



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

October 13, 2023

9:00 AM Board Meeting

MINUTES

1. Introductions of Board and Staff

- Adams, Carlton, Ianni, Jemison, Lajoie, Neavyn
- Assistant Attorney General Carey Gustanski and Staff introduced themselves

2. Minutes of the September 1, 2023 Board Meeting

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

- **Jemison/Carlton: Moved and seconded to accept minutes as amended**
- **In Favor: Unanimous**

3. Workshop Session to Review the Rulemaking Record on the Proposed Amendments to Chapters 20, 31, 32, and 41

(Note: No additional public comments may be accepted at this time.)

On August 9, 2023 a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 31, 32, and 41. A public hearing was held on September 1, 2023 by a hybrid meeting in Deering Building 101 at 90 Blossom Lane, Augusta and on the Microsoft Teams platform. The written comment period closed at 5:00 PM on September 11, 2023. Nine people spoke at the public hearing and six written comments were received by the close of the comment period. One additional comment was received after the close of the comment period. The Board will now review the rulemaking comments and determine how it wishes to proceed with the rulemaking proposals.

Presentation By: Karla Boyd, Policy & Regulations Specialist

Action Needed: Discussion and determination on how the Board wishes to proceed with the rulemaking proposals

- Boyd explained the amendments in the chapters involved and told the Board the rulemaking packet also included public comments summarized with responses, the basis statement and impact on small business. She stated that Chapter 41 was major substantive. Boyd noted that there were three versions of proposed language for Chapter 20 incorporating suggestions relating to comments received regarding the proper identification of treatment sites.
- Adams asked for input from the Board regarding Chapter 20 language and if it should be specific to an individual applicator who continued to make mistakes or to companies that manage the applicators.
- Jemison stated that an individual making applications to an incorrect site was the problem but companies needed to train the applicator and the BPC needed to train the companies. He added that he appreciated that this change could be more difficult for larger companies to oversee but that the companies still had some responsibility.
- Carlton stated this became an issue because the Board had received many consent agreements regarding improper identification of the application site. He added that he was of the opinion that the violation needed to follow the employee and was leaning towards version two of the amended rule.
- Ianni stated that she would support version three of the proposed amendment which put the onus on the master applicator and the firm. She stated that regardless of the number of employees the businesses needed to have enough commercial master applicators to supervise those employees just like having managers for any business.
- Lajoie stated that shutting down a company because of one individual's mistakes seemed severe. He supported version two of the proposed rule.
- There was discussion about the process of inspections, consent agreements and steps in making a determination of whether a suspension would be in order.
- Boyd stated that Title 22 §1471-D outlined the process for applicator license suspension. The Board would be the entity to suspend a license temporarily and the individual would have the opportunity for a hearing.
- Carey said discretion was up to the Board on whether or not to impose a temporary suspension.
- There was discussion about the length of time it would take to impose a suspension after an offense and if a company would need to provide a plan to address errors moving forward. There was consensus that version two followed the applicator, which was what the Board was setting out to do initially, and it would eventually affect the company.
- Chapter 31 was a housekeeping change to consolidate category 7C. Boyd explained that the change in Chapter 32 was to incorporate federal rule by reference.
- There was Board discussion on the wording in Chapter 41 mandating seed sales of *Bt* corn must be in quantities large enough to plant one acre or more. The Board decided to remove the acreage requirement.
- Carey stated that if there were a change in the acreage requirement, the rule would need to go back to public comment. The basis statement would need to be amended so the other chapters could proceed in the rulemaking process.

- **Neavyn/Lajoie: Motioned and seconded to adopt version two of Chapter 20 as amended, the Basis Statement, the Impact on Small Business, and the Summary of Comments and Responses as written.**
- **In Favor: Unanimous**

- **Lajoie/Carlton: Motioned and seconded to adopt Chapter 31, the Basis Statement, the Impact on Small Business, and the Summary of Comments and Responses as written.**
- **In Favor: Unanimous**

- **Ianni/Lajoie: Motioned and seconded to adopt Chapter 32, the Basis Statement, the Impact on Small Business, and the Summary of Comments and Responses as written.**
- **In Favor: Unanimous**

- **Jemison/Neavyn: Motioned and seconded to table Chapter 41 and reinvite additional public comment.**
- **In Favor: Unanimous**

4. LD 1770 Sales & Use Reporting

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 that meeting. In addition, the Board discussed potential rulemaking to require electronic submissions of records. Staff have provided potential amendments to Chapter 50: Recordkeeping that would implement these requirements. A report on the implementation of LD 1770 is due to the legislature by March 1, 2024.

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

- Pietroski summarized the meeting that staff, Bohlen and stakeholders held reviewing what was currently in place for electronic annual use and sales summary reporting in MePERLS. It was decided at the meeting to update the current system to include a preliminary review process before an individual submitted a final report and to include the ability to enter adjuvants. There was discussion about the quality of the data. The group plans to have a subsequent meeting.
- Bryer stated this had been an issue to present quality data in a format the legislature would find useful. She added that staff could not get to fine details easily but with these records they could get to pesticide use trends that could assist in answering whether or not the state was reducing its reliance on pesticides. Bryer summarized what data had been collected and what could be gleaned from that. There was further discussion about what other entities would like from the data and the resource limitations on collecting that data. Bryer noted that the sales data seemed more reliable than the use data but gave less information on who was using it and why.
- There was Board discussion about exactly where the request for data was coming from and how data could be used to help the Board make decisions.
- Adams commented the Board could spend more money to update the software but that would only change what was reported, not the data quality.

- Bryer said it would be great to see some changes in the requirements for the form because recording the category an application is made under may be an improvement that would make the end data more useful.
- There was discussion about how ‘application site’ is recorded and if refining that could improve the data.
- Jemison suggested asking Representative Osher to attend the next meeting to hear the details about collecting this data.
- Ianni agreed that Osher and a data analytics person should be involved.
- There was a discussion about the reporting of adjuvants. The Board will discuss this further at the next meeting.

5. Revised BPC Budget Review

Staff have prepared the budget for fiscal years 2024, 2025, and 2026 for the Board to review. Staff is requesting the Board's guidance on adjustments to the budget including adding funding to additional programs.

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

- Pietroski stated that FY ‘24, ‘25, and ‘26 revenue was projected to be higher than expenditures. Pietroski mentioned the previous approval from the Board for allocating funds towards outreach.

6. Discussion About Registration of Repellent Clothing

At the September 1, 2023 meeting, the Board discussed potentially adding repellent clothing to registration requirements. Staff had requested the Board’s guidance in developing a policy for registering or exempting pesticide-impregnated clothing and gear. During the discussion, Board members asked for additional information describing the greater context of this issue. Staff will present assembled documents, sample labels, and feedback from other states regarding impregnated clothing and gear.

Presentation By: Pamela Bryer, PhD, Pesticides Toxicologist
 Action Needed: Discussion

- Bryer stated that the EPA website described regulation of these types of articles. EPA only recognized permethrin-treated articles for ticks and mosquitoes. Board materials included three master labels that were currently registered. Bryer summarized the memo and described the current registration process for other treated articles. She explained how some of the other states handled these registrations and the max number that EPA registered.
- Adams stated that he felt like this proposed policy had a specific purpose to keep people safe.
- The Board directed staff to reach out to manufacturers of the cloth to inform them that moving forward each brand would require separate registration and to add explanatory language to the registration webpage.

7. Update on Agricultural Container Recycling in Maine

At the last Board meeting members expressed interest in receiving an update regarding the current landscape of agricultural container recycling in Maine. In response, staff spoke with Mark Hudson, Executive Director, of the Ag Container Recycling Council (ACRC). Hudson offered to attend the following Board meeting to give an update on agricultural container recycling. Additionally, material describing changes to state law regarding the new extended producer responsibility (EPR) container recycling program has been included in the board packet. The Department of Environmental Protection facilitates the EPR program. This new program may affect pesticide manufacturers depending on several criteria as described in the included material. Successful implementation of the ACRC (or similar) recycling program has the potential to provide an exemption for pesticide manufacturers from EPR participation.

Presentation By: Staff
Action Needed: Discussion

- Pietroski stated that Mark Hudson would address the Board at the next meeting. He added that BPC staff would be assisting Hudson with presentations for recertification and working with the regulated community.

8. Other Old and New Business

- a. EEE Press Release
- b. Press Release on Drone Use in Herbicide Applications in Maine
- c. Variance Permit for CMR01-26 Chapter 29, RCL Services, LLC
- d. Variance Permit for CMR01-26 Chapter 29, Midcoast Conservancy
- e. EPA Update: DCPA (Dacthal) Technical Product Suspended
- f. EPA Update: New Active Ingredient Fluazaindolizine Registered
- g. EPA Update: Proposes New Mitigations for TCVP
- h. EPA Update: Upcoming Webinar on Understanding Bulletins Live! Two November 9, 2023
- i. EPA Update: Approves New Mitigations for Cyantraniliprole as Part of ESA Protections
- j. EPA Update: Public Comment Period on Proposal to Register Novel Pesticide Technology for Potato Crops

9. Schedule of Future Meetings

December 1, 2023, January 10, 2024, February 23, 2024 and April 5, 2024 are the next scheduled Board meeting dates. The Board will decide whether to change and/or add dates.

Staff reserved Deering Room 101 for December 1, 2023 and January 10, 2024; Marquardt Room 118 for February 23, 2024; and Deering Room 101 for April 5, 2024.

Adjustments and/or Additional Dates?

9. Adjourn

- **Jemison/Lajoie: Motioned and seconded to adjourn at 12:05 PM**
- **In Favor: Unanimous**