



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

January 14, 2022

9:00 AM Board Meeting
11:00 AM-12:00 PM Public Forum
12:00 Board Meeting Continued As Necessary

MINUTES

- Adams, Bohlen, Flewelling, Granger, Jemison, Morrill, Waterman
1. Introductions of Board and Staff
 - The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
 - Staff: Boyd, Bryer, Connors, Couture, Nelson, Patterson, Pietroski, Saucier, Tomlinson
 2. Public Hearing on Proposed Rule Amendments to Chapters 20 and 41

The Board heard testimony on the proposed amendments:

Chapter 20—Three amendments are proposed:

1. Define “Perfluoroalkyl and Polyfluoroalkyl Substances” or “PFAS”.
 2. Add a requirement for registrants to submit a confidential statement of formula to register their product with the state of Maine.
 3. Add two affidavit requirements; one affidavit that asks registrants to disclose if their pesticide product has ever been stored in a fluorinated high-density polyethylene container and a second affidavit asking registrants to disclose if the formulation of the pesticide product contains any perfluoroalkyl or polyfluoroalkyl substances.
- Patricia Rupert-Nason, speaking on behalf of the Sierra Club. Rupert-Nason stated that she wanted to make sure the rule included affidavits for inert and active ingredients, as well as any contaminants known to the manufacturer. She stated that she would like the affidavits to be public so people can make informed decisions about what they apply to their land.

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Rupert-Nason added that the next step would be to limit and eliminate PFAS in pesticides. She stated that she was in favor of the definition of PFAS adopted by the Board.

- Karen Reardon, speaking on behalf of Responsible Industry for a Sound Environment, RISE: Reardon stated that she wanted to ensure that the definition accounted for the rich data set that was accessible for pesticides that covered the total impact when used, which was a unique attribute. She said that the EPA planned to release a container leaching study in the first quarter of 2022 that would help inform the rules in mind and she hoped that the Board would not rush to complete rulemaking until they had a full finding of what was happening with high-density polyethylene, HDPE, containers. She added that pesticides were unique in the PFAS conversation and wanted them to still be available for the many important uses for which they are applied.
- Sarah Woodbury, speaking as an advocate for Defend our Health: Woodbury stated that she appreciated the more inclusive definition of PFAS included in the draft rule and that it was important that the consistency of the definition be maintained through all Maine statutes. She added that regarding the review, registration, and submission of the confidential statement of formula, CSF, and affidavits she would like clarification. Woodbury said that she wanted to make sure that actives, inerts, and contaminants were included in the CSF and affidavits. She stated that she knew the CSF was confidential but that the affidavits should be made public information so citizens would know what products contained PFAS. She commented that this could help people regain trust in these products. Woodbury said that she recognized that the resolution specifically called out HDPE containers, but that the Board should use its existing authority to expand upon that to cover storage in any fluorinated container. She urged that the Board require that contaminants be added to the rule because Maine already has PFAS contamination and cleanup will cost millions. Woodbury stated that the Board should make a recommendation to the legislature stating that they supported no use of pesticides containing PFAS or of pesticides stored in HDPE containers. She stated that there was a precedent in federal and state law that allowed the Board to ask for pesticide ingredient information, as well as contaminants. Woodbury reiterated the importance of making the affidavits public.
- Patterson stated that the Board did have the authority in statute to collect active and inert ingredient information. She explained that a CSF is currently collected for all 25b minimum risk pesticides but not for Section 3 products. Patterson clarified that when the rule mentioned collecting a products' CSF that it included both active and inert ingredients.
- Sharon Treat, speaking on behalf of the Institute for Agriculture & Trade Policy, IATP: Treat said that she was also a citizen of Hallowell. She stated that the IATP, based in Minnesota, had been a 501(c)(3) since 1986 and that they work with farmers to back sustainable farming practices. Treat said that she hoped the Board would exercise full authority to protect farms and foods from PFAS, that she appreciated that they would collect inert ingredient information and hoped the Board would also work with other regulatory agencies, like DEP, to get rid of all PFAS sources. She commented that the Board would need to update their policy as new PFAS were discovered and that public disclosure of affidavits should be included in the rule since affidavits were not the formula itself but only whether PFAS was part of the formula. She stated that there was not a law, or anything within FIFRA, to keep the affidavits confidential. Treat said that she would also submit written testimony and that she wanted the Board to make a point to prohibit the registration of pesticides that were found to contain PFAS. Treat said if the affidavits were kept confidential neither farmers, home gardeners nor the public would have the information they needed to avoid PFAS. She suggested that the disclosure to the public should include PFAS contamination during manufacture and that it should also be part of

the affidavit that manufacturers must attest to. Treat said that she agreed with statements made by Woodbury about pesticide containers and that LD 264 specifically mentioned HDPE but there were other plastic containers which were fluorinated and marketed for storage of pesticides. She said that the Board did not need LD 264 to regulate containers and that they should exercise their authority to regulate containers. Treat told the Board that it was important to do this now and not wait for additional legislation.

- Heather Spaulding, Deputy Director of MOFGA: Spaulding stated that she felt the new rules would help minimize reliance on pesticides and that the legislature initially started out to stop PFAS contamination from aerial spraying, and it morphed into the current resolve language. Spaulding said that the PFAS problem in Maine had been emerging over the past few years and it was a growing issue regarding food in Maine. She added that the PFAS problem was being exacerbated by pesticides that contained PFAS and farmers were losing businesses, land, and health. Spaulding stated that she hoped this rule would help Maine turn off one of the PFAS taps by discovering the extent of PFAS in pesticides. She said that she appreciated that the definition of PFAS proposed by the Board aligned with state law and that the affidavits needed to reference actives, inerts, and contaminants. She stated that the CSF was confidential, but the affidavits should be made public. Spaulding said she appreciated the effort to collect information about whether pesticide storage occurred in HDPE containers but that there were other fluorinated containers that also contained contaminants. She concluded that she looked forward to hearing what the BPC intended to do to stop PFAS contamination in pesticides.

Chapter 41—Two amendments are proposed:

1. Add a new section pertaining to neonicotinoids (dinotefuran, clothianidin, imidacloprid, or thiamethoxam) to restrict registration and prohibit use in outdoor residential landscapes for the purposes of managing pests in turf and ornamental vegetation. Add a clause allowing use for management of invasive invertebrate pests in ornamental vegetation.
 2. Add a new section prohibiting the use of chlorpyrifos, except for licensed applicators who obtain a use permit from the Board to apply chlorpyrifos products purchased prior to December 31, 2022.
- Patricia Rupert-Nason said that the chlorpyrifos section looked like a straightforward implementation of the law that was passed and she would like it to stay the same. She added that she had concerns about the proposed neonicotinoid rule. Rupert-Nason stated that there was a crisis in insect populations and diversity and since neonicotinoids were systemic it made them of particular concern and problematic for pollinators because these insecticides ended up in the nectar. Rupert-Nason stated that these specific compounds were especially persistent and could last multiple years in a plant. She said the proposed rule seemed to be much less restrictive than the intent of the law, and that there was an accepted definition for invasive species that generally meant non-native species. Rupert-Nason suggested that it would be more in keeping with the intent of the law to have a specific list of insects included in this exemption and to also include which neonicotinoids were an appropriate treatment. She said that emerald ash borer, EAB, and hemlock wooly adelgid, HWA, were specified in the original legislation and the intent was that these were characteristic species that were worth the trade-off for using neonicotinoids. Rupert-Nason concluded that she wanted the BPC to create a specific list of invasive species and not leave it up to applicators because that was beyond their training.

- Bohlen stated that the Board had concerns about how to recognize when there were new species coming into Maine and how to do that without going through rulemaking every time. He agreed that the language needed work and asked Rupert-Nason's thoughts on how to tighten up the language.
- Rupert-Nason said that it might be a good thing to revisit the rule when new insects emerged, and we should consider if a pest was severe enough to use neonicotinoids and if these chemicals were an effective treatment for the pest. She added that the rule should specify which neonicotinoid could be used for which pest and if there were drawbacks. Rupert-Nason stated that she appreciated the impact of EAB, but that ash was a pollinating tree so it would be worth considering those issues. She said that the Board should target state and federally regulated species and that she would like to see rulemaking undertaken regularly.
- Maine State Representative Nicole Grohowski: Grohowski stated that section six of Chapter 41 was drafted in response to LD 155, which she sponsored. She stated that the legislature recognized that pollinators were in crisis and citizens should not be using these neonicotinoids for cosmetic use. Grohowski told the Board that most of the draft rule language was true to the intent of the resolve, but it deviated in some areas. She said that the approach to handling the invasive pest provision was not what they had intended. She added that they spoke with DACF staff about neonicotinoids that were important for the control of certain invasive species, and they were told neonicotinoids were used for the three insects listed in the resolve. Grohowski said that the purpose of the word 'emerging' meant unknown to us now and emerging at a later date. She said that if they had intended the Board to create a definition they would have said that instead of beginning a list for the Board to build on, and that it was wrong to abdicate the Board's duty in this and put it on applicators. Grohowski said she was not aware of any agency that included native species in their definition of invasives. She added that the resolve used the word 'insect', which was not interchangeable with 'invertebrate'. Grohowski stated that she wanted the Board to reject this proposed section and implement the three invasives listed in the law. She added that the Board could always do emergency rulemaking if something else arose overnight. Grohowski stated that regarding implementation dates, she would like the Board to keep in mind that time was of the essence and they did not need to wait for the products to sell out before implementing the ban. She said that there was a total of 164 products for lawn and ornamental treatment and that reviewing labels takes time, but the Board could start with what they were sure of and implement the ban on those products on April 1, 2022. Grohowski said she would be happy to submit a list that Board staff could double-check and that retailers could then have these products off the shelf in a week. She concluded that she thought there were also technical language issues that could be fixed, but she would submit those issues in writing.
- Anya Fetcher, State Director of Environment Maine: Fetcher stated that thousands of members had spoken up to show their support to pass this bill and she was excited that it had happened. She urged the Board to implement these rules as swiftly as possible. Fetcher stated that this was a very urgent issue and the Board needed to implement this ban before the next growing season. She added that obvious products known to contain one of these neonicotinoids can be found and are out there. Fetcher stated that they would be submitting a list of products that should be taken off the shelf this spring and that this was one real action that could be taken to protect bee populations to ensure backyard gardens and city parks were safe for bees. Regarding the definition for invasive species, Fetcher echoed Grohowski and Rupert-Nason and urged the Board to implement that section in the way the bill initially intended, which was by listing out specific insect pests with the corresponding

neonicotinoid that was effective for their treatment. Fetcher stated that she believed there was rarely a surprise pest found and that they are normally tracked for years. She concluded that she wanted the Board to narrow the scope of the invasive pest list.

- Bohlen stated that the Board was struggling for a way to make management responses to new invasives feasible and said that if they were supposed to create a list they needed ideas on how to pull this together in intelligent ways. He stated that he would love to have ideas on how the Board makes the call on what should be on the list.
- Fetcher responded that she was not an expert, but that neonicotinoids were not necessarily the correct management tool for all invasives and there were alternatives that could be used. She added that the Xerces Society had a lot of information on this topic and the BPC should also look to other states that have implemented similar laws and see what they had done. Fetcher said she was sure there was an initial list out there somewhere and stated that they would submit a suggested list and connect the Board with experts.
- Heather Spalding, Deputy Director of MOFGA; Spalding stated that the chlorpyrifos rule looked good and she was happy that action was being taken, but she was concerned about the invasive definition. She told the Board that she would like the definition to be limited to reflect the intent of the legislature, which was to specify specific emerging pests and specific neonicotinoids that could be used for their treatment. She stated that she was worried about permitting because variances seemed to be regularly approved and she wanted to make sure permitting would not be a fast track to allowing more neonicotinoid use. Spalding stated that the definition of invasive pest should use ‘emerging insect pests’ rather than ‘invertebrate’. She urged the board to act swiftly and said that other states have identified products to come off the shelves and this did not have to be perfect at first but there were products that needed to come out of homeowners’ hands immediately. She stated that she was worried about the declining population of insects and MOFGA felt that broader action should be taken but this was an important first step that should be acted on right away. She thanked everyone for the huge effort put into this and said that she hoped that Maine continued to lead on these pesticide policies.
- Jesse O’Brien, on the IPM council for DACF, works with several golf and landscape associations, and on the Portland and South Portland committees where these pesticides have been banned. He stated that he was here speaking on behalf of himself today. O’Brien stated that he would be the first to come to the Board when there was an organic product that really worked well for white grub complexes. O’Brien explained that white grubs were a destructive insect for turf, not just their eating, but also because other animals come in and dig up the lawn to eat the grubs. He said he was thinking of the golf courses that he deals with and he saw this as taking away the chemistries available for use and only leaving them to rely on a few, which was concerning. O’Brien stated that he had thought these products would be made restricted use and not absolutely banned. He suggested that perhaps these products could be made limited use and a person could petition the Board with reasons why the use was necessary. O’Brien said that in South Portland and in Portland a couple of waivers have had to be issued for use of neonicotinoids on athletic fields.

3. Minutes of the November 19, 2021 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

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

4. Request for Financial Support from the Maine Mobile Health Program and the Eastern Maine Development Corporation

Since 1995 the Board has supported the Migrant and Seasonal Farmworker Safety Education program. The Maine Mobile Health Program (MMHP) and the Eastern Maine Development Corporation (EMDC) provided training to 128 farmworkers during the 2021 season. Funding to support the effort in 2022 is being requested in the amount of \$6,432, which is the same funding amount provided by the Board in 2021. The funding has been accounted for in the Board's FY22 budget.

Presentation By: Elizabeth Charles McGough, Director of Outreach and Deputy Director, Maine Mobile Health

Chris Huh, Program Manager, Farmworkers Jobs Program, Eastern Maine Development Corporation

Action Needed: Discussion and determination if the Board wishes to fund this request

- Elizabeth Charles McGough, Director of Outreach and Deputy Director, Maine Mobile Health, MMH, told the Board that the request would come directly from MMH this year.
- Charles McGough told the board that MMH services were again impacted in 2021 by COVID and there were limited numbers because of growers limiting exposure to large groups of their employees. Numbers continue to be below usual attendance but MMH did accommodate every request for education throughout the entire state. Charles McGough stated that MMH had re-hired a previous trainer and hired a second part-time person that speaks English, Spanish and Haitian Creole. They were also able to provide a curriculum to Haitian farmworkers in their native language for the first time last year. She stated that their request for support was in the same amount and they hoped that the Board would continue to assist.
- Morrill mentioned a former Board member's dedication to and interest in the work of the MMH Program.
 - **Morrill/Jemison: Moved and seconded to fund this request**
 - **In Favor: Unanimous**

5. Medical Advisory Committee Interim Report on Herbicide Use at Schools and Human Health

At the July 16, 2021, meeting, the Board reviewed pesticide-related bills enacted by the Maine Legislature. LD 519—An Act to Protect Children from Exposure to Toxic Chemicals, directed the Board to convene the Medical Advisory Committee (MAC) to assess the human health impacts of herbicide use on school grounds. At the same meeting, the Board agreed that the MAC should take up the LD 519 directive to evaluate the potential impact of herbicides used on school grounds on human health. Following three meetings of the MAC, staff have prepared an interim report incorporating commentary from MAC members. This report has been reviewed by MAC members and includes recommended next steps approved by MAC members. Staff will provide an overview of the report for Board consideration, discussion, and approval/disapproval. LD 519 required submission of a report by February 1, 2022.

Presentation By: Megan Patterson, Director
Dr. Pam Bryer, Toxicologist

Action Needed: Approve/disapprove submission of the interim report to the Maine Legislature Agriculture, Conservation and Forestry Committee

- Patterson stated that LD 519 directed the Board to convene the MAC and staff needed Board approval or disapproval of the report that was requested to be submitted by February 1, 2022. She stated that the MAC met three times before voting for a number of final recommendations for inclusion in the report, which included reviewing existing rules and ensuring that IPM is mandatory. Patterson pointed out that after a review of the current rule it was determined that IPM was already required. She added that it was still important that all schools understand IPM is a requirement. Patterson stated other recommendations from the MAC included reviewing specific chemicals in a risk assessment and evaluating herbicide use for legality since a few products submitted with use records were not labeled for use on school grounds. She stated that this last point would require additional education for the school IPM coordinators. The MAC also voted unanimously to recommend that staff survey other states about pesticide use on school grounds and voted unanimously to submit an interim report to the legislature in order to allow time for completion of a risk assessment.
 - **Flewelling/Jemison: Moved and seconded approval of the interim report to the Maine Legislature Agriculture, Conservation and Forestry Committee**
- Waterman stated that he chaired the MAC and had to lodge a dissent from the conclusion that this topic needed more study. He thanked MAC members and all of those that worked to gather and compile the information they had but thought the process was overshooting the mark assigned to the MAC. Waterman stated that the MAC was assigned to ‘evaluate underlying and potential effects on human health’ and that the legislature had already banned glyphosate and dicamba on school grounds. He said that his first concern was that there was a definite detrimental effect of spraying herbicides on school grounds, and his second concern was that they were overlooking the tenet of ‘think first spray last’. Waterman stated that he believed there were no good reasons to spray on school grounds and that the reasoning behind the use of herbicide application to reduce injury on sports fields was not compelling. He said that his advice would be to

send a much briefer report to the legislature emphasizing the points he made and would vote against sending this report on.

- Bohlen asked if there was any mention of dissent in the report.
- Patterson stated that the minutes were included in the report, except for the December minutes, which had not yet been approved by the MAC members as they had not met again, but these minutes would be provided to the ACF Committee. She added that the report tried to focus on unanimous, consensus recommendations as is typical for MAC reports.
- Lebelle, Hicks, MAC member, told the Board that she was impressed with the way the report came together but would like to add a section of things left to be done to evaluate risk and which were the less risky herbicides labeled for use on school grounds.
- Bohlen and Jemison stated that they had not read the report and were not in a position to vote and would abstain.
- Flewelling commented that the report was well written and thanked staff for all of the work that was put into writing it.
- Morrill thanked staff for their work and said that the report was very well written.
- The Board voted on the motion to submit the interim report to the Maine Legislature Agriculture, Conservation and Forestry Committee.
 - **In Favor: Adams Flewelling, Granger, Morrill**
 - **Against: Waterman**
 - **Abstained: Bohlen, Jemison**

6. Other Old and New Business

- a. LD 264 Final Report
- b. LD 524 Final Report
- c. Executive Order 41 FY 20/21 Listening Session and Final Report
- d. Staff Update on the Contract for Testing Center Exam Administration
 - Patterson said that staff would be moving from offering exams solely in the Augusta office to contracting with a company to administer exams throughout the state five days a week and some nights and weekends.
 - Pietroski thanked Randlett, Patterson, and the commissioner's office for all of the help with the exam contract. He added that exams will be offered in six locations throughout the state.
- e. CropLife Article on First U.S. T-30 Drone Approval Granted

f. Organization for Economic Co-operation and Development Literature Review on Unmanned Aerial Spray Systems in Agriculture

7. Schedule of Future Meetings

February 18, 2022, and April 1, 2022, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

8. Adjourn

- **Morrill/Jemison: Moved and seconded to adjourn at 11:40 AM**
- **In Favor: Unanimous**