



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

October 8, 2021

9:00 AM Board Meeting

MINUTES

Adams, Bohlen, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

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

2. Minutes of the August 27, 2021 Board Meeting

Presentation By: Megan Patterson, Director

Action Needed: Amend and/or approve

- **Jemison/Waterman: Moved and seconded to approve minutes as amended**
- **In Favor: Unanimous**

2. Introduction of Dr. Hillary Peterson, Integrated Pest Management Specialist with the Department of Agriculture, Conservation and Forestry

Following a competitive interview process, Dr. Hillary Peterson was hired in August of 2021. Dr. Peterson began serving as the Integrated Pest Management Specialist with the DACF on September 7th. This position was formerly held by Dr. Kathy Murray until April 30, 2021, when she retired after 22+ years of service.

Presentation By: Megan Patterson, Director

MEGAN PATTERSON, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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Action Needed: Information only

- Patterson told the Board that Dr. Hillary Peterson was recently hired to fill the IPM Specialist position that was previously held by Kathy Murray.
- Peterson described her educational background, B.S in biology but interested in entomology. Worked with Dr. Frank Drummond when spotted wing drosophila first appeared in Maine and did blueberry and honeybee dissection. She also worked in Dr. Eleanor Groden's lab assisting with winter moth research and completed her undergraduate honors thesis on managing winter moth with natural predators. Peterson expressed a keen interest in parasitoids. She also completed an internship at Smithsonian where she identified and named a new moth species. Before coming to Maine Dr. Peterson worked at Penn State on parasitoids and brown marmorated stink bug management.
- Morrill welcomed Dr. Peterson on behalf of the Board.

4. Staff Memo: Introduction of Laboratory Equipment for Pesticide Analyses

Periodically, EPA makes available funds for expansion of pesticide program laboratory capacity. In 2021, these funds were used to purchase equipment capable of conducting automated ELISA analysis. Staff will now introduce the equipment and its current and future capabilities.

Presentation By: Dr. Pam Bryer, Pesticides Toxicologist

Action Needed: Information only

- Bryer told the Board that her memo introduces a new piece of equipment that tests various compounds via ELISA (enzyme-linked immunosorbent assay) technology. She explained that this process diminishes human error because samples are placed into small well plates pre-loaded with antibodies to test for a specific active ingredient, i.e. glyphosate. The company's technician was recently on campus for two days installing the equipment and training staff. The limit of detection on this equipment is fairly equivalent to the reporting limit of the Montana Ag Lab. Bryer stated that the Board is currently paying about \$200 for each analyte sample sent out for testing and this equipment reduces the cost to about \$25 per sample. She told the board that staff had not yet found glyphosate in any surface water. Also, if there was interest to test for other analytes, the product manufacturer may be able to develop analysis upon request and in as little as two to four months.
- Board members expressed interest in and support for this new acquisition.
- Patterson told the Board that staff brought this idea to them last year and it was paid for by grant funding from EPA that rotates through the New England states about every five years. She stated that the total cost of the equipment was about \$40,000.

5. Staff Memo: Feasible Definition of PFAS in Pesticide Products

LD 264 directs the Board to amend its rules governing registration of pesticides to require two affidavits pertaining to the product containment and product formulation. The first affidavit requires manufacturers and distributors to affirm that the pesticide product they are registering/reregistering has or has not been stored, distributed, or packaged in a fluorinated HDPE container. The second affidavit requires manufacturers to affirm that the pesticide they are registering/reregistering does or does not contain, as a part of its formulation, PFAS. For registrants to attest via these affidavits, the Board must define PFAS. Given the rapidly changing science related to PFAS, staff suggests adoption of a policy that may be referenced in rule.

Presentation By: Dr. Pam Bryer, Pesticides Toxicologist

Action Needed: Discuss and determine the next steps

- Bryer stated that in order for the BPC to implement the resolve from the legislature, staff needed to be able to reference what definition to use when referring to PFAS. Bryer had looked at all the definitions currently out there and anything with at least one fully fluorinated carbon seems to be the simplest definition but that brings the total number of products to around 9,000, which includes some registered pesticides. She told the Board that EPA was trying to figure out how to prioritize efforts within the next five years towards the highest risk chemical structures we should be concerned with first. Currently, this is a list of 75 unique chemicals. Bryer's suggestion was for adoption of this EPA list which she said she anticipated could be hugely unpopular because many organizations were trying to regulate the entire group of chemicals as a class.
- Morrill said the Board really needed to define how they wanted to look at these chemicals and they also had the affidavit portion to consider.
- Patterson stated that this possible definition was one that could be added to the product registration flow to inform people who need to sign the affidavit stating their product does or does not contain these compounds.
- Randlett recommended having a discussion on how the Board wanted to define PFAS, and that it may be possible that part of that definition has a reference to an annual list of products to be identified by the Board. He said that it would make it a little difficult for the enforcement component of the rule but if it was a published policy that was noted in rule he would likely sign off on that.
- Morrill commented on what a fluid and changing topic PFAS was presently.
- Randlett agreed and said this would prevent the Board from having to do rulemaking every time they wanted to add a new product.
- Bohlen said to include a calendar about when the list will be updated annually so as not to catch people off guard.
- Patterson responded that people began renewing products in November, so mid-summer may be a good time to review the list for any needed updates.

- Jemison noted that there were twenty pesticide products on the larger list and asked if anyone knew if any of those were regularly used in agriculture.
- Patterson stated that fipronil was also on the list along with some synthetic pyrethroids.
- Bryer said a total of 9,252 compounds were found in the EPA database with at least one fluorinated carbon.
- Morrill asked if the list of 75 compounds included any registered pesticides.
- Bryer responded that she had not seen any on that list.
- Randlett recommended that staff provide notice to the regulated community of any changes in policy to the list of compounds.
- Adams suggested waiting for Maine Department of Environmental Protection or EPA to create a definition instead of trying to write something themselves.
- Morrill stated he felt that the list was concrete and not over or under-reaching. He said his preference would be to create in rule something that points to policy.
- There was discussion about including in rule wording that explained criteria for determining when and under what circumstances the list may be changed.
- Patterson said that this gave staff something here to work with. She added that she had ongoing concern that this was a moving target and staff would be receiving additional info from EPA and likely DEP. Patterson stated that staff could continue to come back to the Board to try to refine the process.
- Randlett stated that he felt there needed to be something on record that the Board had authorized staff to draft rule and publish or direct staff to direct proposed rule for publication and then hold another meeting so Board can overview.
 - **Jemison/Morrill: Moved and seconded for staff to craft a proposed rule to be reviewed at the next meeting**
 - **In Favor: Unanimous**

6. Review of Potential Rulemaking Concepts Pertaining to LD 155 (neonicotinoids used in residential turf/landscape management) and LD 264 (registration affidavits related to PFAS and container fluorination)

On June 10, 2021 LD 155 and LD 264 were signed into Maine law. LD 155 is a resolve and directs that Board to prohibit the use of any product containing the active ingredients dinotefuran, clothianidin, imidacloprid or thiamethoxam used for application in outdoor residential landscapes such as on lawn, turf, or ornamental vegetation. The resolve directs the Board to provide exemptions for certain applications related to wood preservation, structural pests, pets, and emerging invasive insects. LD 264 is a resolve and directs the Board to amend its rules governing pesticide product registration to require manufacturers and distributors to provide affidavits stating whether the registered pesticide has ever been stored, distributed, or packaged in a fluorinated high-density polyethylene container. It further directs the Board to require manufacturers to provide an affidavit stating whether a polyfluoroalkyl or polyfluoroalkyl substance is in the formulation of the registered pesticide. At its August 27, 2021 meeting, the Board held stakeholder information gathering sessions addressing these two bills. Following the August meeting, the Board directed staff to return with a review of rulemaking concepts.

Presentation By: Megan Patterson, Director

Action Needed: Refine the rulemaking concepts and schedule a hearing

- Patterson described some proposed language for inclusion in rule and pointed the Board toward the document included in the Board packet that explained the difficulties and pitfalls associated with creating a definition for invasive species. In a separate included memo staff suggested two options for an emerging invasive pest definition and listed several concepts that should be included in the rule.
- Patterson said that LD 264 directed the Board to have product registrants attest to two affidavits during the course of registration. She said staff is currently looking at how to implement that functionality in the registration flow. Patterson told the Board that staff will already be requesting each products' confidential statement of formula (CSF) and since it will be collected regularly it should be added into rule.
- Morrill stated that the concepts seemed sound and it was really clear what needed to be done with the affidavits.
- There was discussion about including what the BPC will be considering as a PFAS definition for purpose of the affidavits.
 - **Morrill/Jemison: Moved and seconded for staff to draft language on the affidavits within the process of registration to be to be reviewed at the next meeting**
 - **In Favor: Unanimous**
- The Board discussed the resolve that resulted out of LD 155.
- Patterson stated that staff proposed a very general definition of emerging invasive pests, but after discussion at the last board meeting about term 'emerging', that piece was dropped in the definition presented in the memo in the meeting packet. There was discussion about the Board possibly recognizing emerging invasive pests that would be identified on a list created by the Maine State Horticulturalist and Maine State Entomologist.
- Randlett commented that it should be up to the Board to create its own list rather than recommendations by a third party and another concern was that the Board would be delegating its authority to define emerging invasive species to someone outside the Board.
- Morrill suggested amending section five, fourth bullet, to read 'as created by the BPC'. He asked if emerging invasive pest could be defined in Chapter 41 using that same language.
- Randlett responded that the Board could do a combination of definition in rule that included specific language about certain species and then a list that got updated annually. He added that if there was a good definition that the Board felt comfortable with then there would not be a need for a separate list.

- Bohlen asked if the Board had in this mechanism an effective way to respond to an emerging threat. He added that a list was good but very static, although he was leaning towards some sort of a list due to closeness in definition between pests and invasives.
- Morrill commented that he liked the idea of a definition because it eliminated the need to prepare a list, but also liked the idea of a list as guidance.
- There was discussion about the difficulty of creating a definition and how enforcement would work with it. Morrill asked which option would be easier for staff.
- Patterson said staff could come back with a more considered definition and come up with a proposed list.
- Bohlen brought up the possibility of issuing variances but stated he was not sure about that route either. Morrill stated that he would not support a variance because he felt like that would be creating a whole new bureaucracy. There was further talk about issuing variances and how many variances that could add up to in a year.
- Morrill said he would like the definition reworked and steps detailed regarding how a list of emerging invasive pests would be prepared and how it would be updated annually.
- Adams asked what the net impact would be of changing from regular to restricted use.
- Patterson responded that it would be similar to what has been done in the past with aquatic herbicides because in Maine those products are treated the same way as federally restricted products. She added that the list of aquatic herbicides is published routinely and posted on the BPC website.
- Morrill asked if this would also trigger the training of non-licensed applicators.
- Patterson responded that it would.
- Patterson stated that the first bullet on item five would restrict those neonicotinoids listed in LD 155 and make them restricted use pesticides.
- Granger commented that this was supposed to only be for ornamental uses and asked if making these products restricted would also be taking the option off the table for agricultural users.
- Morrill responded that it was his understanding that it would do that.
- Patterson suggested staff could identify labels that were for outdoor residential landscapes only and make only those products restricted.
- Adams commented that they could possibly protect agriculture via label changes and that would put most of the work on the registrants to figure out how they would want to do this.
- Patterson said that that would still put some burden on staff, especially Tomlinson.
- Tomlinson stated that having language on the label would require a more thorough review of label language like she already does with state restricted aquatic herbicides.

- Adams said that his experience with chemical companies was that they change the name of the product, even though it is an identical formulation, and the new name only has one use on it.
- There was further discussion about how to go about this and the effect on distributors, applicators, and others.
- Morrill asked about restricting the actives through categories, or possibly just specifically exempting agricultural settings from being considered restricted use in rule.
- Adams asked if the Board was mandated to come up with a phase out or if is that was a recommendation.
- Patterson responded that it was a recommendation, but ultimately it will need to be implemented.
- Adams asked if phasing out within two years would result in the manufacturer largely doing the work for us.
- Patterson responded that that would depend on the manufacturer, but staff could reach out to companies with these products that have an ornamental use on them.
- Morrill asked Patterson what the easiest direction was.
- Jemison suggested that since renewals would begin next month it seemed like it would be really difficult to stop the products from being used next year.
- Morrill suggested revisiting this next meeting with a new outline of how and where this may go.
- Patterson asked if that should be in the form of draft rule or not.
- Morrill said he did not think the Board was close enough to a draft rule and that they needed some conceptual ideas in there.

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

- The report was not finished at the time of the meeting. Agenda item was postponed until next meeting.

8. Consideration of a Consent Agreement with Central Exterminating Services, Inc.,
Lincolnton, 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 an unauthorized application.

Presentation By: Raymond Connors, Manager of Enforcement

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

- Connors told the Board that the applicator went to the correct town and street but treated the incorrect address. The owner of the application company self-reported the incident.
- Connors noted that on two documents, the Proposed Administrative Consent Agreement Background Summary, and the Consent Agreement itself, the application date is incorrectly listed as July 11, 2018 and it needs to be changed to June 11, 2018. He added that a monetary penalty of \$1,000 was assessed, which has been the standard for treating the wrong property.
 - **Adams/Jemison: Moved and seconded to approve the consent agreement**
 - **In Favor: Adams, Jemison, Morrill, Waterman**
 - **Abstained: Bohlen**

9. Other Old and New Business

a. Obsolete Pesticide Collection Press Release

- Patterson told the Board that staff procured the services of Tradebe, a new contractor, for the obsolete pesticides collection this year and that they will be at the same pick-up locations during the week of October 18th.

b. LD 1503—An Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution

c. EPA's Analytical Chemistry Branch Method for the Analysis of PFAS in an Oily Matrix

- Patterson told the Board that if they should want to enforce against PFAS then staff would need to test for it and this is the only verified analytical method for PFAS analysis in pesticides.

d. Comments in Response to LD 155 and 524 Received After the August Board Meeting

e. Massachusetts Spotted Lanternfly Pest Alert

- Patterson stated that this was included as information only since Spotted Lanternfly is an important agricultural pest.

f. Medical Advisory Committee Update

- Staff is currently compiling information for the MAC to use regarding applications that were made this year and last year on school grounds.

g. Other items?

- Randlett told the Board that there had been discussion about in-person meetings and right now under policy there was an emergency that provided for remote meetings. He said that in order to return to regular in person meetings the Board would need to officially rescind that determination that the emergency exists.
- Morrill stated that could be added as an agenda item and discussed at every meeting.
- Randlett responded that that was the Board's option, and they could decide whether they wanted to continue to meet remotely.
- Patterson stated she could add it as an agenda item under 'Schedule of Future Meetings' and the Board could decide whether each meeting would be held in person or remotely.
- Jemison asked if the Board were to decide to change things back would there still be an option for a member driving long distances to attend remotely if there was inclement weather.
- Morrill responded that yes, that was covered in the policy.

10. Schedule of Future Meetings

The Board will decide whether to change and/or add dates.

- The next Board meeting is tentatively scheduled for November 19, 2021.
- The Board consensus was to remove the scheduled December meeting since there was not enough time to get information to the Secretary of State and publish notice of the public hearing in the newspapers.
- Patterson stated that the Agricultural Trade Show was scheduled to be an in person event to be held January 11-13, 2022.

11. Adjourn

- **Granger/Adams: Moved and seconded to adjourn at 11:25 AM**
- **In Favor: Unanimous**