



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

November 19, 2021

9:00 AM Board Meeting

Video conference hosted in MS Teams

MINUTES

Adams, Bohlen, Flewelling, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff: Boyd, Bryer, Connors, Couture, Nelson, Patterson, Saucier, Tomlinson

2. Minutes of the October 8 Regular and August 16 Emergency Board Meetings

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Adams/Jemison: Moved and seconded approval of minutes as amended**
- **In Favor: Unanimous**

3. Request to extend a Special Local Need [24(c)] Registration for Arsenal Herbicide with Applicators Concentrate for Increased Surfactant Rate When Used in Combination with Glyphosate for Jack Pine, Red Spruce and White Spruce Release

The Board last approved a Section 24(c) registration for Arsenal Herbicide (EPA Reg. No. 241-299) in 2016 and initially approved it in 2004. This current EPA label specifies a maximum surfactant concentration of 0.25% (v/v) for conifer release. The current and proposed SLN allows the increased rate of surfactants for tank mixes of Arsenal and glyphosate which maximizes the effectiveness of glyphosate.

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

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

- Tomlinson stated that this SLN requested authority to use extra surfactant when tank mixing imazapyr and glyphosate, to increase the efficacy of the glyphosate. She indicated that she asked the company to add this use to the label and they stated they intend to, but it may take a couple years due to existing stock. She added that this request was to bridge the gap to allow for the use until then.
- Ron Lemin stated that they have been using this SLN since 2004 and only about 1.5 oz per acre of Arsenal Herbicide is used during application. He added that he was glad BASF would finally be adding this language to the master label.
- Jemison asked if staff had found this combo in their water sampling.
- Tomlinson stated that they had detected imazapyr in surface water.
- Lemin said the current label rate was 6-12 ounces per acre for release of black spruce in Maine and they only use one ounce per acre.
- Jemison asked about how many people were currently using this mixture for a release program and that he was concerned the label rate was so high that it could hurt the plant while trying to protect it.
- Lemin responded that about five or six landowners used this prescription and that he hoped BASF would decrease the labeled rate per acre.
 - **Adams/Granger: Moved and seconded approval of the 24(c) request**
 - **In Favor: Unanimous**

4. Staff Memo: Update on a Feasible Definition of PFAS in Pesticide Products

At the October 8, 2021 meeting, staff presented a memo discussing the difficulty of identifying a PFAS definition for the implementation of the affidavits required by LD 264. Since that meeting, staff have met with staff at Maine DEP to discuss LD 1503. At that meeting, it became apparent that pesticides would be subject to the requirements of LD 1503 as well as LD 264. Staff will now present the outcome of that research.

Presentation By: Dr. Pam Bryer, Pesticides Toxicologist

Action Needed: Information only

- Bryer stated that Patterson, McBrady and she met with Maine DEP staff regarding LD 1503, which will prohibit, by 2030, distribution in Maine of all products with intentionally added PFAS. She added that in 2022 DEP must begin to record all products with intentionally added PFAS coming into Maine. Bryer told the Board that it should consider harmonizing their definition of PFAS with the definition in LD 1503 so that there would be clarity in compliance between DEP and BPC. She stated that DEP was

open to input from DACF and indicated they would likely reach out at a later date but were currently in the process of hiring for a position to implement LD 1503.

- Morrill asked if they were waiting for DEP’s definition of PFAS.
- Patterson responded that the definition was already laid out in LD 1503 to mean substances that included any member of the class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom. She added that DEP would have the ability to prohibit distribution of pesticides in Maine if they included intentionally added PFAS, but they also would have the ability to provide exemptions for these products. Patterson told the Board that DEP indicated they would be interested in consulting with BPC.
- Patterson stated that the vast majority of products would not be prohibited until 2030 and said in the meantime staff could act on the affidavits in section one of LD 264. She stated that, to comply, registrants needed to know what they were attesting to when they made the claims that their product did or did not contain PFAS.
- Morrill thanked Bryer for all of her work on this subject.

5. Continued Review of Potential Rulemaking Concepts Pertaining to LD 155 (neonicotinoids used in residential turf/landscape management) and Discussion of Next Steps for Proposed Rulemaking in Response to LD 264 (PFAS affidavits and registration of pesticide products) and LD 316 (prohibition on chlorpyrifos distribution)

On June 10, 2021 LD 155, LD 264 and LD 316 were signed into Maine law. At its August 27, 2021 meeting, the Board held stakeholder information gathering sessions addressing these three bills. Following the August meeting, the Board directed staff to return with a review of rulemaking concepts. At the October 8, 2021 meeting of the Board, staff returned with proposed language and further discussion of rulemaking concepts. Following the October meeting, the Board directed staff to return with a draft rule for concepts related to LD 264 and additional information related to outstanding questions on LD 155—primarily related to the definition of “invasive vertebrate species”. Staff will now present their findings.

Presentation By: Megan Patterson, Director
Karla Boyd, Policy & Regulations Specialist

Action Needed: Refine the rulemaking concepts and schedule a hearing

- Patterson directed the Board members to the staff memo included with this agenda item which detailed the actionable items, potential rulemaking concepts and steps that have been taken by staff to develop the current rule. She explained that the Board could not take public comment at this time for language in the rule, but the public comment period would open if the Board decided to go through with rulemaking.

- Boyd explained that Chapter 20 included a new definition of PFAS in which staff proposed adopting the State's definition.
- The Board decided to incorporate the State's definition for PFAS.
- Morrill requested that a public hearing be scheduled for the January Board meeting.
- The Board moved on to discuss Chapter 41 which dealt with LD 155 and LD 316.
- Boyd told the Board that staff proposed staying with the base definition of invasive invertebrate pests but also included criteria. She said that for ornamental plant, staff referred to the existing definition in Chapter 10.
- There was discussion about why turf and lawn had been excluded from the definition of ornamental plants.
- Patterson stated that staff had to exclude turf to accommodate the wording of LD 155 and that a pesticide license would be required to purchase any products with a label that allowed for use on outdoor ornamental and turf sites.
- Morrill and Jemison both expressed concern about the wording being understandable to applicators.
- Randlett commented that he thought what staff had done made sense if applicators read Section C carefully, and that it was the responsibility of the person using the product to read the rule and understand it.
- Tomlinson stated that on pesticide labels turf and lawn were always separate from ornamental plants and this suggested definition made it very clear that ornamental plants did not include turf and lawn.
- Randlett asked if the section listed under 6(C)IV should read Section 6(C)(II) rather than 6(C)(I).
- Patterson responded that it should.
- Morrill suggested that would it be clearer to strike out turf and lawn.
- Patterson responded that was not a bad point, however the definition already in place in Chapter 10 included turf and that was why staff attempted to provide clarification.
- The Board further discussed the original definition of ornamental plant in Chapter 10.
- Morrill pointed out that 'turf' was not defined in rule and suggested specifying that the listed exemption did not apply to turf and lawn applications.
- Jemison stated that they did not want people to think these four chemicals could be used on turf and suggested possibly defining 'turf' in Section 6(A).
- Adams commented that he tended to agree with Tomlinson and as a label reader he knew that turf and ornamental were separate, but they needed to make the public aware that 'T&O' do not stay together regarding these products.
- Patterson suggested retaining the original ornamental definition and adding that this exemption did not apply to turf.
- Tomlinson agreed with Jemison that maybe adding a definition for 'turf' and Patterson's idea about adding an additional statement in 6(C)(IV) that clarified it was not for turf. She added that Adams was correct in that the public often think of 'T&O' together.
- Morrill noted that the Board did provide separate licensing for turf and ornamental, and it may be easier to talk about applications being performed under category 3B to exclude turf. He suggested striking the word 'mown' from 6(A)(II) and have it just read 'turf and lawn' and add a new section 6(C)(V) to state that this prohibition extends to turf and lawn.
- Jemison agreed.
- Adams asked if the Board needed to consider commercial sod farmers.

- Patterson responded that they did not because commercial sod farmers were not residential, and agriculture was not addressed in LD 155.
- Morrill said to clarify in a new section 6(C)(V) that this was for residential areas only.
- Flewelling commented on the additional work this was going to be for the dealerships and asked if places like Lowes would no longer be able to sell these products.
- Patterson stated that was correct, that these products would only be able to be legally sold by restricted use pesticide dealers.
- Morrill commented on the large amount of on hand stock the large stores would have to use up. He asked if the Board normally referenced effective dates in rule.
- Patterson responded that staff would have to conduct a public education campaign for the general public, applicators, and dealers and it could take a couple of years to broadly communicate.
- Morrill suggested an effective date of January 1, 2023 to allow everyone to get rid of stock that was currently in the system. He added that this date may have to change after they hear from distributors and homeowners during the comment period.
- Jemison agreed that the Board should work towards January 2023 for no more sales of these products.
- Flewelling asked what would happen if someone sprayed their lawn after the rule went into effect.
- Patterson said that the application would be unlawful, but staff could, for a period of time exercise enforcement discretion and that the priority would be with commercial applicators and retailers and making sure they were aware of the regulatory changes.
- Tomlinson told the Board that she sent registrants letters in October regarding the new law so they had all been made aware that these products would become restricted use.
- Morrill commented that Section 7(C)(III) had a date that would essentially be retroactive.
- Patterson responded that was case because there would already be a prohibition on purchase by the time the rules were passed.
- Randlett responded that the retroactive date was not a problem.
- Jemison brought up the plant incorporated protectants, PIPs, referenced in Section 5. He said the Board originally created this section in 2012 and the reason the section was detailed was because it was thought at that time that specific education was required. Jemison said a lot things had changed since then, and he would like to consider changes to Section 5. He told the Board that in the past there were products that required a certain planting distribution where so much of a field required a buffer and it was confusing to growers, but after time industry decided they would put multiple PIPs in a seed and move to refuge in a bag and that was 99% of the current use seed corn. Jemison stated that he gave a talk annually to aid applicators with compliance and has wanted to raise this issue for the last three years. He added that most current use seed corn includes a PIP, which was unfortunate because it was not a good IPM approach to assume there was a problem a grower may or may not even have.
- Randlett commented that if the Board wished to make broader changes to the rule they would need to be proposed with these changes or rulemaking would need to be moved to a later date. He added that anything added to the rule regarding PIPs would make it major substantive.
- Jemison stated that maybe next time the Board did something major substantive to this rule then that would be the time to edit Section 5.
- Morrill said the Board should do that at a later date and Jemison could come back with suggestions for wording in the summer or fall.

- Patterson stated that regarding Section 7 federal law had passed that removed all tolerances for chlorpyrifos on food, including chlorpyrifos treated seed. She stated that staff needed clarification on the duration of permits issued under Section 7.
- Granger suggested letting the user define the permit length based on what they had on hand and how much they use. He said that he felt flexibility would be useful here for growers to find other products to use.
- Morrill suggested adding another section that talked about the duration of when the application would take place, depending on how much product the grower had on hand.
- Patterson stated that section 6(C)(III) essentially prohibited use of product purchased after January 1, 2022. She also asked when the Board would like to publish the initial list of neonicotinoid products under Section 6.
- It was decided that July 1, 2022 would be a good date as long as that would give staff enough time to compile a list.

6. Staff Report and Presentation of Sampling Results from the Ten Cities Surface Water Quality Study

On February 26, 2019, the Board approved funding for a staff proposed water quality monitoring effort referred to as the “Ten Cities Project”. The primary objective of the study was to assess the occurrence of pesticides in surface water in urban waters along a population gradient of the ten largest Maine cities. Additional objectives including assessing the feasibility of passive sampling techniques and establishing a baseline for future trend studies of pesticide contamination in the sampled waters. Staff will present the findings of the study.

Presentation By: Dr. Pam Bryer, Toxicologist

Mary Tomlinson, Pesticide Registrar and Water Quality Specialist

Action Needed: Discuss and provide feedback on results

- Bryer presented the Board with a slideshow detailing the process and results of the 10 Cities Surface Water Study. She stated that the goals were to assess occurrence of pesticides in surface water and sediment along a population gradient of the ten largest Maine cities. She explained that staff collected grab and passive samples. Bryer explained that grab samples provided concentrations and only captured a snapshot in time, while passive samplers captured daily changes but did not give concentrations, only presence and absence of certain analytes. She told the Board it would have been expected to see the number of detections go up with population but there was no correlation. She noted that they did not find any glyphosate. Bryer said that all locations had pesticides in the water, and they did find that the variety of pesticides increased with population. She told the Board that bifenthrin in one location and imidacloprid in another were found to exceed the Aquatic Life Benchmark.
- Flewelling asked what bifenthrin was commonly used for.
- Bryer stated that it was usually used in urban areas for tick and mosquito treatment.
- Morrill asked about the spike in the stormwater drain.

- Bryer responded that it was a place that was draining a really small concentrated area.
- Bohlen stated that storm water concentrations tended to be much higher than once they got into the larger water bodies.
- Bohlen stated that generally any urban streams in the United States will contain a mix of pesticides and he did not see this as anything dramatically different than what was normally seen in an urban environment.
- Jemison asked if there had been a press release on what staff had found and that it might make some people think about being more careful when using products. He asked how this would be presented to the public.
- Patterson stated that it was on the website, and anyone on the Board mailing list would have been directed to the information. She added that staff planned to incorporate this into their recertification courses.
- Bohlen noted that since most of the data was from grab samples we likely were not seeing the moment of highest risk for the aquatic community and when staff presented this data to applicators they should be careful about how they talk about these low concentrations in the surface water.

7. 2021 Preliminary 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 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 completion of the EO request, staff conducted a small preliminary surface water quality monitoring pilot in 2021. Sampling was limited and all samples were collected in advance of planned 2021 aerial applications of herbicides for site preparation and conifer release.

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

Action Needed: Discuss and provide feedback on results

- Tomlinson stated that staff were tasked with conducting a baseline assessment of the occurrence of herbicides known to be applied via aerial application in forest management. Ron Lemin assisted staff with a list of commonly used active ingredients. There were 10 different sites selected that were likely to receive drainage from site preparation or conifer release preparation. A map was provided showing the location of those sites. Tomlinson credited inspectors for going out and collecting these samples in very remote areas. She added that they utilized the Montana Analytical Lab for the testing, and their general method tested 102 different pesticide active ingredients and metabolites. She told the Board that imazapyr and sulfometuron were found in water and sediment samples, but none exceeded benchmark levels. Tomlinson said that glyphosate,

metsulfuron methyl, and triclopyr were not found. AMPA (a glyphosate metabolite) was also not detected.

- Bohlen asked if staff hoped to do some more sampling around areas of aerial spraying.
- Tomlinson stated that staff had a very limited window to do this and some places were not adjacent to spray areas but were as close as they could get to the area where there was also water.

8. Consideration of a Consent Agreement with Mosquito Squad of Southern Maine, Scarborough, 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 multiple applications by unlicensed/unsupervised individuals, an unauthorized application, failure to notify an individual on the Maine Pesticide Notification Registry, and noncompliant record keeping.

Presentation By: Raymond Connors, Manager of Enforcement

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors stated that this consent agreement was discussed at a previous meeting to get input from the Board because of the extent of some of the issues of the case which involved multiple years from 2018 to 2020. The first violation was an application to the wrong property and the company did not have a compliant method of positive identification. Connors stated there were also two months of unlicensed applications from July to September 2018. After reviewing the company records it was found that there were 170 unlicensed applications involving three applicators over that time period. The company indicated that the applicators alluded to be being licensed when they were not. The company made an application in June of 2020 in York and failed to provide sufficient advanced notification to a registry member. During the time frame from 2018 through 2020, Board inspectors, through inspections, also documented the company's commercial pesticide application records were missing the following required information: name of applicator, application method, size of area treated, site treated, application rate, record of sprayer calibration, target pest, sky conditions, active ingredient, and restricted entry interval. Connors stated that the proposed penalty of \$20,000 was based on the variety and scope of violations. He added that it was negotiated down to \$18,000 with \$2,000 suspended if the company did not commit any violations in the following two years, beginning when the consent agreement was ratified.
 - **Adams/Jemison: Moved and seconded to approve the consent agreement**
 - **In Favor: Unanimous**

9. Other Old and New Business

a. Obsolete Pesticide Collection Results

b. LD 264 Final Report—January 15, 2022

- PFAS report

c. LD 519 Final Report—February 1, 2022

- The MAC has held two meetings.

d. LD 524 Final Report—January 1, 2022

e. Executive Order 41 Final Report—Due January 2, 2022

f. Medical Advisory Committee Update

- Waterman told the Board that MAC planned to prepare the requested report for the legislature’s Agricultural, Conservation and Forestry Committee—as requested in LD 519 and regarding the potential impact of herbicides on human health. He added that the toxicologists were asked to review what had been applied to school grounds over the last two years. Waterman stated that there were 458 applications made over two years and the products used were mostly glyphosate and dicamba. He stated that the wording ‘potential impact [of herbicides on human health]’ was what they came up against during their discussion and that there was data suggesting both ways [both no and significant impact], but he had concerns especially for chronic exposures. Waterman said he felt that the MAC should recommend adding all herbicides to the 75’ rule on school grounds. He told the Board that there were objections from the rest of the MAC that they felt that suggestion was too broad and wanted more specific data about what replacement herbicides might be, along with their toxicities. Waterman added that he would like to ask for an extension to gather more data and would ask the toxicologists to compile data of potential replacement products. He added that he thought the Board was supposed to be saying ‘think first, spray last’ and did not see a problem with preventing pesticides on school grounds.
- Patterson commented that she did not see an issue with asking for an extension.
- Waterman suggested each MAC member submit their own statement.
- Patterson suggested submitting the minutes from the meetings.
- Morrill stated that the MAC had always operated on a consensus basis in the past. He added that he thought the ask with a six-month deadline was a short turnaround time. Morrill said that if more guidance needed to be given to the MAC the Board could revisit this at the January Board meeting.

g. Other items?

10. Schedule of Future Meetings

The Board has added the following tentative meeting dates:

- January 14, 2022 12-4:00 PM with a 1-2:00 PM public hearing and 2-3:00 PM public listening session;
- February 18, 2022 and April 1, 2022

11. Adjourn

- **Jemison/Waterman: Moved and seconded to adjourn 12:08 PM**
- **In Favor: Unanimous**