



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

December 2, 2022

9:00 a.m. Board Meeting—Hybrid

MINUTES

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Adams, Bohlen, Carlton, Ianni, Jemison, Lajoie

2. Minutes of the October 21, 2022 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Lajoie/Carlton: Moved and seconded to approve the minutes**
- **In Favor: Unanimous**

3. Request to Extend Special Local Need [24(c)] Registration for Callisto Herbicide (Syngenta Crop Protection, Inc.) for Broadleaf Weeds in Lowbush Blueberries in the Bearing and Nonbearing Years

Syngenta Crop Protection, Inc. is requesting extension of a Special Local Need [24(c)] Application to allow use of Callisto® herbicide for broadleaf weed control on low bush blueberries in the bearing and non-bearing years. This request is supported by Lily Calderwood, Maine Cooperative Extension Wild Blueberry Specialist. The expiring 24(c) for Callisto is for use in lowbush blueberries during the crop-bearing year. Because the additional applications will be made in the non-bearing year, residues are expected to be below the established tolerance.

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

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

- Tomlinson stated that this was a request to extend the Special Local Need (SLN) registration for use on lowbush blueberries during the crop-bearing year.
- Calderwood explained that Callisto is labeled for use in the prune year and this 24(c) request was to extend the use to the crop year as well. She added that allowing growers to use this in the crop year would help reduce the use of glyphosate. Calderwood stated that during the crop year Callisto was applied to approximately 20 acres. She added that there are approximately 42,000 wild blueberry acres, most of which have Calisto applied in the prune year. Calderwood stated that growers had expressed the request to use the product in the crop year, but it was not a very common practice.
- There was a discussion about how and if to collect data on the applications.
- Calderwood stated that in a crop year it would be a wipe application and in a prune year it would be a boom spray application.
- Bohlen asked about these requests always coming back to the Board and if the uses would be added to the label.
- Tomlinson replied that anytime one of these comes up she asks the company when they will add it to the label. She stated that in this case the company has said that they will not be adding it to the label because of phytotoxicity concerns. They do not want growers to misapply and have to compensate growers for crop damage.
- The Board discussed the modes of action and costs of mesotrione and glyphosate. The topic of pesticide tolerances was raised.
- Bryer responded that anytime a pesticide was going to be used on a commodity it must be approved by the EPA. She stated that she could start including links to tolerances in the risk assessments. Wild blueberry growers export a large amount of crop, and the onus is on the grower to make sure the tolerance is under the level required by EPA.
- Tomlinson noted that the EPA would not approve an SLN if use of the pesticide in the manner describes would cause exceedance of crop tolerances.
- Ianni asked if growers were using alternative methods of weed management and if those alternative methods and IPM could be encouraged.
- Calderwood talked about the use of sulfur to control weeds and stated she could look up any percent increase in use of sulfur as a cultural management tool for this. She explained that sulfur creates a more acidic environment that wild blueberries do well in but the weeds do not so a lot of grass and broadleaf weed pressure is reduced. Calderwood stated that she had been talking about it and encouraging people to do that. She added that they had also done some research on mechanical weeding, specifically tine weeding. She also discussed a proposal with the robotics team at UMaine where robots could cut weeds that were growing above the canopy in an effort to reduce product use.
- Lajoie asked if Calderwood had seen instances where this chemistry had to be used as a rescue tool, and if glyphosate was the only other option.
- She replied that glyphosate was the only other option in the crop year.

- **Carlton/LaJoie: Moved and seconded to approve the 24(c) registration request**
- **In Favor: Unanimous**

4. Request to Extend Special Local Need [24(c)] Registration for Milestone Herbicide (Corteva Agrisciences) for Herbaceous Broadleaf Weeds and Woody Plants for Forest Site Preparation

The extension of this SLN has been requested on behalf of the Maine forest industry. Milestone Herbicide reduces competition by controlling herbaceous broadleaf weeds and woody plants, including native conifers. The industry is seeking to replace the use of glyphosate with aminopyralid.

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

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

- Tomlinson stated that the company had plans to add this to the label, but she did not know how long that would take.
- Carlton asked if this was about economics.
- Lemin responded that need to seek alternative chemistries was more related to social factors.

- **Lajoie/Carlton: Moved and seconded to approve the 24(c) registration request**
- **In Favor: Unanimous**

5. Discussion of Progress on the Risk Assessment of Herbicide Use On School Grounds And Human Health Impacts As Proposed by the Medical Advisory Committee and Directed by the Board

At the July 16, 2021, meeting, the Board reviewed LD 519—An Act to Protect Children from Exposure to Toxic Chemicals, which directed the Board to convene the Medical Advisory Committee (MAC) to assess the human health impacts of herbicide use on school grounds. The Board agreed that the MAC should take up the LD 519 directive to evaluate the potential impact of herbicides used on school grounds on human health. The MAC met and staff prepared an interim report incorporating commentary from MAC members. This report was presented to the Board and the Legislature’s Agriculture, Conservation and Forestry Committee. Staff will provide an update on progress on and challenges to completing the MAC proposed projects.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Bryer explained staff found gaps in data that was collected from the first call-in, so they went back and revised the call-in to make it more specific so that all data needed was submitted. There were about 640 records. Data improved quite a bit, but it all had to be re-entered. Bryer stated that some trends had been found but staff had not dug too deep into it at this time. She explained that she planned to submit the information to the Board at some time in the future. Bryer said the memo covered the risk assessment that was

asked for, and she would work on the exposure assessment. She explained that this involved data mining multiple sources to come up with an assessment of how much children are being exposed to herbicides. Staff had hoped to outsource the work for the literature review because there are thousands of documents to go through, but ultimately were not able to.

- Patterson told the Board they had attempted to hire Lebel Hicks but were unable to work through contract issues with the Department. She added that she did think it was necessary to contract for this work because the BPC does not have staff to keep up with the amount of work being asked. Patterson said Massachusetts was currently looking to do a similar study as a directive from their legislature and they have created a commission. The Massachusetts study will be public information and it serve as an alternative source of some of the desired information given that there are similar concerns between the two states. The Massachusetts commission is already working on this contract.
- Bohlen noted that Bryer's memo mentioned the issue of applying some of the exposure information to children because of the difference in body sizes. He asked if the general review coming from Massachusetts would assist with that and if there would be missing pieces to be filled in.
- Bryer said she would want to see the up-to-date literature review from Massachusetts and would be looking for any new standards that were found or any new level where the concentration of concern has been lowered. She added that she would still complete the exposure assessment after the literature review was completed.
- There was discussion about whether BPC staff should proceed with an RFP.
- The Board discussed the MAC, how it works and that there was not currently a medical professional on the Board to serve as the Chair.
- Patterson stated that the policy was revised last year because the state toxicologist, a standing member of the MAC, could not serve on the MAC due to other obligations. If the Board did choose to engage the MAC they may need to revise the policy. Patterson noted that one medical professional had submitted an application to the Governor's office. She had no further updates on potential Board appointments.
- Adams stated that he did not feel good about engaging a MAC without a medical professional on the Board. He added that he was leaning toward letting Massachusetts conduct their study and then reviewing it.
- Randlett said that a MAC without a medical representative would require a policy change.
- Bohlen asked if we knew how long Massachusetts would take to publish their results.
- Patterson said we did not know at this point.
- Bryer stated that the BPC had a temporary worker through January and one of the hopes was that this person would be able to get through some of the exposure data.

- There was discussion about whether to submit a formal RFP, but it was decided to get the information from Massachusetts. Bohlen commented that would reduce the workload on everyone involved.
- Patterson said it seemed that the MAC report showed there was a desire to have the BPC do something quite comprehensive that would reflect all pesticides used on school grounds. There was discussion about conducting this work or doing a more general risk assessment on herbicide use on school grounds.
- Patterson asked Bryer how long it would take to complete this work if the Board were to contract with someone to do a literature review.
- Bryer responded that it would be similar to the Massachusetts timeline, about 18 months.
- Adams commented that they had a huge responsibility to look out for the wellbeing of children in our schools and are learning how complex and expensive that can be. He mentioned discussing the nature and level of risk, such as the toxicity of insecticides for cockroaches in school versus killing weeds on the football field. There was discussion of the public's perception of risk and how there should not be a myopic focus on one type of use.
- Adams asked if the Massachusetts study was limited to herbicides.
- Patterson responded that it was.
- Bryer stated that staff would gather the Massachusetts plan to present in January, both what they had completed and what their future goals are.

6. Discussion of Progress on Water Quality Monitoring Related to Aerially Applied Herbicides in Forestry

Executive Order 41 FY 20/21 directed the Board to develop a surface water quality monitoring effort to focus on the aerial application of herbicides in forestry to be conducted in 2022. In an effort to be responsive to this request and to accommodate what was a changing timeline for the completion of the EO request, staff conducted a small preliminary surface water quality monitoring pilot study in 2021. Staff proposed an expanded monitoring project for completion in 2022, but in the absence of additional funding chose to develop standard operating procedures and scout potential sampling sites. Staff will provide an update on the progress on and challenges to completing the EO 41 proposed water quality monitoring project.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Bryer explained that EO 41 directed the BPC to do several things, including conducting a water quality project in this past year, which did not occur because it was a large, expensive project. In the meantime, staff detailed what would be needed to do the study, got the testing equipment operating correctly and wrote a standard operating procedure that will need to be submitted to EPA so the BPC can conduct the testing ourselves. Bryer mentioned she recently went to Aroostook County and looked at sites and proximity to water. She stated that it was difficult to find an area where proximity from a clear cut to a water body was close enough to make sense to sample a stream if that stream was over 1000 feet away. Bryer stated that they did map proposed sites and

proximity to streams, and about 16,000 acres has been mapped. She noted that she would like to get more information on the average stream distance from forestry vegetation management applications.

- Carlton stated that most forest managers today are doing a much better job at planning and mitigating issues regarding proximity to water.
- Bryer stated that this request for testing came about due to BPC rules limiting broadcast applications in proximity to water. The next steps were to find out if these current laws were protective enough and if products were reaching waterways. She added that the BPC has money for a project in the upcoming year that should be sufficient.
- There was discussion about the difficulty of detects versus non-detects in the samples about how to write up the report with, for example, a detect way down stream versus non-detects nearer to application sites. Bohlen noted that there would be very different types of risk statements to glean from that.
- Ron Lemin asked if it would be acceptable to send a GIS file rather than a paper file to make process easier for staff, or if rules would need to be changed.
- Patterson said it would work well for staff, but the general public would need to be able to review it if requested.
- Randlett said it would be hard to say whether the requirements could be altered without looking at the rule first.
- Lemin stated he thought the forest industry would be willing to supply that data as GIS and as paper in the next years.
- There was a discussion about the size and number of sites being looked at for drift, and that there was likely only enough money for an in-depth review of approximately five sites. The Board also talked about logistics regarding sampling to catch runoff during heavy rain events.
- Adams suggested possibly drafting a letter from staff to forest landowners to ask for GIS data.
- Patterson said they had been in close contact with all of the landowners and they were aware of the legislative ask but staff could certainly send something out.

7. Discussion of Sales and Use Reporting

In 2019, the Board approved funding to develop functionality in MePERLS for the submission of annual use and sales reports. In 2020, staff worked with contractors to develop this functionality. In 2021, staff contracted a temporary employee to begin entering sales and use data from previously submitted records. Also in 2021, LD 524 (collection of pesticide sales and use information) was signed into law. The resolve directed the Board to research workable methods to collect pesticide sales and use records for the purpose of providing information to the public. Staff completed this work and provided a report and presentation to the Legislature's Agriculture, Conservation and Forestry Committee. In 2022, a similar bill was introduced but failed. Also in 2022, staff have spent additional time working with digitized sales and use data. Staff will now provide an update on the work accomplished and challenges encountered while attempting to provide meaningful analysis of sales and use information.

Presentations By: Pam Bryer, PhD, Pesticides Toxicologist

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Bryer stated that this had been a frequent topic in the legislature. She said that last year a temporary worker entered use and sales information so we now have a couple years' worth of data entered into MePERLS and were beginning to generate reports based on that. Bryer pointed out part of the information provided for the meeting, which showed a list of active ingredients and the total weight used in the state per year, accounting for both liquid and dry product. It will also show areas that were reported for use with each active ingredient. The goal was to get this information on the Board's website.
- Bryer explained the process for use reporting.
- Patterson explained that the use site was simply a hand-typed field in the received reports and figuring out what was applied by site had continued to be a burden on standardizing the information and compiling the data.
- Bohlen commented that despite all of the challenges there was some great information provided. He added that if this kind of report was completed for multiple years, we could really learn something from it. Bohlen pointed out that some of the things that were the largest uses were items that people did not generally recognize as pesticides. He stated that there was some interesting data there and congratulated staff involved for wrestling through this and answering some of the questions people have been asking.
- Bryer stated that part of the point was to ask how much effort staff should put into this. She noted that because of reporting inconsistencies, it would continue to be impossible for a scientist to come in and find data standardized enough to be used for a legitimate scientific study to show any sort of cause and effect because there were too many inaccuracies and variables on how the data was reported
- Bohlen responded that it was better than no data and it was brought forward as more of a policy need than a scientific need, which made different levels of uncertainty acceptable.
- Patterson said that staff continue to receive these asks but would like the Board to tell them how to prioritize these efforts because staff resources are limited.
- Ianni asked about shifting to an electronic database to enter this data into the system.
- Patterson stated that in 2019 the Board voted to approve funding to create the capacity for electronic records submission via MEPERLS and it was created, but there was no requirement that applicators submit their information through this system.
- Ianni suggested changing the rule regarding this would save a lot of time.
- Bryer stated that in New York they receive about 90% electronically and pay about \$100,000 to have the last 10% entered by hand. She noted that this year there had been a bill submitted requiring that electronic entry be mandatory.
- Patterson added that in New York managing the electronic records and affiliated database requires six full time staff members—three at Cornell and three with the state.
- Adams asked that the topic of electronic reporting be included as part of the planning session.

8. Discussion of a Possible Board Planning Session

Prior to 2014 the Board periodically held planning sessions with the entire staff to review Board concerns, issues and priorities. In the past few years, staff have received numerous requests and directives to pursue projects and policy efforts—typically without the allocation of funds and/or staff. Staff would like to discuss the possibility of reviving planning sessions.

Presentations By: Megan Patterson, Director

Action Needed: Review/Discuss Provided Information, Determine Next Steps

- Patterson explained the process of Board planning sessions and stated that these were previously held, but there had not been any in several years. She stated that staff are currently managing a number of directives and it would be helpful to get direction from the Board on how to best allocate staff time.
- Bohlen commented that he felt like over the last few years there had been a lot of back and forth from the legislature. He added that he would have a hard time answering where to put staff time without knowing the external forces working on that. It would be very helpful to bring in some conversation about that.
- Patterson stated that staff could give a digestion of the last few years and the trends, as well as what our counterparts were doing nationally.
- Randlett stated that the public needed to have the ability to attend a planning session, but the Board did not have to allow for public input into the process.
- Adams asked if a hybrid process would satisfy that.
- Randlett responded that it would but there was the requirement to also have a location for the public to gather.

9. Discussion of Pesticide Product Affidavit Submission and By Request Limited Duration Extensions

In 2021 and 2022, the Board conducted rulemaking in response to LD 264—Resolve, Directing the Board of Pesticides Control To Gather Information Relating to Perfluoroalkyl and Polyfluoroalkyl Substances in the State. This resolve directed the Board to amend its rules addressing product registration and require the submission of specific affidavits. The Board finally adopted these rules on April 1, 2022. Staff communicated these regulatory changes to pesticide product registrants. Staff also worked with contracted developers to create functionality to collect affidavits in the pesticide product registration and renewal process. This work was completed prior to the November 1 start of registration renewal season. However, some registrants have indicated that they need additional time to address confidential business and trade secret information. Staff are proposing a short extension of no greater than two months, to end on February 28, 2023. Staff will present the proposed requirements for registrants seeking an extension.

Presentations By: Megan Patterson, Director

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Patterson explained LD-264, confidential statements of formula and the affidavit questions required for registration. She stated that industry had asked for an extension for registrations and that staff had agreed to allow a two-month extension. Patterson noted

that there had been a request to suspend answering the affidavits and supplying the confidential statements of formula for one year. She told the Board that DEP was allowing a six-month extension, but she was not sure about the basis for approving those extensions.

- Tomlinson stated that she had received four requests for extension so far. She explained to the Board that the information that would be required was made available to registrants in August when the functionality went into production, another notice was sent in September and another in the last week of October with instructions about submitting confidential statements of formula information and affidavits. There have been some issues with some registrants entering information due to computer glitches and she has assured folks that if a problem was on our end that would not be held against them. Tomlinson stated that any delay beyond February would be problematic, and they were already behind in registration as it was. She explained that in March an aquatic herbicide and a neonicotinoid list need to be created and posted on the website. Tomlinson said another challenge was that it would be difficult for inspectors to know what products were registered in the marketplace.
- Randlett stated that this was a matter of enforcement discretion for Board and staff. He added that a couple of months was reasonable, but letting it go for a year made it start to look like the Board was not upholding its responsibility in accordance with the rule. The Board already had the ability to withhold any confidential information from the public.
- Tomlinson noted that February 28, 2023, would be the two-month deadline.
- Lajoie asked for an update at the next meeting about what percent of registrations had come through.

10. Discussion of Reciprocal Certification of Applicators Based On Certification Issued by Another State

Since 1974, the Maine Department of Agriculture has been receiving funds from EPA in the form of a program partnership grant. This money supports the regulation of pesticide use in the state. Upon the origination of this partnership, a “Plan for Certification of Pesticide Applicators” was developed. Since 2018, staff have worked to revise the State Plan and incorporate federal changes to the section of FIFRA pertaining to certification and training rules. EPA has reviewed drafts of the Plan and requested additional clarification of the circumstances under which the Board will issue reciprocal certification. While the Board has broad authority to permit reciprocity, the rules describing the application of this authority are narrow in scope—pertaining primarily to aerial application in emergency situations. Staff will provide a description of the current circumstances under which reciprocity may be permitted and existing and proposed requirements applicators must meet to receive a temporary reciprocal license.

Presentations By: John Pietroski, Manager of Pesticide Programs

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Pietroski stated that the purpose of this was for the state plan to be submitted to EPA. He explained that the State of Maine had the authority to grant reciprocity if the Board deemed there was an emergency. In that case, an individual could be granted a reciprocal license that would expire December 31 of the year it was granted.

- Patterson told the Board that this emergency exemption to the licensing process was for aerial application.
- Adams asked what would be considered an emergency and gave an example of beetles in stored food and using ProFume, and if a person from Virginia could request reciprocity.
- Ianni pointed out that the wording pertained only to aerial applications. She asked if anyone knew the legislative history on why only ‘aerial’ was inserted into the language.
- Patterson responded that it was possibly related to spruce budworm or mosquito management. She added that the Board could pursue rulemaking and revisit the language. Patterson stated another tool would be to hold a public listening session to ask if the public had information to provide on this topic.
- Bohlen stated that aerial was in there because there was a lack of available aerial response in Maine. He added that this would be a good first topic for the planning session. Bohlen said additions make sense and the Board could approve this as written and then have a conversation about possible emergency situations in which this may be needed.
- Pietroski stated that if the Board agreed then this could go into the state plan to submit to EPA. He added that if rule changes were made down the road the state plan could be revised at that time.
- The Board agreed.

11. Discussion of Guidelines for In-person, Virtual, Taped Video, and On-line Recertification Courses

As a part of the State Plan review process, EPA has requested additional information on the Board’s standards for recertification courses. Staff have compiled existing standards described in rule and previously approved by the Board. Additionally, in response to the increased interest in virtual trainings, staff have developed standards for these meetings that reflect the current practices in neighboring states as well as the practices of existing Maine-based training collaborators. Staff will present the proposed recertification meeting guidelines.

Presentations By: John Pietroski, Manager of Pesticide Programs

Action Needed: Review/Discuss Provided Information, Provide Guidance

- Pietroski stated that recertification programs had greatly changed since Covid. He stated that staff were hosting a lot more virtual programs and that Maine currently had reciprocity among the other EPA Region 1 states for recertification credit courses. The presented draft guidance was reviewed by all other states in the region and met their requirements.
- Bohlen asked if there was anything new about the guidance.
- Pietroski stated that this was basically to fulfill the requirement to have a set process for certification course completion. He added that the purpose was to make sure people were paying attention to recertification programs and getting value out of them, and other states want to make sure Maine approved programs are at the level of their recertification programs and vice versa.

12. Other Old and New Business

a. EPA Federal Register Proposal—Proposed Removal of PFAS Chemicals from Approved Inert Ingredient List for Pesticide Products

b. Civil Eats article

c. Chlorpyrifos permit

- This was the only request received. No further requests are permitted after December 31, 2022.

d. Other items?

- Maine citizens Jim and Lega Metcalf attended the meeting and spoke to the Board. They stated they believed their elderly dog had passed due to liver damage caused by secondary poisoning from rodent bait. They said they had seen several small dead animals on their property and found their dog chewing on a dead grey squirrel. They later found out that a neighbor had hired a commercial pesticide applicator to put rodent bait boxes around their property. They told the Board they felt that anytime rodenticides were put out on that scale that abutters should be notified. They also stated that they felt the product Tomcat had misleading labeling that implied it was safe for children and pets. They explained that they were not aware before this that secondary poisoning was a concern when using rodenticides. They would like the displays in stores and the labels to prominently state that secondhand poisoning is a concern when using these products.
- Ianni asked about a possible requirement of traps that did not allow the release of the poisoned animal.
- Adams asked about the about notification registry and if this type of application would apply.
- Patterson stated that it would not, but potentially self-initiated notification would have applied.
- Ianni suggested this was maybe a case where rule could be changed to include bait boxes.
- Bryer explained the steps the EPA was taking regarding eleven active ingredients and offered to give the couple more information so they could provide public comment.

13. Schedule of Future Meetings

January 11, 2023, February 24, 2023, and April 7, 2023 are the next tentative Board meeting dates.

14. Adjourn

- **Lajoie/Bohlen: Moved and seconded to adjourn meeting at 12:15 AM**
- **In Favor: Unanimous**