.
 - Morrill asked if this is something the Board should work on soon. Titus asked what can you do? Advocate for studies, look at research from south of here? Assess level of resistance? The seed production companies know and they are required to investigate if notified of suspected resistance. We used to find small dead corn earworms (only one per ear because they are cannibalistic), now we are finding large corn earworms, so they are not dying, indicating that they are no longer susceptible to Bt. He suggested

someone determine where they are overwintering now versus 20 years ago. Patterson suggested Dave Handley might have some information

- e. Variance Permit for Asplundh Tree Experts—Railroad Division
 - f. Variance Permit for RWC, Inc.
 - g. Variance Permit for the Maine Department of Transportation
 - h. LD 908— An Act To Require Schools To Submit Pest Management Activity Logs and Inspection Results to the Board of Pesticides Control for the Purpose of Providing Information to the Public
 - i. LD 1273—An Act To Ensure Funding for Certain Essential Functions of the University of Maine Cooperative Extension Pesticide Safety Education Program
 - j. LD 1518— An Act To Establish a Fund for Portions of the Operations and Outreach Activities of the University of Maine Cooperative Extension Diagnostic and Research Laboratory and To Increase Statewide Enforcement of Pesticide Use
 - k. LD 1691—An Act To Ban Use of Aerial Herbicide Spraying for the Purpose of Deforestation
- Randlett asked that the March minutes be amended under item 6 Request for Special Local Need [24(c)] Registration for Express® Herbicide with TotalSol (FMC Corporation) for Spot Application and Bunchberry Control in Lowbush Blueberries to clarify his remarks. “Randlett said that the Board can impose reasonable conditions on a 24(c) registration, but there are limitations to that ability. The question at the time was whether the registrant could be required to pay for testing conducted by a third party as a condition of registration, and the answer to that is no.”
 - **Morrill/Flewelling: Moved and seconded to amend the March 8, 2019 minutes as requested**
 - **In Favor: Unanimous**

7. Schedule of Future Meetings

July 12, 2019 as proposed meeting dates. This meeting will focus on forestry and will include a visit to forestry management sites. Staff would like to request that this meeting be rescheduled for an alternate date.

Adjustments and/or Additional Dates?

- Patterson stated that she could not attend a meeting on July 12. The Board agreed to change the meeting to July 16.
- The Board added August 30 as a meeting date.

8. Adjourn

- **Morrill/Waterman: Moved and seconded to adjourn at 10:19**
- **In Favor: Unanimous**

DRAFT New England 2-day Rodent Academy, October 29-30, 2019

Proposed Objectives: to provide in-depth learning opportunity for PMPs, School IPM Coordinators, sanitarians, public health staff, building inspectors, code enforcement officers, and Extension educators on comprehensive approach to prevention, monitoring, and management of rodent pests of concern to public health and structural damage.

Topics to be covered:

Bobby Corrigan

- Health and economic impacts of rodents
- Rodent management 101: for beginners – intro to sanitation, exclusion, trapping, landscape modifications
- Rodent biology and ecology (including rats, house mouse, white footed and deer mice, and voles)
- Rodent identification
- Exclusion
- Modifying the environment
- Rat and mouse trapping (junior level to advanced level)
- Monitoring (with traps and bait stations and visual inspection)
- Recognizing rodent activity and entryways

Other Speakers and Topics

- Rodent cleanup (Lisa Silva, ME CDC), and Anne Lichtenwalner, Univ of Maine
- ME CDC Health Inspection program (what kinds of facilities are inspected and what protocols are used)- Lisa Silva
- Rodenticide toxicology (Dr Pam Breyer, ME BPC Toxicologist)
- Rodenticide use regulations (John Pietroski, Manager of Pesticide Program, or Megan Patterson, ME BPC)
- Rodenticides and Bait Stations (products, formulations, when and how to use them) Jason Myers, BASF
- School IPM (requirements for several states, record-keeping, prevention, exclusion, communication with school IPM Coordinator (Janet and Kathy)
- Hands-on activities (Identifying rodent droppings and taxidermied specimens, placing traps and bait stations (have participants put them in the places they think are best in a room and outdoors then compare and discuss which placements best for which situations). Everyone

DRAFT AGENDA

	10/29/2019 Tuesday	10/30/2019 Wednesday	
TIME	Portland, ME		
7:30-8:00	Registration		
8:00-8:15	Welcome/Introductions	Exclusion: how to build them out – Bobby Corrigan	
8:15-9:00	Health and Economic Significance of Rodents-- Dr. Bobby Corrigan		

9:00-10:00	Biology and Ecology of Rodents- Dr. Bobby Corrigan (include rats, house mouse, white footed/deer mice)	Rodenticides and Bait Stations (Products, formulations: how and where to use them) – Dr Jason Myers BASF	
10:00-10:15	<i>Break</i>	<i>Break</i>	
10:15-11:15	Inspecting for and Identifying Rodent Activity -Dr Corrigan	10:15-11:00 Modes of Action and how they impact humans and animals including non-targets - Pam Breyer, Toxicologist , ME Board of Pesticides Control	
11:15-12:00	Rodent Trapping for monitoring and control - Corrigan	11:00-11:30 Reading a Rodenticide labels - Use Restrictions, Regulatory Requirements: ME BPC (Patterson, Pietroski?) 11:30-12:00 Managing rodents in schools – Murray and Hurley	
12:00-1:00	<i>Lunch</i>	<i>Lunch</i>	
1:00-3:00	Inspection activity: Break into groups, inspect buildings and grounds for rodent activity and rodent trap and bait station placement. Students will mark on a grounds sketch or aerial photo signs of activity, exclusion and prevention deficiencies, sites where traps and bait stations could/should be placed. – Myers, Quinn, Peaslee, Corrigan, all participants, everyone	Using game cameras to monitor and identify rodent activity – Janet Hurley. 15 mins 1:15-3:15 Group activities: work in small groups. Inspect the landscaped beds, unmanaged areas and building exterior. Inspect the pest-vulnerable areas of a building. Then work with to develop an IPM plan for the buildings and immediate grounds based on inspections of the building exterior and grounds and ‘planted’ signs. Corrigan (will float among the groups), Chris Quinn , Mike Peaslee, Jason Myers, others will guide and facilitate the groups	
3:00-4:30	ME Health Inspection Process and Response- Lisa Silva, DHHS 3-3:45p Cleaning up after rodents- Dr Anne Lichtenwalner, DVM 3:45-	3:15-4:15 <i>exams, certificates credits, wrap-up</i>	

	4:30		
4:30	Class dismissed.	<i>4:15 class dismissed</i>	

Class participants will need to demonstrate inspection, detection, and exclusion techniques

Class participants will need to demonstrate installing bait stations, monitoring devices

Class participants will need to demonstrate how to write up and present an IPM program to property managers

DRAFT

Payee	Expense	Cost
USM	Room rent	675
	AV	100
	Food (estimated 60/person x 55 people)	3300
Bobby	Speaking fee	2200
	Travel	600
Janet	Travel	1200
Subtotal		8075
DICAP	Currently ~26%, but program is assessed 15%	1211
Total		9286

Option 1:

Participant Registration Fee	40 x \$175	7000
Cost above those covered by participant registration fees		2286

Option 2:

Participant Registration Fee	40 x \$200	8000
Cost above those covered by participant registration fees		1283

STATE OF MAINE

 IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

 S.P. 393 - L.D. 1273

**An Act To Ensure Funding for Certain Essential Functions of the University
of Maine Cooperative Extension Pesticide Safety Education Program**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA §607, sub-§6, as amended by PL 2013, c. 290, §1 and affected by §4, is further amended to read:

6. Registration fee; programs funded. The applicant desiring to register a pesticide must pay an annual registration fee of \$160 for each pesticide registered for that applicant. Annual registration periods expire on December 31st or in a manner consistent with Title 5, section 10002, whichever is later.

The board shall monitor fee revenue and expenditures under this subsection to ensure that adequate funds are available to fund board and related department programs and, to the extent funds are available, to provide grants to support stewardship programs. The board shall use funds received under this subsection to provide:

A. An annual grant of no less than \$135,000 to the University of Maine Cooperative Extension, on or about April 1st, for development and implementation of integrated pest management programs. ~~The University of Maine may not charge overhead costs against this grant; and~~

B. Funding for public health-related mosquito monitoring programs or other pesticide stewardship and integrated pest management programs, if designated at the discretion of the board, as funds allow after expenditures under paragraph A. The board ~~shall~~ may seek the advice of the Integrated Pest Management Council established in section 2404 in determining the most beneficial use of the funds, if available, under this subsection; ~~and~~

C. An annual grant of not less than \$65,000 to the University of Maine Cooperative Extension, on or about April 1st, for the development and revision of training manuals for applicator certification, licensing and recertification and to perform other aspects of pesticide education programs. The University of Maine Cooperative Extension may seek the advice of the board in establishing the pesticide education programs and shall submit an annual report on the use of the funds under this

paragraph, no later than January 15th, to the board and the joint standing committee of the Legislature having jurisdiction over pesticide education and certification matters.

The University of Maine may not charge overhead costs against grants under this subsection.

By February 15th annually, the board shall submit a report to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters detailing the grants funded by the fee under this subsection. The annual report must include a recommendation by the board as to whether the amount of the fee is adequate to fund the programs described in this subsection. The joint standing committee may report out a bill to the Legislature based on the board's recommendations.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

UNIVERSITY OF MAINE SYSTEM, BOARD OF TRUSTEES OF THE

University of Maine Cooperative Extension Z172

Initiative: Allocates ongoing funds for the University of Maine Cooperative Extension to develop and revise training manuals for applicator licensing and recertification and to perform other aspects of pesticide education programs.

OTHER SPECIAL REVENUE FUNDS	2019-20	2020-21
All Other	\$65,000	\$65,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$65,000	\$65,000

APPROVED
JUNE 19, 2019
BY GOVERNOR

CHAPTER
84
RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

S.P. 556 - L.D. 1691

Resolve, Directing the Board of Pesticides Control To Work with the Forest Products Industry To Monitor Aerial Herbicide Applications

Sec. 1. Monitoring of aerial herbicide applications. Resolved: That the Board of Pesticides Control, established in the Maine Revised Statutes, Title 22, section 1471-B, shall work with representatives of the forest products industry who conduct aerial application of herbicides for the purpose of silviculture, including reforestation, regeneration or vegetation control, to monitor aerial applications of herbicides through a neutral 3rd-party entity determined by the board. The one-time monitoring of aerial applications required under this section is contingent upon the receipt of outside funds for this purpose. The board shall report to the Joint Standing Committee on Agriculture, Conservation and Forestry with findings and recommendations related to the monitoring of aerial herbicide application no later than February 1, 2020. The monitoring of aerial applications of herbicides must conclude upon submission of the report to the joint standing committee. The joint standing committee may submit a bill relating to the subject matter of the report to the Second Regular Session of the 129th Legislature.