



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

**March 8, 2019
9:00 AM**

Room 118 Marquardt Building
32 Blossom Lane, Augusta, Maine

MINUTES

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

1. Introductions of Board and Staff

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

2. Public Hearing on Proposed Rule Amendments to Chapters 10, 26, 27, 31, 32, and 50 and Repeal of Chapter 36

The Board will hear testimony on the proposed amendments and repeal:

Chapter 10—Two amendments are proposed:

1. Amend the definition of “Aerial Applicator” to allow certification as a private applicator. Currently the rule requires applicators to hold a commercial license which prevents an individual from making applications on their own property. This is required by the new EPA C&T rules, and is in anticipation of potential applications by unmanned aircraft systems.

Chapter 26—One amendment is proposed:

1. Clarify the definition of “occupied buildings” to mean fully enclosed indoor spaces inside buildings and that roofed structures which are otherwise not enclosed are not buildings for the purpose of the rule.

Chapter 27—Three amendments are proposed:

1. Change wording to clarify that all pesticide applications, inside and outside, must be included in the pest management activity log.
2. Change wording to clarify that applications made to the exterior of buildings are included in the rule.
3. Add personal insect repellents to the list of products which do not require licensure.

MEGAN PATTERSON, DIRECTOR
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Chapter 28—One amendment is proposed:

1. Clarify that the telephone number required on signs must be a working number.

Chapter 31—Eleven amendments are proposed:

1. Add requirement for a government-issued photo id for all exams (required by EPA C&T).
2. Establish annual training requirements for noncertified applicators of restricted use pesticides (required by EPA C&T).
3. Establish minimum age for individuals certified as commercial or private applicators (required by EPA C&T).
4. Describe the credentials which will be issued to each applicator verifying certification (required by EPA C&T).
5. Remove section on transitioning to revised licensing and certification requirements since the time frame has passed.
6. Update the names of certain categories to align with current exams.
7. Remove requirement to collect social security number.
8. Change cost of master exams from \$50 for both to \$10 for Master Regulations exam and \$40 for Master Oral exam.
9. Remove exemption for those certifying in the Post Harvest Treatment category from having to take the core exam.
10. Remove requirements for applicators to receive continuing education credits in specific categories as the Board doesn't categorize courses this way.
11. Remove fee for replacement and upgraded licenses as the Board no longer charges for these due to improved software.

Chapter 32—Six amendments are proposed:

1. Amend competency standards to include those required by EPA C&T: label comprehension; responsibilities for supervisors of noncertified applicators; stewardship; ability to read and understand pesticide labeling.
2. Remove option to provide oral exam as EPA C&T no longer allows non-reader accommodations.
3. Add supplemental private categories which can be obtained in addition to certification for private licensure: aerial application; soil fumigation; non-soil fumigation (required by EPA C&T).
4. Establish minimum age for individuals certified as commercial or private applicators (required by EPA C&T).
5. Describe the credentials which will be issued to each applicator verifying certification (required by EPA C&T).
6. Add requirement for a government-issued photo id for all exams (required by EPA C&T amendments).

Chapter 50—One amendment is proposed:

1. Add requirements to dealer records of sales (required by EPA C&T amendments):
 - a. customer address
 - b. issuing authority, certification expiration date, and categories of certification in addition to the applicator's certification number

Chapter 36—Repeal of chapter is proposed. Associated requirements were previously repealed because they are no longer necessary with the current technology used in aircraft.

- There were no comments from the public.
 - **Morrill/Granger: Moved and seconded to close public hearing at 9:03am**
 - **In Favor: Unanimous**

3. Minutes of the January 16, 2019 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or Approve

- The Board requested minor edits be made.
 - **Granger/Waterman: Moved and seconded to accept minutes as amended**
 - **In Favor: Unanimous**

4. Overview of Mosquito-borne Diseases and Monitoring in Maine

The Maine Center for Disease Control and Prevention (Maine CDC) coordinates state activities around preventing vector-borne diseases. As part of its responsibilities, the CDC coordinates mosquito and disease monitoring in Maine. The presence of mosquito-borne diseases and the species of vector mosquitoes present in Maine have been on the rise in recent years. Maine CDC and BPC entered into a Memorandum of Understanding in 2013 to establish cooperation to conduct surveillance for mosquito-borne diseases to protect public health. Sara Robinson of the Maine CDC will provide an overview of the trends and the state's monitoring program and discuss the possibility of increased BPC financial support for the 2019 season.

Presentation By: Sara Robinson, Program Director

Action Needed: Discussion and Determination if the Board Wishes to Increase Funding to CDC for Environmental Monitoring of Mosquitoes

- Maine CDC has a Memorandum of Understanding with the Board to collaborate on mosquito monitoring.
- Robinson recounted Maine CDC's history of mosquito monitoring for the Board. The Maine CDC began monitoring in 2001 and Eastern Equine Encephalitis (EEE) was identified in 2008. In 2009, 15 horses died from EEE. Maine saw its first human case of West Nile Virus (WNV) in 2012. In 2015 a case of EEE and of WNV were found. The EEE case was fatal. In 2018 a horse became infected with WNV, and mosquito pools from Bangor tested positive as well, which is the furthest north it has been found.
- Robinson stated that in 2015, the Maine CDC launched a much larger monitoring response due to worries about Zika. Though *Aedes aegypti* mosquitoes have not been found in Maine, they have been identified overwintering in Massachusetts.
- The Maine CDC contracts with Maine Medical Center Research Institute (MMCRI) and have established mosquito colonies from mosquitoes collected in the wild. This is the first year they will begin routinely testing these mosquitoes for pesticide resistance.
- Robinson added that they would like to continue monitoring to better help predict what areas they may find mosquitoes in, and anytime a positive is discovered in an area they try to maintain a trap there.
- Robinson explained that Maine CDC complements any federal CDC funds they receive with funds from the BPC. She added that they expand to more testing sites when they have money. In 2017, the federal CDC gave them \$600,000 for monitoring Zika. Last year they received zero federal dollars for mosquito monitoring.

- Morrill asked about information pertaining to Jamestown Canyon Virus.
- Robinson stated it is a mosquito borne virus that four to five species of mosquitoes found in Maine can carry. There have been two cases in Maine and both patients developed encephalitis. The federal CDC is now routinely testing and they are averaging about 13 cases a year nationwide. Robinson added that Maine CDC believe they found it in two mosquito pools and they are awaiting verification.
- Morrill asked how much testing and/or trapping can be conducted with \$25,000.
- Robinson responded that it gets added to the pool with any monies from the federal CDC. Their trapping is contracted out to MMCRI and MMCRI contracts it out to Swamp Inc.
- Morrill asked how large the pool of money toward this was.
- Robinson stated that it is usually \$150,000 but the money is gone for this year so Maine CDC will cover the rest with general funds, which is not a sustainable long-term solution.
- Bohlen asked when the start date of the MOU was, when it will expire, and if there is a clear picture of what they are trying to accomplish and where they see this going.
- Robinson will look into the MOU and stated that they have light traps, gap traps, resting boxes to trap various species of mosquitoes. She added that they are trying to be thoughtful as they expand so that trapping capacity is flexible depending on funding.
- Morrill asked if there is any tick testing going on.
- Robinson responded that UMO's lab is launching tick testing this year. They are expecting there to be high interest in it and they are looking to charge \$15 to test for Lyme. Robinson added that there has also been talk of partnering with some other states to do some wider tick testing.
- Adams asked about the disease detection process and if medical providers in the state are educated.
- Robinson replied that they provide extensive education to providers instructing them to remain alert if they observe flu-like symptoms in the summer months.
- Patterson commented that the mosquito testing is also done to inform us on whether there is a need to pursue an aerial application. She added that the Board would assist in the event of an arboviral threat. The board has responsibilities to provide monitoring, provide lists of registered products, and to indicate exclusion areas.
- Granger asked about the fiscal obligations of the Board for aerial mosquito spray programs.
- Bohlen expressed that he really appreciated all the work but needed to look at the Board's overall budget before he could understand how it fits in and what would come out of it.
- Patterson stated that the current budget is likely able to support this request.
- Morrill stated he would like to see the budget along with what they have for specific asks.
- Bohlen added that he would like a more specific explanation of where the money is going.
- Robinson stated that MMCRI submits an annual report and offered to make that available for the Board.
- Bohlen stated he would like a sense on what the return on investment would be.
- Patterson commented that the Board has a responsibility to provide information on application exclusion zones. Further, in the event that control measures need to be implemented, the Department will be able to use the data collected from this monitoring

effort to assist in delineating a more refined treatment area. Patterson added that the Board also has a statutory obligation to provide Maine CDC with, at minimum, \$25,000 and that we have given them that in past years.

- Bohlen responded that he would like to know how long the Board has been giving the same amount.
- Robinson stated she will provide the Board with a summary and budget breakdown.
- Morrill added that he would like to see a list of what cannot be covered with that money.

5. Request from Integrated Pest Management Program for Funds for Mosquito Monitoring

The Integrated Pest Management Program is requesting funds to assist with on-going efforts for mosquito surveillance and identification, development of a GIS-based mosquito habitat mapping system, and continued outreach around vector-borne diseases.

Presentation By: Kathy Murray, DACF IPM Specialist

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

- Murphy stated surveillance is developed as an early warning sign to protect public health. She added that the state lab testing the mosquitoes is in Augusta. Murray told the Board she has been focusing her surveillance in the central Maine area. Maine CDC assisted with the purchase of a dry ice maker. Maintenance cost are about \$50 per week to have CO₂ delivered.
- Murray provided a budget outline to the Board. Her request is for a little over \$6,000.
- Murray told the Board that they focus heavily on the species of mosquitoes that they know carry EEE virus--all ten sites have resting boxes. The two target species emerge at different times of the season, so they conducted sampling last year from the end of June to the end of October.
- Bohlen asked if there were any found to be EEE positive.
- Murray responded that none were found last year. They also identify all mosquitoes found in the traps whether they are sent to the lab or not.
 - **Morrill/Jemison: Moved and seconded to approve funding request.**
 - **In Favor: Unanimous**

6. Request for Special Local Need [24(c)] Registration for Express® Herbicide with TotalSol (FMC Corporation) for Spot Application and Bunchberry Control in Lowbush Blueberries

In September 2008, the Board first approved a Section 24(c) registration for DuPont Express® Herbicide with TotalSol (EPA Reg. No. 352-632). The 24(c) was renewed in 2010 and 2013, but the registration expired December 31, 2018. The EPA Section 3 registration was recently transferred to FMC Corporation which supports the request by the University of Maine Cooperative Extension for a new 24(c) registration. This 24(c) has been expanded to allow for spot applications to control labeled weeds during the prune year and applications in the fall after harvest and in the spring of the non-crop year to control bunchberry.

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

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

- Tomlinson stated this is a repeat Special Local Need (SLN), but the registration was transferred to FMC invalidating the SLN. She added that there were some changes in the new label which increase the maximum application rate and added additional sites/plants.
- Yarborough stated he was aware it was expiring at end of 2018. Wyman approached him asking about harmonization of use for this product. They conducted an experiment at Wyman's. He added that the timing was a bit off and it can set the plants back some in the spring but there is evidence that the plants bounce back.
- Yarborough stated he will continue to look at some problematic weeds, like red sorrel, which is not listed on the label. He told the Board they are trying to align more with what they have been doing in Canada in the last 10 years.
- Jemison asked if the lab analyzes for this specific product because he wants to ensure testing is done for this fairly soluble product to see if it is getting into the water. He asked if anyone in Canada has looked for it in water.
- Yarborough responded that he was not aware of any testing in Canada
- Jemison stated his memory is that the Board approved it but stated they wanted to have water testing done so he is hesitant on this.
- Yarborough responded that he was unaware it was that mobile.
- Yarborough stated this is not like Velpar, which is applied every year. He added that if it is applied correctly it is not something that would have to be used annually.
- Morrill commented that in the initial coversheet it stated that this was tested for in 2011.
- Bryer stated that a study in Sweden showed it was mostly mineralized in the top 15 centimeters.
- Bohlen commented that there were several studies with similar outcomes that the active is metabolized relatively rapidly in loamy soils, but things may be very different with saturated soils or sandy soils.
- Jemison stated the test was done in Modesto with highly alkaline soils and we have acidic soils.
- Yarborough stated the wild blueberry soils are generally sandy loam with high organic matter. He added that with acidic soils bacteria levels drop and fungus levels rise.
- Morrill asked Darren Hammond of Wymans about the use of this product in Canada.
- Hammond responded that spring application gives better efficacy than in the fall. In the fall they are applying it as needed as a spot spray. He added that in Canada they have to wait until a little later in the spring and there would not be saturated soils at that time.
- Morrill asked how often growers are using the product in Canada.
- Hammond stated that once bunchberry is controlled there could be four to six cycles before it would need to be treated again. He added that there are not many pesticide options for control of bunchberry, and there is no other good option. Hammond stated that Velossa can be used but it is hit or miss and bunchberry returns in the off year. He continued that the only other option is an extremely hot product called Sandea and he would not recommend its use by someone unless they are a very experienced applicator.
- Hammond responded that having Express as an option will most likely result in lower use of hexazinone and lower the amount of material that could possibly contaminate groundwater.
- Morrill asked if water testing was currently being done in the wild blueberry areas.

- Tomlinson responded not specifically at this time. She added that they get tested every four to six years and sampling in blueberry production areas would occur next year.
- Morrill asked if this active ingredient could be added to the panel.
- Tomlinson will look into this.
- Adams asked if the Board could make water testing by UMCE a condition of approval.
- Randlett stated the Board could not impose conditions under FIFRA. [At the June 7, 2019 meeting, Randlett requested that this statement be amended and the Board voted to approve this amendment. Randlett said that the Board can impose reasonable conditions on a 24(c) registration, but there are limitations to that ability. The question at the time was whether the registrant could be required to pay for testing conducted by a third party as a condition of registration, and the answer to that is no.]
- Bohlen commented that to really test for this the BPC should pay for a study to test for it.
- Jemison suggested that possibly Lily Calderwood, Yarborough's replacement as Extension Blueberry Specialist, would be interested in doing the testing.
- Morrill asked if doing this testing was feasible.
- Yarborough answered yes, they could do it in the fields where they have test wells, or fields with houses nearby. He continued that it would be difficult knowing when to test not knowing the movement capacity of this active ingredient.
- Hammond responded that they have used this material since the initial SLN was approved.
- Adams asked about the timing on spring applications.
- Hammond stated it is really variable; last year was late May into June.
- Bryer commented that there is a passive sampler available with a well-fitting and it is good at detecting low concentrations.
- Morrill asked if that was technology the Board has available.
- Bryer responded that we have the passive sampler but do not have the well-fitting portion.
- Tomlinson will follow up with an extension specialist on the water testing.
 - **Morrill/Adams: Moved and seconded to approve SLN for two years contingent on having the active ingredient added to the panel of testing for next year.**
 - **In Favor: Unanimous**

7. Review of Proposed Surface Water Testing for 2019

7 M.R.S.A. § 607-A, Section 2-A, directs the Board to conduct water residue surveys, for both ground and surface water, to prepare profiles of the kinds and amounts of pesticides present. At the November 2018 Board meeting, Board staff proposed a continuation of past water monitoring efforts. The Board asked that staff provide the Board with the proposed cost, purpose of the testing, and set objectives.

Presentation By: Mary Tomlinson, Registrar and Water Quality Specialist and Pam Bryer, Toxicologist

Action Needed: Approve or disapprove funding for the proposed monitoring effort

- Tomlinson told the Board that there are two different projects in the proposal. The plan is to repeat what they did last September, but during the spring so spring/fall results could be reported on the second project and would have some overlap. The second project is being called 10 cities and the purpose is to examine surface water pollution in an urban area.
- Tomlinson stated they will look for the 10 largest cities by population and deploy the passive sampler downstream/river of these areas and collect grab sample there and upstream. Sediment samples would also be collected from those areas.
- Tomlinson told the Board they would be using UMaine for analysis of the sediment, particle size and organic matter. All water profile testing would be done by Montana Lab. She stated that the estimated costs would be \$56,000 and that includes the cost of the analysis, passive samplers and membranes.
- Bohlen stated that the United States Geological Service (USGS) has a series of publications looking at pesticide residues in urban waters. He suggested Tomlinson use that to make sure that Montana's panel includes products that are being detected. Bohlen added that we need to think about the watershed leading into where the sample is being taken and if it is from a commercial district or a residential district.
- Tomlinson stated that once sites are selected she will communicate with Bohlen.
- Morrill asked if glyphosate would be included in the test panel.
- Tomlinson responded that glyphosate was not detected in the fall sampling but it may be different in the spring. She added that there would be a separate cost as this would need to be done in a separate panel.
- Bryer commented that glyphosate is not found a lot but it is very important to the public.
- Tomlinson stated that in the past it was not tested for because of financial constraints.
- Morrill asked if the increased cost would be less than \$10,000.
- Tomlinson replied yes.
- Patterson explained to the Board that they could submit a budget order to cover these additional costs.
 - **Adams/Morrill: Motioned and seconded approve \$80,000 for water testing to specifically include glyphosate testing.**
 - **In Favor: Unanimous**

8. Request to Fund Development of Additional Functionality Within Existing MEPERLS Framework of Digital Inspection Flows and Digital Reports for Submission of Existing Annual Pesticide Use and Sales Reports

Board staff and constituents are now successfully working with the Maine Pesticide Enforcement, Registration and Licensing System (MEPERLS). Staff propose that there are opportunities to use the system to provide further benefit to constituents and further improve the efficiency of the Board's work. One suggestion is to incorporate required reporting within the system, allowing dealers and applicators to report sales/use using an online fillable form linked to the product registration data. This would force the data to be entered consistently and allow accurate reporting. These forms are currently submitted on paper or through email as static digital documents. A second improvement would be to replace the current digital, but static, fillable PDFs used for the inspection process with interactive flows within MEPERLS resulting in a fully searchable enforcement dataset.

Presentation By: Megan Patterson, Director

Action Needed: Approve or disapprove funding for the proposed development effort

- Patterson told the Board that MEPERLS encompasses all the components of the business and it is where we host, for both internal and external users, enforcement, registration, licensing info, exam scores, certification information, etc.
- Patterson stated that the first ask was to enter inspections in the form of flows through the system allowing for improved ease of conducting inspections via tablet and conducting enforcement assessments.
- Patterson explained to the Board that the second idea was to allow for commercial applicator and dealer annual end of year reporting to be made in MEPERLS. This would give use more agile use of information which the public has been very interested in. She added that it may also make it easier for applicators to enter their application information by prepopulating fields.
- Patterson told the Board that preliminary estimates are between \$60-90,000.
- Morrill stated he is concerned with the costs of the Pega system largely because when this project was pitched five years ago the whole project was supposed to be \$200,000 and now we are at well over a million.
- Patterson stated that there was initial work that was not viable but it still had to be paid for. She further explained to the Board that this would be an additional functionality, not something we initially intended to spend money on.
- Morrill commented that providing a cost range did not work the first time and it probably would not work this time. He added that he was all for the idea but wants to see a fixed cost for doing this.
- Patterson explained that there has been a lot of change in the personnel we work with. We have a lot of confidence in these individuals we are working with now.
- Morrill asked that staff provide a 'not to exceed' price. The Board agreed.
- Patterson will provide that and the budget at the next Board meeting.

9. Correspondence

a. Letter from Linda Titus, Ag Matters

- Patterson explained to the board that this pertains to recordkeeping requirements for the Food Safety Modernization Act and disinfectant that they must keep records of. Disinfectants are being used before the product leaves the farm, which requires that the use be recorded. According to how our rules are written it appears they do need to maintain records.
- Linda Titus stated she was initially asking for clarification for a grower because there appears to be an inequity between rules. A restaurant can do the same type of application and not have to report it. Growers are asking if this information needs to be recorded in the pesticide logbook. There are growers that are not aware of this. She added that not all farmers fall under the produce safety rule and if they do not then they do not need to record the treatment of water. Titus stated she wants to make sure she is giving growers correct information.
- Patterson stated that there is no licensing requirement for this record-keeping.

- Titus asked the Board for clarification because growers have questions, and additionally, what are the regulations for those using single pass water.
- Bohlen commented that the discussion about whether this is appropriate brings to mind all the other instances in which people use sanitizer but are not required to maintain records.
- Morrill stated he remembered there was a lot of time spent on this and they had solid reasons for adding each of those items to the list. He added that it is his feeling we should educate about this rather than revisiting the list.
- Titus stated she spoke at the AgTrade show trying to educate people on this. She added that it took a while to get an answer and if it takes me a while then you can be sure growers don't have a clue.

10. Other Items of Interest

- a. Montana Universal Pesticide Analysis (Water) June 2018
- b. LD 643 An Act To Provide Funding to Municipalities Severely Affected by Pest Infestations
- c. LD 785 Resolve, Directing the Board of Pesticides Control To Educate the Public on the Proper Use of Pesticides and To Promote Integrated Pest Management
- d. LD 796 An Act To Reestablish the Department of Agriculture, Food and Rural Resources and the Department of Conservation
- e. LD 889 An Act To Require the Labeling of Foods Made with Nanotechnology
- f. LD 908 An Act To Require Schools to Submit Pest Management Activity Logs and Inspection Results to the Board of Pesticides Control for the Purpose of Providing Information to the Public

11. Schedule of Future Meetings

April 19, 2019, and May 24, 2019 are proposed meeting dates.

- The Board set June 28, 2019 as an additional proposed meeting date.
- There was discussion about possibly August 9 or 30th as well. Bohlen suggested a forestry or urban use themed trip. Staff will look into when Ron Lemin may be available

12. Adjourn

- **Adams/Bohlen: Motioned and seconded to adjourn at 11:17am**
- **In Favor: Unanimous**