



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

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JANET T. MILLS
GOVERNOR

AMANDA E. BEAL
COMMISSIONER

BOARD OF PESTICIDES CONTROL

**September 18, 2020
9:00 AM**

Minutes

Present: Adams, Bohlen, Curtis, Flewelling, 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, Tomlinson

2. Minutes of the July 24 Regular and August 17 Emergency Board Meetings

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

- **Granger/Flewelling: Moved and seconded to adopt with minor revisions**
- **In Favor: Unanimous**

3. Request for Variance from Chapter 29 for White Grub Management in Harpswell

Board staff have received a request for variance from 25-foot buffer requirement outlined in Chapter 29, Section 6(A). This request is for the application of Dylox, a state restricted pesticide, for the control of white grubs damaging turf in close proximity to marine waters. An applicator may vary from the standards imposed under Chapter 29, Section 6(A) by obtaining a permit to do so from the Board.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and Determination On How the Board Wishes to Proceed with Requested Variance

- Patterson explained to the Board that this variance request was from a resident of Harpswell, whose home is on a cliff above the ocean. The individual has had an aggressive grub infestation for four years. Patterson stated that the homeowner was seeking a variance to allow Naturalawn to treat the grub-infested area with Dylox within 25 feet of the mean high-water line. Via rule, Dylox is a restricted use pesticide in the State of Maine.
- Jemison stated that this is not the ideal time of year to control grubs and that Dylox is a problematic chemical given the proximity of water. He added that he would suggest researching an alternative chemical, time of year, and/or overseeding in the spring. Jemison also suggested that the homeowner work with UMaine Extension for ideas for alternative plantings in that area.
- Patterson stated that Dylox is a granular which must be watered in and that it is typically the solution people use when they cannot adhere to the timing for a systemic product. She added that there were some other options that could be applied in the spring, and that Board staff did suggest possible alternate plantings in that area.
- There was discussion amongst the Board about the timing of the application, that the species of grub had not been identified in the variance request and that any prescribed treatment should be determined by the pest identification. They also discussed the lack of a remediation plan.
- Adams commented that the variance request did include details for preventing runoff with absorbent pillows and buffers and noted that any product used in the spring would likely be a neonicotinoid.
- Morrill stated there was a local ordinance in Harpswell regarding pesticide use and encouraged the homeowner to work with their local ordinance committee first to obtain a variance from them and then come back to the Board.
 - **Morrill/Jemison: Moved and seconded to deny the variance request**
 - **In Favor: Bohlen, Flewelling, Granger, Jemison, Morrill, Waterman**
 - **Against: Adams**

4. Additional Requests for Limited Duration Exemptions from Commercial Certification/Licensure Requirements for Custodial Staff Applying General Use Antimicrobials with Powered Application Equipment for the Purposes of Routine Cleaning in Facilities Open to the Public

Following the August 17, 2020 emergency meeting of the Board and the issuance of EO 7 FY 20/21, Board staff have received inquiries from various entities, including the University of Maine System and Maine General hospital. These groups which have included municipalities, bus services, ambulance services, universities, hospitals and medical facilities, and houses of worship are all seeking inclusion in the exemption provided to K-12 schools. Additionally, Board staff have been made aware that some school facilities contract with private cleaning and/or bus services. These individuals are not employees of the school and so their use of powered application equipment to apply general use disinfectants would not be addressed by EO 7 FY 20/21.

Presentation By: Megan Patterson, Director

Action Needed: Discussion and Determination On How the Board Wishes to Proceed with Requested Exemptions

- Patterson stated that at the emergency meeting the Board supported an exemption for school staff to use powered application equipment to apply disinfectants and sent a letter of support to the governor. She added that several other entities have reached out asking for an exemption to use powered application equipment, including municipalities, bus services, ambulance services, universities/colleges, hospitals, churches, a gym who was already using powered application equipment, and others. Some are seeking a longer-term suspension of licensure and inquiring about the Board's interest in supporting or not supporting that.
- The Board discussed pros and cons of expanding the exemption. Flewelling stated he would be in favor of expanding the exemption somewhat to be fair for all. Jemison stated he agreed as long as the expansion included following the same protocols and training as the initial exemption. Bohlen stated that the purpose of licensure was to make sure people understood the risks involved and he did not want to expose people to unnecessary hazards. Waterman added that he would not oppose expanding the exemption although he had not seen solid evidence that powered application of disinfectants reduced outbreaks.
- Randlett explained that this would be a letter of support to the Governor's Office similar to the school exemption as the Board does not have the authority to grant exemptions from applications made with powered equipment. The exemption would expire when the Governor's Emergency Order expired.
- Pete Philbrick, owner of the Germinator Bangor, thanked the Board and stated that he was most concerned about products being applied incorrectly by people with no training, given that there had already been the issue at RSU 19. He added that his family invested a lot of time, money and effort into starting their business including going through the pesticide licensure process. Philbrick stated that he understood the reason for the exemption for the schools and hospitals but asked where it ends and what happens after the exemption ends. He asked if the Board is ready to police unlicensed use, and if this exemption was just opening the flood gates to get rid of licensure for these applications.
- There was discussion regarding what was covered in the disinfectant training. Patterson stated that the training addressed concerns regarding label rates, personal protective equipment, contact time, restricted entry intervals, and more.
- The Board also heard from Nathaniel Waite, Manager of Environmental Services for Maine General Hospital. Waite stated that they have over one million square feet of buildings and were looking for something quicker than sending out all 150 housekeepers to disinfect by hand. He added that they were planning to have only three people use the equipment and they were also going to pursue licensure. Waite stated they planned to use the equipment in waiting rooms after hours, but would not use in hospital rooms when a patient is discharged, and another comes in. In patient rooms, cleaning would be conducted according to the hospital's normal cleaning protocols.
- There was discussion amongst the Board on when these exemptions would end, and Bohlen noted it would be nice to incorporate an expectation that these people are on a path toward licensure.
 - **Morrill/Jemison: Moved and seconded to submit a request to the Governor to extend the Governor's Executive Order for temporary suspension of licensure to businesses state-wide**

○ **In Favor: Unanimous**

5. Review of the 2017-2019 Complaints/Inquiries Summary

In 2007, the Stakeholders Committee on Drift recommended that the Board produce and review an annual summary of complaints received by the Board's office. The Board will now review the 2017, 2018 and 2019 summaries.

Presentation By: Raymond Connors, Manager of Compliance

Action Needed: None—Informational Only

- Connors told the Board that the spreadsheet is separated by whether the call was an inquiry or a complaint and that it only represents calls that came to enforcement staff and were entered into MePERLS. He added that calls taken by other staff may not have been recorded in MePERLS.
- Jemison stated that it was very valuable to see all the calls that come in and helps to really understand what the issues are.
- Morrill thanked Connors and stated that it was very comprehensive overview.

6. Continuation of the BPC Budget Review

At the July 24, 2020 meeting of the Board, expenditures for State Fiscal Year 2020 were reviewed. The Board requested and will now review detailed projections for SFY 2021 and summary projections for SFY 2022 and 2023.

Presentation By: Megan Patterson, Director

Action Needed: Provide Guidance to Staff on Board Budget Priorities

- Patterson reviewed the budget with the Board, including the current fiscal year, which ends June 2021, as well as summary projections for 2022 and 2023. She explained the projection for 2023 is higher because Maine IT will likely no longer be funding the portion of MePERLS that they presently subsidize, which is something the Board should be aware of because it is a substantial increase of \$173,000.
- Morrill and other Board members stated this cost seemed extremely high and asked if there were any other alternatives out there.
- Patterson responded that staff could look into what other alternatives there may be, but that development of alternative software would take significant time—likely a few years. She added that we currently pay a licensing fee, hosting, and support and maintenance. These costs are paid to Pegasystems, Inc. and Stratosphere Consulting.
- Gibbs commented that this is a real quandary for all our programs. She added that staff have had these conversations about going out and getting bids from private software development firms, and in the past have also looked at “off the shelf” systems but they fail to meet the program needs. Gibbs stated that Patterson has worked hard with this program

and it has created a lot of efficiencies for the staff and there may be more as yet unrealized efficiency.

- Patterson explained that being able to keep up with the increases in calls, exams, registrations and licenses being processed is because of this system and we have not had to hire additional staff, and the amount of paper checks we process is vastly reduced.
- Adams commented that he is a Pega user and cannot stand it but if staff are gaining from it he respects that. Adams stated that \$360,000 is a lot of money but we need to establish what it would cost if we did not have this support for the staff.
- Morrill asked to have Pegasystems and Stratosphere come speak with the Board.

7. Proposed Policy on Facilitating Efficiency and Communication with the *Maine Pesticide Notification Registry* for Non-Agricultural Pesticide Applications

At the July 24, 2020 of the Board staff was directed to return with a policy reflecting the Board discussion of the notification registry and the proposal to make optional the registry enrollment fee. Making the registry fee optional may help facilitate participation in the notification registry. It will also allow the transition to an online format for the notification registry. The Board will now review the draft policy.

Presentation By: Megan Patterson, Director

Action Needed: Approve/Disapprove the Proposed Policy and Approaches

- Patterson stated that the Board asked staff to come back with a policy on removing the fee for the non-agricultural registry. She explained that staff could also create a template in Microsoft Forms for the registry so it would be much easier for folks to participate and save considerable staff time through minimizing data entry. Patterson noted that alternatively, we will still have a paper form for those who wish to sign up via that method.
- There was discussion regarding what applicators and types of applications this policy applied to.
 - **Morrill/Bohlen: Moved and seconded to adopt the proposed policy**
 - **In Favor: Adams, Bohlen, Jemison, Morrill, Waterman**
 - **Against: Flewelling, Granger**

8. Board IPM Outreach/Education Campaign

Board staff is in the process of moving forward with this campaign and part of this process includes the formation of an RFP review committee. The Board had expressed interest in participating in this committee.

Presentation By: Megan Patterson, Director

Action Needed: Select a Board Member for the RFP Review Committee

- Patterson stated the Request for Proposals (RFP) should soon be published in the Kennebec Journal. She asked the Board to identify what member will be on the RFP review committee.
- Morrill stated that he would be happy to serve on the review committee.
 - **Granger/Jemison: Moved and seconded to appoint Morrill to serve on the RFP review committee**
 - **In Favor: Unanimous**

9. Other Old and New Business

- a. Variance permit to Elizabeth Farrell for control of Japanese knotweed in New Portland
- b. Variance permit to Basswood Environmental, LLC for control of invasive plants in Cape Elizabeth
- c. Revised biological policy pertaining to browntail moth control
- d. Executive Order of the Governor 7 FY 20/21
- e. Letter from John Jemison—late submission for the Board meeting
 - Jemison thanked the Board and stated he was looking for thoughts, suggestions and ideas from the group regarding the following topics.
 - Jemison stated that the State has had an active medical marijuana program for 20 years and growers supplying that market do a good job to provide quality products and also thanked Board staff for providing trainings for these growers. He added that the medical marijuana program had brought in enough tax revenue that it currently sits right behind lobster and potatoes and with recreational sales beginning soon he believes that production will greatly increase.
 - Jemison explained that hemp (marijuana plants with less than 0.3% THC) was now federally legal. Growers are now able to use products that are tested and have hemp on the label, but the medical marijuana program is still in limbo when it comes to legal products to use. Jemison stated he would like to invite people from the Office of Marijuana Policy, OMP, that are making decisions related to pesticides and pesticide testing to come speak with the Board regarding their residue testing plans moving forward.
 - Jemison summarized a recent event where finished cannabis that had not been treated with pesticides tested positive for bifenthrin and imidacloprid. This led him to speak with a compost extension specialist and found out that compost could be sold as a finished product within a month of initiating the composting process. He added that this could possibly explain the imidacloprid but not the bifenthrin. Jemison asked if BPC staff ever tested any 25b products for adulteration and also asked about the possibility of using some resources to test compost samples for anything that could be pulled up into a plant.
 - Patterson stated that a registered pesticide product containing neem oil recently tested positive for bifenthrin and other actives. The usefulness of this information is limited because every lot of product must be tested. Oregon has a list of other contaminated

products that they tested and found to contain active ingredients not included on the product label.

- Jemison commented that most states are doing some testing and believed pesticide testing is in the Board's bailiwick. He asked if it made sense to test and ensure more products are not spiked with active ingredients that are not listed on the label.
- Adams stated that he would support the notion that staff have the responsibility to find out why a pesticide is showing up where it is not supposed to be but questioned whether we have the ability to do that with a federally illegal plant.
- Randlett stated that it is a complicated issue between Maine laws and federal laws, and if the Board plans to take any action on this it needs to be posted as an agenda item to allow time for the public to weigh in.
- Morrill asked how an agenda item would be framed and what would be the top priority.
- Jemison responded that the top item would be to have a meeting with the OMP because he would like to know where they come down on testing and if the Board could weigh in on that. He added that he would hate for something to come down requiring testing for every batch, which would put small growers who have been doing this for years out of business.
- Morrill asked Patterson to please add this to the agenda for a future meeting if OMP is willing to talk.

10. Schedule of Future Meetings

November 6, 2020 is the next proposed meeting date. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Morrill asked Patterson to select a date that worked well during the Annual Agricultural Trade Show, and that the Board would like to have the meeting virtually.
- Jemison mentioned that last Board meeting we talked about protocols for doing programs online and how might we know that someone is participating.
- Patterson stated that staff are currently trialling a number of approaches to monitoring digital trainings. Staff are also investigating all exam options, including the possibility of letting a small number of people into our building during the winter months and various methods of proctoring. She added that staff are considering all options and know we need to move forward quickly with this.

12. Adjourn

- **Jemison/Flewelling: Moved and seconded to adjourn at 11:55pm**
- **In Favor: Unanimous**