



JANET T. MILLS
GOVERNOR

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

2

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

January 11, 2023

1:00-2:00 PM Board Meeting—Hybrid
2:00-3:00 PM Public Forum
3:00-4:00 PM Board Meeting Continued as Necessary

MINUTES

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Board: Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

2. Consideration of a Request for Financial Support from Maine Mobile Health

Since 1995 the Board has supported the Migrant and Seasonal Farmworker Safety Education program. The Maine Mobile Health Program (MMHP) provided training to 100 farmworkers during the 2022 season. Funding to support the effort in 2023 is being requested in the amount of \$6,432, which is the same funding amount provided by the Board in 2022. The funding has been accounted for in the Board's FY23 budget.

Presentations By: Hannah Miller, Director of Outreach, Maine Mobile Health

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

- Miller thanked the Board and said Maine Mobile Health had expanded the WPS training to include Spanish Creole and Portuguese.
- Jemison said it looked like the numbers were down from previous years and asked how they planned to get more people trained.
- Miller replied that one very large farm did not want trainers coming in for the last couple years due to Covid, but MMH was hoping to get back in there. They also planned to participate in different outreach meetings to make sure farms were aware MMH could do

this training. Miller added that some farms did not have the need and a couple farms canceled on short notice. She said they were hopeful to get their numbers up this year.

- **Lajoie/Jemison: Moved and seconded to fund the request from the Maine Mobile Health Program**
- **In Favor: Unanimous**

3. Consideration of a Request to Extend Special Local Need [24(c)] Registration for Sandea Herbicide (Canyon Group and Gowan Company) to Manage Perennial Broadleaf Weeds in Lowbush Blueberries in the Nonbearing Year

In 2016 and again in 2020, 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, 2022. 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.

Presentations By: Mary Tomlinson, Pesticides Registrar and Water Quality Specialist

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

- Patterson told the Board that there were two Section 24(c) registrations that expired December 2022. UMaine Extension submitted the request to renew these registrations for use on lowbush blueberries in the non-bearing year. There was intention to put the language on the label, but it had not occurred yet.
- Calderwood stated that this was really for broadleaf weeds and grasses and they were still trying to figure out where it would be most useful. She added that cool season weeds had been a problem and this product allowed for applications at cooler temperatures.
- There was discussion about whether this product was efficacious on both grasses and broadleaf species of weeds.
- Calderwood stated that the product is efficacious for weeds one to three inches tall and applications would be made after mowing had occurred.
- Bruce Hall, from Wyman's Blueberry, stated that observations had been made that it assisted in controlling grasses, brambles, and sheep laurel that result from growers disturbing the seed bank when going in every ten to twelve years with an excavator to remove rocks that have come to the surface.
- Jemison stated that he had experience using this on nutsedge in corn and asked how bad sedges were in wild blueberry.
- Calderwood replied that there was a lot of sedge to manage.
- Jemison said he recalled it not being exceptional on quack grass but it was good at controlling sedge. He stated that he was supportive of the SLN and had not seen it found in groundwater. Jemison said he was not as concerned of approving it as wondering how effective it would be. He told Calderwood that he was curious what they would find and would like to see a report after the season.

- Bryer stated that the active ingredient fit the profile of modern herbicides with low mammalian toxicity and a shorter half-life.
- Ianni asked if they anticipated using a control section and/or mechanical weed pulling, to see how well this product would work.
- Calderwood stated that mechanical could be tricky because any disturbance would bring up the weed seed bank. They see this when removing rocks from the fields. She added that she would be talking about multiple modes of weed management at the Agricultural Trades Show tomorrow, including mowing and burning.
- Ianni asked if they could try no control in one area and spray in the other.
- Calderwood stated that they could do a strip of Sandea and a strip with no Sandea to monitor the difference.
- Lajoie asked at what temperature the applications were being made.
- Calderwood stated that the product was most effective under 55 degrees Fahrenheit.
- Calderwood stated that she hoped the company would add this use to the label, and the reason it had not been added was because some chlorosis had been observed and the company did not want to be liable for that.
- Bohlen stated that as a planning session topic he would like to talk about the suite of SLNs that are currently out there.
- Patterson agreed and said she would suggest they invite Calderwood and at least one other extension employee for that discussion.
 - **Jemison/Lajoie: Moved and seconded to approve the SLN request through 2027 and review again at that time**
 - **In Favor: Unanimous**

4. Discussion of Work Completed and Proposed by the Massachusetts Glyphosate Commission

At the July 16, 2021, meeting, the Board reviewed LD 519—An Act to Protect Children from Exposure to Toxic Chemicals, which directed the Board to convene the Medical Advisory Committee (MAC) to assess the human health impacts of herbicide use on school grounds. The MAC met and staff prepared an interim report incorporating commentary from MAC members. This report was presented to the Board and the Legislature’s Agriculture, Conservation and Forestry Committee. At the December 2, 2022 meeting, staff discussed similar work underway in Massachusetts and the possibility of building upon the Massachusetts effort. Staff will now provide an update on the status and proposed direction of the Massachusetts glyphosate review.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/discuss provided information, provide guidance

- Bryer stated that the Massachusetts Glyphosate commission had a deadline of December 21, 2023 to come up with their review on the dangers of glyphosate and available alternatives, but they were still working on it. She added that glyphosate was unique as the

most studied pesticide in the world so there was a tremendous amount of literature and paying someone to find it all was a large task. Bryer stated that anything they found about glyphosate would be a little irrelevant since it was already banned on Maine school grounds. The Massachusetts Glyphosate Commission had eighteen to twenty-four compounds on their list of alternatives and BPC staff had tallied up forty-four during research for the MAC interim report. She added that the Massachusetts review would still be a helpful document to review.

- Adams stated that he was disappointed when he read this because he did not see it as just a school playground issue. He was hoping more to see the metabolite that occurs after application, after the plant absorbs it and converts it into another compound. Adams said this was where we should start looking and it seemed like Massachusetts was a long way from that. He added that this issue, however, was not going away.
- Patterson stated that if the Board had an interest in that it might be time to pivot how to pursue that. She mentioned that at the last meeting there was a discussion about a possible RFP. Patterson said that Massachusetts had a hard time securing a contractor to do the work comprehensively and only after they had tailored the scope a little bit.
- Bohlen said he was struck by the amount of time they plan to spend looking at the official reports of previous reports and does not know if that is particularly productive. He added that there was also some question about what they were really trying to answer. Bohlen suggested that if we were to move forward with a request for information we would need to be very clear about exactly what we want or need to look at. He stated that moving forward with an RFP seemed premature at this time.
- Jemison spoke about determining how much glyphosate was used on school grounds. He stated there might be some value to look at what Massachusetts finds for alternatives to glyphosate.
- Bohlen stated that it seemed we would need to know what people are using and what they want to use it on. He added that there are different uses and right now he had no sense of what was being used in these situations. Bohlen stated that of the 44 alternative compounds there might only need to be three alternatives we need to focus on. If we do not know what people are using, we do not know which products to focus on.
- Bryer volunteered to bring forward information at the next Board meeting from the two years' worth of records that were obtained.
- Jemison stated that he would like to see that data.
- Patterson said that it required significant staff time to make sure the data was complete and accurate and something staff could work with.
- Adams stated that the Board needed more information on the risk and that needed to include the potential for exposure. He added that none of the alternative products would work well for managing grasses on something like a tennis or basketball court. Adams said the alternatives would work to keep brush out of the powerlines but those were completely different uses. He added that if staff could bring information on that next time that would be great. He said that the Board was asked to determine what the risk was, and they needed that knowledge to make a determination.

- Ianni stated that using cultural and mechanical means should still be looked at because society tended to prioritize convenience.
- Bryer talked about the difference between a decorative lawn and athletic fields and the difference between those uses and the reasons for them.
- Patterson asked if it would be useful to hear from School IPM coordinators. She offered that staff could send out a general invite.
- Jemison stated they could certainly do that in a future meeting
- Adams asked that an invitation be sent out.

5. Consideration of a Consent Agreement with Avesta Housing, Portland, 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 failure to postpone an application as requested by a tenant.

Presentations By: Alex Peacock, Manager of Compliance

Action Needed: Review and/or approve

- Peacock told the Board that an application was made on November 1, 2021, to an apartment in Portland. The tenant's apartment abutted the trash room for the building, and cockroaches had become a problem. The tenants went through the normal channels to request treatment, but then felt they did not have the ability to do the pre-treatment preparation in time and asked for the application to be postponed. This was not communicated to the applicator and their apartment was treated without their consent. The tenants came home to find that the treatment had been made. Peacock told the Board that a consent agreement was sent to Avesta Housing.
 - **Carlton/Jemison: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

The Board meeting paused for a Public Forum

6. Consideration of a Consent Agreement with Green Thumb Lawn Services, Brewer, 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 a self-reported unauthorized application and failure to positively identify the application site.

Presentations By: Alex Peacock, Manager of Compliance

Action Needed: Review and/or approve

- Peacock stated that this was a self-reported application to the incorrect property.
- Carlton commented that the Board seemed to be seeing more of these misapplications to an incorrect address.
- Jemison agreed that this had been occurring for years. In this case he thought \$1,000 was acceptable because the company self-reported.
- Ianni asked what property identification was required to make an application.
- Patterson explained that positive identification of the application site was detailed in policy, but the Board could place it in rule if they would like.
- Peacock explained the Board policy and appropriate ways to identify the correct location.
- Randlett stated that it was not legally enforceable as a policy, but it could be moved into rule to increase the enforcement capability of staff, which may double the violation.
- There was discussion about revocation of licenses.
- Randlett stated there needed to be sufficient grounds to revoke a license and the process was similar to a mini-trial and much more intensive than a consent agreement.
- Patterson responded that staff have sometimes included required training as a component of consent agreements and that remains an option.
- Carlton favored increasing the amount of consent agreements to be more of a deterrent rather than just the cost of doing business.
- Randlett stated that a first-time violation has a \$1400 limit and sometime the Board may want to consider approaching the legislature about increasing those penalties. If the address identification policy was in rule the penalty could have been up to \$2800.
- Ianni stated that there seemed to be a much higher potential for error in these residential settings and some applicators have a goal to meet and they are chasing that. She asked if anyone had requested restitution and if there was any means of requiring the company to pay restitution to the injured party.
- Randlett stated that that would be a private civil action.
- Adams stated that the Board needed to make a priority of placing that positive identification policy into rule.
- Lajoie suggested putting rules in place stating that the applicator should visit the site before an application is made or scheduled. He also proposed not allowing any applications to be made unless the homeowner was at the residence. Lajoie agreed that this policy needed to be moved into rule.
- Carlton suggested mandating the applicator to provide a safety data sheet and label.

- Adams and Jemison stated that it made sense to go to rulemaking.
- Patterson stated that staff could summarize all suggestions of rule change the Board had discussed and they could choose which ones they would like to change.
- Boyd reviewed previous rulemaking topics that had been discussed, including the definition of human dwellings or residential properties in Chapter 10 or in Chapter 41. She added that there had been talk about aligning some of the Chapter 32 language with Chapter 31. Boyd stated there was also the topic of seed treatment and how it was described in rule.
- Jemison reiterated that section 5 of Chapter 41 was dated.
- The Board agreed to address rulemaking concepts at the next meeting.
 - **Carlton/Jemison: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

7. Other Old and New Business

a. Letter from Jody Spear and article from Biological Conservation

b. Overview of 2022 certification trainings

- Pietroski stated that for 2022 there were 2129 agricultural basic and private licenses. Of the 807 agricultural basic license 293 were for medical marijuana and the rest were spread among all other commodities. There were 3717 commercial applicators, of which about 2100 were at the master level and around 1700 were at the operator level. He added that last year the BPC gave 1607 exams. In 2022, 43% of the applicators who took their exams at the BPC office or at an extension office passed, but 58% of those who took the new computer-based exams from Metro passed.

c. Overview of 2023 pesticide product registration renewal progress

- Patterson detailed the extension on the registration renewal process. The BPC has approximately 12,000 products registered in 2022, but about half have submitted for registration renewal in 2023. Staff are anticipating that the remainder of renewals will come in closer to the end of February due to the extension.
- Adams asked if there was any indication that companies may not renew.
- Ianni asked about possibly publishing a list of products that have not been renewed after the February deadline.

d. LD 8—An Act to Increase Support for the Modernization of the Board of Pesticides Control by Increasing the Annual Pesticide Registration Fee

- There was discussion about whether this amount of increase was enough. This bill was scheduled for January 25, 2023. The ACF committee would be meeting on Mondays and Wednesdays.

e. Recent EPA complaint pertaining to container fluorination

- Patterson told the Board that this court filing came to staff's attention due to the popular press.

f. Other items?

8. Schedule of Future Meetings

February 24, 2023, and April 7, 2023 are the next tentative Board meeting dates.

9. Adjourn

- **Carlton/Lajoie: Moved and seconded to adjourn at 4:03 PM**
- **In Favor: Unanimous**