



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

August 27, 2021

9:00 AM Board Meeting
9:15-10:45 AM Stakeholder Information Gathering on LD 155, LD 264, and LD 524
10:45 AM Continue Board Meeting

MINUTES

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

1. Introductions of Board and Staff
2.
 - The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves.
 - Boyd, Brown, Bryer, Connors, Couture, Nelson, Patterson, Pietroski, Saucier, Tomlinson

2. Minutes of the July 16, 2021 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Flewelling: Moved and seconded to approve minutes as amended**
- **In Favor: Unanimous**

3. Stakeholder Information Gathering Work Session on LD 155—Resolve, Directing the Board of Pesticides Control To Prohibit the Use of Certain Neonicotinoids for Outdoor Residential Use

On June 10, 2021 LD 155 was signed into Maine law. This resolve directs the Board to prohibit the use of any product containing the active ingredient dinotefuran, clothianidin, imidacloprid or thiamethoxam used for application in outdoor residential landscapes such as

on lawn, turf, or ornamental vegetation. The resolve directs the Board to provide exemptions for certain applications related to wood preservation, structural pests, pets, and emerging invasive insects. The Board is now soliciting informal stakeholder input on its rulemaking concepts prior to formally initiating rulemaking. Written comments may be sent to the Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to megan.l.patterson@maine.gov.

Presentation By: Megan Patterson, Director

Action Needed: Determine what rule changes the Board wishes to pursue and how to implement those changes

- Patterson stated that this law directs the Board to prohibit the use of certain neonicotinoids in residential landscapes for lawn, turf, and ornamental use, but applications for wood preservation, pets, and applications around structures are exempted. It also does not prohibit licensed pesticide applicators to use the listed active ingredients to treat emerging invasive pests.
- Mary Ann Nahf told the Board that she was pleased to see the bill had passed and also addressed exemptions for certain applications. She would like preference given to applications of products that have a shorter half-life to slow down bio accumulation in soil.
- Karen Reardon, from Responsible Industry for a Sound Environment (RISE) told the Board that they were seeking a two-year discontinuance process to have time to remove all products from the channels of trade. They would like the Board to provide additional clarification about tree applications other than ornamental tree care.
- Andy Hackman, from Trugreen Lawn Care stated that he was involved in testimony around LD 155 and he was looking for much greater clarity. He added he would like to make it consistent with other states to make the products restricted use pesticides, and to see January 1, 2024 as a phase out date.
- Bohlen stated he would like clarification around the meaning of structures.
- Hackman asked if it would be square footage or linear feet and how far out from a building could products be applied.
- Flewelling asked what other states had made neonicotinoids restricted use.
- Hackman added that this would be the most restrictive law on neonicotinoids in the country and that both Connecticut and Maryland have designated these products as restricted use pesticides.
- Spalding thanked the Board for convening this stakeholder information gathering meeting. She stated that threats to pollinators regarding neonicotinoids have been discussed for many years and the swift phaseout of these products on shelves is really important. Spalding stated that she worried that allowing two years posed unnecessary harm and wanted the Board to work as aggressively as possible to phase them out. She

added that the sponsor of the bill did an incredible job reaching out to all stakeholders and everyone should be happy that this is the strongest rule in the country.

- Flewelling asked Spaulding what her expectation of a timeline was.
- Spalding replied that she would like to see no more sales beginning in the coming year and wanted the same as the legislation laid out in the chlorpyrifos bill.
- Fish stated the importance of creating a good definition of what emerging invasive pest means as well as what ornamental means. He added if the rule is really restrictive it could hamper keeping invasive species out of the state.
- Morrill stated that the Board also did not know what emerging invasive pests meant and asked Fish what he would consider as a definition.
- Fish replied that he did not like the word emerging and added that the examples given in the law are already here and already established. He added that he did not know what the legislative intent was when using the term “emerging”.
- Morrill asked Fish for the definition of an invasive insect.
- Fish replied that he would not want to limit the definition of invasive to insects specifically and that the term invasive pest would be more appropriate. He added that he would look for some definitions and send them to Patterson. Fish stated that the other term ornamental could have many definitions as well and asked if this law would prevent the treatment of forest trees.
- Granger agreed that sometimes the same species were both forest trees and ornamental. It was going to be very hard to define how the same species can be both.
- Fish stated that one example is emerald ash borer, EAB, and ash seed trees. New Hampshire uses clothianidin to treat for EAB and these trees are important to Wabanaki people who will be wanting to prevent death of seed trees for collection of seeds and the continuation of the species.
- Jemison asked what percentage of ornamental use of neonicotinoids goes beyond lawn care and grubs, which are both pretty clearly ornamentally oriented, and that use can be a real damaging use to bees foraging on dandelions.
- Patterson stated she could look at a number of products labeled for such uses.
- Fish stated that in the nursery industry some pests were difficult to manage without clothianidin, but he did not have numbers.
- Adams asked if LD 155 went beyond restriction of use on residential and outdoor landscapes and if it would apply to nursery and forestry as well. He said to focus on lawncare and turf and going to restricted use brings the Board to 50% of the resolve.
- Jemison asked if staff would know how much product is available to consumers.
- Tomlinson stated that there was a total of 164 products registered including for lawn and ornamental treatment.
- Bohlen asked if the term ‘ornamental’ was used in a consistent way on labels when thinking of a definition and if that was something the Board could lean on.

- Patterson stated that there was a definition of “ornamental plant” in Chapter 10 of rule which the Board could use or modify if they would like.
- The Board decided this was the definition they would use.
- Bohlen commented that the Board may want to think about how staff could respond if there was an emerging pest we needed to respond to quickly. He asked if there was a procedure the Board could put in rule stating that they had authority to make applications if the state horticulturalist agreed there was an immediate need to control an emerging pest.
- Morrill asked what the next step would be.
- Randlett stated the next step was to get through the stakeholder information gathering meeting today and then direct staff to come back to the next meeting with a draft concept of rule that best represented the Board’s desires.

4. Stakeholder Information Gathering Work Session on LD 264—Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State

On June 10, 2021 LD 264 was signed into Maine law. This resolve directs the Board to amend its rules governing pesticide product registration to require manufacturers and distributors to provide affidavits stating whether the registered pesticide has ever been stored, distributed, or packaged in a fluorinated high-density polyethylene container. It further directs the Board to require manufacturers to provide an affidavit stating whether a polyfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide. This resolve also directs the board to conduct a study and report back on the distribution and use of fluorinated adjuvants in Maine, how to regulate adjuvants, and how to prohibit distribution and use pesticides and adjuvants containing perfluoroalkyl or polyfluoroalkyl substances in Maine. The Board is now soliciting informal stakeholder input on its rulemaking concepts prior to formally initiating rulemaking. Written comments may be sent to the Board’s main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to megan.l.patterson@maine.gov.

Presentation By: Megan Patterson, Director

Action Needed: Determine what rule changes the Board wishes to pursue and how to implement those changes

- Karen Reardon provided comments in letter and wanted to provide options for registrant compliance with this resolve, and that it is an emerging and evolving situation. She proposed that the confidential statement of formula that is submitted to EPA should suffice for the affidavit. Reardon would like sufficient time provided to all registrants selling products into Maine since this would be a new obligation for them. She said that there was not a clear definition of what PFAS was yet and there are not intentionally added PFAS in these products.

- Bohlen stated that the issue of data confidentiality may be very hard to protect since there was an intent to provide a report. He had thoughts about how this report could be provided without releasing information that may be of concern.
- Reardon stated it would be very complicated because as of right now those substances are not part of pesticide formulations.
- Flewelling asked about what other products may be contaminated with PFAS.
- Reardon responded that fluorinated packaging was ubiquitous in our environment, including food packaging and surfaces, tubing and medical equipment, semi-conductors, and many kinds of plastic material around us.
- Spalding stated that almost all legislative committees this past session had a PFAS bill. She stated that when Representative Pluecker first brought this bill forward it was thought that PFAS were intentionally being added to pesticides. Spaulding stated that aggressive and swift action needed to be taken to eliminate use of PFAS in all consumer products.
- Morrill asked what Patterson needed from the Board.
- Patterson asked if the Board wanted to collect data on manufactures or submitters to provide affidavits about whether the product has been in HDPE container. She said that the Board had authority to collect a confidential statement of formula but would need to make it part of rule that it is required for all products registered in Maine, as well as create a definition for PFAS.
- Bohlen noted that Bryer's memo was fabulous and it was very helpful.
- Patterson stated staff had received quotes on what costs would be associated with collecting affidavits and the confidential statement of formula in the registration flow. She said that PFAS science is evolving and creates issues with compliance/enforcement sampling with consistent results. There is also currently no way to test for all of these substances in the case of an enforcement process—there are no verified methods and this would be cost prohibitive.
- Bohlen stated that the ultimate goal should be some sort of risk assessment because he felt those definitions were evolving.
- Patterson asked if the Board wanted to go with an affidavit and/or confidential statement of formula.
- Morrill replied that he would lean on staff to implement whatever was easier.

5. Stakeholder Information Gathering Work Session on LD 524—Resolve, Directing the Board of Pesticides Control To Research Workable Methods To Collect Pesticide Sales and Use Records for the Purpose of Providing Information to the Public

On June 14, 2021 LD 524 was signed into law. The resolve directs the Board to research workable methods to collect pesticide sales and use records for the purpose of providing information to the public. The resolve also directs the Board to research the best methods for

collecting information from schools, private applicators, and commercial applicators. The Board is further directed to research the best methods for collecting information on pesticide sales in the State. The Board is now soliciting informal stakeholder input on its rulemaking concepts prior to formally initiating rulemaking. Written comments may be sent to the Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to megan.l.patterson@maine.gov.

Presentation By: Megan Patterson, Director

Action Needed: Determine what rule changes the Board wishes to pursue and how to implement those changes

- Patterson explained what the resolve requests were and that they included collecting use info from both commercial and private applicators, from schools, and all sales of pesticides. She told the Board that annual summary reports from commercial applicators were currently required, but annual reports are not required from private and agricultural basic applicators.
- Spalding stated that this had been a topic of discussion for many years and was very important to MOFGA. She said it was very easy for people to provide online reporting of records with current technology. She further indicated that this data with better understanding the quantity of pesticides annually. Spalding said she thought the fiscal note assigned to LD 1599 was astounding to hire eight additional people and spend millions of dollars to track this information. She objected to the fiscal note.
- Patterson told the Board she was concerned about the ability for all applicators to have access to technology to be able to enter the information.
- Bohlen commented that this seemed to obscure what information people want--mashing all of this information together. He said the Board needed to think about what we were trying to learn and report on, what questions we are answering, and if there was clarity in the discussion.

6. Discussion of Powered Application of Disinfectants and Licensing Requirements

In 2020 and 2021 the Board discussed the use of powered equipment for the application of disinfectants. While the Board does not have the authority to allow unlicensed individuals to use powered equipment without a license, the Board did vote to support a Governor's Office executive order providing a license exemption for certain individuals conducting these types of applications in areas open to use by the public. That executive order, EO 7A FY20/21, has now expired and previously exempted individuals and others are inquiring about an extended or permanent licensing exemption. Staff have compiled relevant information for the Board's consideration.

Presentation By: Dr. Pam Bryer, Pesticides Toxicologist and
Megan Patterson, Director

Action Needed: Discussion

- Bryer gave an overview of the memo and how the public health relevance of surface disinfection has changed over the course of the pandemic, and that it was also salient to remember that some members of the public do not recognize the risk from use of disinfectants. She added that we now know surfaces are not how COVID-19 is spread. Bryer explained that electrostatic spraying had been around for a long time, but recent EPA research has demonstrated that when shifting formula, or even when water is used, efficacy can vary radically.
- Patterson stated that she had been fielding lots of inquiries from schools, EMS professionals, ambulance services, legislators, and a number of other entities that had previously been allowed to use this equipment under the now expired Executive Order 7-A 20/21. The Board does not have the authority to change it without submitting a bill because the Board may only change rules for powered application equipment in statute. Patterson explained what entities were allowed to use electrostatic sprayers without licensure, but now would be required to be licensed.
- Randlett stated that statute was very clear about the application of pesticides using powered application equipment and the executive order made it legal to use them but that was no longer in effect.
- Ron Souza with the University of New England asked if there was any consideration to provide relief by extending this exemption month by month or did it have to go through the legislature.
- Patterson replied that the exemption expired with the civil state of emergency and a bill would have to be submitted to the legislature.
- Souza asked if there would be consideration given to renewing or extending the executive order since COVID-19 cases have risen. Would someone be successful in extending the executive order if they approached the governor's office?
- Patterson stated that unlicensed applicators were allowed to use non-powered application for the application of disinfectants for routine cleaning and aerosol products for stinging insects. These are currently the only exemptions from commercial licensure in the Maine.

7. Review of Potential Rulemaking Concepts Pertaining to LD 316—An Act To Prohibit the Use of Chlorpyrifos

On June 8, 2021 LD 316 was signed into Maine law. This law prohibits, beginning January 1, 2022, the distribution of pesticides containing chlorpyrifos as an active ingredient. The law allows the Board to grant temporary permits from January 1, 2022 to December 31, 2022 authorizing licensed pesticide applicators to use pesticides containing chlorpyrifos, as long as the product was in the State and in the possession of the applicator before January 1, 2022. On July 16, 2021, the Board directed staff to return with a review of rulemaking concepts.

Presentation By: Megan Patterson, Director

Action Needed: Refine the rulemaking concepts and schedule a hearing

- Patterson stated that EPA recently announced they are cancelling all food tolerances for chlorpyrifos within six months of notice of publication in the Federal Register. Following the six-month phase-in there will be no lawful use on food crops, but federal law may still permit use on Christmas trees, golf courses, etc. Patterson said that this eliminated the Board's need to issue temporary permits for any food uses.
- There was discussion about what the process of issuing a permit for use of chlorpyrifos in Maine should look like. Staff were directed to bring this back to the Board for the next meeting.

8. Proposed Ad Hoc Member of the Medical Advisory Committee

At the July 16, 2021 meeting, the Board revised its Medical Advisory Committee (MAC) policy. While the Board has identified a qualified individual to serve in the standing role formerly reserved for the State Toxicologist, the Board has not reviewed and approved any ad hoc members. This MAC is charged with assessing the human health risk posed by the application of herbicides on school grounds. The Board will now consider the appointment of a proposed ad hoc member.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and approve/disapprove ad hoc member proposal

- Waterman stated that Emily Poulin, member of the Board of School Nurses, will serve in a very important role since the focus of the legislative request is pesticide use on school grounds. He added that she is ready and willing to serve on the MAC to look at the pros and cons regarding the use of herbicides on school grounds.
 - **Morrill/Adams: Moved and seconded to approve ad hoc member for the Medical Advisory Committee**
 - **In Favor: Unanimous**

9. Consideration of Enforcement Action with Mosquito Squad of Southern Maine,

The Board has previously indicated an interest in determining the appropriate enforcement response in cases involving significant violations of pesticide laws and regulations. Typically, staff follows the Board's Enforcement Protocol which authorizes staff to work

with the Attorney General to negotiate consent agreements in advance on matters not involving substantial threats to the environment or public health. Staff have identified this as a case involving significant violations of pesticides laws and regulations and will now present the case for Board deliberation and discussion of next steps.

Presentation By: Raymond Connors, Manager of Enforcement

Action Needed: Discussion and approve/disapprove next steps

- **Morrill/Bohlen: Moved and seconded to approve to enter executive session under statute 405(6e) to discuss with legal counsel regarding the Board's legal rights, duties, and enforcement actions regarding the consent agreement with Mosquito Squad of Southern Maine.**
- **In Favor: Unanimous**
- The Board exited executive session.
- Erik Hanson from Mosquito Squad of Southern Maine said they employ twenty people, and want to comply and practice IPM. Mosquito Squad provided a detailed written statement, and this was provided with the documentary materials for the meeting. He added that the company hired a former inspector who spent a day training employees on compliance. The company has since hired an outside contractor who specializes in state law to ensure future compliance.

10. Other Old and New Business

a. State Plan Update (Pietroski)

- Patterson stated that staff had received responses back from EPA and were working to incorporate them.

b. Online Exams Update (Pietroski)

- Patterson told the Board that the request for proposals process had been finalized and the selected company would be offering on-site exams more frequently and throughout the state.

c. Governor's Office Executive Order 41 FY 20/21 Update (Patterson)

- Patterson stated that staff were collaborating with Inland Fisheries and Wildlife, the Maine Forest Service, and have hired a contractor. She added that the Board had been asked to review the best management practices and discuss how they could be revised.

d. LD 808—An Act to Repeal the Pesticide Container Fee and Tick Laboratory and Pest Management Fund

- Patterson said this act died on the appropriations table, so the tax still stands, and staff are working to assist retailers in complying with this law.

e. Final Remote Meeting Policy

f. Revised Medical Advisory Committee Policy

11. Schedule of Future Meetings

October 8, 2021 is next tentative Board meeting date. The Board will decide whether to change and/or add dates.

- There was general discussion about future meeting dates and the need to complete rulemaking.
- Possible meeting dates of November 19 and December 17 were discussed.
- Morrill asked Patterson to return to the next meeting with proposed meeting dates for November and December.

12. Adjourn

- **Granger/Bohlen: Moved and seconded to adjourn 12:15 PM**
- **In Favor: Unanimous**