



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

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

Room 101 Deering Building
32 Blossom Lane, Augusta, Maine

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



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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**