



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

**November 6, 2020
9:00 AM**

Video conference hosted in MS Teams

MINUTES

Adams, Bohlen, Flewelling, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves
- Brown, Bryer, Connors, Couture, Nelson, Patterson, Peacock, Pietroski, Saucier, Tomlinson

2. Minutes of the September 18, 2020 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Morrill: Moved and seconded to accept minutes as amended**
- **In Favor: Unanimous**

3. Presentation from the Office of Marijuana Policy (OMP) on the Regulation of Pesticide Use in Maine Cannabis Production

At the September 18 meeting, the Board received a letter and comment from John Jemison regarding current regulation of pesticide use on Maine-grown cannabis. The Board expressed interest in understanding how pesticide use on cannabis and potential pesticide residues are currently regulated. The staff was asked to invite a representative of the OMP to a future Board meeting. The OMP will now provide an overview of existing regulations pertaining to pesticide use and pesticide residues on adult-use and medical marijuana.

Presentation By: Megan Patterson, Director

Action Needed: Determine next steps

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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- Patterson explained that during the last Board meeting there was discussion of cannabis production and regulation of pesticide use and residues after harvest. She added that the Board has authority regarding pesticide use for the production of cannabis, but that the USDA has authority over post-harvest residues.
- David Heidrich, Director of Engagement and Community Outreach, from the Office of Marijuana Policy (OMP) gave the Board an overview of OMP's role and a comparison and contrast between the adult use and medical marijuana programs which they regulate. Heidrich also discussed the rules for certification of testing facilities and marijuana production.
- Heidrich stated that OMP currently waves mandatory testing requirements for residues and heavy metals because the Maine legislature gave them power to do this until adequate licensed testing facilities were available. He told the Board that all cultivation facilities must provide a preliminary operating plan including all pesticides and fertilizers that will be used at the facility. Heidrich showed the Board the rule that lists all prohibitive active ingredients that products will be tested for when the mandatory testing begins.
- Patterson explained to the Board that BPC staff had flow charts available to aid in determining which products are not prohibited by label language. She added that hemp as a crop has only recently become federally legal and it will take some time to develop data to have the crop added to product labels.
- Jemison raised concerns from cannabis growers who had product test positive that some compost may be contaminated with certain systemic active ingredients and some pesticide products, such as neem oil, have been tested and found to be adulterated with other active ingredients.
- Morrill asked Heidrich when OMP anticipated implementing mandatory testing.
- Heidrich responded that the goal was by end of 2021, but a priority was to make sure there was enough lab capacity first so it would not bottleneck bringing finished product to market once testing becomes mandatory. Heidrich explained that testing would be required before product could be sent to a manufacturer and then tested each time the product was altered or moved from one licensee to another.
- Bohlen commented that would be a lot of testing and asked if there was a mechanism at OMP to track samples which test positive for prohibited pesticide residues.
- Heidrich replied that OMP has a track and trace system with a certified identification tag which follows every plant through its life cycle until harvest. The identification tag is also included when a batch is sent to be tested., Failed product could still move to a manufacturer, but it would be flagged and if no method of remediation is available the product must be destroyed.
- Bohlen commented that it would be really interesting if the Board could view an annual summary of OMP's testing to see if there were significant systemic issues occurring. He added that he would love to have Board staff work with OMP staff on a way to do that.
- Heidrich replied that they would absolutely be willing to share that information.
- Patterson suggested creating a Memorandum of Understanding for this.

- Jemison noted that some products were state approved in Colorado and asked Patterson to explain why this is not the case in Maine.
- Patterson explained that states had very different approaches regarding what products could be used and that we are very concerned about protecting our primacy granted to us by the EPA and protecting our relationship with the EPA. She stated that in Colorado an agency other than the state lead agency had chosen to establish tolerances for pesticide residue on marijuana grown in their state. Tolerances are established at the federal level and not at the state level and that is why we have not done that in Maine. Patterson explained that was why we had taken the approach to allow products with very generic labels to be listed as not prohibited for use on cannabis.
- Jemison asked if there was any energy on the Board to support testing for pesticide residues in fertilizer, not just for cannabis, but for any organic grower. He added that once we know then we could recommend a composting facility not take compost from a golf course for example.
- The Board members discussed and ultimately decided to wait until they had a larger data set to look at before deciding if that was something they would support looking into.
- Heidrich mentioned that OMP was considering forming an advisory board to have conversations about issues that are presenting themselves in the markets they regulate.
- Morrill thanked Heidrich for his time and for informing the Board.

4. Continuation of the BPC Budget Review with a Focus on the Cost of MEPERLS Support, Maintenance, Hosting, and Licensing

During the September 18, 2020 Board review of the its projected 2023 budget, the increasing cost of MEPERLS was discussed. Following a robust discussion of MEPERLS and the projected costs, staff was asked to invite representatives from Pegasystems and Stratosphere to a future Board meeting. The State of Maine Office of Information Technology serves an essential role in negotiating contracts with both Pegasystems and Stratosphere and can provide a comprehensive overview of the technology and the relative costs. The Maine Office of Information Technology will now provide an overview of the proposed ongoing costs of MEPERLS.

Presentation By: Megan Patterson, Director

Action Needed: Determine next steps

- Patterson stated that this conversation was an extension of a conversation from the last meeting, regarding projection of the budget through 2023 and a substantial increase in tech costs.
- William Mason was scheduled to present but had to drop off for another meeting. Mason is Applications Director for Maine’s Office of Information Technology and is responsible for negotiating ongoing contracts with Stratosphere and Pega and would likely be able to speak about the high cost and that Maine IT had previously subsidized the cost of MePERLS but will no longer be subsidizing it beginning in 2023.

- **Jemison/Morrill: Moved and seconded to table this agenda item until the next meeting**
- **In Favor: Unanimous**

5. Consideration of the EPA Special Local Need [FIFRA Section 24(c)] Request to Extend the Use of Sandea Herbicide (Canyon Group and Gowan Company) to Manage Perennial Broadleaf Weeds in Lowbush Blueberries in the Non-Bearing Year

In 2016, the Board approved two Section 24(c) registrations for Sandea Herbicide (EPA Reg. Nos. 81880-18 and 81880-18-10163). The existing 24(c) registrations will expire December 31, 2020. The University of Maine Cooperative Extension submitted this renewal request for a 24(c) registration. This product is one of two Herbicide Resistance Action Committee (HRAC) Group 2 herbicides reviewed and supported by Extension for use in rotation on lowbush blueberries.

Presentation By: Mary Tomlinson, Pesticide Registrar/Water Quality Specialist

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

- Tomlinson stated that in 2016 the Board approved this Section 24(c) request for control of perennial broadleaf weeds in lowbush blueberries in non-bearing years. She explained that this use is listed on the master label and that the company will be producing new container labels with the use included on them, but they are requesting up to two years to relabel as they have a lot of old product. Tomlinson noted that Lily Calderwood, UMaine Extension Wild Blueberry Specialist and Assistant Professor of Horticulture, was requesting this extension.
- Calderwood told the Board she had reached out to growers and companies and found one company that is using this product and finds it to be an important tool to allow them to rotate through products with different modes of action.
- Jemison noted that he had used this product in other cropping systems and said it is good to control tricky weeds like nutsedge and the use rate is very low. He added that it is slightly mobile but the amount being used is very low and to have it would give the grower an extra tool.

- **Adams/Jemison: Moved and seconded to approve the Section 24(c) registration request**
- **In Favor: Unanimous**

6. Consideration of a Board Policy to Assess the Standard Registration Fee for Review of Section 24(c) Registrations

Maine assesses an annual registration fee for all pesticides registered in Maine with a current exception for Section 24(c) registrations. Due to the additional EPA, Board, and staff reviews required, these registrations present a considerable additional demand on Board resources. For this reason and for administrative purposes, it may be prudent for the Board to create consistency across all product registrations. The Board will review the staff's memorandum and discuss the policy proposal.

Presentation By: Mary Tomlinson, Pesticide Registrar and Water Quality Specialist

Action Needed: Discuss and approve/disapprove the proposed policy

- Tomlinson told the Board that Maine BPC has never required a registration fee for Section 24(c) registrations and companies have inquired about this because fees are assessed in other states. She added that EPA also requires an annual maintenance fee for these types of registrations. Tomlinson stated that these take a lot more time than regular registrations and it would certainly be reasonable that a fee be assessed for these on an annual basis. She said that there were currently 12-14 Section 24(c) registrations and proposed assessing the regular registration fee of \$160 for these in the future.
- Morrill commented he was surprised we did not already charge a fee.
- There was further discussion amongst the Board regarding whether this fee was double dipping and whether it was needed.
 - **Jemison/Adams: Moved and seconded to assess a fee for 24(c) registrations**
 - **In Favor: Adams, Bohlen, Flewelling, Jemison, Waterman**
 - **Against: Granger, Morrill**

7. Consideration of a Board Policy on Approaches for Confirming Attendance of Live, On-line Recertification Training Courses

Following considerable Board discussion, this topic was tabled at the July 24, 2020 meeting of the Board. Staff have since conducted and proctored numerous live, on-line recertification courses. The Board will now review and discuss the staff's proposed guidelines for verification of attendance at live, on-line certification trainings.

Presentation By: John Pietroski, Manager of Pesticide Programs

Action Needed: Discuss and approve/disapprove the proposed policy

- Pietroski stated that since the pandemic there has been a large increase in demand for on-line programs. He shared a draft policy that was included in the Board packet detailing rules for monitoring participants during recertification programs.
- The Board discussed how those hosting virtual recertification meetings have been using various ways to ensure attendee participation, including requiring preregistration, scanning QR codes, texting, and polling during meeting, as well as exams after meetings.
- Granger commented that many people can't connect to the internet in some areas and felt this was overkill and unnecessary. He stated staff should focus on providing in person meetings outside during the summer where folks can socially distance. Granger stated he felt what was proposed was beyond the capacity and ability of those seeking recertification, and that it had the potential to alienate people.
 - **Morrill/Granger: Moved and seconded to continue to explore these as guidelines, not as a means to disqualify, but as a means to increase participation and make meetings better**

- **In Favor: Unanimous**

8. Other Old and New Business

a. 2020 Obsolete Pesticide Program Review

- Morrill stated that there was a significant uptick in participants which was great to see.

b. Ag Trades Show Update

- Patterson told the Board that the Annual Agricultural Trade Show will be conducted virtually, and the tentatively scheduled dates are January 19-21, 2021. She added that the plan was to stick to the regular schedule and discussed some planned recertification meeting topics to cover.
- The Board will hold their meeting and public forum on January 20, 2021.

c. Fall Recertification Programming Review

- Pietroski stated that staff recently hosted an annual update and four recertification programs. A total of 474 credits were awarded for those programs. He also thanked Kerry Bernard, from UMaine Cooperative Extension for all of her assistance.

10. Schedule of Future Meetings

January 20, 2020 is the next proposed meeting date. The Board will decide whether to change and/or add dates.

- The Board proposed to hold meetings on the following dates: January 20, 2021; March 5, 2021; April 16, 2021; and June 4, 2021.

12. Adjourn

- **Bohlen/Jemison: Moved and seconded to adjourn at 11:09am**
- **In Favor: Unanimous**