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GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

BOARD OF PESTICIDES CONTROL

October 27, 2017

Room 118 Marquardt Building  
32 Blossom Lane  
Augusta, Maine  
9:00 AM

MINUTES

Present: Granger, Morrill, Jemison, Flewelling.

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves.
- Staff present: Connors, Couture, Lay, Patterson, Pietroski, Tomlinson, Tourtelotte.

2. Minutes of the June 23, 2017, Board Meeting

Presentation By: Cam Lay  
Director

Action Needed: Amend and/or Approve

- **Granger/Flewelling: Moved and seconded approval of minutes**
- **In Favor: Unanimous**

3. Consideration of Registration Requests for Several New *Bt* Corn Products

Monsanto Company and Dow AgroSciences LLC have requested registrations of several new *Bt* corn products. The Board must consider whether these products are dissimilar enough from previous registrations to be reviewed by the Technical Committee before registration, or can be registered now based on the information submitted.

Presentation By: Mary Tomlinson  
Pesticides Registrar/Water Quality Specialist

CAM LAY, DIRECTOR  
90 BLOSSOM LANE, DEERING BUILDING



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Action Needed: Approve/Disapprove Registration Request or Refer to Technical Committee

- Tomlinson has received multiple applications for *Bt* corn products featuring MON 87411 double stranded ribonucleic acid (dsRNA) to protect from western corn rootworm.
- Tomlinson provided the Board with a flow chart and explained how the products function. The corn rootworm ingests the plant material with the dsRNA, which is then taken up by specific midgut cells of the rootworm. That RNA is cleaved into shorter interference RNA (siRNA) that binds to and silences (stops) the production of a particular protein. Protein levels rapidly decline, growth is inhibited, and the rootworm dies within 24-48 hours.
- Tomlinson stated the interference RNA is essentially a gene silencing mechanism. When the plant takes up that distinct sequence it suppresses a species-specific section of RNA. It is extremely targeted and effects the production of one specific protein.
- Tomlinson added that many studies were completed on mammalian toxicity studies and there have been no observable effects.
- Tomlinson asked the Board if they considered these products substantially different enough from previous registrations to require review by the technical committee. If the Board does consider the products dissimilar the technical committee will need to be re-established.
- Jemison stated that it is both yes and no a different pesticidal organism because it has been used in other crops. He does think it is different for this particular use, but questioned if a technical group, given this information, would find anything new that EPA has not found. He doubts that they will but stated he still feels it to be a tough call.
- Jemison asked if there has ever been a western root cornworm problem in Maine. Dill answered that they have found them but they have never been abundant enough to lead to a yield or quality difference. He added that a one-year crop rotation basically breaks the cycle.
- Jemison asked the room if there was a farmer present that would like to have this variety. There was no response.
- Jemison stated his opinion was they would be adding another pesticide mechanism where there is not a need, and asked if we are doing this for Monsanto or for Maine farmers.
- Morrill asked Randlett about the statutory criteria for registering a pesticide in Maine and if one criterion required there be a need for the pesticide. Randlett responded that was one of the criteria.
- Flewelling asked if *Bt* corn is being used in the state. Jemison answered that it is, but it is directed toward different pests such as black cutworm. He added he would be all for this if we were in the Midwest where there is a need.
- Tomlinson stated when she registers a product she registers the brand name, but with *Bt* corn it is difficult for enforcement because she registers what is on the bag tag. She found out recently there are multiple products produced under the same name that are using the same registration.
- Jemison stated he is not concerned about the technology, but about adding a new material into our environment that there is not a need for.
- Flewelling commented that he would like to hear from a representative explaining their marketing.
- Granger stated that he does not approve of tinkering too much with a company's ability to provide products to use that are efficient. He added that he will not support the motion not to register, but he understands the merit behind it.
- Morrill and Jemison agreed that they do not want to register the product at this time without a clear and present need for it in Maine agriculture.

- Tomlinson stated she will notify registrant and invite them to come back and present their case for consideration.
  - **Jemison/Morrill: Moved and seconded to not to register the product based on lack of need.**
  - **Vote 3-1 In Favor; Granger Opposed**

4. Inquiry and Complaint Summary

Summary of enforcement actions taken in 2015-2016.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: None—Informational Only

- Connors presented the Board with a summary of inquiries and complaints received by Augusta enforcement staff. They were in separate tables for 2015 and 2016 to give the Board an overview of the types and number of calls staff receive throughout the year.
- About halfway through 2016 staff switched from an Access database to the new Pega database, so the 2016 summary is a compilation from both databases.
- This information allows Board members to track trends in what kinds of calls are coming in, where they are coming in from, and what the response was.
- There was a discussion about the possibility of tracking all calls. Patterson stated staff are currently working to draw up parameters around what types of calls warrant recording.

5. Continuing Discussion of Funding for University of Maine Cooperative Extension PSAT and PSEP Positions

At the May 12, 2017 meeting, the Board tabled discussion of a request from Dr. James Dill of the University of Maine Cooperative Extension for a one-year grant of \$65,000 for a combined Pesticide Safety Education Program and Pesticide Applicator Training position. The Board requested that staff meet with Dr. Dill to develop a list of deliverables for this funding. The Board will now discuss the proposed list.

Presentation By: Megan Patterson  
Pesticide Program Manager

Action Needed: Discuss and Determine if the Board Wants to Fund this Request

- Patterson and Dill met and discussed what the Board had asked for in the previous meeting, including what outcome would be tied to monies funded by the Board. They came up with a plan of what would be produced for this fiscal year. After January 1, 2018, the funding will run yearly from October 1<sup>st</sup> to September 30<sup>th</sup> of each year.
- Patterson and Dill collaborated recently on a tick meeting that was very well attended, and a rodent management meeting, which is coming up next week. Kirby Stafford was the principal

speaker at the tick meeting and Bobby Corrigan will be the featured speaker at the rodent meeting. Both are nationally-recognized experts.

- Morrill told staff the Board should plan to revisit the grant in June every year so that there is no lapse in funding.
  - **Granger/Flewelling: Moved and seconded to fund request**
  - **In Favor: Unanimous; Jemison abstained**

6. Consideration of Consent Agreement with Weyerhaeuser Company of Fairfield, 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 multiple aerial applications of pesticides to sensitive sites (streams) and insufficient notification of an adjacent landowner prior to the application.

Presentation By:      Raymond Connors  
                                 Manager of Compliance

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

- Connors stated Weyerhaeuser Company is a paper company with substantial forestry tracts in Maine and they contract out for pesticide applications to those tracts. Applications are made to release softwood for the industry they are supplying. In this case the company self-reported in August 2016 after doing ground checking to see how the project went. They saw that the spraying of the prior year had encroached on areas that should not have been sprayed. There were buffer issues and streams that were sprayed over.
- Connors met with Weyerhaeuser staff to discuss how they prepare for forest spray projects and what steps are taken to ensure these things do not happen. This project was done in two separate Weyerhaeuser divisions, one in Greenville and one in Bingham. All incidences involving these violations occurred in the Greenville division. Weyerhaeuser attributed the application violations to a company employee not following company protocol.
- Granger asked if the spraying was done by Weyerhaeuser or contracted out. Connors stated it was contracted out to JBI Helicopters and Skyline.
- Granger asked why the company was liable and not the applicators. Connors explained that although Weyerhaeuser hired the companies to make the applications it was Weyerhaeuser who was responsible for detailing where the spraying was to be done. Weyerhaeuser employees lay out the spray blocks and then their foresters are responsible for walking the blocks with the map and making note of any sensitive areas that were not already noted on the maps. In this case, the Weyerhaeuser forester failed to mark the sensitive areas. The contractors sprayed where the Weyerhaeuser maps directed them to spray.
- In the Greenville division, Weyerhaeuser had invested the responsibility of walking the block and marking sensitive areas to a single forester and later found out the forester was not taking all steps that were required. They have since changed their requirements and now ensure more than one forester is involved in the walk-throughs to prevent the problem from recurring.

- Based on Weyerhaeuser's reports, BPC Inspector Tourtelotte and Weyerhaeuser foresters went into the spray areas and conducted ground-checking. Tourtelotte observed where there had been buffer violations and direct applications to water. Morrill asked how large the water bodies were. Tourtelotte stated the streams ranged from 12" to 15' wide. She added that some of the streams went below ground and came back above ground.
- Present in the audience were Mark Doty, public affairs manager in New England for Weyerhaeuser, and Frank Cuff, senior research forester for Weyerhaeuser, who were part of the group that investigated and followed up on the incident. Doty explained the softwood release process. He stated that there is an extensive layout process which begins a couple years before the application. Foresters use that information to build the plan and decide where they are going to spray. The year prior to the herbicide applications foresters are required to take maps and walk in the field to determine if there are any sensitive areas that were not noted. They then update the GIS information to more accurately reflect what is actually on the ground. Those updated maps are then given to the spray contractor.
- Doty stated his company is happy with the work of the Board, Marilyn Tourtelotte for all her work in the field, and Ray Connors for his assistance.
- Jake Metzler, Forest Land Stewardship Manager for the Moosehead Region Conservation Easement, was present and stated they have an interest in some of the property where the violations occurred. They wanted to hear the Board's findings and what enforcement actions were taken against Weyerhaeuser because they have their own enforcement process. Hearing the Board's decision will help them decide how they will move forward with this.
- Jemison commented that he was very encouraged that Weyerhaeuser came to us to admit there may be some issues.
- Tim Hobbs, Maine Potato Board, asked about self-reporting and what the incentive is for self-reporting. Morrill responded that a violation that is self-reported is still a violation. Connors stated the regulations describe events that must be self-reported. Connors added that when someone self-reports then he, Lay, and Randlett discuss how much effect that should have on the enforcement action pursued against the company.

- **Flewelling/Granger: Moved and seconded to approve consent agreement.**
- **Vote 4-0 In Favor**

## 7. Consideration of Consent Agreement with Town of Ogunquit, 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 misapplication of rodent bait.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors stated this consent agreement involved a situation where a building caught fire or was razed and there was immigration of rodents to a public beach area in Ogunquit. The rats went into the rip rap between the beach and the parking lot. The administrative services director for

the town directed a few of the summer workers to make an application of rodenticide blocks to the rip rap. There was a total of 40 lbs. of blocks purchased. The employees were instructed to place the blocks in the rip rap every couple feet. The administrative services director himself put out bait stations in the upper parking lot on three different occasions.

- Connors stated the violations included applications by unlicensed applicators and the use of a pesticide product without a bait station which was required for the outdoor, above ground application made in the rip rap. Connors added that the town did end up hiring a licensed applicator.
- Jemison asked about legal placement of bait stations on public property. Connors responded that bait stations are legal but have to be within one hundred feet of a man-made structure.

- **Flewelling/Jemison: Moved and seconded to approve consent agreement.**
- **Vote 4-0 In Favor**

8. Consideration of Consent Agreement with Green Thumb Lawn Service, Brewer, 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 application of herbicide to the wrong property.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors received a call from a home owner in Brewer asking how to remediate an unwanted herbicide application made to her property. She did not want to file a complaint. However, because an application had been made to the incorrect property, the Board was required to follow up on the issue.
- Green Thumb did have an established protocol for verifying the correct location but the applicator still made an application to the incorrect property. Connors stated the requirement to verify the location by checking the electric meter was the company's policy, but it was his understanding that the applicator did not check the meter.

- **Flewelling/Granger: Moved and seconded to approve consent agreement.**
- **Vote 4-0 In Favor**

9. Consideration of Consent Agreement with Frederick's Property Preservation and Inspections of Dixmont, 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 application of an herbicide in a manner inconsistent with its label, to an unauthorized property, by an unlicensed applicator.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors stated that Frederick's Property Preservation and Inspections (FPPI) company was hired to clean up a foreclosed property so it could be auctioned off at a later date. An enclosed cargo trailer parked on an abutting property, but owned by the foreclosed property owner, was part of the cleanup project. When FPPI employees opened the trailer, they saw approximately thirty 20 pound bags of Sam's Choice Weed and Feed. FPPI employees said that when they dismantled the sides of the trailer the bags fell off the trailer and ended up in a marsh/wetland area on the abutting property and all but six bags broke. The unbroken bags were removed from the site by the company employees. The balance of the weed and feed was left in the wetland.
- Inspector Pietroski, aided by a Department of Environmental Protection agent, investigated the incident. They observed a large cone shaped pile of granular material consistent with the appearance of the weed-and-feed, with no bags in the pile. Statements from employees indicated that the company attempted to remove the product from the marsh but ran out of totes. The company then poked holes in the totes, filled them with weed and feed, and dragged them around the property in an effort to disperse the material. Granular weed and feed could still be seen in the wetland area. There was dead vegetation in this same area. Other granules could be seen spread out on both the foreclosed property and the abutting property and there was a strong smell associated with pesticides. The granules were not spread out uniformly and clumps and piles covered large areas. Connors added that there were no employees of FPPI that were licensed applicators and the max application rate of the weed and feed had been exceeded.

- **Jemison/Flewelling: Moved and seconded to approve consent agreement.**
- **Vote 4-0 In Favor**

10. Consideration of Consent Agreement with Dependable Pest Solutions of Rochester, New Hampshire

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 multiple applications of pesticides in Maine by an unlicensed and unsupervised applicator.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Board staff received a tip that Dependable Pest Solutions company, based in New Hampshire, was sending an unlicensed applicator into Maine to make pesticide applications. The BPC

inspector went to the company and conducted a records check inspection. It was determined by the records check that an unlicensed applicator made 43 pesticide applications in Maine in 2016.

- Flewelling asked if the New Hampshire business was required to let BPC inspectors in to their facility to conduct the inspection. Connors replied that there was no opposition to let the Maine inspector in.
  - **Flewelling/Jemison: Moved and seconded to approve consent agreement.**
  - **Vote 4-0 In Favor**

## 11. Other Old or New Business

- a. Manchester Municipal Ordinance
- b. Articles and correspondence submitted by Board constituents:
  - Nancy Caudle Johnson email
  - Claire Adams, et al, *Lincoln County News* letter
  - Jody Spear, *Portland Press Herald* article
- c. Variances approved (all Chapter 29, Section 6):
  - Farrell, knotweed on her own property along Carrabassett River
  - High Pine Environmental, LLC, *Phragmites* in Kittery
  - Burman Land and Tree, LLC, invasive plants in Vassalboro
  - Baxter State Park, invasive plants

### Board member positions

- Jemison asked if there were any candidates yet to fill the empty position on the Board for an individual in the medical field. Lay replied he has initiated conversations in an attempt to find someone and is currently waiting for a response from one individual. Lay asked the Board to please let him know if they are aware of anyone that may be interested.
- David Adams has been selected to fill Richard Stevenson's position on the Board. Adams has been confirmed, but not sworn in. Adams stated the committee approved him, but the Senate has to vote and then he can be sworn in.

### Toxicologist position

- Lay told the Board that the BPC toxicologist position is open and they are actively looking for a good candidate to fill Lebel Hicks' position. The position is being held open until November 20<sup>th</sup>. Lay added he would be happy to hear any suggestions from Board members.

### Obsolete Collection Program

- Couture gave the Board a summary of this year's Obsolete Collection Program. There was a larger turnout this year. A total of 8,096 lbs. of obsolete and unusable pesticides were collected, which was an increase of 4,540 lbs. from 2016.

## 12. Schedule of Future Meetings



December 8, 2017, January 10, 2018, February 23, 2018 and April 6, 2018 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

13. Adjourn

- **Granger/Flewelling: Moved and seconded to adjourn at 10:30am.**
- **Vote 4-0 In Favor**