



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

May 12, 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: Couture, Connors, Couture, Hicks, Lay, Patterson, Tomlinson

2. Minutes of the May 12, 2017 Board Meeting

Presentation By: Cam Lay
Director

Action Needed: Amend and/or Approve

- **Morrill/: Moved and tabled approval of minutes**
- **In Favor: Unanimous**

3. Consideration of Three Plant Incorporated Protectants (PIP) for Late Blight Control in Potatoes

J.R. Simplot Company submitted registration requests for three new seed potato products that contain VNT1 protein and feature late blight protection. The Board toxicologist and the Chair of the PIP Technical Committee have reviewed the VNT1 protein technology and are prepared to present and discuss their findings.

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Presentation By: Lebelle Hicks
Staff Toxicologist

John Jemison
Board Member and PIP Technical Committee Chair

Action Needed: Approve/Disapprove PIP Registration Request or Pursue a Medical Advisory Committee and/or a PIP Technical Committee Review of the Late Blight Resistant PIP Products

- Sharon Fitzpatrick, J.R. Simplot Company, is present to field Board questions. Fitzpatrick stated the potatoes they are requesting registration for are modified with a wild potato gene that adds resistance to late blight and cuts down on the number of fungicide applications required in a late blight affected field.
- There was discussion about whether the potatoes would be used to extend breeding stock. Fitzpatrick stated that right now the Atlantic and the Snowden are appropriate for the chipping market, and there are some manufacturers accepting GMO products for the fresh market as well. Fitzpatrick added that they are beginning to use these seed potatoes for breeding, but every time they are bred, they change a little and Simplot has had to go through regulatory approval three separate times.
- Jemison inquired to what extent these potatoes would lessen the reliance on fungicides. Fitzpatrick stated they recommend one early season application, one to two applications mid season and one late season application. Only active growing tissue responds to the presence of the fungus. Since it is a single gene protection, they like to have the dual action of the PIP's and the fungicide. Fitzpatrick added that under very high pressure they recommend supplemental applications. Jemison asked Flewelling how often he currently applies fungicides. Flewelling responded that he usually sprays on a five to seven day cycle. These potatoes would bring them out to a two week schedule.
- Jemison asked how much more expensive these seed potatoes would be. Fitzpatrick responded in a non-late blight area the pricing would be different because they would not be leveraging the weight of that need.
- Jemison asked if there would be any special labeling on the chips. Fitzpatrick stated many chips do say "produced with genetic engineering" and many food companies have chosen to do that preemptively.
 - **Jemison/Flewelling: Moved and seconded to approve PIP registration request**
 - **In Favor: Unanimous**

4. Syngenta Crop Protection, Inc., Request for FIFRA Section 24(c) Registration for Callisto Herbicide on Lowbush Blueberries in the Bearing and Nonbearing Years

Syngenta Crop Protection, Inc. is requesting a Special Local Need [24(c)] Application to allow use of Callisto® herbicide for broadleaf weed control on low bush blueberries in the bearing and non-bearing years. This request is supported by Dave Yarborough, University of Maine Blueberry Extension Specialist. The expiring 24(c) for Callisto is for use in low bush blueberries during the crop-bearing year. Because the additional applications will be made in the non-bearing year, residues are expected to be below the established tolerance.

Presentation By: Mary Tomlinson
Pesticides Registrar

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson stated the current SLN is expired. The new requests combine the old SLN and an additional treatment in the non-bearing year. Tomlinson turned the discussion over to Dave Yarborough.
- Yarborough stated that essentially this looks at the renewal in a crop year. Growers have requested this. If they have a real weedy year it gives them something to use. The traditional non-bearing year use is six ounces per acre. They were targeting it at the growth stage of the plant as a directed spray. The rate has not changed, just the way they will go about it.
 - **Flewelling/Granger: Moved and seconded to approve 24(c) Registration Request**
 - **In Favor: Unanimous**

5. Loveland Products, Inc., Request for FIFRA Section 24(c) Registration for Malathion 8 Aquamul on Blueberries

Loveland Products, Inc. is requesting a Special Local Need [24(c)] registration to increase the maximum application rate of Malathion 8 Flowable agricultural insecticide to control spotted wing drosophila (SWD) on high and low bush blueberries. This request is supported by David Yarborough, University of Maine Blueberry Extension Specialist, and is based on economic considerations. The SLN is for the same rate as the current SLN for Gowan Malathion 8 Flowable.

Presentation By: Mary Tomlinson,
Pesticides Registrar

Action Needed: Approve/Disapprove 24(c) Registration Request

- **Flewelling/Granger: Moved and seconded to approve 24(c) Registration Request**
- **In Favor: Unanimous**

6. Arkion Life Sciences LLC Request to extend FIFRA Section 24(c) Registration for the Use of Avipel Hopper Box (dry) Corn Seed Treatment to Discourage Consumption of Corn Seed by Grackles, Black Birds, and Crows

Arkion Life Sciences LLC is requesting an extension of the Special Local Need [24(c)] registration for the use of Avipel® Hopper Box (dry) Corn Seed Treatment (anthraquinone) to reduce predation of corn seed by grackles, black birds, and crows. This extension is supported by Richard Kersbergen, University of Maine Cooperative Extension Corn Specialist.

Presentation By: Mary Tomlinson,
Pesticides Registrar

Action Needed: Approve/Disapprove the Section 18 Emergency Exemption Registration Request

- Tomlinson stated they are covered for this year, but there is a better chance of getting an approval from EPA if they can get the application in before it has expired.
- Richard Kersbergen states that the hopper product taste repellent for birds has been extremely effective. Farmers have stopped using it and then returned to using it. It is not used on 100% of planted acres, but only where bird predation is a problem.
- Flewelling asked if it is a liquid or dry product. Kersbergen responded that it is a dry formulation on seed in a hopper box.
- Granger asked if it would only be applied to corn. Tomlinson responded that it would.
 - **Jemison/Flewelling: Moved and seconded to approve 24(c) extension request**
 - **In Favor: Unanimous**

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

At the March 2017 meeting, the Board discussed current pesticide regulations and their pertinence to the use of unmanned aircraft to apply pesticides. Following the March discussion, the Board requested that staff invite Federal Aviation Administration staff to provide explanation of the current aviation regulations pertaining to use of unmanned aircraft for the application of pesticides.

Presentation By: Daniel Jockett,
FAA Aviation Safety Inspector

Action Needed: None—Informational Only

- **Morrill/Granger: Moved and seconded to table Agenda items 7 and 8**
- **In Favor: Unanimous**

8. Continuing Discussion of Rulemaking Priorities

At an earlier meeting, the Board discussed undertaking rulemaking to address Section 5 of Chapter 29 concerning browntail moth. Rulemaking is time-consuming and expensive so a list of all potential rulemaking was developed and, at the last meeting, the Board pared that list down to Chapters 27, 29 and 36. The Board will now discuss whether to proceed with rulemaking and consideration of amendments.

Presentation By: Megan Patterson,
Manager of Pesticide Programs

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

9. Discussion of the Definition of Wetlands as it Pertains to Chapter 29 Section 6

Ron Lemin, Crop Production Services, has requested that the Board clarify whether the definition of wetlands in Chapter 29 Section 6(c): “dominated by emergent or aquatic plants” was intended to include dry areas which contain plants such as phragmites, cattails, purple loosestrife, etc. The Board will now discuss the attached memo and provide clarification on the intended interpretation of the definition of wetlands.

Presentation By: Megan Patterson,
Manager of Pesticide Programs

Action Needed: Provide Definition Interpretation Clarification

- Jennings drafted a letter to Ron Dyer to explain the historic intent of the Board was not to attempt to define wetlands, but to say a marsh or wetland that met the other three listed points in Chapter 29 Section 6 must have a 25 foot buffer around it. The Board tried to stay away from defining wetlands because the definition was complicated for a lay person. Patterson explained the issue and stated the rule was not intended to cover man-made wetlands that provide habitat for emergent species. Jemison added that was also his memory of what the Board’s intent had been and the goal of the original rule was to protect water quality.
- There is concern that the rule, as written, could apply to ditches and skidder ruts. Patterson explained to the Board that staff need clarification on how far they want wetlands to extend, and if they mean to include more than marshes, swamps, and bogs.
- There was Board discussion about what should be considered when defining a site as a wetland requiring a buffer, such as: surface water, emergent species, a possible size threshold, level of risk to water quality, etc.
- Flewelling asked Ron Lemin to describe the situation to the Board. Lemin referenced the photos he submitted to the Board which showed roadside ditches and skidder tire depressions containing emergent species, such as cattails. Lemin stated buffering these small pockets of water is time consuming and costly.
- Patterson stated that is why they need to know the intent of the rule and if those small areas were intended to be defined as wetlands, or if they had to meet all three of the other points listed in the rule.
- Morrill asked staff to draft a clarification to be viewed by the Board at the next meeting.
- Randlett counseled the Board that original intent is important and to be taken into consideration, but the current Board does not have to make their decision based on that. Randlett stated that in the long run the Board should consider amending the rule, even to giving a definition of wetland. He added that some guidance should be given to the public in the interim.
- Morrill stated the confusion comes from the word ‘or’ that is inbetween b and c of Chapter 29 Section 6V.
- Staff will bring a draft clarification to the Board next meeting.

10. Discussion of Provision of Worker Protection Standard Handler and Worker Training by Licensed Agricultural Basic Pesticide Applicators

In June of 2016, staff submitted an equivalency request to EPA regarding certification requirements for trainers of handlers and workers as defined by the Worker Protection Standard (WPS). The equivalency request argued that the licensing and certification requirements for Maine Private Applicators of General Use Pesticides (ag basic applicators) exceed the federal standards for certification of private applicators certified to use restricted use pesticides. Agreement with this argument would allow licensed and certified agricultural basic applicators to train their workers/handlers in compliance with the WPS. The Board will now discuss the attached staff memo and equivalency request and determine whether to consider agricultural basic applicators suitably trained to provide training to workers and handlers as defined by the WPS.

Presentation By: Megan Patterson,
Manager of Pesticide Programs

Action Needed: Determine Whether to Consider Ag Basic Applicators as Equivalent to Private Applicators for the Sole Purpose of Training WPS Defined Workers and Handlers

- Patterson explained the issue. The newly revised Worker Protection Standard, WPS, only allows applicators who are certified to apply restricted use pesticides to conduct worker and handler WPS training. Maine's ag basic level applicators are not certified by the state of Maine to apply restricted use pesticides, but by federal standards they receive a level of training equal to that of private applicators who are certified to apply restricted use pesticides, and to conduct WPS training. Staff has requested that ag basic applicators also be able to conduct WPS training.
- Bohlen commented that EPA's response was to handle this how the state saw fit.
 - **Jemison/Flewelling: Moved and seconded to allow ag basic applicators to conduct WPS worker and handler training**
 - **In Favor: Unanimous**

11. Consideration of Consent Agreement with Goodall Enterprises DBA NaturaLawn of America of Bangor, 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 unauthorized application of a pesticide by a commercial applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained the violation. The complainant had previously been a customer of Goodall Enterprises DBA Naturalawn of America some years back. In 2016, the complainant had an ant problem and scheduled a consultation with the company. An applicator showed up an hour prior to the scheduled application and made an application. The complainant stated this was an unauthorized application that had not been consented to.
 - **Jemison/Bohlen: Moved and seconded to approve consent agreement**
 - **In Favor: Unanimous**

12. Consideration of Consent Agreement with Salmon Falls Resort & Golf Club LLC

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

- Connors summarized the violation. During a routine records check it was determined that applications made that required a commercial applicator license. This applicator was not licensed at the time of the applications.
- Flewelling asked if the individual had been previously licensed. Connors responded that he was licensed at another golf course and then left there and started his own company. He was licensed at his own company, but he was not licensed at this golf course and there were no other licensed applicators at the course.
- Morrill asked if the individual could have been contracted by the course to do the application. Connors stated he could have done that, but since he was an employee of the golf course he was required to be licensed with his employer. He also could have had a concurrent license for his company and the course, but he did not. Randlett added it states in Chapter 31 that all companies are required to have a master applicator.
- Jemison asked if the individual argued that he did hold a master’s license. Connors explained that the consent agreement is with the company, not the individual, and they did not contest it.
 - **Jemison/Stevenson: Moved and seconded to approve consent agreement**
 - **In Favor: Unanimous**

13. Request for Clarification of Minimum State-level Labeling Requirements for Minimum Risk (Section 25(b) of FIFRA) Pesticides

In 1996, EPA exempted minimum risk pesticides from federal regulation under section 25(b) of FIFRA. The Pesticide Control Act of 1975 has not been revised to reflect the new reality of minimum risk

pesticides. Staff request that the Board provide definitive guidance on requiring the minimum protective language of “caution” and the Child Hazard Statement for all pesticide products registered in Maine.

Presentation By: Cam Lay
Director

Action Needed: Approve/Disapprove Proposed Minimum Label Language

- Lay stated staff are looking for guidance on this issue since EPA has no standards, but he had an extensive discussion with staff and it appears they need to discuss it in more detail. Bohlen stated it was not clear on what level staff would like Board to act on this and asked if staff could return with this issue when it is clearer what level of response is legally appropriate.
 - **Morrill/Granger: Moved and seconded to table until staff is ready to bring back to Board**
 - **In Favor: Unanimous**

14. 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: Cam Lay
Director

Action Needed: Nominations and Election of Officers

- **Granger/Jemison: Moved and seconded to nominate Morrill as Chair**
- **In Favor: Unanimous**

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

15. Other Old or New Business

- a. Board fund report
- b. Homeowner outreach update
 - Patterson relayed recent homeowner outreach efforts to the Board. These included: browntail moth meetings, working on updating websites, fixing broken links, and overhauling the YardScaping website content. Patterson did an IPM presentation for the Rockport Conservation Committee and general public which was live-streamed. Patterson also presented at a land trust conference about herbicide use on land trusts. Through conversations at the conference Patterson learned that the majority of land trusts do not have a licensed applicator that works with them.
 - Patterson told the Board that this season’s Master Gardener talks are finished. Staff have been working on amending the self-service sign to make it more eye-catching. The obsolete pesticide collection contract for this October has been completed. Staff have begun advertising for the obsolete collection, and are also working with DEP to get information about the collection to

transfer stations so operators there can inform citizens about it. Staff is not only focused on advertising the event, but also using that opportunity to talk about ways to reduce pesticide use and proper use of pesticides.

- c. Revised biological policy pertaining to browntail moth control
- d. Email and article submitted by Heather Spalding
- e. Email and letter submitted by Lynn Hower Allen
- f. Email and articles submitted by Heather Spalding
- g. CMP 2017 Foliar Herbicide Plan
- h. Asplundh variance
- i. RWC variance
- j. Woodland Club variance
- k. Cooperative Extension pesticide manual writer/editor position
 - Jemison, as a university employee, is abstaining from this agenda item due to a conflict of interest.
 - Jim Dill discussed the position that is now open after Don Berry's retirement in February. Dill suggested that the Board continue funding this position. He has redrafted the position description to include pesticide safety education in addition to writing manuals to make the job more palatable than sitting in an office eight hours a day. The revised job description draft has not been run by through the university yet. Maine has more than twenty categories and commercial commodities which makes for a lot of manuals to keep up on. Dill would like the new individual to also take over the coordination of the training program. Dill stated the base salary for the position would be around \$40,000, and the benefits add another 50%, so he is asking for \$65,000. He added that the EPA used to grant them \$30,000 per year for training but now the university does not receive any training funds from the EPA. Dill asked the Board to fund for three years and they will report back to the Board annually. If the Board is satisfied with the work being accomplished then they can continue the funding.
 - Morrill stated the university does not receive money from EPA for training, but the Board gives additional money. Dill responded that that \$135,000 is for IPM and helps support all their programs, not for training. It is used for all soft money- equipment, supplies, and part of salaries to plug gaps. Dill added that the monies they are asking for are just a continuation of what they have been receiving and he is only here because Berry retired.
 - Bohlen commented that a lot of state budgets he works with cannot make a budget commitment beyond three years. Randlett concurred that the Board cannot make a commitment beyond the budget year. Bohlen asked Randlett about doing a statement of understanding, or subject to funding. Randlett stated they are not able to bind future money and even a statement of intent may not have any binding effect, but the Board can state that.
 - Morrill commented that the Board would like to postpone this until they can meet with the Commissioner and see where they are with the budget.
 - **Morrill/Stevenson: Moved and seconded to table until next meeting**
 - **Five In Favor; Jemison abstained**

k. LD 1505

- Morrill stated the Agriculture committee has asked the Board to weigh in on LD 1505, which seeks to limit municipalities' ability to regulate pesticides in some way. He added that they have an amendment from Representative Pickett, an amendment that was done in committee and a third amendment from the governor's office. A fourth amendment, written by Granger, was

distributed at the meeting. Randlett told the Board it is up to them whether and how they respond to this. Jim Dill commented that the committee will often reach out to experts to get information on legislation that the committee is dealing with. The various proposed amendments constitute a range of options, and the committee would like the Board to weigh in.

- The Board had a lengthy discussion. Issues discussed included:
 - the potential of having 500 different ordinances would be difficult for businesses;
 - personal rights vs community rights;
 - restricting homeowner's rights on their own property;
 - home rule;
 - education about BPC and pesticides;
 - how does/should the Board provide support to municipalities;
 - using Chapter 60 Designation of Critical pesticide Control Areas;
 - recognizing that values are an important part of the discussion;
 - education about IPM;

- The Board drafted a proposed amendment to LD 1505. Jemison said he could not approve something without giving it a lot more consideration. Bohlen said he could not support it because it invalidated existing ordinances and that was not fair to the towns and citizens who put a lot of work into them. He recommended a memo that the Board has consensus on ideas, including education and IPM.
 - **Morrill/Jemison: Moved and seconded that the staff draft a memo to the Committee on State and Local Government summarizing the Board's discussion and explaining that they had approved the proposed language by a vote of 4-2. The Board's concept language, Chapter 60 Designation of Critical Pesticide Control Areas, Existing IPM Definitions from statutes and board rules and the State Policy to Minimize Reliance on Pesticides should be attached.**
 - **In Favor: Unanimous**
 - Note: Memo and concept language are attached as part of the minutes

- At 1:00 pm (prior to the above vote):
 - **Flewelling/Stevenson: Moved and seconded to cancel the scheduled meeting with the Commissioner**
 - **In Favor: Flewelling, Stevenson, Morrill, Granger, Jemison. Opposed: Bohlen**
 - **Morrill/Jemison: Moved and seconded that the Board break for lunch, reconvene at 1:45 and postpone the meeting with the Commissioner until 3:00 pm.**
 - **In Favor: Unanimous**

6. Schedule of Future Meetings

June 23, 2017; August 4, 2017; September 15, 2017; October 27, 2017; December 8, 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?

- **The Board added September 15, October 27, and December 8, 2017 as tentative Board meeting dates.**

17. Adjourn

- **Flewelling/Bohlen: Moved and seconded to adjourn at 2:35 pm**
- **In Favor: Unanimous**