



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

September 23, 2016

NOTE DIFFERENT LOCATION:
Conference Room
Maine DOT John E. Dority Training Center
10 Mountain Ave, Fairfield, Maine

AGENDA
8:30 AM

1. Introductions of Board and Staff

2. Minutes of the August 19, 2016 Board Meeting
Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

3. Consideration of Enforcement Action Against Stone Wall Farms, Lincoln, Maine

In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. This case involves the use of a pesticide in a careless, negligent or faulty manner and the use of a pesticide in a manner inconsistent with product labeling, which resulted in the death of two dogs.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

4. Consideration of Enforcement Action Against Joseph Fazekas, Harpswell, Maine

In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. This case involves an unauthorized pesticide application.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

5. Consideration of Consent Agreement with Granite Bay Care, Inc., Portland, Maine

The Board's Enforcement Protocol authorizes 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 involves the indoor application of an unregistered pesticide by an unlicensed applicator to an area open to use by the public.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

6. Overview of Historical Maine Lawn and Landscape Pesticide Use Estimates

At the August 19, 2016 meeting, the Board requested an explanation of the methodology used by Board staff to estimate Maine lawn and landscape pesticide use trends. The analysis utilized annual sales and use reports submitted to the Board by pesticide dealers and commercial applicators. Gary Fish, the State Horticulturist, will provide an overview of past estimates.

Presentation By: Gary Fish
State Horticulturist

Action Needed: None—Informational Only

7. Review and Discussion of Board Homeowner Education Efforts

At the August 19, 2016 meeting, the Board requested a presentation of an updated outreach plan at the following meeting and progress updates at all subsequent meetings. Over the last several months, the Board discussed various ideas and approaches for improving education of homeowners on the use of Integrated Pest Management and the proper use of pesticides. Staff will provide an update to the Board about activities planned for the winter and spring of 2016 and 2017.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Determine next steps

8. Overview of Pesticide Sales and Use Data Submitted to the Board

At the August 19, 2016 Meeting, the Board requested a presentation detailing current pesticide sales and use reports. The staff will explain the current requirements and the nature of the information that is received by the Board.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: None—Informational Only

9. Other Old or New Business

- a. Chapter 29 Variance for Vegetation Control Service, Inc.
- b. Revision of Chapter 29 Variance for Vegetation Control Service, Inc.
- c. Chapter 29 Variance for Maine Coast Heritage Trust
- d. Chapter 29 Variance for Town of North Yarmouth

10. Schedule of Future Meetings

November 4 and December 16, 2016 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

11. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the Board's office or pesticides@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.



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**August 19, 2016
Conference Room
O'Donal's Nursery
6 County Road Gorham, Maine**

DRAFT MINUTES

11:30 AM

Present: Bohlen, Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Connors, Couture, Hicks, Jennings, Meserve, Patterson, Tomlinson

2. Minutes of the March 25 and the May 13, 2016 Board Meetings

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- **Eckert/Stevenson: Moved and seconded to adopt as amended.**
- **In Favor: Unanimous**

3. Public Forum (limited to one hour)

At this time, the Board invites anyone interested to address its members with questions or concerns about any pesticide-related issues.

Presentation By: Henry Jennings
Director

Action Needed: None required

- Public attendees who addressed the Board:
Donna Herczeg, Mary Cerullo, John Bochert, Cathy Chapman, Mike Hughes, Jesse O' Brien, Kevin Doyle, Matt Ten Eyck, Maria Woodbury, Doug Bogdan, Rick Lewis, Jody Spear, Mallory Hattie, Terry Showmaker, Sally Waite, Paul Sevigny, Tom Estabrook, Jeff O'Donal, Fred Daigle, Phil Roberts, Katy Green

4. Consideration of the EPA Special Local Need [FIFRA Section 24(c)] request to extend the use of Echo ZN, EPA Reg. 60063-4 for control of late blight (*Phytophthora infestans*) in long-season potatoes

The Special Local Needs (24c) request to extend the use of Echo ZN (EPA Reg. No. 60063-4) limits use to long-season potatoes during epidemics of severe late blight (*Phytophthora infestans*). The request is in response to high levels of late blight present in recent growing seasons in Maine, according to Steve Johnson, Ph.D., Crops Specialist, at the University of Maine Cooperative Extension. The continued use of this product at the higher annual maximum rate will permit growers the needed flexibility to respond more effectively during unique growing conditions that promote late blight.

Presentation By: Mary Tomlinson
Pesticide Registrar

Action Needed: Approve/Disapprove 24(c) Registration Requests

- Tomlinson noted that the Board previously approved a Special Local Needs (24c) request for Bravo Zn (EPA Reg. No. 50534-204-100). Tomlinson stated this request is for a similar product with the same percentage, but produced by another company, so the Board should not discriminate between companies. Tomlinson stated the Special Local Needs request will expire December 31, 2021, the same year the Bravo Zn Special Local Needs request expires.
- Eckert asked if late blight will be a large issue since it has been a very dry year. Flewelling stated it is not dry in Aroostook County and potato growers continue to make regular fungicide applications.
- Jemison stated he is somewhat critical of it, but realizes it will not be used if there is not a need. Flewelling replied it is a relatively inexpensive product with relatively low toxicity.
 - **Flewelling/Stevenson: Moved and seconded to approve the Special Local Need (24c) request to extend the use of Echo ZN (EPA Reg. 60063-4), for control of late blight (*Phytophthora infestans*) in long-season potatoes**
 - **In Favor: Unanimous**

5. Consideration of a Consent Agreement with the Maine Seed Company, Wales, 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 involves the sale of a restricted-use pesticide to a grower with an expired license.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors stated that sales records were collected during a routine restricted use pesticide (RUP) dealer inspection in 2015. While reviewing records, the investigating inspector found two sales made, on separate occasions, to an unlicensed individual. Connors explained the individual

had been licensed at one time, but was not licensed at the time of the purchases. Connors sent a consent agreement to Maine Seed Company, which they have acknowledged and paid.

- Flewelling asked if there were consequences for the buyer. Connors answered that the buyer acknowledged and paid a \$200 consent agreement.
- Morrill asked about the typical use of Lumax. Connors replied that it is a corn herbicide containing the active ingredient atrazine.
- Morrill stated that a considerable amount of pesticide was purchased—50 two-and-a-half pound bags. He noted there have been several similar consent agreements in recent years and inquired if inspectors were conducting more effective compliance checks or if sellers required more education on RUP sales.
- Eckert asked if the new electronic license system would help with this. Connors stated dealers are supposed to be verifying applicator licenses at the point of sale. There is a field on the sales form to record applicator license number and there was no entry in that field for these sales. Jennings stated that some companies ask Board staff to provide a list of licensees and license numbers and use this to determine license status.

- **Flewelling/Eckert: Moved and seconded to approve the consent agreement negotiated by staff**
- **In Favor: Unanimous**

6. Other Old or New Business

a. Homeowner Education Update:

- Morrill stated that the Board would like updates, at each Board meeting, regarding staff progress on homeowner education outreach efforts.
- Jennings reported that work on homeowner education was done in the spring and a fairly ambitious plan had been mapped out. Due to a variety of circumstances, the staff has not conducted homeowner education during the latter part of the summer. For example, Gary Fish left his position resulting in a cascade of staff vacancies. In addition, the staff had to relocate to a new building and a large IT project is also taking up much staff time with everyone required to test their own part of it and work out the bugs.
- Jennings stated that several public education talks, including the master gardener talks, were presented this year by himself, Tomlinson and Patterson. The Tom Mather tick talks reached 167 people, whereas the GotPests website receives about 10,000 hits per month. Jennings said staff did not understand how early in the year garden centers develop their seminar schedule and found it was too late to get into some of the planned venues.
- O'Donal stated Jennings had been in contact with him on numerous occasions and feels it is as much his fault as the BPC staff's because the early spring and favorable weather resulted in an unusually hectic spring for garden centers. O'Donal advised that pesticide use is a hot topic right now and said homeowners need to know how to identify what the pest is, if they have a problem and if the insect is beneficial or detrimental to their garden plants. O'Donal expressed the need to get people into a meeting where they could look at and learn how to identify insects.
- Bohlen stated government is often poor at educating the public because it is a multiple year process, and that what staff did this spring is not as important as developing a long-term plan and committing to it. Bohlen advised that bumping this topic back into focus now and then is important and we should seek help from the private sector.

- Estabrook, president of the Independent Garden Centers of Maine (IGC), expressed that he would love to work with the BPC. He stated there are 19 garden centers in the IGC that he believes would feel the same way. Estabrook also stated he thought this outreach would fit in nicely with the Maine Landscape and Nursery Association's, (MELNA) 'Plant Something' initiative. Estabrook suggested working with the BPC staff beginning in the next couple months to get some meetings set up.
- Eckert commented on the recent pesticide ordinance movements involving large towns and stated they are becoming a semi-urban phenomenon which people are very passionate about. Eckert stated she feels the BPC has a large audience of people who have no specific interest in pesticides and that the Board needs a better understanding of potentially interested demographics because there are not unlimited resources for outreach.
- Morrill reiterated he would like homeowner education on the agenda at all Board meetings. He stated the most important question now is how the Board can increase outreach. Morrill also suggested reaching out to the general public and asking what topics they would like addressed and then focus the conversations on that. Morrill asked about offering educational grants to organizations that have the ability to, and would like to, take on some educational efforts.
- Jesse O'Brien recommended asking Kathy Murray and Extension to help out. He also stressed the need to teach about soil composition and landscape design, such as the right plant for the right location.
- O'Donal suggested the BPC identify two or three topics and present these with a schedule listing the dates staff or volunteers are available. He said he knows the garden centers would sign up to hear those talks. O'Donal also stated the BPC should conduct talks at the Portland Flower show and other trade shows.
- Morrill stated these are great ideas and need to be implemented. He said we now need a strategy and wants it included on the agenda for the next Board meeting. Eckert agreed and stated people are really passionate about these topics.
- Eckert asked about bed bugs and the ordinance in Augusta requiring tenants to report bed bugs and landlords to treat for bed bugs. Stevenson stated they are treating for bed bugs all over the state, but are seeing smaller numbers of them at the moment.
- Jemison referenced the letter from Jo Ann Myers that stated the Board is not fulfilling its statutory responsibilities regarding tracking all pesticides purchased and used in Maine. Jemison stated he was confused about the origin of the cited 700% increase in pesticide use given that the Board is not tracking use. Jennings stated that Myers is working from an old statute; the legislature repealed the sentence requiring the BPC to publish reports tracking pesticide use, and the '700%' figure came from an estimate of lawn and landscape pesticide use that Fish did.
- A discussion followed regarding where/how data on pesticides sold and used in Maine was obtained. Also discussed was the difficulty of normalizing the raw data into meaningful figures. Bohlen stated people are really interested in this information and the Board should provide it. Jennings replied that there are several issues with the data, not only methodology for calculating it, but also getting sales reports from stores and the inability to track online sales of pesticides. Tomlinson stated there is an issue with accuracy of the reports. Bohlen asked about the possibility of getting pieces of the data that would be useful to the public. Morrill said Bohlen raised a good point; there is a lot of desire out there for some data. Morrill suggested getting help from the public on exactly what data they want to see. Bohlen stated that if there is an underlying issue with data accuracy then it is not worth analyzing until the reports contain reliable data.

Katy Green asked about the possibility of getting data for a handful of active ingredients. The Board agreed to discuss this further at the next meeting.

- Stevenson asked about getting clarification on the '700% increase' quote because he hears it repeated often. Jennings stated he also hears it frequently. Stevenson asked if there is a way to retract the comment if it is not accurate. Jennings replied he would ask Fish about where and how he got the figure.
- Granger questioned how useful this data is, if it is worth spending this much time on, and if it will give any real answers to anyone. He asked if it means the public is using fewer pesticides, or does it mean the public is using less of different pesticides. Eckert stated the time period of the data is also important. Bohlen said the information needs to be democratized and the Board should not tell the public when they can see the data. Bohlen stated the reason the '700%' number keeps coming back to us is because it is the only number people have.
- Bohlen thanked Tomlinson for getting the data for the sediment and water quality tests out to the public.

- b. Chapter 29 Variance for Dasco Inc.
- c. Chapter 29 Variance for Dubois Contracting
- d. Omega 24c 2016 Use Report
- e. Letter to the Board from Spear

7. Schedule of Future Meetings

September 23, November 4 and December 16, 2016 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- No changes or additions were made

8. Adjourn

- **Granger/Bohlen: Moved and seconded to adjourn at 2:06 pm**
- **In Favor: Unanimous**

CASE INVESTIGATION SUMMARY

3

Company: Stone Wall Farms

Licensed: PPA 10648 (Alfred Fugazzi)

Origin of Case: Call from Lincoln Police Department

Background: On April 26, 2016, the Board received a call from John Walsh, a police officer in the town of Lincoln. Walsh said he responded to a complaint received on April 23, 2016, of two dogs that were thought to have been poisoned in Lincoln. Walsh met with the owners of the dogs as well the vegetable grower on the land where the incident occurred.

Findings:

- The grower Alfred Fugazzi leases the land where the incident occurred to grow a variety of crops.
- The owners of the dogs are Hawley (Tim) and Ann Thornton who live within walking distance of the field.
- Fugazzi is licensed as a private pesticide applicator with the Board of Pesticides Control (BPC).
- On April 23, 2016,
 - Lincoln police department receive a complaint at approximately 4:41 PM about dead dogs.
 - Walsh and Lincoln animal control officer Nicole Murchison investigated the incident that same day.
 - Walsh and Murchison met Tim at the Thornton's residence.
 - Tim said that earlier in the day, his wife walked their 2 dogs (dachshund, english setter) down the road in the fields behind their house. Ann called him from the field saying something was wrong with the dachshund and she wanted to take him to an emergency vet and that she could not locate the other dog. Tim drove to the field, Ann took the car to drive the dachshund to the emergency vet and Tim proceeded to look for the english setter. He found the english setter lying in tall grass in the field. The dog was convulsing and foaming at the mouth. The dog died as Tim was carrying him out of the field.
 - Tim took Walsh to the field to show him where he found the english setter. Walsh's written report documents that in this area there was tall grass that was flattened down and a large amount of foam on the grass.
 - Tim and Walsh then went back to the Thornton's residence, by that time Ann was there. Ann said the dachshund died en route to the vets and was convulsing and foaming at the mouth before it died.
 - Walsh saw the 2 deceased dogs while at the Thornton residence.
 - Ann Thornton then took Walsh back to the field where the incident occurred.
 - Ann Thornton showed Walsh the area where she saw the dogs eat something.
 - Walsh searched this area where the dogs had been seen eating and found bread crumbs on the ground. Canine tracks were visible at this spot. Walsh collected some bread crumbs here.
 - While in the field Walsh called Fugazzi and left a voice message about the incident and what they found.
 - While Walsh was still in the field, Fugazzi returned his call and came to the field and met with Walsh.
 - Walsh's written report states that Fugazzi told him earlier that morning, he put out 3 pieces of bread that he had crumbled up and laced with a teaspoon of Lannate insecticide and then put the crumbs out in piles in 3 separate locations in the field to kill crows that were eating his newly planted seeds.
 - Fugazzi showed Walsh the 3 locations where he put the treated bread crumbs.
 - At the first location Walsh saw seven dead crows in the immediate area and what appeared to be more dead crows in the distance. Only a minimal amount of crumbs remained at this location.
 - At the second location, the bait appeared to be untouched.

- The third location was the site the dogs had been seen feeding and where Walsh had collected the bread crumb sample.
- April 26th, The Board inspector met with Walsh.
 - The inspector collected a copy of the 6 page police investigation report on this incident.
 - The inspector collected the Lannate laced bread sample Walsh collected in the field.
 - Walsh discussed the same basic information contained in the police report.
- April 26th, The Board inspector and Walsh then met with Fugazzi.
 - Fugazzi explained that he placed poison bait out in his field on 4-23-2016 because crows damaged his crops (squash and cucumber seeds). This was done about noon time.
 - The inspector completed an inspection on how the Lannate SP insecticide was applied.
 - Fugazzi explained that he crumbled up 4 slices of bread in a bag and added approximately 1 oz. of Lannate to it.
 - The inspector documented the label and labeling of the Lannate SP Insecticide.
 - The inspector took digital photos the field, signs used to post the field, and the farm sign at the field.
 - Fugazzi stated he had contacted Robin Dyer from USDA and the local Maine Wardens about the crow damage prior to this incident. He also tried noise cannons to address the problem prior to using the treated bread.
- On April 26th, the Board inspector then met with Ann Thornton.
 - Thornton described what happened when she saw the dogs eating something in the field.
 - Within 30 seconds the dachshund stumbled and fell, and began coughing and foaming at the mouth. The dog was also shaking and twitching.
 - Thornton took the dog home and tried to induce vomiting without success.
 - Thornton drove towards emergency vet with the dog, the dog died en route to the vets within 45 minutes of ingesting the bread.
 - Thornton then reiterated what her husband experienced with the death of their other dog and summarized her trip back to the field with the Walsh and route she took to enter the field.
 - The inspector collected a written statement from Thornton about the incident.
- April 27, 2016, a Board inspector met with Fugazzi
 - The inspector mailed Ann Thornton a Google Earth map and requested she mark the route she took to enter the field. Thornton marked her route on the map and the inspector received it back April 30th.
 - The inspector collected the 7 ounces of Lannate left over from the application Fugazzi made to the bread.
 - The inspector delivered the Lannate to Bangor's DEP facility for later disposal through the BPC's obsolete pesticide disposal program.
- April 29, 2016, a Board inspector met with Fugazzi
 - Fugazzi signed a written statement about the incident
 - Fugazzi indicated on a map where he placed signs at the field
- May 3, 2016, a Board inspector returned to Fugazzi's field.
 - The inspector checked for signs where Ann Thornton entered the field on May 23rd.

Violations

Use of a pesticide in a careless, negligent or faulty manner in violation of 22 M.R.S. § 1471-D (8)(C).

Use of a pesticide in a manner inconsistent with its label in violation of 7 U.S.C. § 136j (a)(2)(G), 7 M.R.S. § 606 (2)(B) and 22 M.R.S. § 1471-D (8)(F).

- LANNATE® SP is a dry powder in a water soluble bag to be dissolved in water for application by mechanical ground, overhead sprinkler or aerial application equipment only. Hand-held equipment is prohibited for application to crops.
- Do not handle, open, rip, tear, cut or perforate the inner water soluble bag.
- Wear protective eyewear and respirator.

Staff Recommendation(s): Authorize staff to negotiate a consent agreement.

CASE INVESTIGATION SUMMARY

4

Subject: Joseph Fazekas
21 South Dyers Cove Road
Harpwell, Maine 04079

Date of Incident(s): Damaged first noticed 6-13-15

Background Narrative: On July 2, 2015, the Board received a call from Jeff Gillis, an arborist and licensed commercial pesticide applicator. Gillis reported that he was hired by clients Debbie Thomas and Ned Douglas of Harpswell. Thomas/Douglas called Gillis because another arborist they employ recommended they do so when he noticed an area of dead and symptomatic vegetation approximately 20x20 feet on a slope on their property. The damaged vegetation included, but was not limited to oak, cherry, white pine, and brambles. The twisted and distorted foliage looked like herbicide damage to Gillis. Their neighbors Joseph and Caroline Fazekas have property that abuts this damaged area on the uphill side. According to Gillis, Fazekas asked Thomas/Douglas to lower the height a large Norway maple tree on their property near the shore so Fazekas would have an open view of the ocean and be more apt to sell when they put their house on the market. Thomas and Douglas did not consent to the tree being cut at the time of the request.

A Board inspector went to the site where she met Gillis, Thomas and Douglas. The inspector took photos and physical samples. Douglas completed a written statement while the inspector was at the site. At that same time Douglas also approached Joseph Fazekas to inform him that an inspector from the Board was investigating the damaged area on the slope. Douglas told the inspector Fazekas said he was not involved and he had a lawyer on retainer.

On July 10, 2015, the Board inspector sent digital photos taken of the damaged area and vegetation on the Thomas/Douglas property to Bill Ostrofsky, a plant pathologist with the Maine Forest Service. Three days later on July 13th, the inspector hand delivered two physical samples (150710MLP01D and 150710MLP01E) collected in the damage area to Ostrofsky at his office. Ostrofsky reported back on July 22, 2015, in an email. An excerpt from that email follows:

“I’ve re-examined the plant samples and the photos from the Harpswell client of WellTree, and in my opinion, it appears clear to me that some type of herbicide was used on the property. The indications of this include:

1. The relatively clear demarcation between the bare ground, and an area well-covered with herbaceous plant growth;
2. The multiple plant species (ferns in the photos; raspberry and oak live samples and photos) which appear damaged - (a single biotic agent that could affect all three is unknown and unlikely);
3. Leaf and stem damage of the affected plants is consistent with herbicide injury response- twisting and flattening of the young shoots and leaves; exaggerated elongation of growth; stimulation of the development of multiple bud clusters, particularly in oak, etc.; As we discussed, raspberry may be affected by some viruses that could produce similar symptoms, but not oak”.

On July 29, 2015, the Board inspector sent two separate foliage samples (150710MLP01C and 150710MLP01F) collected from the damaged area on the Thomas/Douglas property to a lab for chemical analysis. At the lab these sample were combined and analyzed as one sample. Lab results were positive for glyphosate at 8.9 ppm.

Based on the above findings Board staff sent the Fazekases a consent agreement.

In response to the consent agreement the Fazekases hired legal counsel. A lawyer representing the Fazekases sent a letter to Board staff refuting allegations and conclusions in the consent agreement. Board staff, in following up on the legal firm's contentions, looked further in to the deeds of both properties in this case.

Two separate view easements do exist. One allows the Fazekases to lower the height of a big maple tree on the Thomas/Douglas lawn. A second view easement allows the Fazekases to trim existing and future trees and to cut down any saplings less than four inches in diameter to the portion of the Thomas/Douglas property abutting the Fazekases' property. Neither easement allows the Fazekases to apply pesticides to any of the Thomas/Douglas property.

Summary of Violation(s):

- CMR 01-026 Chapter 20 Section 6(D)2. No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property.

Rationale for Settlement: The property boundaries are clearly marked between the two abutting properties. The Fazekases did not have authorization to apply any pesticide to the Thomas/Douglas property. Although there is no direct evidence that Fazekas applied pesticides to the Thomas/Douglas property the fact that their properties abut and that the damaged vegetation was in the line of Fazekas' view of the ocean indicate that a motive existed for Fazekas to have done so.

Staff Recommendation(s): Since the staff has been unable to reach a settlement, it recommends referring the case to the Office of the Attorney General.

Proposed Administrative Consent Agreement Background Summary

5

Subject: Granite Bay Care, Inc.
2338 Congress Street
Portland, Maine 04102

Date of Incident(s): Approximately January 7, 2015, and other dates prior to this.

Background Narrative: A caller reported to the Board that staff at this company's Cape Road facility in Raymond was making pesticide applications indoors. A Board inspector went to the site and interviewed a facility worker and later met with the company's executive director in Portland. From these contacts, it was determined that an unlicensed in house maintenance employee purchased and applied Bed Bug Bully (unregistered in Maine) inside the Raymond facility. Unlicensed staff there also applied borax, Raid Roach Traps and Raid Spray to control insect problems.

Summary of Violation(s):

That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III

CMR 01-026 Chapter 20, Section (I) A prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §60 I.

Rationale for Settlement: The company was not soliciting commercial work but did make pesticide applications to their own facility. A licensed commercial applicator was then hired to address the pest problem.

Attachments: Proposed Consent Agreement

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL

In the Matter of:)	
Elizabeth Sullivan)	ADMINISTRATIVE CONSENT AGREEMENT
Granite Bay Care, Inc.)	AND
2338 Congress Street)	FINDINGS OF FACT
Portland, Maine 04102)	

This Agreement by and between Granite Bay Care, Inc. (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S. §1471-M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company operates multiple residential care facilities including Granite Bay Care, Inc. located at 23 Cape Road in Raymond.
2. That on January 26, 2015, the Board received a call from the parents of their autistic daughter who was a resident at the facility described in paragraph one. The parents alleged that Company staff made a pesticide application inside the facility on or about January 7, 2015, to control bed bugs and roaches.
3. That in response to the call in paragraph two, a Board inspector conducted a follow up inspection with Company employee Merriam Davis. Davis stated that bait stations and borax had been applied in the kitchen of the Raymond facility and that the inspector should contact the Company in Portland to get more information about this.
4. That on February 11, 2015 the inspector conducted a follow up inspection at the Company located at 2338 Congress Street in Portland. Granite Bay Care, Inc. in Raymond is an affiliate of the Company. The inspector met with Ken Olson, the executive director of the Company.
5. That during the inspection described in paragraph four, Olson acknowledge that an unlicensed in house maintenance employee purchased Bed Bug Bully from Amazon and applied it at their Raymond facility. Olson also stated that Raid Roach Traps and Raid Spray had been used by staff at their Raymond facility.
6. That the inspector later consulted with the Board registrar. The registrar determined that Bed Bug Bully was not registered in Maine and did not qualify for an EPA 25b exemption from registration.
7. That CMR 0 I -026 Chapter 20, Section (I) A prohibits the use of any pesticide not registered by the Board in accordance with Title 7 M.R.S.A. §60 I.
8. That the conditions in paragraphs one through seven constitute a violation of CMR 0 I -026 Chapter 20, Section (I) A.
9. That any person making a pesticide application that is a custom application, as defined under 22 M.R.S. § 1471-C(5-A), must be a certified commercial applicator or under the direct supervision of a certified applicator in accordance with 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III.

10. That a custom application is defined in 22 M.R.S. § 1471-C(5-A) as any application of any pesticide under contract or for which compensation is received or any application of a pesticide to a property open to use by the public. Compensation is defined in CMR 01-026 Chapter 10 Section 2(P) 1(b) For purposes of this definition, compensation is deemed to have been received for a pesticide application where any form of remuneration has been or will be exchanged, including payment of cash, rent, or other financial consideration, or by the exchange of goods and/or services. Residents pay rent at the Company facility in Raymond. In CMR 01-026 Chapter 10 Section 2(P)2(b) property open to use by the public includes common areas of apartment buildings and occupied apartments. A staff person for the Company treated both common areas and bed rooms at the Raymond facility.
11. That no one from the Company had a commercial pesticide applicator's license at the time of the application described in paragraphs three and five.
12. That the circumstances described in paragraphs one through six and nine through eleven constitute violations of 22 M.R.S. § 1471-D(1) (A) and CMR 01-026 Chapter 31 Section 1(A) III
13. That the Board has regulatory authority over the activities described herein.
14. That the Company expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
15. That this Agreement shall not become effective unless and until the Board accepts it.
16. That, in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in paragraphs eight and twelve, the Company agrees to pay to the State of Maine the sum of \$250. (Please make checks payable to Treasurer, State of Maine.)

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

_____ Date: _____
 GRANITE BAY CARE, INC.

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
 Henry Jennings, Director

APPROVED:

By: _____ Date: _____
 Mark Randlett, Assistant Attorney General



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER
HENRY JENNINGS
DIRECTOR

August 31, 2016

8a

Jeffrey M. Taylor
Vegetation Control Service, Inc.
2342 Main Street
Athol, MA 01331

RE: Variance Permit for CMR 01-026, Chapter 29

Dear Mr. Taylor:

On December 13, 2013, the Board authorized the staff to issue multi-year permits for broadcast pesticide applications within 25 feet of water for control of invasive plants provided the applicator has demonstrated knowledge of best management practices for control of the plant, has a multi-year plan for controlling the invasive plants, and has a re-vegetation plan for the site.

Thank you for including the Invasive Plant Survey and Recommendations prepared for the Town of Cumberland by FB Environmental Associates as part of your application.

By way of this letter, your request for a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 is hereby granted for the treatment of various invasive at two sites in the Town of Cumberland. This variance is valid until December 31, 2018. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your variance application; also, the Board does require that you notify them if there is a change in products to be used.

We will alert the Board at its October 9, 2015 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control



PAUL R. LePAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER
HENRY JENNINGS
DIRECTOR

August 31, 2016

8b

Jeffrey M. Taylor
Vegetation Control Service, Inc.
2342 Main Street
Athol, MA 01331

RE: Variance Permit for CMR 01-026, Chapter 29

Dear Mr. Taylor:

Thank you for your application to extend the area included in the variance for the treatment of various invasive plants along public roadside rights-of-way in the Town of Falmouth, and to add the herbicide Milestone to the treatment. Those amendments have been approved; the variance remains valid until December 31, 2017.

We will alert the Board at its October 9, 2015 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

August 15, 2016

8c

Amanda Devine
Maine Coast Heritage Trust
1 Bowdoin Mill Island, Suite 201
Topsham, ME 04086

Ms. Devine,

Thank you for your variance application.

The Board adopted a policy in 2013 allowing for the issuance of multi-year variances for the control of invasive species. In determining this policy the Board emphasized the need for a long-term plan for re-vegetation of the site, and demonstration of knowledge of efficacy and appropriate practices—the goal being to ensure that the site is reverted to native species, and not made available for another invasive species.

This letter will serve as your Chapter 29 variance permit until December 31, 2018 for the treatment of Phragmites on the Maine Coast Heritage Trust preserve on Owls Head Harbor.

Please bear in mind that your permit is based upon adherence to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

August 15, 2016

8d

Rosemary Roy, Town Manager
Town of North Yarmouth
10 Village Square Road
North Yarmouth, ME 04097

Ms. Roy,

Thank you for your variance application.

The Board adopted a policy in 2013 allowing for the issuance of multi-year variances for the control of invasive species. In determining this policy the Board emphasized the need for a long-term plan for re-vegetation of the site, and demonstration of knowledge of efficacy and appropriate practices—the goal being to ensure that the site is reverted to native species, and not made available for another invasive species.

This letter will serve as your Chapter 29 variance permit until December 31, 2018 for the treatment of Japanese knotweed in Old Town House Park.

Please bear in mind that your permit is based upon adherence to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings
Director
Maine Board of Pesticides Control

cc: Bryan Emerson

Maine Board of Pesticides Control

Miscellaneous Pesticides Articles
September 2016

(submitted by individuals)

Chamberlain, Anne

From: jody spear <>
Sent: Wednesday, August 31, 2016 3:37 PM
To: Chamberlain, Anne
Subject: for next board meeting packet (misc.) : 'Femme fatale' emerald ash borer decoy lures, kills males

Check out this article from the Penn State news site:

<http://news.psu.edu/story/326413/2014/09/15/research/femme-fatale-emerald-ash-borer-decoy-lures-kills-males>



PennState



An emerald ash borer rests on a leaf.

Image: Jonathan Lelito/BASF Corporation

'Femme fatale' emerald ash borer decoy lures, kills males

Researchers target bug that has killed tens of millions of ash trees

Sara Lajeunesse

September 15, 2014

UNIVERSITY PARK, Pa. -- An international team of researchers has designed decoys that mimic female emerald ash borer beetles and successfully entice male emerald ash borers to land on them in an attempt to mate, only to be electrocuted and killed by high-voltage current.

"Our new decoy and electrocution process may be useful in managing what the U.S. Department of Agriculture Forest Service claims to be the most destructive forest pest ever seen in North America," said Michael Domingue, postdoctoral fellow in entomology, Penn State.

According to the Forest Service, the emerald ash borer was introduced to the United States from China in 2002. Since then, it has spread throughout 24 states and two Canadian provinces, and killed tens of millions of otherwise healthy native ash trees.

"Early detection of the pest in traps such as ours can help in coordinating management strategies to slow its spread and minimize its impact," said Domingue.

The researchers -- including entomologists and engineers at Penn State, the Hungarian Academy of Sciences, the Forest Research Institute in Matrafured, Hungary, and the USDA -- created the decoys using a bioreplication process with nanoscale fidelity.

"Specifically, we coated a dead female beetle with a vapor of nickel, and used the 'nickelized' shell to fabricate two matching molds in the shape of a resting beetle," said Akhlesh Lakhtakia, Charles Godfrey Binder professor of engineering science and mechanics, Penn State. "Pressing a structurally colored plastic sheet between the two molds while simultaneously applying heat, we cast numerous replicas or decoys. The finished bioreplicated decoys retained the surface texture of the beetle at the nanoscale.

Additionally, we painted some decoys a metallic green."

The Penn State engineers also created decoys using a 3D-printing process. In this method, they molded plastic into the size and shape of emerald ash borers, but did not attempt to duplicate the surface texture of the insects.



The researchers pinned the bioreplicated and 3D-printed decoys, as well as dead female emerald ash borers, onto leaves to see which of them best attracted wild males.

Image: Michael Domingue/Penn State

Next, the entomology researchers pinned the bioreplicated and 3D-printed decoys, as well as dead female emerald ash borers, onto leaves in forests in Hungary to see which of them best attracted wild males. In the same forests, the team also placed traps configured with decoys bearing a 4,000-volt charge to electrocute and trap males as they landed on the decoy females.

The results appeared Sept. 15 in the Proceedings of the National Academy of Sciences.

The scientists found that both types of synthetic decoys, as well as the dead pinned females, elicited initial flights by males toward them. Males nearly always chose to land on the dead females and the more realistic bioreplicated decoys. However, while the males initially flew toward the simpler 3D-printed decoys, they did not land on them. Males would normally quickly leave the bioreplicated decoys after they touched them. Yet, that brief contact was enough for them to become instantly stunned and captured by the trap if the voltage was applied to the decoys.

According to Domingue, the light-scattering properties of the beetle's shell -- which the team experimentally demonstrated using a white laser -- made the nano-bioreplicated decoys more lifelike and, therefore, more attractive to males than the non-textured 3-D-printed decoy.

"We learned that not only do color and shape of a resting female beetle play a role in attracting males to a mate, but also the fine-scale texture of the visible surface is important," said Domingue. "Small bumps and spines on the outer surface of their wings and heads that aren't visible to the human eye scatter light in a distinctive pattern. Beetles appear to be able to recognize this feature of the decoys and are strongly attracted to it. This insight may at least partially explain how mate-seeking males can easily detect and approach green-colored females cryptically resting on green leaves. Ultimately, we have gained new insights into how to manipulate the behavior of emerald ash borers and similar pests in ways that can help to trap them and monitor where they might be doing damage."

According to Thomas C. Baker, distinguished professor of entomology, Penn State, the findings were possible only because of the multidisciplinary makeup of the team.

"I was able to find colleagues whose intellects, expertise, and enthusiasm matched the tasks at hand, thus enabling us to figure out how these destructive beetles find each other to mate and how we can exploit this behavior in order to help APHIS meet its goals of early detection and mitigation of invasive pests," he said.

The researchers said their next step will be to further improve the traps to maximize their potential as part of an early detection tool for emerald ash borers.

"Our laboratory has ongoing research with the USDA Animal Plant Health Inspection Service into remote-reporting, Internet-based technologies, and we will be working to couple this research with our ash-borer detection technique so that activity of the pest can be reported and assessed immediately by APHIS personnel, rather than waiting days or weeks until a trap might usually be checked," said Baker.

In addition, the team has been investigating the use of the decoys to attract other insect species, some of which are aggressive feeders on oak trees in central Europe and might threaten North American oaks in urban and forest landscapes much as the emerald ash borer destroyed ash trees.

"We have made progress in our research so far in Hungary these past few summers, and it looks like our decoys can be refined to attract and detect these other, new and potentially invasive pest species effectively," said Domingue.

Other authors on the paper include Drew Pulsifer, recent graduate student in engineering science and mechanics; Loyal Hall, graduate student in entomology; John Badding, professor of chemistry; Jesse Bischof, graduate student in chemistry; Raul Martin-Palma, adjunct professor of materials science and engineering; and Missy Hazen, research technologist, Huck Institutes of the Life Sciences; all of Penn State; and Zoltan Imrei of the Hungarian Academy of Sciences, Gergely Janik of the Forest Research Institute in Matrafured, Hungary, Victor Mastro of the USDA.

The USDA and the Hungarian Academy of Sciences supported this research.

CONTACTS:

A'ndrea Elyse Messer, aem1@psu.edu

Work Phone: 814-865-9481

Last Updated October 14, 2014

Chamberlain, Anne

From: jody spear <>
Sent: Wednesday, August 31, 2016 3:35 PM
To: Chamberlain, Anne
Subject: Fwd: ionization, rather than toxic chemicals, for weed and insect control

Hi Anne,

I sent this to go in the "Misc." section of the board's packet for the last meeting, and it wasn't included. Please post it for the Sept. meeting. Another is on the way as well.

I have a question about comments Curtis Bohlen made about sales data analysis on Aug. 19. Assuming minutes are not recorded, is it possible to get those remarks verbatim now, before the minutes are released?

Thanks,
Jody

----- Forwarded message -----

From: jody spear <>
Date: Mon, Aug 15, 2016 at 5:00 PM
Subject: ionization, rather than toxic chemicals, for weed and insect control
To: Henry Jennings <henry.jennings@maine.gov>

----- Forwarded message -----

From: jody spear <donotreply@bangordailynews.com>
Date: Mon, Aug 15, 2016 at 4:59 PM
Subject: Recommended Article By jody spear: Vineyard, orchard rising from old County potato farm
To: jody spear <>

Hi jody spear,

Your friend, jody spear, has recommended this article entitled '**Vineyard, orchard rising from old County potato farm**' to you.

Here is his/her remark:

N/A

Vineyard, orchard rising from old County potato farm

Posted By Anthony Brino On August 8, 2016 (6:03 am) In [Aroostook](#), [Business](#), [Homestead](#), [News](#)

On a 60-acre family farm in Fort Fairfield that was left fallow for four decades, Jeff and Judy Armstrong are tending to a growing fruit farm, experimenting with wine making and also using some unique pest control practices.

Over 30 acres on their Currier Road property passed on by Jeff's father, the Armstrongs have 6,000 grape vines and 1,600 fruit trees, mostly apples, comprising a vineyard and orchard just getting started.

“The average age of the trees is four years. This year, for the first real time, our apples are starting to produce fruit,” said Jeff Armstrong. The couple also started making wine from grape varieties like Frontenac and Valiant, and are thinking about selling it within the next few years, which would make this Aroostook County’s second commercial winery and the only one to use grapes.

Richard and Jean Sloat, who run a craft and embroidery shop in Houlton, started [Hidden Spring Winery](#) in Hodgdon last fall, making fruit wines from local wild and cultivated fruits like choke cherry, elderberry, rhubarb, apple and strawberry, as well as grape wines from imported juice.

Story continues below advertisement.

They are not yet distributing their wines, but sell bottles and servings from a tasting room at their farmstead.

The wines the Armstrongs are working on are similar to many originating from California’s Napa Valley, although with some “unique characteristics” thanks to the colder climate. “We get frost in September and October, and warm afternoons, and it sweetens up the grapes.”

The Armstrongs started planting the vineyard and orchard in 2009, almost 20 years after they moved back to their native Fort Fairfield from Portland and settled at the property of Jeff’s family farm. Jeff left the town in the late 1970s for college and to pursue a career in engineering, around the same time his father gave up potato farming and became a plumber. The farm, like other fallow land in the area, grew into a young forest.

“It took about 10 years to get that cleared, and then I thought maybe we should do something with the land. We had to do something other than mow the grass.”

Jeff’s brother suggested apples, as other apple orchards in Caribou and Presque Isle were growing at the time, and he got the idea for the grapes from the Bible. “One day I was reading the parable of the vine and the branches, and I was inspired by that: What about grapes?”

They started researching and talked with a now deceased woman in Washburn who tended a small vineyard with her husband, and then visited Lincoln Peak Vineyard in New Haven, Vermont, where the owners “were 12 years ahead and doing well.”

So far, so good with their vineyard and orchards, too, Armstrong said, adding that he hopes local farmers and gardeners will give grapes in particular a try. The Armstrongs sell many of the same cold-hardy varieties of vines and trees they’re growing, such as the seedless variety Somerset, along with honey, fresh vegetables and other goods, from a [shop](#) inside Jeff’s business, [Armstrong Engineering](#), in Fort Fairfield.

While the Armstrongs surprised family and neighbors by planting 15 acres of grapes in potato country, they’ve also taken a highly unconventional approach to common fungal diseases of the grapes and fruits, with a treatment known as ionized water.

“Basically, the machine puts a positive electrical charge in the water, and that electrical charge causes the spore to be destroyed” by creating an acidic environment for the fungus, Armstrong said.

Like potato growers, conventional vineyards and orchards normally rely on a number of synthetic fungicides to control blights, mildews and other diseases, and ionized water is virtually unheard of in the United States. Armstrong said he discovered that farmers in other countries are using ionized water as fungal treatment in greenhouses, and he found a Canadian business that is testing ionizer machines that could be developed for the agricultural market.

“It seems almost too good to be true,” said Judy Armstrong. Yet they say the treatment has allowed them to control downy mildew, one of the worst grape diseases, with a spray that’s harmless to humans.

They also use ionized water on the potatoes they sell, although they normally avoid major potato pests because they harvest most of the spuds early as new potatoes.

“Ionized water would be great for late blight,” Jeff Armstrong said. “I roughly determined that [potato growers] would save 50 percent on chemicals in a year.” He added that he thinks it could also help control the Colorado Potato Beetle.

Although their farm is not certified organic, the Armstrongs said they largely follow organic practices and avoid synthetic and toxic pesticides. To control insects, for instance, they spray a water and baking soda mixture.

As their production starts growing, the Armstrongs are still figuring out what they will do with the fruits, between wines, ciders, jams, pick-your-own and fresh fruit, but they’re looking forward to passing the farm on to their kids and grandkids, as Jeff Armstrong’s family did for four generations.

The farm already has about 50 old apple trees, some dating back more than a century, including the Yellow Dutchess planted by Armstrong’s great-grandfather.

“An apple tree will last a long time and so will a grape vine,” he said.

Article taken from Bangor Daily News - <http://bangordailynews.com>

URL to article: <http://bangordailynews.com/2016/08/08/news/aroostook/vineyard-orchard-rising-from-old-county-potato-farm/>