

From: Paul Schlein
Sent: Thursday, May 11, 2017 4:38 PM
To: Chamberlain, Anne
Cc: Patterson, Megan L; Lay, Cam; Whitcomb, Walt; Randlett, Mark
Subject: Re: Submission of Comments for Friday's Board Meeting

Anne and All,

I can understand your wanting to handle this in a different way, since a new and timely item was added to the agenda. However, I cannot at all accept the manner in which you have decided to handle it. Once you decided to accept comments after the deadline, a notice should have been sent out far and wide to all interested parties--at a minimum, to those on the Board Meeting mailing list and posted prominently on the BPC homepage. This is unacceptable and I honestly believe that any comments received after the deadline should be immediately removed from the website and kept from public view until proper notice is sent out. That policy (http://www.maine.gov/dacf/php/pesticides/documents2/policies/bpc-policy_comment-submission_11-16-07.pdf) has been in effect since 2007--10 years--and there are many in the public who follow all Board activities and know about the policy and strictly adhere to it. In fact, I helped develop that policy, and, if I remember correctly, one reason it was created was to create and enforce a uniform, consistent, and fair approach to the acceptance of comments from the public. For whatever reason, fairness seems to be lacking here.

Sincerely and respectfully,

Paul

On Thu, May 11, 2017 at 4:22 PM, Chamberlain, Anne <Anne.Chamberlain@maine.gov> wrote:

No, it was not posted anywhere, nor did we send anything out. We do not know why people chose to write to us, but a couple of people called and asked and we told them that we would share their comments given the circumstances.. If you would like to respond yourself, you can send something today and we will share with the Board tomorrow.

I understand your concerns, and I struggle with this issue myself, which is why we want to discuss the policy with the Board. We had planned to do so at this meeting (ironically) but it had to get postponed because there were too many time-sensitive agenda items, like registrations. I would suggest you write to the Board with your concerns and we will include it in the discussion.

Anne

Anne Chamberlain

Policy & Regulations Specialist

Maine Board of Pesticides Control

anne.chamberlain@maine.gov

thinkfirstspraylast.org

From: Paul Schlein [mailto:
Sent: Thursday, May 11, 2017 4:18 PM
To: Chamberlain, Anne
Cc: Patterson, Megan L; Lay, Cam
Subject: Re: Submission of Comments for Friday's Board Meeting

Thanks for your reply. And how did anyone know that this could be done? It looks like all of the new comments are in support of LD 1505. Was it posted somewhere on the BPC website or sent out in an e-mail that this was possible? Perhaps I missed it.

Thanks again,

Paul

On Thu, May 11, 2017 at 4:14 PM, Chamberlain, Anne <Anne.Chamberlain@maine.gov> wrote:

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We are preparing to discuss the policy with the Board to address issues like this.

Anne

Anne Chamberlain

Policy & Regulations Specialist

Maine Board of Pesticides Control

anne.chamberlain@maine.gov

thinkfirstspraylast.org

From: Paul Schlein
Sent: Thursday, May 11, 2017 4:07 PM
To: Chamberlain, Anne; Patterson, Megan L
Cc: Lay, Cam
Subject: Submission of Comments for Friday's Board Meeting

Hi Anne and Megan,

Please correct me if I am mistaken, but were all the additional comments just posted received after the 8 am Tuesday, 5/9 deadline?

Thanks,

Paul

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Paul Schlein

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Paul Schlein

From: Pesticides
Sent: Thursday, May 11, 2017 4:04 PM
To: Lay, Cam; Chamberlain, Anne
Subject: FW: BPC meeting 5.12.17
Attachments: LD 1505 Letter to BPC 5.11.17.docx

-----Original Message-----

From: Mary Ann Nahf
Sent: Thursday, May 11, 2017 3:58 PM
To: Pesticides
Subject: BPC meeting 5.12.17

Dear Ms. Chamberlain,

I am submitting the following for consideration in regard to Agenda Item LD1505. I hope there is still time to distribute to the committee.

Thank you

Mary Ann Nahf

Harpwell Conservation Commission

Town of Harpswell, 263 Mountain Road, Harpswell, ME 04079

May 10, 2017

Board of Pesticides Control
28 State House Station
Augusta, ME 04333

Re: Agenda Item LD 1505, An Act to Promote Consistency in the Regulation of Pesticides

Dear Members of the Board of Pesticides Control,

At the May 8 Work Session of the State and Local Governance Committee, the amendment to LD 1505 was introduced and discussed (below). It was tabled in order for the Board of Pesticides Control discuss at its May 12th meeting.

Sec. 1. 22 MRS §1471-U, as repealed and replaced by PL 1989 , c. 93, §1, is repealed.

Sec. 2. 30-A MRS §3007, sub-§7 is enacted to read:

1. Restrictions on pesticide ordinances. A municipality may not adopt or enforce any ordinance or rule regulating the sale or use of pesticides, including without limitation ordinances relating to pesticide use limitations, registration, use notification, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal or product composition or the disclosure of confidential information related to pesticides **unless the ordinance conforms to all existing state and federal statutes, rules, and regulations and to the State policy of integrated pest management as determined by the Pesticides Control Board.** An ordinance regulating the sale or use of pesticides adopted prior to the effective date of this subsection is void. As used in this subsection, "pesticide" has the same meaning as in Title 22, section 1471-C, subsection 19.

A number of questions arose as I reviewed the above. To better understand, I ask the Board to consider the following in the discussion

- The amendment doesn't state what would happen if a town did conform. What is the process? Who would make the determination and when would a decision be made?
- Is there staff sufficient to handle and rule in a timely manner? What would the time frame be?
- When Harpswell considered its update in 2016 and 2017, prior to voting, it forwarded drafts to the BPC for comment; changes were made to accommodate BPC concerns. Once passed a copy of the ordinance was sent to the Board for filing.

Didn't the process Harpswell follow cover what is stated in red in the amendment? If not, would you explain why not?

Board of Pesticides Control - Page 2

In 2004, under the authority pursuant to 22 M.R.S. Statute 1471, Harpswell enacted its original ordinance to prohibit spraying of a specific insecticide; Dimilin an insect growth regulator, because of its poisonous effect on arthropods. The Town realized that the type of investigation that would be needed in order to have a state regulation put in place would take time; spraying of this product would continue and affect the lobster fishery until the State could change regulations.

It did take time, the State enacted rules to regulate the use of insecticides used to control browntail moth in the shoreland zone on January 25, 2008. Had Harpswell not had the local authority to regulate, four spraying seasons would have ensued and affected more lobsters.

The ability of our Town to restrict pesticide use with guidance from the Board of Pesticides Control has been effective in allowing us to protect our marine economy from the unintended results from pesticide and fertilizer use. LD 1505 and its amendment would take away long-standing home rule authority that Maine municipalities have had to regulate the use of pesticides in their communities. Maine law should not be changed to give the Board of Pesticide Control the authority to decide what local limits municipalities can or cannot put on pesticide use in their communities.

Sincerely,

Mary Ann Nahf, Chair
Harpswell Conservation Commission

From: Paul Schlein
Sent: Friday, May 12, 2017 4:47 AM
Subject: Re: LD 1505 and Submission of Comments for Friday's Board Meeting
To: Attorney General <attorney.general@maine.gov>
Cc: Randlett, Mark <mark.randlett@maine.gov>, Whitcomb, Walt <walt.whitcomb@maine.gov>, Lay, Cam <cam.lay@maine.gov>

Good Morning, Attorney General Mills,

As you can see, where I had become aware of this issue at about 4:30 yesterday, I tried to rush out any correspondence regarding it before closing yesterday, but I continue to think about it. Mark Randlett's out of office reply indicates he's away, so I do not know where to turn. In his absence, I'm appealing directly to you, as the Board meeting takes place today at 9:00 am. The Board of Pesticides Control (BPC) has a new director (copied here, along with the ACF commissioner), just moved here from Montana state government, and has only been on the job for a couple of weeks..

This issue is directly connected to LD 1505 (http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1505&PID=1456&snum=128&sec3). It seems everything about this bill has been rushed, coming out four months into the legislative session, directly from the Governor's office, leaving the public inadequate time to comment. And now this feverish pace has been transferred to the BPC, as the Joint Committee on State and Local Government, during its work session last week, asked the BPC to opine (as it should) on LD 1505 asap, in advance of its second work session next week. The Board had little time to prepare and its agenda--an extremely busy one--was already set. LD 1505 was added after the fact, with no explanation to the public as to why (<http://www.maine.gov/dacf/php/pesticides/meetings.shtml#nextmtg>). Then, following a request from someone in the public, comments were allowed after the normal submission deadline passed, but no notice was given to the public that this was occurring. Board staff are doing their absolute best to handle this, but the pace is too much for anyone.

This issue is too important to too many to rush through, and any opinions from the BPC on this will have great impact on LD 1505. This is a critical issue impacting all 500 or so Maine municipalities, not just the 27 towns that have pesticide ordinances (http://www.maine.gov/dacf/php/pesticides/public/municipal_ordinances.shtml) and those currently

considering them. It's also about Home Rule in general, something Maine towns have cherished and used very effectively, when needed, over the years.

This issue deserves more time and the public needs more time for comment. I don't know who has the authority to intervene here, but my request is that this issue be tabled on the current BPC agenda, and either held over until the next meeting, or, perhaps better, discussed by itself, in an emergency meeting, if that is possible and appropriate. Of course, this would require the State and Local Government Committee to adjust its schedule as well. I do not think this would not be an unreasonable request, as there is no emergency with respect to this bill.

Thank you for your time and attention in this important matter.

Sincerely,
Paul

Paul Schlein

On Thu, May 11, 2017 at 4:54 PM, Paul Schlein
Dear Attorney General Mills,

wrote:

In the absen
c

e of Mark Randlett, who oversees the Board of Pesticides Control, but is evidently away, I am forwarding this message to you, as I feel it needs immediate attention. Just as background, I worked for the Board of Pesticides Control as Public Information Officer for eight years.

Thank you for your attention in this matter.

Sincerely,
Paul Schlein

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Paul Schlein

----- Forwarded message -----

From: **Paul Schlein**

Date: Thu, May 11, 2017 at 4:37 PM

Subject: Re: Submission of Comments for Friday's Board Meeting

To: "Chamberlain, Anne" <Anne.Chamberlain@maine.gov>
Cc: "Patterson, Megan L" <Megan.L.Patterson@maine.gov>, "Lay, Cam"
<Cam.Lay@maine.gov>, Walt.Whitcomb@maine.gov, "Randlett, Mark" <mark.randlett@maine.gov>

Anne and All,

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Paul Schlein

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Paul Schlein

From: Jake Gilbert
Sent: Thursday, May 11, 2017 9:46 PM
To: Pesticides
Subject: LD 1505

I am the Assistant Superintendent of the Ledges Golf Club and I support LD 1505. Towns in the state of Maine should not be able to supersede state laws and enact stricter regulations.

-Jake Gilbert
Sent from my iPhone

From: Pat Rocheleau
Sent: Thursday, May 11, 2017 9:38 PM
To: Pesticides
Subject: LD 1505

To whom it may concern,

My name is Pat Rocheleau, President of The Ledges Golf Club in York Maine. 22 years ago we received local and State approval for the golf course. A major part of our approval with both the DEP and local Conservation and Planning Boards was our Best Management Practice protocol when it came to the maintenance of our turf. This protocol includes the judicious use of pesticides. Pesticides are only applied by a licensed applicator.

As part of our approval we installed 7 monitoring wells throughout the course. In the first 10 years groundwater samples were tested by an independent laboratory twice a year. Samples and reports were filed by Exeter Environmental. These reports are part of the public record at both the DEP and local regulators. Not once has there been any pesticides cited in our reports. In fact, after 10 years of twice a year sampling, Exeter Environmental asked for and received permission to test once a year. The Ledges Golf Club and our turf management crew continue their stellar Best Management Practices. For us it's not just a fancy saying or buzz word. In 2010 we stopped the use of insecticides that affect pollinators (bees). We did this on our own because it was important to our environment.

I urge your support of LD 1505. Judicious pesticide use is necessary in our turf management program. Without it our business would suffer needlessly. Application of pesticides by our licensed applicators at The Ledges is not harmful to the environment and we are proud to say we have 18 years of stellar reports to prove it.

If you have any questions or would like us to meet with your Board to explain our practices we would be happy to join you.

Best regards,

Pat Rocheleau
The Ledges Golf Club
York, Maine

From: Daniel Patch
Sent: Thursday, May 11, 2017 6:44 PM
To: Pesticides
Subject: LD 1505
Attachments: Maine Board of Pesticides Control.docx

Hello, my name is Dan Patch and I have attached a letter expressing support for LD 1505.

Maine Board of Pesticides Control,

I am writing to express my support for Maine's Legislative Document 1505, An Act to Create Consistency in the Regulation of Pesticides. This legislation would strengthen existing state regulations of pesticides, recognize both the Board of Pesticides Control and Department of Agriculture, Forestry and Conservation's expertise, resources and authority on pesticide matters.

My name is Dan Patch, and I am a resident of Sebago. As a citizen of Sebago, I support this legislation because it would establish uniform pesticide regulations, reduce uncertainty, remove duplicative efforts and save resources and tax payers money. Strengthening state regulatory authority would create consistency and ensure the manufacture, sale and use of pesticides is consistently regulated at the state level, by those with the expertise and resources to make these assessments and decisions.

I want to ensure that I can protect my family, property and community from any pest or invasive pressures, and the ability to choose state approved products if the situation arises.

I encourage your support of LD 1505, and believe it would help strengthen the Boards authority and budgetary discretion of pesticide regulations

Sincerely
Daniel Patch

Out-of-state lobbying group wants to weaken Maine laws. Legislators shouldn't fall for it.

(<http://bangordailynews.com/2017/05/11/opinion/editorials/out-of-state-lobbying-group-wants-to-weaken-maine-laws-legislators-shouldnt-fall-for-it/>)



BDN File

Twenty-seven Maine communities have restrictions on pesticide use. Gov. Paul LePage wants to overrule them.

Posted May 11, 2017, at 12:10 p.m.

A couple dozen Maine communities have enacted ordinances to protect their waterways and residents from pesticides. Now, Gov. Paul LePage, through a bill that appears to have been written by a pro-industry group (https://www.google.com/url?q=http://www.centralmaine.com/2017/05/09/pesticide-friendly-bill-from-lepage-mirrors-model-by-secretive-national-group/&sa=D&ust=1494522402905000&usg=AFQjCNGV-2SSt1K-ASqpqHEqWPL3UcyD_w), is seeking to outlaw such rules.

The Maine Municipal Association, which represents the state's towns and cities, explained perhaps most succinctly why this idea makes no sense:

"It is difficult to understand what interest the state would be serving by repealing targeted local ordinances that have been established to protect the public's health and natural resources," the Maine Municipal Association's Garrett Corbin (https://www.google.com/url?q=http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id%3D73262&sa=D&ust=1494522402908000&usg=AFQjCNEenOv8D8Dso_UglTtZghYyzm6WA) told the Legislature's State and Local Government Committee during a public hearing last week.

We agree.

For nearly 30 years, towns have been able to regulate pesticide use and sales within their boundaries. The Maine Supreme Judicial Court upheld this municipal right in 1990. Central Maine Power Co. had sued the town of Lebanon over a 1983 ordinance that forbids the use of pesticides for non-agricultural uses unless approved by a vote at town meeting. In 1986, CMP sought permission to spray herbicides along a transmission line corridor in the town in order to control plant growth. Residents took up the question at town meeting and voted it down.

CMP went to court the next day, arguing that the town could not preempt state and federal rules regarding pesticide use and that the power to regulate pesticides was wrongly delegated to the town.

The Maine Supreme Court disagreed in a 1990 ruling (https://www.google.com/url?q=http://www.leagle.com/decision/19901760571A2d1189_11744/CENTRAL%2520MAINE%2520POWER%2520CO.%2520v.%2520TOWN%2520OF%2520

A year later, the U.S. Supreme Court affirmed (<https://www.google.com/url?q=https://supreme.justia.com/cases/federal/us/501/597/case.html&sa=D&ust=1494522402915000&usg=AFQjCNFABkBlbEJQMfhNDif6RZ4rDF-Jg>) that communities can adopt stricter standards for pesticide use than federal or state regulations.

Now, LePage is trying to undo these rulings to benefit the chemical industry.

The language in LD 1505 (https://www.google.com/url?q=http://www.mainelegislature.org/legis/bills/bills_128th/billtexts/SPO53001.asp&sa=D&ust=1494522402918000&usg=AFQjCNEXXEXlQDoabBA942H) closely mirrors model legislation (https://www.google.com/url?q=https://www.alec.org/model-policy/state-pesticide-preemption-act/&sa=D&ust=1494522402919000&usg=AFQjCNH8v9exWUPoxdmUNrIF9_Ab5Rc9vQ) circulated by the American Legislative Exchange Council, a conservative, pro-business group. ALEC has been peddling the legislation to preempt local chemical ordinances since 1995. ALEC has authored other model legislation used by Republican governors and lawmakers to try to preempt local rules (https://www.google.com/url?q=http://www.slate.com/articles/business/metropolis/2016/09/how_alec_acce_and_pre_emptions_laws_are_gutting_the_powers_of_american_cities.l

such as LePage's attempt in 2015 to prevent communities (<https://www.google.com/url?q=http://bangordailynews.com/2015/04/20/politics/state->

house/lepage-seeks-to-quash-portland-bangor-efforts-for-increased-minimum-wage/&sa=D&ust=1494522402921000&usg=AFQjCNFQox3e1pzP1sPdcBTLEBRHfPzjsA) from enacting their own minimum wages and a bill (https://www.google.com/url?q=http://www.mainelegislature.org/legis/bills/bills_128th/billtexts/HP104001.asp&sa=D&ust=1494522402922000&usg=AFQjCNFnauz3dBnM3JcD6OYt) being considered by Maine lawmakers that would make it harder for communities to build their own broadband networks (<https://www.google.com/url?q=http://www.pressherald.com/2017/05/02/bill-would-hamstring-maine-towns-trying-to-build-internet-networks/&sa=D&ust=1494522402923000&usg=AFQjCNHQaR4bB5WSpYAtVXTfbXHdfsivw>). Regarding pesticides, the group argues that quashing local ordinances would protect the safety of America's food supply.

This argument is ridiculous. Strict pesticide rules, not blanket federal or state approvals for their widespread use, ensure the safety of food, local communities and waterways.

According to state law (https://www.google.com/url?q=http://legislature.maine.gov/statutes/22/title22sec1471-X.html&sa=D&ust=1494522402927000&usg=AFQjCNFvUaqT_z84-cES4hKvHvmbA7dOPA): "It is the policy of the State to work to find ways to use the minimum amount of pesticides needed to effectively control targeted pests in all areas of application."

Yet, from 1995 to 2011, the volume of pesticides sold for home use in Maine has increased (<https://www.google.com/url?q=https://drive.google.com/file/d/oB2GGUTXhI8gQWENJTksTnItRlk/view?usp%3Dsharing&sa=D&ust=1494522402929000&usg=AFQjCNEsOt8FpeNjPHTBMopyUeB9sAoLGw>) from 800,000 pounds to 5.7 million pounds, according to data from the Maine Board of Pesticides Control.

Against this tide, 27 towns (https://www.google.com/url?q=http://www.maine.gov/dacf/php/pesticides/public/municipal_ordinances.shtml&sa=D&ust=1494522402931000&usg=AFQjCNEFhgvzjvBcc5oSGxV-oiJIXQsZsQ) have enacted ordinances to limit pesticide use. Most of these ordinances are meant to protect water.

Representatives of some of these communities and concerned residents spoke in opposition to LD 1505 at last week's public hearing (https://www.google.com/url?q=http://www.mainelegislature.org/legis/bills/display_ps.ppt?paper%3DSP0530%26PID%3Dundefined%26snum%3D128&sa=D&ust=1494522402934000&usg=AFQjCNFenvau6hZkn3f4P176WsiBUP5-Hw). Chemical trade association representatives and pesticide sellers and applicators spoke in favor.

Lawmakers should put the interests of Maine communities and residents first and reject this bill, which wasn't even written to solve a Maine problem.

<http://bangordailynews.com/2017/05/11/opinion/editorials/out-of-state-lobbying-group-wants-to-weaken-maine-laws-legislators-shouldnt-fall-for-it/>
(<http://bangordailynews.com/2017/05/11/opinion/editorials/out-of-state-lobbying-group-wants-to-weaken-maine-laws-legislators-shouldnt-fall-for-it/>)
printed on May 12, 2017

Sec. 2. 30-A MRSA subsection 3007, sub-subsection 7 is enacted to read:

Prior to adoption of any ordinance that regulates the sale or use of pesticides, a municipality must obtain approval from the board. The clerk of the municipality shall submit a proposed ordinance to the board for review. The board shall review the proposed ordinance for compliance with existing state and federal laws, rules, and regulations, and be consistent with municipal pesticide use ordinance guidelines to be developed by the Integrated Pest Management Council with board approval. These guidelines must require a municipality to specify what steps it will take under its ordinance to educate its citizens on how to minimize reliance on pesticides through best management and Integrated pest management practices. The board may provide grants to municipalities to help offset the cost of developing compliant ordinances. Revenue to support such grants shall be funded through a limited increase in the registration fee for all pesticide products sold in Maine.

In developing board compliant ordinances, municipalities may ban or regulate any or all pesticide use on publicly owned land, publicly leased land, or land trust property, except for state sponsored public health protection efforts. They may petition the board, under Chapter 60, to designate any areas of their municipalities as critical control areas if they believe additional protections are warranted.

Municipalities may not regulate the use of legally applied pesticides on private property unless these properties are included as part of critical control areas. Towns should report instances of illegal use of pesticides on private land to the board for enforcement action.

Municipal pesticide ordinances in force at the time this statute becomes effective must become compliant with it within two years.