



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

JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

February 9, 2024

9:00 AM Board Meeting
9:30-10:00 AM Public Forum
10:00 AM Board Meeting Continued

MINUTES

Adams, Bohlen, Carlton, Ianni, Lajoie, Neavyn

1. Introductions of Board and Staff

- Board: Adams, Carlton, Ianni, Jemison, Lajoie
- Assistant Attorney General: Carey Gustanski
- Staff: Boyd, Couture, Peacock, Pietroski, Vacchiano

2. Minutes of the December 1, 2023 Board Meeting

Presentation By: John Pietroski, Acting Director
Action Needed: Amend and/or approve

- **Lajoie/Carlton: Moved and seconded to approve the minutes of the December 1, 2023 meeting**
- **In Favor: Unanimous**

3. Introduction of New Registrar, Julia Vacchiano

- Patterson introduced Julia Vacchiano, BPC's recently hired Pesticide Registrar and Water Quality Specialist, to the Board.

4. 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 101 farmworkers during the 2023 season. Funding to support the effort in 2024 is being requested in the amount of \$6,432, which is the same funding amount provided by the Board in 2023. The

funding has been accounted for in the Board's FY24 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 told the Board that MMHP had trained 101 farmworkers on Worker Protection Standards and heat stress in 2023. MMHP also collaborated on a case with BPC in which an interpreter was needed.
- Patterson added that the collaboration around translation was essential while investigating the complaint.
 - **Carlton/Ianni: Moved and seconded to fund the request in the amount of \$6,432.**
 - **In Favor: Unanimous**

5. Update on Implementation of LD 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

At the September 1, 2023 Board meeting, staff brought forward a memo regarding the implementation of LD 1770. Bohlen agreed to join staff for a meeting with developers and licensed applicators/dealers that use Maine Pesticide Enforcement, Registration, and Licensing Software (MEPERLS) to discuss changes that would be needed to simplify the data entry process for annual reports. Staff will provide an update from these meetings. In addition, the Board discussed potential rulemaking to require electronic submissions of records. Staff will give a brief update on the discussions at the sales and use meetings. These discussions will be included in the report on the implementation of LD 1770 is due to the legislature by March 1, 2024. The report will be presented at the February 23, 2024 board meeting.

Presentation By: John Pietroski, Acting Director
Action Needed: Discussion

- LD 1770 requires rulemaking to implement the requirement of electronic submission of annual use and sales reports. Two stakeholder meetings were held to discuss this implementation and some modifications were made to the BPC computer software solution system as a result.
- Carlton stated that staff needed to incorporate training to the regulated community on the process of entering the report information electronically.
- Patterson stated that BPC staff plan on conducting video and live trainings and there are static trainings on the BPC website that will hopefully be useful to folks.
- There was discussion about the amount of staff time to implement this change and issues for the regulated community who do not have access to the internet.
- The Board also went over agenda item six at this time and reviewed the proposed language. They proposed adding language that required reports to be submitted electronically through the current BPC portal and creating a timeline for implementation and start year that electronic reports would be required.
- Adams stated he thought electronic reporting should be strongly encouraged for 2024 and mandated in 2025.
- Patterson suggested additional conditional language could be added at the tail end of the rule. She also asked the Board's thoughts on a variance, waiver or staff issued exemption for those in the regulated community without internet access.

- Adams asked for the number of licensed individuals who did not have internet.
- Patterson responded that it was a small number and staff could bring that back next time.
- There was Board discussion about reporting annual use by commercial category.
- Ianni stated she would like to see a list of what questions could be answered from this data and on the stakeholder side what questions people wanted answered. She suggested that could maybe originate from the IPM Council. Ianni asked if something should be put in place that detailed what BPC wanted to achieve with this recordkeeping.
- Bohlen stated that certain information could be extrapolated about specific sets of pesticide data. He also mentioned the possibility of looking at the pesticides by mode of action to see if there was increased or decreased use in certain groups. Bohlen noted the Board should also consider the burden on industries reporting weighed against what could be answered with this information.

6. Potential Rulemaking on 1770: Resolve, Directing the Board of Pesticides Control to Transition to Electronic Submission of Pesticides Sales and Use Data

At the December 1, 2023 Board meeting, the Board discussed LD 1770 and what issues might be addressed in rulemaking. There is a need for the Board to discuss rulemaking to implement LD 1770. Staff have compiled a memo with draft language for the Board to consider.

Presentation By: Karla Boyd, Policy & Regulations Specialist
 Action Needed: Discussion and amend/approve rulemaking

- This topic and amendments to the proposed rulemaking were discussed in the dialogue above along with agenda item five.

- **Bohlen/Carlton: Moved and seconded to pause meeting for public hearing at 9:49 AM**
- **In Favor: Unanimous**
- **Meeting was restarted at 10:08 AM**

7. Draft Adjuvant Policy

At the February 24, 2023 Board meeting, the Board voted on developing a policy that excluded colorants as adjuvants following the implementation of PL 2022 c. 673 (130st Legislature LD 2019), which includes spray adjuvants in the definition of pesticides. At the July 21, 2023 Board meeting, the Board voted to implement a policy related to the distribution of adjuvants that were not previously registered in Maine. Additionally, there is a need to develop a policy regarding recordkeeping requirements for spray adjuvants. Staff have combined these concepts into one policy for consideration.

Presentation By: Karla Boyd, Policy & Regulations Specialist
 John Pietroski, Acting Director
 Action Needed: Discuss; approve/disapprove adoption by interim policy

- Boyd stated that at a previous meeting the Board decided to include in the adjuvant policy what would not be considered an adjuvant. In this draft policy water and colorants would not be included as adjuvants.

- There was discussion amongst the Board about other products that might not be considered adjuvants. It was decided to handle these on a case by case basis and if there was a product someone considered should not be defined as an adjuvant they should bring it before the Board for discussion.
- Ianni mentioned she had reservations about exempting colorants from the definition of adjuvants as those products. She asked if BPC knew what those products chemically contained and if there could be PFAS concerns. Ianni stated she would prefer if the policy was limited to only water.
- Peacock read what had been included in statute as the definition for an adjuvant.
- Bohlen stated he liked the idea of including that statutory language in the policy.
- Jesse O'Brien, owner of Downeast Turf Farm and Chair of the IPM Council, mentioned softeners that were used to soften the soil when the turf was dry but that these products did not aid in the efficacy of the pesticide.
 - **Bohlen/Lajoie: Moved and seconded to modify the policy to include language from statute defining adjuvant**
 - **In Favor: Unanimous**

8. Adjuvant Reporting Start Date

Staff are requesting guidance on when applicators and dealers must begin reporting annual use and sales data for adjuvants. Staff are requesting guidance and a decision on the start date for reporting adjuvants in order to educate applicators and dealers on these new requirements. Staff are proposing a start date of January 1, 2024.

Presentation By: John Pietroski, Acting Director
 Action Needed: Discussion

- Adams stated this was redundant because adjuvants were already defined as pesticides and that would include reporting requirements.
- Patterson stated that staff would like this to be clear and would like clarification that there is expectation of registration and reporting.
- There was discussion about if there were pesticides being shipped into the state that were not registered. Lajoie asked for an update at the next meeting if more had been registered.

9. Update to Plant-Incorporated Protectant Technical Committee Policy

In 2009, the Board established a policy on forming a technical committee (TC) that would review new plant-incorporated protectant (PIP) registrations. The Board has received several new PIP registrations for 2024, therefore there may be a need for the Board to review these registrations. The Board may need to also revise their PIP TC policy to ensure that all of the required parties are appointed. Staff have provided the existing PIP TC policy for review.

Presentation By: John Pietroski, Acting Director
 Action Needed: Discussion & potential revision to current policy

- Patterson stated there had been discussions during rulemaking and there was a recent legislative hearing related to plant incorporated protectants, PIPs, and *Bt* corn. This policy explained who the technical committee consisted of and their responsibilities. Because of

Jemison's imminent departure from the Board the BPC would have a vacancy and the Board may want to revise policy regarding the standing membership. There was also a need to inform the positions listed that they are on this standing committee.

- Patterson suggested staff could research what would allow a little more flexibility in the standing committee membership and bring that back to the Board for review.
- The Board discussed what other expertise would be needed on the committee.
- Patterson stated the Board had the possibility to have three additional ad hoc members.
 - **Carlton/Lajoie: Moved and seconded to table this topic and have staff bring back a list of suggestions including expertise as needed**
 - **In Favor: Unanimous**

10. Board Representation Discussion

Overview of engagement of Board members in public meetings outside of Board of Pesticides Control meetings.

Presentation By: John Pietroski, Acting Director
Carey Gustanski, Assistant Attorney General
Action Needed: None

- Gustanski summarized protocols for Board member participation in panels that were not Board functions. He stated that if a member was asked to appear on a panel it was best practice to not be identified as a BPC Board member without the prior permission of the Board. He added that it could present the perception that the individual was speaking on behalf of the BPC.

11. Request for 24(c) Registration for Arsenal Herbicide Applicators Concentrate

At the request of Ronald Lemin, Jr. and the BASF Corporation supports the Special Local Need [24(c)] Registration (imazapyr, EPA Registration No. 241-299) and SLN NO. ME-040001 for the use of Arsenal Herbicide Applicators Concentrate to allow increased surfactant rate when used in combination with glyphosate for Jack pine, black spruce, red spruce, and white spruce release. This SLN was renewed in 2021 with a shorter expiration date with the expectation that this use would be added to the master label. According to BASF this use has yet to be incorporated into the label.

Presentation By: John Pietroski, Acting Director
Julia Vacchiano, Registrar
Action Needed: Review and/or Approve

- Vacchiano stated that this SLN was recently renewed in 2021 for three years instead of five because it was thought that this use would be added to label but BASF said they would like to keep this use as an SLN and no longer plan to update the label.
- Lemin stated that he was disappointed that BASF would not be updating the label but he had reached out to another manufacturer and they were in the process of updating their label to include this use. He added that there was need for this SLN product at least for this year until they could obtain the other product with the updated label to replace it. The new product would have language on the standard label and would not need an SLN at that point.

- **Lajoie/Carlton: Moved and seconded to approve the SLN for two years**
- **In Favor: Unanimous**

12. Consideration of Consent Agreement for Certified Pest Management of Chelsea, 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 false or fraudulent record and an unlicensed application.

Presentation By: Alex Peacock, Manager of Compliance
 Action Needed: Review and/or Approve

- Peacock stated this occurred when following up a complaint on a misuse of pesticide and it was discovered that the owner was not licensed. This case involved a false or fraudulent record and an unlicensed application. The company is no longer in business.

- **Carlton/Bohlen: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

13. Consideration of Consent Agreement for Mosquito Squad of Southern Maine of Scarborough, 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 violation of drift minimization and use of a pesticide inconsistent with its label.

Presentation By: Alex Peacock, Manager of Compliance
 Action Needed: Review and/or Approve

- Peacock stated that the agreement outlined several violations. Samples were taken from the neighboring property, including wipe samples on a chicken coop and vegetation samples. The chicken coop was negative but there was drift over the property line. Peacock stated that the applicator was newly hired, not licensed, and had not reviewed the label before the application. The second infraction was an application made during a rainy day. There was video of the application occurring during a rain event. This company had a previous consent agreement in 2021.

- **Lajoie/Carlton: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

14. Consideration of Consent Agreement for TruGreen Lawncare of Westbrook, 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 notify a property on the Notification Registry, use of a pesticide inconsistent with its label, and failure to cease spray activities near unprotected persons.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

Peacock stated that this company previously received a consent agreement in 2020 that required them to conduct extra in house training. This case involved failure to notify a property on the Notification Registry, use of a pesticide inconsistent with its label, and failure to cease spray activities near unprotected persons.

- **Carlton/Lajoie: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

15. Consideration of Consent Agreement for Insight Pest Solutions Maine, LLC of Falmouth, 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 numerous unlicensed applications.

Presentation By: Alex Peacock, Manager of Compliance
Action Needed: Review and/or Approve

- Peacock stated that this case involved numerous unlicensed applications.
 - Ianni asked why \$40,000 was being waived.
 - Peacock replied that this was a negotiated settlement, and if the company had another violation within five years, then the additional \$40,000 would be due.
 - Carlton thanked Peacock and the enforcement staff for the work they were doing.
- **Carlton/Neavyn: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

16. Consideration of Consent Agreement for Prime Cut Landscaping of Scarborough, 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 the application of pesticides by an applicator that did not hold the proper category for the work performed.

- Peacock stated that this violation was discovered after a follow-up complaint regarding. He added that the individual responsible was not working for the company anymore.
- There was Board discussion about whether prior infractions were taken into consideration when licensing individuals.
- Patterson stated that there was nothing in the rule that gave staff the authority to reject applications for licensure.
 - **Bohlen/Neavyn: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**
- **Carlton/Neavyn: Moved and seconded to adjourn for a break**
- **In Favor: Unanimous**
- **The Board meeting resumed at 11:55 AM**

17. Other Old and New Business

- Adams introduced a topic regarding increasing penalties for violators of BPC rule and noted that the Board successfully navigated through licensure suspension for repeat offenders. He voiced concerns about companies that kept violating rules repeatedly.
- Peacock noted that there was currently a process in statute for revocation if the board felt the fines were not significant enough.
- Ianni commented that this level of negligence would not be tolerated in another business setting and it was clear the current consent agreements were not a deterrent.
- There was a discussion about criminal versus civil violations.
- Gustanski stated that to pursue a criminal case there would need to be violations proven that were made in a willful, knowing, and intentional manner. It is a high bar to clear and would require buy-in from the AG's office to pursue.
- Ianni asked how other states handled this issue.
- Peacock responded that other states have the same issues and some states do not have the ability to negotiate consent agreements. If there was a case where someone was severely harmed the BPC may potentially look into criminal violations. Peacock explained the current process for license revocation.
- Gustanski said it would have to be a legislative fix to increase the penalty amounts. The Board could decide to enact a policy about considering going to the district court for revocation. It would not be enforceable but could guide decision making.
- There was further discussion about repeat violators. Bohlen suggested the Board be notified upfront if there was a pattern of repeat violations.
- Peacock said that if the Board had specific parameters regarding when they would want to review a case, staff could bring that forward.
- Ianni asked staff to provide a list of triggers they thought were important for the Board to possibly be brought in earlier in the process.
- Bohlen stated the Board used to receive an enforcement spreadsheet but they had not received one recently and those helped to give a sense of the workload.

- Patterson stated it had been approximately three years and staff used to prepare them every other year or so.

- a. EPA Update: EPA Takes Action to Protect People from PFAS that Leach from Plastic Containers into Pesticides and Other Products

- **Carlton/Bohlen: Moved and seconded to approve Dave Adams and/or Robert Carlton to attend the upcoming work session discussing major substantive changes to Chapter 41 that the Committee on Agriculture, Conservation and Forestry would be holding in the immediate future.**
- **In Favor: Unanimous**

18. Schedule of Future Meetings

April 5, 2024 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

- The Board decided to aim for an early June meeting rather than a May meeting.

19. Adjourn

- **Carlton/Bohlen: Moved and seconded to adjourn at 1:00 PM**
- **In Favor: Unanimous**