

BOARD OF PESTICIDES CONTROL

February 25, 2022

9:00 AM Board Meeting

MINUTES

Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie, Waterman

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff: Boyd, Brown, Bryer, Connors, Couture, Nelson, Patterson, Pietroski, Tomlinson
- Adams thanked outgoing members Morrill, Flewelling, and Granger for their service and dedication.

2. Minutes of the January 14, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Bohlen/Waterman: Moved and seconded to accept minutes as amended**
- **In Favor: Unanimous**

3. Report on 2021 Work Accomplished and Request for Funds for Mosquito Monitoring from the Integrated Pest Management Program

The Integrated Pest Management Program is reporting work accomplished in 2021 and requesting funds to assist with ongoing efforts for mosquito surveillance, identification, and continued outreach around vector-borne diseases.

Presentation By: Hillary Peterson, DACF IPM Specialist

Action Needed: Discussion and determination if the Board wishes to fund this request

- Peterson gave the Board a review of the mosquito monitoring program, which began in 2000. She stated that DACF and Maine Medical Center Research Institute (MMCRI) were two of the major mosquito surveillance entities in Maine and spoke about the importance of surveying for Eastern Equine Encephalitis, Jamestown Canyon Virus, and West Nile Virus. Peterson stated that recently retired IPM Specialist, Kathy Murray, initiated the mapping project in 2015 with the goal to identify habitat characteristics, create a risk map and geodatabase. She told the Board that the habitat map was revised in 2019 to include new site coordinates and updated geospatial data. Peterson stated that they monitor about six sites per summer and that the mosquitoes were submitted to the Maine Health and Environmental Testing Laboratory (HETL) for testing. There were no positives for disease in 2021. She told the Board that it was important to keep doing this monitoring and was requesting \$11,182 for the 2022 season.
 - **Waterman/Jemison: Moved and seconded to fund mosquito monitoring program in the amount of \$11,182**
 - **In Favor: Unanimous**

4. Adaura, LLC Request for 24(c) Registration for GoalTender™ Herbicide

At the request of Maine Cooperative Extension and broccoli growers, Adaura, LLC supports the Special Local Need [24(c)] Registration ME-22000X and the sub-SLN registration for Nufarm INC ME-22000XB for the use of GoalTender™ herbicide (oxyfluorfen, EPA Reg. #62719-447 and EPA Reg. #62719-447-71368) for post-emergent weed control on broccoli. Where the number of herbicides available to manage weeds in broccoli is limited, this product remains the only alternative for post-emergence control of broadleaf weeds that escape preemergent herbicide treatment.

Presentation By: Mary Tomlinson, Pesticides Registrar/Water Quality Specialist
Dr. Pam Bryer, Pesticides Toxicologist

Action Needed: Approve/disapprove 24(c) registration request

- Tomlinson gave an overview of the Special Local Need 24(c) process. She stated that under 24(c) of FIFRA states could register an additional use of a previously registered product for a special local need, and EPA reviewed and could approve or deny the request. She added that certain conditions must be met to apply for an SLN, which included the primary condition being an existing pest problem in the state where there is no other product to mitigate the pest. Tomlinson stated that the Board relies on UMaine Cooperative Extension to determine and request SLNs. She added that the staff toxicologist, water specialist, and registrar conducted reviews on human health and environmental impacts before the SLN was submitted to the EPA. If approved by EPA, the SLN became a federal registration. Tomlinson stated that the EPA requested that SLNs expire after five years, but a five-year approval was not required and the Board could establish the number of years the SLN would be effective or deny this request.
- Tomlinson stated that Mark Hutton, UMaine Extension vegetable specialist requested this SLN for use on broadleaf weed species for broccoli. She explained to the Board

that the product was currently registered in Maine but the master label only permitted pre-emergent use and this request was to allow for post-emergent use.

- Emily Smith, of Smith Farms was present to provide information to the Board regarding why the SLN was essential to them. Smith stated that this product had been used as an herbicide for broccoli and cauliflower since 2009 and that it was really their only option. She added that through the years they have been able to use less product and that they were also using these fields in four to five-year rotations.
- Jemison expressed concern that this product met the state's definition as a PFAS compound and asked Patterson how this would fit in with the proposed affidavit process regarding PFAS in pesticides.
- Patterson stated that the product would get flagged in the process because it met the one fully fluorinated carbon definition.
- Randlett told the Board that this particular pesticide was already registered in the state of Maine. He noted that the affidavits would come into play upon the next registration, and they could certainly take PFAS into consideration, but that current rulemaking did not come into play here.
- Waterman stated that he seconded Jemison's concerns that the product met Maine's definition of a PFAS. He added that the persistence in the soil seemed to be a matter of concern, as well as the carcinogenicity of this material. Waterman stated that he was skeptical of Bryer's argument because chronic intake over years and decades was not something we could know about in 2022. He concluded that it seemed too great of a risk for too little reward to the general public.
- Bohlen commented that since the product was already approved for use in Maine the Board was talking about a particular use not about whether the product could be used at all. He added that he was skeptical about lumping thousands of chemicals into one class and that this initially began as a few dozen and did not feel that he had enough information at this time to say the entire class was dangerous.
- Ianni stated that she seconded Waterman's comments regarding this product and was concerned about expanding its registration. She added that it may be registered but did not believe the Board should expand its use. Ianni stated that she was worried about aquatic toxicity, human health, and cumulative impacts over time from multiple chemicals. She stated she was balancing the risks against the benefits and wondered if this was absolutely necessary. Ianni stated that she was not sure if there may be alternative means for getting similar results or maybe we just live with weeds in broccoli.
- Lajoie commented that weeds were a huge problem across the country in farming in vegetable production. He stated that as farmers they were always looking to find the safest products they can, and new herbicides were far and few between. Lajoie said that this 24c request was very critical to broccoli and potato farmers and did not believe we had the data to say this chemical was too risky. He added that he was in favor of approving the SLN for five years.
- Carlton stated that he echoed what Lajoie said that he would support the five-year SLN extension for this product and that if additional information to change their minds was discovered within the five years they could always go back and revoke the SLN. He commented that this was for broccoli being produced locally and consumed in Maine and reduced the amount of broccoli coming from across the country where they may be using the same herbicide.
- Bryer stated that she saw the cancer risk as a more significant issue than the presence of PFAS. She stated that this was a similar type of PFAS to Prozac and isoflurane,

which were very common to a lot of our medicines. Bryer stated that there was a lot we were going to learn about these chemistries and that this active ingredient had been used for 30 years and the USDA had never found a single molecule of the product on broccoli. She said that the concentration a person was exposed to was where the risk lies. Bryer stated that this active ingredient was used extensively in other crops and this was more of a niche application.

- Jemison thanked Bryer for her perspective and asked Smith if there was anything available pre-emergence so the product would only be used post-emergence. He added that he appreciated their rotation practice and that weed resistance was not his concern in this case. Jemison also asked if this product was used in other states.
- Smith stated that they do not use Sencor because the broccoli will not grow and this product also helps them stretch rotation. She added that there were really only two herbicides labeled for pre-emergence for broccoli and cauliflower, and depending on soil temperature, moisture and crop rotation they can have worse or better control. Smith said that if they did not have this chemical they would really have to go back to the drawing board and figure out how they could mitigate this or maybe everyone would just eat broccoli from Mexico.
- Tomlinson stated that this SLN was approved in four or five other states for broccoli.
- Smith responded that they had seen good control with it in certain areas and they were also really trying to stretch rotations when they do see a problem. She added that USDA was out there testing product and she does receive results back from them regarding random testing and PFAS had not been found in broccoli or cauliflower.
- Adams stated that he believed they were in for years of discussion regarding PFAS. He added that the SLN was not asking to increase the amount of use, but to allow use at a different time and that it was in regard to the tiny quantity of two ounces per acre. Adams stated that this product was in the net that had been cast over PFAS chemistry but was certainly not on EPA's shortlist.
- Jemison stated that he would approve this because he voted to approve it in 2009 and the only real difference was the current concerns which Bryer had helped to decrease. He added that he was very appreciative of the agricultural industry and that this was an important part of the potato rotation.
 - **Lajoie/Jemison: Moved and seconded to approve the 24(c) registration request for five years**
 - **In Favor: Adams, Bohlen, Jemison, Lajoie**
 - **Against: Ianni, Waterman**

5. Workshop Session to Review the Rulemaking Record on the Proposed Amendments to Chapters 20 and 41

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

On December 22, 2021 a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20 and 41. A public hearing was held on January 14, 2022 by remote meeting on the Microsoft Teams platform and the written comment period closed at 8:00 AM on January 24, 2022. Eight people spoke at the public hearing and eleven written comments were received by the close of the comment period. Three additional comments were received after the close of the

comment period. The Board will now review the rulemaking comments 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

- Patterson reviewed steps that had been completed in the rulemaking process and directed the Board to the memo included in their packet that highlighted five points that needed additional attention and/or consideration. She noted that some changes may require pursuing rulemaking again. Patterson told the Board the first memo point discussed the proposed definition of ‘invasive invertebrate pests’ that was created after meetings with BPC staff, the state horticulturist, the state entomologist and others with expertise in invasive species management. She explained the changes in the definition:
 - the addition of the EPA term eco-region,
 - the inclusion of the comment from Grohoski regarding ‘species both known and unknown now but showing up at a later date’, and
 - the suggestion that only the three species listed in the bill be included.
- Bohlen commented that there was little space between the definition of a pest and what the proposed definition of invasive was, but that it was very hard to find a definition to draw a line between emerging species and any pest that was going to cause a problem. He added that he was concerned about creating a finite list and would much rather reserve use of these actives for species that were just arriving. He suggested possibly creating a list and an emergency procedure for editing it.
- Adams stated that he had read through the public comments and ultimately the goal was to protect pollinators. He added that the graph showed that use was almost all lawn and ornamental, which helped him understand the urgency of protection. Adams stated that he also understood the comments concerned about leaving it up to the applicator to decide if a pest was invasive or not. He said that might be something that was above some of the training levels of applicators in the field. Adams asked about attaching a permit process for the use of these neonicotinoids for invasive species.
- Patterson stated that staff could implement a permit process but mentioned the existing variance review process for use within 25 feet of water that staff currently review was quite extensive. She explained what was involved in the current variance review process. Patterson suggested that the Board could bring forth a policy similar to the one that they created for the variance review process. She mentioned that there could be a lot of applications for permits if the Board decided to go that way.
- Adams agreed that there could be and asked about the listed actives becoming restricted use once the rulemaking process was completed.
- Patterson stated that restriction of use would be established in Chapter 41 by making the sale of these products allowable only by restricted use pesticide dealers, and use would be prohibited on turf with the one exception for invasive species on ornamental plants.
- Adams commented that the community seeking permits would certainly be diminished because of the restricted use status. He explained that he was trying to find a way where it would not be up to the applicator to decide and that a permitting process would be a way to accomplish this.
- Patterson agreed that the number of individuals with the ability to seek a permit would be far less since it would be limited to only those who were licensed. She explained why

variances were initially delegated to the staff, which was largely due to the timeliness of the reviews. The Board usually met on a six-week schedule and there was a sense that the reviews would be accomplished in a timelier manner if staff handled them.

- Bohlen commented that he liked the idea of a permit and his interest in an avenue to get past a finite list was to be able to respond to a rapidly occurring circumstance. He added that a permit would be a fairly narrow band because it would only be for use for new pests in early emergence moments when the Board would not have time to respond quickly enough. Bohlen stated that this would only be for a situation when there was a small known population of a species that was found for the first time in the state. He suggested possibly incorporating a definition of when one of these products may be used for pests other than what was defined on the list. Bohlen said a permit would need to be delegated to staff because the Board meeting schedule would not allow for a quick enough response. He stressed that this was a risk balancing situation and they needed to decide under what circumstances using this set of chemistries was worth the risk and to him, it was when they had a chance of making a difference.
- Jemison agreed with Bohlen's idea and said that spotted lanternfly was a good example of when a fast process might be needed.
- Adams commented that it sounded like staff should go back again and work on the definition.
- Patterson asked if the Board would like to have established in rule something akin to a permitting process delegated to staff that would allow for rapid response for only novel, new species.
- Adams said he thought that would solve the problem of not having to set limits in rule that needed to be repeatedly rewritten.
- Randlett stated that some of these changes to Chapter 41 could be considered substantial because they were very different than what was generally proposed, and they could not be just made and adopted. He said that a new rule would need to be devised and sent out for rulemaking so that people would have time to comment. Randlett said if the Board made the determination to go forward with adoption only to the respect of chlorpyrifos and reject the portion on neonicotinoids they would need to explain in the basis statement why they were accepting part of the rule and rejecting part of the rule. He added that if they were changing the definition of invasive species to 'emerging invertebrate species' then there needed to be a corresponding change in section C.
- Adams noted that pressure was on to make this happen, but products were already on the shelf and in the warehouse and that it realistically was not a 2022 change at this point.
- Randlett commented that if this was not adopted with this rulemaking it would be pushed out even further, likely towards the end of 2022.
- Bohlen asked if the list needed to be located in rule or policy and felt that it would be likely to change pretty regularly. He stated that he liked the idea of a specified list and exemption of some sort.
- Patterson stated that a list in policy would not be enforceable and asked Randlett about referencing the list in rule.
- Randlett stated that the Board could reference a publicly available and easily accessible list in rule and that it would be enforceable. He added that he believed this had been done before with biological pesticides within 25 feet of water. Randlett proposed example language stating that applicators could only use these products for the uses specified except for the pests on a board-approved list.
- Adams and Jemison both noted their approval for that process.

- Randlett stated that it made sense if the rule established the list of pests and a permit process.
- Patterson told the Board that the next item on the memo had to do with the list of neonicotinoids prohibited for use. The Board had proposed publishing the list July 1, 2022, and then on March 15 for each subsequent year, and having the ban go into effect December 31, 2022. Patterson stated that the proposal in comments was that the list be published, and then the prohibition go into effect April 1, 2022, or sooner. Patterson asked the Board when they wanted the prohibition to go into effect.
- Adams stated that the Board had not received any comments from dealers or manufacturers voicing their concern about the prohibition. He suggested publishing the list at the next meeting and having the prohibition go into effect in December.
- Jemison stated that expediency was good and he really wanted this to happen quickly. He added that he was sympathetic about dealers but also wanted to be as equitable and protective as possible.
- Patterson responded that the issue was that April 1, 2022 would pass before the Board would be able to adopt the rules.
- Randlett stated that staff could come to the next meeting with what had been proposed. He said that he did not think the Board could split the rule up and adopt just the chlorpyrifos part and not the rest of the rule at that time. The Board would need to decide on both parts at the same time.
- Patterson asked if the Board needed to acknowledge a date or if the prohibition could just become effective upon adoption.
- Randlett said that a list could be published now and then the Board could adopt the rule and postpone its effective date but did not think they could develop a rule and say it was effective upon adoption because it would be anyway. He added that he needed to see if changing the dates generated a substantial change because if someone expected July 1st, 2022 as the publication date and found out it was going to be April, that would likely be a substantial change.
- Tomlinson voiced concern that publishing a list without adoption of the rule would create confusion and there was already confusion with the regulated community and registrants about whether these products could be sold. She suggested adding language in the header of the list stating that the products would be prohibited upon adoption of the rule.
- Bohlen stated that it seemed like there were two dates they were dealing with, one being the date of the release of the list and the other being the date of effectiveness of the rule. He asked if they could say the list would be released 30 days after the rule was adopted. He added that he did not want to push the date of implementation back any further.
- Patterson told the Board about public requests to publish a list of all affidavits received attesting to whether or not a product contained PFAS. She noted that this information is not protected so it could be published without being included in rule.
- There was no objection from the Board regarding publishing the affidavits.
- Patterson told the Board that some commenters also proposed collecting affidavits for products in all fluorinated containers, rather than just HDPE containers. The original LD 264 language only pointed to HDPE containers specifically. She said there was currently language being drafted by the ACF committee that would potentially put into statute a prohibition on the distribution of pesticides in any fluorinated container. She added that currently two-thirds of agricultural pesticides were distributed in HDPE containers. Patterson stated that other commenters also suggested that the Board should recommend to the legislature a prohibition of all pesticides containing PFAS. This was not directly

addressed in LD 264. She added that the ACF committee draft bill language already contained a distribution prohibition on all pesticides with intentionally added PFAS. Patterson stated that the committee was considering a definition of two fully fluorinated carbons, which was more in line with the EPA definition. This would be a difference between a few active ingredients or up to 160 active ingredients that may be impacted.

- Bohlen asked about the use of the phrase ‘confidential statement of formula’ in the proposed rule and asked if there needed to be a definition in rule explaining what that included.
- Patterson responded that it was referenced in statute but that maybe they should refer back to the statutory reference.
- Randlett said he would take a look at the statute and that something like that would probably not be a significant change.
- Ianni stated that she had read through Chapters 20 and 41 and saw that the Board was applying restrictions to residential property use but could not find a good definition for residential. She asked why commercial properties were not also being restricted since so many apply large amounts of product. She also made note of all the multi-use properties that were retail on one floor and residential on another floor. Ianni asked if there was a definition in rule for the term ‘residential’.
- Patterson replied that a definition of residential was in Chapter 10. She said she was not sure why the law was not expanded to more property types but that it was included in the bill.
- Bohlen stated that he would like to address the fluorination of all plastics in rule and asked staff to come back with language to review.

6. Consideration of a Consent Agreement with Green Shield Pest Solutions of Saco, 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 an unauthorized pesticide application and failure to positively identify the proper treatment site.

Presentation By: Ray Connors, Manager of Compliance

Action Needed: Amend and/or approve

- Connors stated that the owner of Green Shield Pest Solutions self-reported that an applicator had treated the wrong property. He went to the correct site on the job order, but there was an office error with the address. The owner wanted it known that the applicator did take steps to identify the site upon arrival and spoke to the adult daughter and husband of the house. The husband gave the go-ahead for the application and the wife of the residence signed the work order. Connors stated that the reason for the consent agreement was that regulations require that before an application is made to a property the owner has to give prior permission and that was not done. He added that the applicator also did not follow proper identification protocol. Connors told the Board that the business signed the consent agreement and are taking steps to adopt a system so this does not reoccur.

- **Jemison/Lajoie: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

7. 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: Nomination and election of officers

- **Lajoie/Jemison: Moved and seconded to nominate Adams as Chair and Bohlen as Vice-Chair**
- **In Favor: Unanimous**

8. Other Old and New Business

a. Summary of 2022 Ag Trades Show Activities—Pietroski

- Pietroski stated that there was a fabulous turnout at the 2022 Agricultural Trades Show and the BPC approved ten programs for credits and awarded a total of 1367 credits.

b. Executive Order 41 FY 20/21 Proposed Water Quality Project—Bryer

- Patterson stated that this was related to the aerial application of herbicides in forestry site prep and conifer release, and that staff was directed to propose a water quality project to be conducted in 2022. She told the Board that no funding was provided to support this and staff have already spent \$31,000 a related literature review and preliminary water quality project. Patterson said that given the lack of monetary support she wanted the Board to be aware that this proposed work was estimated to cost between \$80-90,000. She asked if the Board wanted to support this project.
- Adams stated that he thought the work was extremely important with the ongoing discussions around aerial application and that they needed to determine if the application work was being done safely and to police it at some level. He added that he was struggling a bit with how to get it funded.
- Carlton inquired about possible assistance from the Cooperative Forestry Research Unit.
- Patterson stated that staff had reached out but the CFRU expressed that they did not have time or resources to commit to the effort.
- Bryer explained that staff currently had cooperation with several property owners and were doing the mapping and planning needed to make sure everything was in order. She

told the Board that they had spread sites out from north to west using multiple companies' lands and had tentatively identified 20 different sites plus ten control sites.

c. Briefing on LD 519 (MAC and Herbicide Use on School Grounds) Report for the Legislature's ACF Committee—Scheduled for February 15, 2022

- Patterson stated that staff was asked to complete the proposed risk assessment and were considering contracting for services with Lebel Hicks for assistance on that work.

d. Briefing on LD 264 (PFAS) Report for the Legislature's ACF Committee—Scheduled for February 17, 2022

- Patterson told the Board that bill language was being drafted but was not yet published. She said that the stated purpose for LR 2641 was to regulate the registration of adjuvants in the state and would give the Board the authority to regulate spray adjuvants, prohibits the distribution of any pesticide containing an intentionally added PFAS or contaminated with PFAS, and any pesticide stored in an HDPE container. Patterson told the Board that the given that LR was draft, the language would likely change to some degree.

e. Briefing on LD 524 (Collection of Pesticide Use and Sales Information) Report for the Legislature's ACF Committee—Scheduled for February 24, 2022

9. Schedule of Future Meetings

April 1, 2022, May 6, 2022, and June 17, 2022 are the next tentative Board meeting dates.

10. Adjourn

- **Jemison/Bohlen: Moved and seconded to adjourn at 12:11 PM**
- **In Favor: Unanimous**