



JANET T. MILLS
GOVERNOR

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

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

March 15, 2023

1:30 PM Board Meeting

MINUTES

Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves

2. Update on 2023 Pesticide Product Registration Renewal Progress

At the February 24, 2022, meeting, the staff provided an update on progress made toward the annual renewal of pesticide product registrations. Since that meeting, staff have further modified the MEPERLS software to accommodate registrant requests for functionality. Those modifications were available to registrants beginning March 3, 2023. To support use of the new functionality, staff have permitted an additional three-week registration extension which is scheduled to end on March 21, 2023. At this time, many products, including numerous pesticides commonly used in agriculture and vegetation management remain unexpired. Staff have been fielding inquiries from manufacturers, distributors, agricultural producers, golf course superintendents, vegetation management professionals, special interest groups, commodity groups, legislators and others regarding the status of product registration. Staff will now provide an update on additional progress made toward registration renewal, outstanding issues, and possible pathways forward.

Presentation By: Megan Patterson, Director

Action Needed: Discuss and determine next steps

- Patterson stated that there were still a significant number of products that had not been registered and she expected registration numbers to be down some this year. Instead of a typical annual loss of 1,000 product registrations it might be 1,500-2,000. Some companies had concerns about the registration process and changes were implemented in MePERLS to accommodate those concerns. Staff had also made space for confidential business

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information (CBI) claims to be provided. Patterson said staff would be working through the process of reviewing these claims with Mark Randlett.

- Adams asked if the CBI review process was just beginning.
- Patterson stated that staff needed to design the review process first and were coming up with a rubric which had been sent to the Assistant Attorney General's office for review.
- Lajoie stated that the Board had been very accommodating to companies and asked for an update on Syngenta.
- Patterson responded that Syngenta expressed concern about submitting their confidential statements of formula (CSF) through the State's secure portal. Other concerns were about the affidavit questions. Regarding affidavit questions, registrants wanted to be able to add comments to their responses so BPC accommodated and created a text field. The affidavit question language was also modified to address industry requests.
- Lajoie stated that he felt the BPC had gone above and beyond to accommodate registrant requests and did not see any reason for an additional extension.
- Patterson asked if it was the Board's wish to allow for another extension or find another way to deal with registration.
- Adams stated that some members of the ACF committee said constituents had expressed concern because they could not get the products they needed.
- There was Board discussion about which companies had not yet registered products. Board members commented that they had not heard any legitimate reasons to lengthen the extension.
- Patterson stated that Syngenta did reach out and propose that they could comply by letting BPC staff access CSF information through their secure portal. She added that staff had been trying to work with registrants to find a way forward. There were a few large companies that had not moved forward with registration.
- Tomlinson stated that she was not sure another extension would make a difference. She added that there were also lists of registered pesticide products that staff was required to publish this month.
- Patterson explained that the two lists staff was obligated to publish were herbicides registered for aquatic uses and another list for all neonicotinoids labeled for use in residential settings.
- Ianni stated she believed they should move on and not extend this any further because she did not see what an extension would grant the registrants or us.
- Eric Venturini, director for the Wild Blueberry Commission of Maine, stated that the lack of registered products seemed like it was going to have a real and tremendous impact. He said that the last time he checked there was about ten percent of the products they normally used that were registered. Venturini said this would restrict growers from using cutting edge IPM that they had worked with over decades to respond to pest management issues. He added that it was the Board's responsibility to resolve this issue and urged them to cut back the barriers to registration. He stated that CSFs could not be made publicly available

so why collect them, and there was also a bill in the legislature to change Maine's current definition of PFAS.

- Brad Mitchell, a Syngenta representative, stated that the company would be registering products in the coming weeks. He added that it would not be the full cadre of products registered as in previous years. Mitchell stated that with the deadline, they would likely be unable to ship products in time for growers to use them.
- Sharon Treat, MOFGA legal representation, asked what the Board was doing that the registrants were opposed to. She added that what was being asked was less specific than what would be required by DEP. Treat said she was not sure what the Board could do to change the outcome here if the registrants had an objection to saying whether their product contained PFAS or was in a container from which PFAS might leach.
- Adams stated that he still had not heard anything from Board members about needing the existing extension to be extended. He added that they had instruction from ACF to try not to create a barrier for constituents and farmers that needed these products.
- Patterson stated that staff would continue to try to reach out to these companies and find out if there was something specific that could be remedied. She added that some companies had made claims of CBI in regard to their responses to the affidavit questions. Patterson stated that staff were preparing a process for reviewing those claims.
- Treat asked if the process to establish a CBI review was going to be applied to the affidavits. She said that raised significant concerns because that information was intended to be public information on the part of the legislature. Treat said she was unclear about the authority the Board had to keep information such as that from the public based on claims of CBI.
- Patterson responded that staff would make the review process as public as allowed. She added that the BPC did understand the information collected in the affidavits was intended to be public and did not, at the time of rulemaking, realize the BPC would receive claims of CBI for these products. Patterson said she expected to have a rubric soon to make it clear what was being considered when those claims were reviewed and staff would also take input from Board members.
- Randlett noted that companies had a right in statute to claim CBI. He added that the Board's obligation was to go through the steps to review the information in accordance with the statute.

3. Legislative Response to the BPC Letter Regarding LD 2019 and Container Rulemaking

At the May 6, 2022, meeting, the Board first discussed LD 2019 and associated container rulemaking responsibilities. In a good-faith effort to complete this directive, the Board continued to engage in robust discussions of the topic at three additional meetings. At its October 21, 2022, meeting, the Board discussed issues of federal preemption challenges and directed staff to compose a letter to the Legislature's Committee on Agriculture, Conservation and Forestry (ACF Committee) seeking additional guidance. In November 2022, Board staff met with the bill sponsor and now ACF Committee chair to explain the forthcoming letter and the Board's efforts to date. Following receipt of the BPC letter, the

Board's legal counsel was invited to speak with the ACF Committee. The Board has now received a response and directive from the ACF Committee.

Presentation By: Megan Patterson, Director

Action Needed: Discuss and determine the next steps

- Patterson explained the contents of the letter received from the ACF committee in response to the letter BPC wrote asking for guidance regarding container rulemaking. She stated that the ACF committee wanted action and completion of rulemaking prior to the end of the legislative session
- The Board discussed what additional rules they could put in place to further prohibit the contamination of products.
- Patterson asked Representative Osher if the Board was understanding the letter correctly- that it was speaking to containers that contain PFAS. She asked if it was talking about intentional or unintentional addition.
- Representative Osher responded that that question needed to go to the ACF committee.
- Adams stated that he had been told that fluorinated packaging was being phased out and companies were currently working through existing inventory. He asked Mitchell if that was correct.
- Mitchell replied that he did not know that for sure. He added that they would like to participate in the rulemaking process and ensure it was consistent with the previously stated preemption clause.
- Discussion was had regarding how to go about rulemaking to satisfy the ACF committee's request.
- Bryer spoke to contamination at the federal level and stated that ingredients not noted were considered impurities and were required to be reported within 30 days of discovery. She added that there was not research to back the idea that all fluorinated containers cause PFAS.
- Bohlen commented that the Board needed to act or go back to the ACF committee and say why they believed it did not make sense in a fairly coherent way. He added that with the tight timeline the Board needed to pick a path forward- either go to the committee or start rulemaking. Bohlen stated that he did not think there was a consensus around anything at the moment.
 - **Jemison/Carlton: Moved and seconded to send Board members to speak with the ACF committee**
 - **In Favor: Unanimous**

4. Review and Discussion of Potential Rulemaking Topics

At its January 11, 2023, meeting, the Board expressed interest in initiating rulemaking to incorporate existing Board policy and other potential rulemaking topics. At the February 24, 2023, meeting, staff provided a list of rulemaking ideas identified by Board members and staff. Since rulemaking is expensive and time-consuming, the Board generally tries to group rulemaking initiatives. The staff will present a summary of the February discussion and a timetable of possible hearing dates for Board consideration.

Presentation By: Karla Boyd, Policy and Regulations Specialist

Action Needed: Determine how to approach rulemaking and possibly schedule a hearing

- Boyd stated that staff needed more guidance moving forward and she explained to the Board the timeline for the different types of rulemaking. She added that the first item the Board had expressed interest in moving forward with was the definition of ‘residential landscape’.
- Patterson explained that one of the reasons staff brought this back was because it was impractical for the Board to take on all of these items simultaneously. Staff asked the Board to prioritize the highest priority items and the others could be addressed at a later date. Patterson stated that the cost of entering into rulemaking each time was approximately \$2,000.
- There was Board discussion about taking up the topic of defining ‘residential landscapes’ in Chapter 10. Ianni stated that she thought clearly identifying what ‘residential landscapes’ consisted of was important because there were so many different combinations of residential landscapes.
- There was further discussion about ways to lump the items together and Patterson stated that staff could come back at the next meeting with some ways the rules could be grouped.
- Boyd explained that item number two was about incorporating the ‘Positive Identification of Proper Treatment Site’ policy into rule.
- Adams and Jemison stated they would like to move forward with item number two. There was discussion about whether this should be completed as emergency rulemaking or not.
- Bohlen suggested first taking up items that the Board could handle relatively rapidly, like those required by the EPA and a couple of other topics on the housekeeping end. He stated they could also look at items that were in the same chapter.
- Boyd stated that item number three dealt with amending rules regarding notification of rodenticidal baits. Item number ten was also related to this same topic.
- The Board decided to wait on those items. Adams suggested adding item number four to the agenda for next meeting. Item number four addressed combining the three 7C categories into one exam and manual.
- The Board had discussion that item number six regarding UAVs could become fairly involved. Some states identify them as equivalent to aerial applications and required proof of FAA certification.

- Carlton stated that that topic could become very involved and suggested delaying it for the time being.
- Boyd said that item number seven would address the minimum age requirements for non-certified individuals making applications. The age requirement would be eighteen years old for non-family non-certified applicators and sixteen years old for family non-certified applicators. This was already federal law, and the BPC would simply be adopting it by reference.
- Adams requested that this be added to the April meeting.
- The next item discussed was Chapter 41, Section 5 relating to *Bt* corn. Adams stated that he thought it would be easy to move forward, but it could also be delayed.
- Patterson commented that what was in rule was dated and did not align with existing agricultural practices.
- Adams requested that this be put on the agenda for the April meeting.
- Boyd stated that item eleven would take longer because it would be major substantive. It addressed a possible requirement for the digital submission of annual reports.
- Patterson suggested that staff could hold a stakeholder information gathering meeting to see if there was support for this.
- Adams responded that he was inclined to table this until they had more information on exactly how it would be implemented.
- Patterson said that staff could give an estimate of what it cost to hire temporary staff to enter the existing records. At this point in time, the BPC would not have the capacity to hire temporary staff to enter this information in the future.
- Bohlen stated that it seemed like there was work to do before starting preliminary meetings on this topic.
- Adams stated he would like to move forward on items two, four, seven and nine for the April meeting.
- There was discussion about posting and when public hearings would need to be held. Patterson said staff could bring back a timeline for rulemaking.

5. Other Old and New Business

a. Other items?

6. Schedule of Future Meetings

April 7, 2023, is the next tentative Board meeting date. The Board will decide whether to change and/or add dates.

7. Adjourn

- **Carlton/Jemison: Moved and seconded to adjourn at 3:32 PM**
- **In Favor: Unanimous**