



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

June 5, 2020
9:00 AM

Video conference hosted in Zoom Meeting

MINUTES

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

1. Introductions of Board and Staff

- The Board, Assistant Attorney General Randlett, and Staff introduced themselves
- Staff Present: Brown, Bryer, Connors, Couture, Nelson, Patterson, Peacock, Pietroski, Tomlinson

2. Minutes of the February 28, 2020 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

- The Board noted a few small amendments that needed to be made to the minutes.
- **Jemison/Flewelling: Moved and seconded to accept minutes as amended**
- **In Favor: Unanimous**

3. Annual Report on Funding for the University of Maine Extension Manual Writer/PSEP Position

At the April 19, 2019 meeting, the Board voted to approve a \$65,000 grant to the University of Maine Cooperative Extension, for one year, for a combined Pesticide Safety Education Program and Pesticide Applicator Training position. As part of the approval, the Board requested that it revisit the grant in June every year to confirm the availability of funding for the state fiscal year (October 1-September 30). The Board heard a report on work accomplished in the previous year and work projected for the coming year.

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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Presentation By: Megan Patterson, Director

Action Needed: Discussion of Accomplishments and Projected Work Plan

- Kerry Bernard, Manual Writer/PSEP, gave the Board an overview and update on which manuals and other work was completed last year.
- Patterson explained to the Board that Public Law 2019, Chapter 243 was enacted on June 7, 2019 and this law provides funding for Bernard's position through a legislative transfer that must be completed annually on or about April 1st.
- Bernard stated that she plans to complete rewrites of the Commercial Structural and the Private Small Fruit manual this coming year, as well as conduct recertification meetings for commercial applicators. Bernard said that she may have to move toward online modules for some of the training, and they will include interactive PowerPoints with quizzes throughout that must be answered before the user may progress through the slide show. At the end of the modules a certificate could be generated and emailed to Board staff. She added that she has updated the UMaine pesticide safety website where the manuals are located and added more safety information to the page, including respirator brochures and disinfectant safety.
- Morrill noted that he liked idea of online trainings to help applicators receive their recertification credits, and thanked Bernard for all of her work.

4. Request to Extend Special Local Need [24(c)] Registration for Dual Magnum (Syngenta Crop Protection, LLC) for Yellow Nutsedge and Hairy Galinsoga in Vegetables

In 2014, the Board approved a Section 24(c) registration for Dual Magnum (EPA Reg. No. 100-816). The 24(c) was renewed in 2014, but the registration expired December 2019. The University of Maine Cooperative Extension submitted this renewal request for a 24(c) registration. The proposed SLN will expire December 31, 2024.

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

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

- Mark Hutton, UMaine Extension, explained to the Board that this SLN request came from about a dozen medium sized mixed vegetable growers looking for products to use, especially in spinach and beets, for weed control. He added that use in these crops is not extensive, but it is an important tool for them to use.
- Jemison stated that the EPA planned to release new tolerances between April and June and then the pandemic hit. He asked about Bryer's thoughts on approving the SLN for a shortened approval period until we receive the new info from EPA.
- Bryer stated that she did email the EPA product manager regarding tolerance changes. The EPA reported no further changes. Bryer indicated that she will continue to monitor EPA's active ingredient review process.

- Hutton stated that he supported a shorter approval period with a plan to review the anticipated EPA guidance.
- Randlett told the Board that they had the option to set SLN time periods as they see fit.
- The Board discussed the approval period for the SLN label and agreed to renew approval for the remainder of the year and then, should growers continue to require the SLN, reassess the SLN request following receipt of the anticipated EPA guidance.

- **Jemison/Granger: Moved and seconded to approve the SLN registration for Dual Magnum through to December 31, 2020**
- **In Favor: Unanimous**

5. Consideration of Consent Agreement with Bath Housing Authority, of Bath, 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 an unlicensed application in an area open to the public, posting, and use of a pesticide inconsistent with the product labeling.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors told the Board that he received a call from a tenant who reported witnessing an application of herbicide from an unlicensed individual. An inspector followed up and discovered that Bath Housing Authority had asked an employee to do a crack and crevice treatment on sidewalks and on the pavement around a few of the buildings. Connors stated that several violations were identified:
 - application by an unlicensed individual,
 - no provision of notification to tenants,
 - label-required personal protective equipment was not worn, and
 - the product label prohibited the product from use around homes and walkways.
- Connors stated that the consent agreement included a penalty of \$1,000. Bath Housing Authority has signed and paid the agreement.
 - **Morrill/Flewelling: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

6. Consideration of Consent Agreement with Hughes Inc., of Freeport, 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 an unauthorized pesticide application.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors stated that this case involved a licensed commercial applicator that had been hired for the previous two years to control browntail moth in oak trees on a customer's property. The owner of Hughes, Inc sent out a renewal notice to that customer that advertised services, including new alternative products that could be used for control of browntail moth. The customer was interested in the service but wanted more information regarding the new products and how they compared to products applied in the previous years. No one from Hughes Inc. got back to the customer to discuss the new products. Connors stated that the customer both emailed and phoned Hughes that she had made alternative arrangements for browntail moth control on her property and asked the owner of Hughes Inc. to remove her from his schedule. The customer and her family returned from a vacation to find that Hughes had made an application of Acephate 97 UP while they were gone. The customer did not authorize this application and did not want this pesticide applied.

Connors told the Board that Hughes, Inc was fined \$600 for the unauthorized pesticide application. The fine has been paid.

- **Jemison/Waterman: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

7. Consideration of Consent Agreement with The Turf Doctor Inc., of Augusta, 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 notification registry and broadcast application of a pesticide within 25 feet of water other than those applied to control arthropod vectors of human disease or stinging insects.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors told the Board that this was a combination of two complaints. The first complaint involved a neighbor of a Turf Doctor customer who was on the notification registry and was not notified before the application. Connors added that the second

complaint involved a violation of a broadcast application made within the 25 feet buffer zone around surface water.

- Connors stated that the proposed fine was \$750, and both violations were included in the consent agreement. Turf Doctor, Inc. has paid the assessed fine.

- **Morrill/Jemison: Moved and seconded to approve consent agreement**
- **In Favor: Unanimous**

8. 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: Megan Patterson, Director

Action Needed: Nominations and Election of Officers

- **Granger: nominated Morrill for Board of Pesticides Control, chair**
- **Morrill: nominated Bohlen for Board of Pesticides Control, Vice Chair**
- **Jemison: seconded both nominations**
- **In Favor: Unanimous for both nominations**

9. Other Old and New Business

a. Certification and Licensing Program Update

- Morrill indicated that staff should send information to commercial applicators informing them of the new training requirement for non-certified applicators because it seemed like many companies may not be aware of this new rule.
- Patterson stated that staff can definitely send another email blast and a GovDelivery to let companies know they need to have non certified applicators take pesticide safety training.
- Patterson summarized the protocol for drive up certification exams that staff were currently hosting.
- Pietroski stated that staff is also reaching out to licensed applicators to let those who are low on credits know that there are online recertification courses available. He added that staff have administered 353 commercial applicator exams since the beginning of the COVID pandemic and inspectors have given 12 private agricultural exams. Pietroski told the Board that the commercial pass rate is currently around 66%.
- Morrill asked if staff had explored options for web-based exams.

- Pietroski replied that staff had given it much thought, but ultimately chose the current option in order to keep the integrity of the exams.
- There was further discussion about offering exams during this time. Patterson stated that colleagues in Massachusetts are thinking about initializing online exams and they will share outcome of that effort with us. She added that there is concern regarding test security and the downside of utilizing an outside testing center is that they charge a significant fee that would need to be passed along to the people taking exams.

b. Neonicotinoid Registration Reviews

- Morrill commended Bryer's memo for summarizing the review in a clear and easy to understand manner.
- There was further discussion about neonics and the proposed changes. Bryer told the Board that EPA has extended the comment periods multiple times so it is unclear when EPA will move forward with the process.
- Patterson also noted stewardship changes, but that many of them are voluntary and cannot be enforced. She added that the comment period was extended again about a week ago.

c. Pesticide Container Fee Webpage

- Patterson stated that the new fee on all containers of pesticides sold to unlicensed applicators was now Public Law 2020, Chapter 548, and it went into effect January 1, 2020, but there was a substantial delay. She added that the Maine Revenue Service should have it up on their site very soon. Patterson told the Board that BPC staff will create outreach services for licensed applicators to let them know they can receive a Certificate of Exemption.
- Patterson told the Board that our obligation is to provide a monthly update of registered products in the state of Maine, which will be posted on the website and we will send out a monthly GovDelivery detailing these products. Maine Revenue Service will also have guidance on their website. A small amount of funding goes to the BPC to offset costs of addressing the responsibilities identified in statute. Patterson stated that Maine Revenue Service also receives a small amount of funding for administering the fee. The remaining funds are collected by the University of Maine Cooperative Extension Diagnostic and Research Laboratory. She explained that half of the remaining funds are to be distributed to the tick laboratory for various non administrative costs. The other half of the remaining funds are to be shared equally between efforts toward pest management and pest research. The funding allocated to pest research will be overseen by a seven-member pest research committee.

d. Notification Update

- Patterson told the Board that she spoke with Pluecker to brainstorm ways in which the approach to notification could be changed without going through rulemaking. Ideas included providing an online sign up for the Non-Agricultural Registry and considering removing the associated fee. She added that staff could conduct more outreach and

education for the public about the Non-Agricultural Registry and Self-Initiated Notification. Patterson stated that we could also create resources for applicators to make notification easier.

e. Budget Update

- Patterson will come back at July Board meeting with information on the budget.
- There was discussion amongst the Board about keeping within statutory requirements that the budget is to be created with input from the Board.
- Bohlen stated that colleagues at other state agencies are asking about directions for cuts and asked if the Board would have input into these relevant conversations if we are at an appropriate time to weigh in.
- Gibbs stated that the timing is perfect because staff is dealing with finalizing end of budget now, so July would be a great time. She added that they would have to start looking at cuts and are being directed to only purchase items that are necessary.
- Morrill asked that ideas about the upcoming budget be added to the next agenda.

f. Variance Permit for Asplundh Tree Experts—Railroad Division

g. Variance Permit for Dubois Contracting

h. Letter from Emera Maine

i. Water Quality Monitoring Update

- Patterson stated that the Water Quality Monitoring Program had begun sampling wells this year and was about one third through before it was cut short this year due to the pandemic. She commented that staff had only completed about 55-60 out of the 200 wells they planned to test. Patterson told the Board that the inspectors were extremely efficient and did their best to get as much done as possible in the time allotted. She added that they did not want to cut short the water quality program, but the COVID-19 pandemic left staff with no choice because people were not answering their doors. This response was presumed to be related to corona virus and folks being concerned about people entering their homes. This initiative is typically very well received, and people are typically eager to participate.
- Morrill asked if staff had intentions of picking the project back up after the COVID-19 pandemic was over.
- Patterson responded that staff intended to continue the work in late 2020 and/or early 2021. The conversation about proceeding will necessarily include a discussion of how to move forward as well as the consideration of contingency plans for how the project might change to address continued complications resulting from the pandemic.
- Morrill suggested sending out flyers or calling individuals ahead of time.

j. Falmouth Municipal Ordinance

9. Schedule of Future Meetings

July 24, 2020; September 18, 2020 and November 6, 2020 are proposed meeting dates.

- Flewelling asked if the July meeting would be held on Zoom as well.
- Patterson stated that at this time it looks like it will be unless the office building is open by then. She offered to find a facility if the Board would prefer to meet in person.
- Flewelling stated that the Zoom meeting worked well.
- Jemison stated that he thought this was a successful meeting and really appreciated having an extra three hours in his day from not having to drive to Augusta for the meeting. He added that it would be great to hold virtual meetings in the winter when there is bad weather.

8. Adjourn

- **Morrill/Flewelling: Moved and seconded to adjourn at 11:04am**
- **In Favor: Unanimous**