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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY  
BOARD OF PESTICIDES CONTROL  
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AMANDA E. BEAL  
COMMISSIONER

**BOARD OF PESTICIDES CONTROL**

**June 9, 2023**

**9:00 AM Board Meeting**

**MINUTES**

Adams, Carlton, Ianni, Jemison, Lajoie, Neavyn

1. Introductions of Board and Staff
2. Minutes of the April 7, 2023 Board Meeting

Presentation By: John Pietroski, Acting Director  
Action Needed: Amend and/or approve

- **Carlton/Lajoie: Moved and seconded to approve minutes**
- **In Favor: Unanimous**

3. Review of Board Responsibilities and Procedures

Mark Randlett, Assistant Attorney General, will review Board procedures and Board member responsibilities.

Presentation By: Mark Randlett, Assistant Attorney General  
Action Needed: Board procedural review

- Randlett gave an overview of Board responsibilities and stated that the Board members' ultimate interest was to the public as a whole. He noted that all Board matters and decisions of the Board must be discussed in public. Randlett explained that all correspondence, including emails and text messages were subject to the Freedom of Access Act. Randlett stated that as their legal representation conversations with him were privileged and would not be disclosed.

4. 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: John Pietroski, Acting Director  
Action Needed: Nomination and election of officers

- **Lajoie/Carlton: Moved and seconded to nominate and elect David Adams as Chair**
- **In Favor: Unanimous**
- **Carlton/Lajoie: Moved and seconded to nominate and elect John Jemison as Vice Chair**
- **In Favor: Unanimous**

5. Review of the Board Budget

At the April 7, 2023 meeting, the Board held its annual review of the Pesticide Control Fund. The goal of the annual budget update is to identify potential resources that could be allocated to Board priorities. The Board asked for additional discussion during this meeting to help clarify potential budget forecasting.

Presentation By: Megan Patterson, Division Director  
Action Needed: Provide guidance to the staff on Board budget priorities

- Patterson stated that the Board looked to be solvent for the next three years because they were able to secure a fee increase for pesticide registrations. She went over the revenue from registrations, exams and licenses. Patterson noted that the Board may want to consider the current exam and licensing fees in the near future since they have remained flat for several years. She explained DICAP expenses, which are about 15% for every dollar, and the statutory transfers the Board was required to make annually.
- Carlton asked if there were any changes regarding registration.
- Patterson stated that there were fewer this year. She said that due to the external regulatory burden some companies chose not to register and other companies decided to only register specific products.
- There was further discussion about registration. Adams asked about the number of adjuvants registered.
- Patterson responded that there were currently 162. She added that the number of products other states had estimated was 400-1,100 so staff estimated approximately 400. A lot of the adjuvants are pool products and Maine does not have many pools. The registrar has reached out to adjuvant companies to let them know they now need to register to distribute their products in the state. Patterson stated that staff would continue to provide information to companies and during marketplace inspections.
- Adams stated that convincing the end user community to report these products would be helpful.
- Patterson explained staff expenditures which included five members from the plant health program. She added that the ACF committee was discussing moving those five positions to the general fund. There may also be three additional positions for BPC that

may come under the general fund. Patterson noted that this was not a certainty and was still up in the air.

- Patterson discussed the two contract employees currently on staff, staff travel expenses for both in and out of state, rental fees from Central Fleet Management, and the obsolete collection program. She noted that the BPC was still paying credit card fees for purchases through MePERLS and there was a story to be put in place to recoup some of those monies. Patterson stated that MePERLS expenses had significantly increased. The reason for this was because Maine IT was previously financing about 50% of the cost and they are no longer doing this.
- Adams asked about the potential cost of defending CBI in civil court if the new regulation procedures were challenged. He asked if there should be a line item in there to cover that.
- Randlett stated he was not sure if it came out of Board funds or the Department but there was a flat fee charged for the Assistant Attorney General. He added that there were no additional fees in the event of a legal challenge; it would be covered by what was already paid.
- Jemison asked about the annual depletion of the cash balance.
- Patterson responded that if the five plant health positions were transferred to the general fund the BPC would likely be in a good position for multiple years. She added that there would hopefully be some clarity about this by the next meeting. Patterson stated that another point in the future timeline to face would be the 2030 ban on intentionally added PFAS. Staff have an idea of how many active ingredients would be considered PFAS under Maine's definition but still not a clear number of how many products may have inert ingredients that would qualify as PFAS.

#### 6. LD 1770 Sales & Use Reporting

At the May 10, 2023 work session the Agriculture, Conservation and Forestry Committee voted this bill ought to pass as amended as a resolve directing the Board to act to enter into rulemaking to require applicators and dealers to submit their annual use reports electronically via MePERLS.

Presentation By: Karla Boyd, Policy and Regulations Specialist  
Action Needed: Discussion

- Patterson stated that she thought there might be language to share but had only seen draft language. She said she believed the bill would be turned into a resolve to require electronic submission of all currently required end of year sales and use reports. There was discussion about the possible use of optical character recognition if reports were to be collected electronically. This option would require all applicators to use the same template and would require additional funding to build.

#### 7. Discussion and Update on Container Fluorination

Understanding changes in pesticide container fluorination activities is relevant for the Board's ongoing discussions on fluorinated containers. Staff have reached out to EPA for updates on container fluorination actions at the federal level. Staff have also summarized existing federal and Maine rules in an attempt to clarify what is allowed in pesticide products as of spring 2023.

Presentation By: Pam Bryer, PhD, Pesticides Toxicologist  
Action Needed: Discussion and consideration of container regulations

- Bryer stated this update was mostly about contamination of pesticides by PFAS. She explained the study that had been provided last fall to the Board, Lasee et al. 2022, showed high levels of PFOS in insecticides. The EPA contacted the study author and obtained the same samples used in that study and reanalyzed them using a different method and found no PFAS contamination in the insecticides that had been tested by those authors. On the state level, the Department was having conversations about proper methods for PFAS testing. There have been unreliable results originating from the testing of animals on farms in Maine and the revelation that the testing method being used in the lab could confuse bile acids with PFOS. PFOS is the same PFAS seen in high concentrations in the Lasee et al. paper that EPA re-evaluated. Bryer stated that many pesticides, often insecticides, tend to be in oily matrixes because they are not water soluble, so it is more difficult to measure insecticides for PFAS. This study re-evaluation by EPA does not mean that there is no PFAS contamination in pesticides, but this unusual source does not seem to be a concern at this time. The container fluorination contamination that has been seen was related to a different type of PFAS.
- Bryer mentioned that the company that makes the insecticide Anvil 10-10, which sort of started the PFAS discussion, had switched from fluorinated plastic containers to stainless steel containers. EPA's Toxic Substances Control Act, TSCA, program received nine Significant New Use Notifications, SNUN, related to containers (not specifically pesticide containers). EPA requires manufacturers whose fluorinated containers leach PFAS to notify the agency via the SNUN process. EPA sued Inhance Technologies for not notifying the agency about PFAS that had migrated from containers. Inhance Technologies is the company that produced the original plastic containers used for Anvil 10+10, a mosquito adulticide commonly used in aerial spray programs.
- EPA is working on a system that should allow public access to 6(a)(2) reports, also called "Incident Reports." Manufacturers are required to send EPA incident reports when a company becomes aware of a problem with their products, including contamination issues. Companies are required under FIFRA to report to EPA within 30 days following the discovery of PFAS contamination in their pesticide products or any other deviation from what ingredients were registered with EPA. It is unclear what this public-facing 6(a)(2) reporting would look like because portions of 6(a)(2) reports are protected health information while others are confidential business information. The system is expected to be live within the federal fiscal year.
- Bryer stated that the state of Maine defines PFAS in a very broad sense and there would be approximately 1,300 products that would be classified as PFAS by that definition. The EPA definition recognizes four pesticide active ingredients as PFAS as of June 2023. There is not a history of dealing with a class of chemicals this large and EPA is looking at separating them out into about 70 groups to streamline the next regulatory steps. There has been difficulty classifying them in a way that makes sense, but once the EPA has figured out how many groups there are, they can approach manufacturers to get information on those chemicals.
- There was discussion about whether products being in a fluorinated container would equate with PFAS leaching
- Ianni asked if there was consensus across other state agencies that given these two sampling studies, EPA vs the other one, were other states choosing to agree with EPA or was the jury still out that there may be dozens of other studies coming.

- Bryer stated that the EPA was viewed as the standard setter. The method is really important and that is not saying that the methods the other study used were wrong. They had been using a method for radishes and used that same method for PFAS testing. Bryer said this was all very new.
- Ianni inquired about what are other states doing.
- Bryer stated that Maine did not have a state lab but the Massachusetts laboratory had worked with the Fort Mead laboratory and validated EPA's findings.
- Adams noted the difference that he heard had been found in fluorinated containers, depending on whether they were fluorinated in mold or fluorinated in gas chambers. He stated that some manufacturers have stated their intention to move away from fluorinated containers while others are not sure about what alternative they can use that would pass standards. Given the State of Maine definition versus the EPA definition, Adams asked where Bryer recommended the Board stay focused- on container fluorination or the formulation of products.
- Bryer responded that the type of contamination she saw as a larger problem was container fluorination. Fluorination produces some of the PFAS that had been off the market for 20 years and with known health effects. She stated she saw that type of contamination more dangerous from a human health perspective. Bryer noted that per FDA regulation, it was still legal to use many PFAS as part of a food contact package.
- There was further discussion about the composition of plastics and what may be deemed unavoidable use of products containing PFAS according to Maine DEP. In draft, it stated that anything deemed unavoidable use would need to be deemed so via rulemaking. There was also discussion on whether reporting of packaging would be required.

8. Staff Memo on Possible Addition of Balsam Woolly Adelgid to the Board's Policy on *Approved Invasive Invertebrate Pests On Ornamental Vegetation In Outdoor Residential Landscapes For Neonicotinoids Exemption*

Staff have received a request to add Balsam Woolly Adelgid to the Board's existing policy on the use of neonicotinoids for the management of invasive invertebrate pests in outdoor residential landscapes.

Presentation By: John Pietroski, Acting Director

Action Needed: Discuss the memo; approve/disapprove amendment of the interim policy

- Pietroski stated that this memo stemmed from a request to use a neonicotinoid to treat balsam woolly adelgid (BWA) which is an invasive introduced into the United States around 1900. He added that there were other alternatives that could also be used.
- Jemison stated that BWA was already spread widely around the southern part of the state and it was his understanding that exemptions were for trying to stop an insect before it got to this stage.
- Carlton agreed with Jemison.
- Lajoie asked about alternative treatments.
- Pietroski answered that insecticidal soaps, carbaryl and bifenthrin were some alternatives.
- The other Board members agreed that this was not an emergency use effort that would stop the spread of this pest.
- Patterson mentioned that there was also the option to provide a variance.
- Billy Guess, the applicator who submitted the request, stated that alternative control methods were foliar sprays which were more detrimental to pollinators than a bark application. He

added that this was also a pest in Christmas tree plantations. Guess stated that the fact that neonicotinoids could still be used on commercial turf but not in residential settings did not make sense.

9. Consideration of a Consent Agreement with Davey Tree Expert Company Gorham, 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 application and failure to positively identify the application site.

Presentation By: Alex Peacock, Manager of Compliance  
Action Needed Review and/or Approve

- Peacock stated that the company had a positive property identification process in place but the applicator did not follow it.
- There was discussion about the possible revocation of licenses for a certain period of time in the future if the same issue continues to reoccur. Peacock stated that that was an option but was not a precedent set in the past.
- Randlett stated that people who do not properly identify the correct location were subject to revocation. He added that it may be subject to appeal if it was a revocation that was done arbitrarily or unreasonably so the seriousness of a violation, the number of violations and recklessness of the violation would be looked at among other things. Randlett explained that if the Board would like this to be more defensible then it should be in rule that persons who fail to make appropriate identification of properties may be subject to license revocation or suspension.
  - **Carlton/Jemison: Moved and seconded to approve consent agreement**
  - **In Favor: Adams, Carlton, Jemison, Lajoie, Neavyn**
  - **Against: Ianni**

10. Consideration of Consent Agreement with Osmose Utilities Services, Inc

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 a vehicle accident resulting in the jettisoning of canisters of restricted use pesticides that were left unattended subsequently leading to an acute human exposure at a later date.

Presentation By: Alex Peacock, Manager of Compliance  
Action Needed Review and/or Approve

- Peacock explained that an employee was traveling from out of state and had a car accident which resulted in 541 canisters of restricted use pesticides being dislodged from the vehicle onto the side of the highway. Those remained on the side of the road for several months until an employee from Maine DOT was doing mechanical vegetation control and several of the canisters were punctured by the mowing machine. The employee experienced an acute response to the pesticide and was treated by emergency medical personnel on site. DOT contacted Osmose Utilities Services to recover the rest of the canisters. They came and collected what they found. When DOT went out the next day more canisters were found. Osmose Utilities Services purchased a metal detector to collect the remainder of the canisters.
- There was a discussion about the range of penalties for this incident and about the active ingredient.
  - **Lajoie/Carlton: Moved and seconded to approve**
  - **In Favor: Unanimous**

#### 11. Consideration of Consent Agreement with Cannabis Culture

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 unlicensed applications and improper disposal of pesticides.

Presentation By: Alex Peacock, Manager of Compliance  
 Action Needed: Review and/or Approve

- Peacock explained that this consent agreement essentially goes together with the consent agreement detailed in agenda item twelve. The individuals were spraying myclobutanil on the crop, vacuuming the excess off the floor, and dumping it out behind the building. Collected samples were positive for myclobutanil from the crop and from the soil outside of the building. There were other violations also found.
- Jemison noted that myclobutanil is dangerous if combusted and inhaled. He added that it would be great if BPC inspectors could go to multiple sites both medical and adult use and inspect them but understood we were limited by the number of inspectors. Jemison stated that this product was supposed to be medicine for people. He noted that at one point the Department was going to get a joint employee with the Office of Cannabis Policy to help with registration questions and educational training but that did not happen. Jemison asked for an update on where the Department was with that.
- Patterson stated that BPC staff have been offering trainings to the twenty inspectors that OCP currently has. There were about 4,000 facilities that would be susceptible to inspection, but for the BPC to take that on would be nearly impossible unless staff stopped other routine inspections since it would be nearly doubling the existing entities BPC was responsible for pursuing routine enforcement inspections for. There were initial talks with OCP about them helping to support additional staff but for multiple reasons that did not come to fruition.
- Pietroski mentioned that all OCP inspectors just recently received training to get their agricultural basic license and there was a following training in the works to do pesticide inspection training with OCP inspectors.

- There was discussion about the allowance of the payment plan for this consent agreement. Randlett responded payment plans were utilized often in the court system.

12. Consideration of Consent Agreement with Cunningham Cultivation

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 unlicensed applications and improper disposal of pesticides.

Presentation By: Alex Peacock, Manager of Compliance  
Action Needed: Review and/or Approve

- **Jemison/Carlton: Moved and seconded to approve the consent agreement for both Cannabis Culture and the consent agreement for Cunningham Cultivation**
- **In Favor: Unanimous**

13. Other Old and New Business

- Policy on Clarification of Distribution
- Letter from Zavier Asbridge of IPM Of New Hampshire on the use of neonicotinoids in residential landscapes for invasive species management
- Email and article from Heather Spaulding, Maine Organic Farmer’s and Growers’ Association
- LD 1960: “An Act to Support Farming in Maine by Extending the Deadline for Manufacturers of Products Containing Perfluoroalkyl and Polyfluoroalkyl Substances to Report on Those Products”
- EPA Update: “EPA Completes Scientific Testing of Pesticide Products for PFAS”
- Center for Biological Diversity: PFAS contamination of pesticide products
- Other?

14. Schedule of Future Meetings

- July 21, September 1 and October 13 are the next scheduled Board meeting dates.
- Mark Randlett announced that he would be retiring August 31, 2023.

14. Adjourn

- **Carlton/Jemison: Moved and seconded to adjourn at 11:45 AM**



- **In Favor: Unanimous**