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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

March 31, 2017

Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine

MINUTES

9:00 AM

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

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Hicks, Patterson, Tomlinson

2. Minutes of the February 17, 2017 Board Meeting

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

- **Jemison/Flewelling: Moved and seconded to adopt the minutes**
- **In Favor: Unanimous**

9a. Determination of whether *Bt* should be added to the list of biological pesticides pursuant to Chapter 29, Section 5

The Board received input from the Maine Forest Service and Stephen Nicholson at Valent Biosciences requesting that the Board consider adding *Btk* to the list of biologicals approved for application against browntail moth within 250 feet of the mean high water mark.

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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Presentation By: Lebelle Hicks
Toxicologist

Action Needed: Discussion of Policy Addition

- The Board moved agenda item 9a to the beginning of the agenda to discuss and clarify for applicators what chemistries can be applied for browntail moth within 250 feet of the mean high water mark. There has been much discussion about whether or not this includes *Bt*.
- Agenda item 9a is a draft document with the two definitions the Board initially voted on. Morrill stated that the Board's intention was to use the number two definition, and a list of Board-approved chemistries, and asked if they can go back to that verbiage.
- Chamberlain asked if this would require the policy to be re-adopted. Randlett responded that the policy is being amended and it will have to be readopted. Randlett asked staff to attach the list of Board-approved pesticides to the policy and include it on the website as well so people have easy access to the information.
- The pesticides included on the Board approved list are: Spinosad, *Btk* (*Bacillus thuringiensis kurstaki*), and Azadirachtin.
 - **Morrill/Jemison: Moved and seconded to amend policy to use the second definition of biological pesticide in the document for Agenda item 9a, and a list of products as approved by the Board**
 - **In Favor: Unanimous**

2a. Board Director Appointment

Presentation By: Ann Gibbs
Director of Animal and Plant Health

Action Needed: Discussion by the Board

- Walt Whitcomb, DACF Commissioner, was in attendance. He thanked the Board for serving in this capacity, and also thanked staff for helping get us through this challenging time. Whitcomb stated the process for filling the vacant seat on the Board has also advanced and is in the process of getting clearance. He added that he also plans to meet with the Board to discuss the budget process.
- Whitcomb introduced Cam Lay to the Board as the candidate for the BPC Director position that the selection team chose as the best person to offer the Board. Whitcomb stated that there is a statutory responsibility for the department to go through a routine and very thorough hiring process and then present their selection to the Board for approval.
- Whitcomb addressed concerns about why a Board member was not included on the selection committee. He stated that it was his decision because there were a number of highly qualified candidates and he felt it imperative for all that they maintain an absolute degree of fairness. All of the candidates were very qualified people, and he wanted to put together a hiring team that would give the fairest assessment of the candidates, which is why he included an individual that did not know any of the applicants.
- Whitcomb concluded that the Board does have the final decision on which individual is selected as Director.
- Morrill thanked the Commissioner for his time today, and stated he appreciated him being forthcoming on the decision process.
- Lay gave the Board an overview of his professional background.

- **Morrill/Flewelling: Moved and seconded for the Board to enter into executive session at 9:34am, pursuant to 1 M.R.S.A § 405(6)(A)**
- **In Favor: Unanimous**

At 10:45am, the Board exited executive session and reconvened

- **Morrill/Flewelling: Moved and seconded to approve Cam Lay as the new Director of the BPC**
 - **In Favor: Five; Opposed: Granger**
- Morrill welcomed Lay and thanked him for coming to speak with the Board. Lay replied he is delighted and will do his best not to disappoint them.
 - Morrill thanked the staff for keeping the ship afloat for the last several months.

3. Continuing Discussion About the Board's Budget

At the last three meetings, the Board reviewed the budget with a goal of identifying potential resources that could be allocated to Board priorities. The Department has prepared additional documents per the Board's request to help illustrate the budget process and the current status of the Pesticide Control Fund.

Presentation By: Ann Gibbs
 Director of Animal and Plant Health

Action Needed: None—Informational Only

- Gibbs presented the Board with breakdowns of the budget detailing: fiscal year 2016, calendar year 2016, and cash flow to show when money comes in and the projection for the rest of 2017.
- Gibbs stated that under Title 7, Chapter 103, §607(6), the Board is obligated by statute to fund an annual grant of no less than \$135,000 to University of Maine Cooperative Extension, and provide funding for public health-related mosquito monitoring programs, or other pesticide stewardship and integrated pest management programs as funds allow.
- Gibbs included for the Board descriptions of all positions funded and went over these positions with the Board. The positions included five plant health care positions, which fall under the supervision of the state horticulturalist. Flewelling asked when the BPC began funding those positions. Gibbs responded that it was when Bob Tardy was chair of the Agriculture committee, probably in the early 1990's, when there was a shortfall of funding. She continued that there were originally two assistant horticulturists and an entomologist, who was also the apiarist at that time. Gibbs stated the Entomologist III is the IPM Coordinator and has always been funded by the Board. Morrill asked why the Entomologist III was not under the purview of the BPC. Hicks responded that it was thought better to have that position separate from oversight by the Board that registers pesticides so as to avoid conflicts of interest, because the Entomologist III position provides pest control recommendations to the public.
- Gibbs stated the State Horticulturalist position was added approximately five years ago when the BPC was put under purview of Plant and Animal Health.
- Flewelling asked how DICAP is derived. Gibbs responded that it is a department wide percentage allocation that is based on our expenditures.

- There was a discussion about the yearly estimate for Pega, which costs approximately \$6800 per month. In June the Board will pay \$120,000, but that is because development is still ongoing.
- Morrill asked what the Board's requirement is by statute. Randlett stated that the budget is generally prepared by the department and the department then advises the Board. Gibbs stated if the Board wants to fund something specific, please put it forward and it can be determined how to put it into the budget process.
- Bohlen thanked Gibbs and stated he appreciated the budget being explained, and there was insight gained by being able to look at the budget and understand how it fits together. He added that he has been on the Board for six years and this is the first time he has been able to take a look at the numbers like this. Morrill added that the Board wants to understand Board expenditures and revenues to ensure funds are going to causes important to the Board.
- Morrill asked Gibbs for another budget report at fiscal year-end.
- Stevenson asked why revenues are \$1.7 million and the expenses are \$2.7 million. Gibbs responded the reason is Pega, and it does not look like that every year. Morrill added that the revenue from federal grants brings revenues up to around \$2.1 million.
- Morrill thanked Gibbs for putting the budget information together for the Board.

4. Review of the Annual Grant to the University of Maine Cooperative Extension for Manual Development

Public Law 1987, Chapter 723 created a fiscal year 1988-89 state budget allocation of \$22,000 for the purpose of providing a grant to Cooperative Extension to develop and revise pesticide applicator training manuals. Over the subsequent years, Extension increased its funding request until it reached the current level of \$65,000 annually. Donald Barry, the Extension employee who worked on manuals, recently retired. James Dill from the Extension has proposed revising the job duties of this position and requested an opportunity to discuss the future of the position with the Board.

Presentation By: James Dill
University of Maine Cooperative Extension

Action Needed: Approve/Disapprove/Revise Grant

- Jim Dill, University of Maine Cooperative Extension (UMCE), is in attendance to review the Board's annual grant to UMCE. Jemison asked to be recused from the discussion, as an employee of UMCE.
- Dill stated that Don Barry, the individual who worked on the pesticide applicator training manuals, retired on February 1, 2017. He added that he is here today to find out if UMCE will still receive this funding on an annual basis before they start advertising the position. Dill stated they would like to revise the job description for the position to include more of the education and training. Dill stated that this has been an ongoing grant UMCE has been receiving for about 30 years and there is still the MOU at the state and federal level that tasks UMCE with education and the Board with regulation.
- There was a discussion about the history of this grant and how that amount was reached. Dill stated that in 1991 the amount was increased to \$31k, because \$22k was not covering the position and the director at that time wrote a request and justification to the commissioner. The grant increased from \$31k to \$35k in 2000 and then from \$35k to \$50k in 2010. Dill stated that it was raised to the current \$65k in 2012, which covered about ¾ of the position for the person who just retired.

- Dill stated that along with the MOU, the EPA used to fund both the education and regulation side, but now EPA does not grant any funds to UMCE for pesticide education.
- Bohlen asked if there was a schedule for reviewing and updating the manuals. Dill stated that he would sit down with Don Barry and Gary Fish and decide which manuals needed to be revised most urgently. Dill added that it takes about ten months to a year to write a manual from scratch, and there are 20 manuals that constantly need revising.
- Morrill asked where the revenue UMCE receives for selling the manuals goes. Dill replied that it goes to printing.
- Bohlen stated he thinks it is a very important thing to be doing, but if he was contracting for someone to do this work he would want a yearly progress report and he has never seen one. Dill replied that a report is sent to EPA annually.
- There was discussion around how the \$135,000 annual grant from the Board to UMCE for the development and management of ipm program is used. Morrill asked that the Board be given a copy of this year's Annual fund report that was submitted to the Legislature.
- Stevenson asked what the training that would go along with the new hire's position would be. Dill responded that it would be working directly with the growers.
- Morrill asked about working with homeowners. Dill stated homeowner education is really hard to fulfill, because homeowners are not as interested as growers and applicators to come and sit down as a group.
- Morrill asked if they have reached out to municipalities. Dill stated UMCE has in the past, but not in the last few years. Dill stated that he is supposed to be neutral, so once municipalities have his contact info, it is their decision on whether or not to reach out.
- Morrill asked if any money from the \$135,000 grant is being used to educate at the homeowner level. Dill stated that it is not, but they have written about 65-80 homeowner fact sheets and they do about 2,500 identifications of specimens a year, from plant pathology to insect and tick identification. Dill stated that that is truly homeowner outreach, and they do reach many homeowners, but are not specifically targeting a large number of homeowners at once. Dill added that they also do programs with greenhouses, like Longfellow's and O'Donal's, and will get 10-20 people to show up but it is not large numbers. Dill stated he is open to any suggestions and very willing to try new ideas.
- Morrill stated he was of the opinion that all grants should be evaluated yearly and they should achieve some measurable goals.
- Granger spoke about efforts in trying to reach a disinterested audience and suggested trying a newsletter as a way to reach them. Patterson stated that staff are currently using GovDelivery as a digital newsletter and recently collaborated with UMCE and MFS to arrange meetings about btm to help provide more comprehensive coverage of the topic.
- Morrill stated he would like to see Dill's new job description for Don Barry's old position and asked that it be added to the agenda for the next meeting. Morrill added that he is leery to say the Board will guarantee that grant every year, as grants are to be project-based and measurable.
 - **Morrill/Flewelling: Moved and seconded to adjourn for lunch**
 - **In Favor: Unanimous**

The Board adjourned for lunch for one hour and reconvened the meeting at 1:00pm.

5. Discussion About the Board Subsidizing Speaker Costs to Help Contain the Costs of Jointly Sponsored Pesticide Applicator Training Seminars

Each year the Board and the University of Maine Cooperative Extension jointly sponsor a series of pesticide applicator training seminars. An effort is made to identify subjects and speakers that represent the latest developments in IPM. This often results in contracting with expert speakers from other states, which adds to the cost of hosting training sessions. One way to reduce the costs to the regulated community is for the Board to pay the costs of the speakers, either by contracting with them directly or by providing an annual grant—up to \$5,000—to Extension for that purpose. Before considering those expenditures, the Department believes it's appropriate for the Board to determine whether it supports this use of funds.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Department and Staff

- Patterson noted that the Board has expressed that recertification courses should not be more than \$100. Cooperative Extension (UMCE) has requested that BPC cover speaker costs, including travel expenses, while they pay for the meeting room and food. Next week there are two meetings with speakers from UMass and the Board is paying for the speakers, contracting with each of the speakers. In the fall we are hosting Kirby Stafford and Bobby Corrigan; their fees will be substantially higher than the speakers from UMass. In the long run the Board can continue to contract with speakers, or give a \$5,000 grant to UMCE to cover the speaker costs.
- Morrill noted that the Board is responsible for policy, and according to Jim Dill, UMCE is responsible for education. Taking the education aspect and turning it into a fundraising scheme on the backs of applicants is an issue. How is this currently handled? Patterson replied that Cooperative Extension has handled everything, because contracting through the state is difficult, especially for venues—have to go out to bid if it's over a certain amount—but for speaker fees, which are fairly low, the contracts are not as difficult.
- Morrill asked how many talks are given annually. Patterson replied that there are 4-5 invited speakers annually and some by Board staff and some by UMCE staff. Jemison noted that he is happy to give talks about things he knows, but if you ask if about something outside his area of expertise, he is hesitant. There is no one at Extension who is an expert on turf. Patterson added that topics were deliberately chosen because expertise is not available at UMCE or UMaine.
- Jemison also noted that when his shop organizes talks, the goal is to break even.
- Bohlen stated that the Board needs to spend dollars with purpose. What are we trying to get from these workshops and are we spending the money wisely to get what we need. What is the big goal, how does this move us toward that goal?
- Morrill replied that there are two objectives: to gain knowledge and to get CEUs for license. As an employer, there is a cost, both for the meetings but also their wages, and the fact that they are not producing while they are attending. The Board should try to keep cost down but keep quality content and CEUs available up. If applicators are going to pay for the day, they want to get as many CEUs as possible.
- Patterson noted that usually these meetings are 4 hours for 4 credits. UMCE stated that they have found that 4 hours is the maximum of what people are willing to commit. UMCE has anecdotally indicated that full day meetings are not as well attended as half day meetings.

- Morrill asked how many speakers the Board has paid for in the past 2 to 3 years. Patterson replied one. Hicks pointed out that the Board paid to have Vincent Covello at the Ag Trades Show a few years back.
- Bohlen pointed out that there is a cost to managing contracts and it might be beneficial to give a grant to UMCE to save the cost of managing the process.
- Morrill asked how many talks UMCE hosts each year that require outside speakers. Jemison replied that it depends on the topic covered. UMCE provides presentations at the Trades Show, Farm Days, things like that. The Potato Conference is two days each year and UMCE tries to bring in new speakers so people don't get bored. UMCE people speak, but also UMCE also invites other speakers to provide presentations on current issues. Outside speakers add credibility to subject matter. Applicators pay \$20/day, which covers the costs of outside speakers. Flewelling noted that there is a Trade Show, which helps cover costs.
- Morrill stated that there are a lot of unanswered questions. Morrill feels like the Board is giving an extra \$5,000 to do what it's already paying UMCE to do. Morrill was not okay with authorizing a grant to cover speakers.
- Patterson asked if the Board was okay paying of the ones already committed to this year. Morrill said he is okay if we're already committed.
- There was a brief discussion about the value of industry reps doing recertification talks.
- Bohlen asked if there are goals on how many people need to get credits each year. Are we meeting those goals? Are we putting our resources in the right place? Are people showing up, and are they getting anything out of it.

6. Overview of Pesticide Laws that Currently Pertain the Use of Unmanned Aircraft for Pesticide Application

At the February 2017 meeting, the Board discussed the propriety of the using unmanned aircraft to apply pesticides. Following that discussion, the Board requested that the staff return to the next meeting with an overview of the current laws that would apply to the use of unmanned aircraft.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: None—Informational Only

- Patterson explained that the Board was given a copy of the rules that pertain. Only commercial applicators can do aerial applications, not private. As Coutts stated at the board meeting they attended, they can oversee applications from a bucket truck. There is nothing in our rules to require that. If you're in the airplane, you can see what's happening. There is nothing in our rules that says they have to have a means to see where spray is going to prevent drift.
- Bohlen stated that the rules on aerial application clearly do not envision applications in small areas, which UAVs could be. Also, would need to change the notification requirements; maybe not be as rigid about distances to notify. They make sense on 75 acres, not on 2 acres.
- Flewelling said that it would be easier to classify UAVs as a separate application method. Define and write specific rules. Not really ground, not really aerial.
- Morrill agreed that the rules are blurred, except for Chapter 51. We tend to think of UAVs as small, but they could get bigger. If you're spraying ounces over an oak tree at 8 inches, that's different than spraying gallons over a larger area. Not just acreage but also the size of the

equipment. He asked where things stand now as far as being able to spray. Patterson replied that a UAV operator has to be permitted by FAA. Other permits are required for applying pesticides, flying over heavily populated areas, and carrying hazardous chemicals. If they get those permits, there is nothing in Maine's rules to prevent them from doing an application.

- Morrill suggested talking to applicators to determine what should be done. Hicks noted that most labels specify 10 feet over crops for aerial applications; it might be worth looking at them as EPA is slow to add anything to labels.

7. Continuing Discussion of Rulemaking Priorities

At the last two meetings, the Board discussed pending rulemaking needs and subsequently requested that the staff organize the potential rulemaking topic areas by level of complexity and to provide a brief explanation of each item.

Presentation By: Anne Chamberlain
Policy & Regulations Specialist

Action Needed: Determine Whether to Initiate Rulemaking and Schedule a Hearing

- **The Board looked at the list and decided not to consider rulemaking to Chapters 10, 26, 28, 31, 41, and 50. They asked the Board to return with Chapters 27, 29, and 36 next meeting.**

8. Consideration of Consent Agreement with Greenscapes of Maine from Kennebunk, Maine

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 the commercial use of a pesticide by an unlicensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

- Ray summarized the case, explained that the Board received a call in May about an unlicensed application at a housing complex in Wells. The inspector found that the owner had made an application of a fertilizer and weed control product—it had a low percent of herbicide to control crabgrass. The owner acknowledged but said he didn't realize that using granules required a license. He has signed the consent agreement and paid.
- Flewelling asked if he is licensed now; Connors replied yet.
 - **Flewelling/Jemison: Moved and seconded to accept consent agreement**
 - **In Favor: Unanimous (Bohlen no longer present)**

9a. Determination of whether *Bt* should be added to the list of biological pesticides pursuant to Chapter 29, Section 5

The Board received input from the Maine Forest Service and Stephen Nicholson at Valent Biosciences requesting that the Board consider adding *Btk* to the list of biologicals approved for application against browntail moth within 250 feet of the mean high water mark.

Presentation By: Lebelle Hicks
 Toxicologist

Action Needed: Discussion of Policy Addition

- See discussion above.

9. Other Old or New Business

- b. Homeowner outreach update
- c. Email and article submitted by Paul Schlein
- d. Second email and article submitted by Paul Schlein
- e. Email submitted by Jody Spear
- f. LD 993 An Act To Protect Pollinators From Neonicotinoid Pesticides
- g. LD 594 An Act To Modify the Definition of “General Use Pesticide”
- h. LD 699 An Act To Enact the Toxic Chemicals in the Workplace Act
- i. LD 418 An Act To Educate the Public on the Proper Use of Pesticides and To Promote Integrated Pest management Using Existing Resources

10. Schedule of Future Meetings

May 12, 2017, June 23, 2017, and August 4, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- The August 4, 2017 meeting will be held in Fairfield

Adjustments and/or Additional Dates?

- **No dates were added.**

11. Adjourn

- **Morrill/Stevenson: Moved and seconded to adjourn**
- **In Favor: Unanimous**