



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

BOARD OF PESTICIDES CONTROL

January 10, 2018

Ag Trade Show
Augusta, Maine

MINUTES
3:00 PM

Present: Adams, Granger, Jemison, Morrill

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Lay, Nelson, Patterson, Pietroski, Tomlinson

2. Minutes of the October 17, 2017, Board Meeting

Presentation By: Cam Lay
Director

Action Needed: Amend and/or Approve

- Jemison stated that as pertains to the first and second page there was more discussion about the fact that there was corn rootworm in the state.
 - **Granger/Adams: Moved and seconded to adopt minutes as amended.**
 - **In Favor: Unanimous**

3. Request for Financial Support from the Maine Mobile Health Program and the Eastern Maine Development Corporation

CAM LAY, DIRECTOR
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Since 1995 the Board has supported a Migrant and Seasonal Farmworker Safety Education program. The MMHP and EMDC provided training to 385 migrant agricultural workers during the 2017 season. Funding to support this effort in 2018 is being requested in the amount of \$5,360. The funding has been accounted for in the Board's FY'17 budget.

Presentation By: Chris Huh, Program Manager, Farmworkers Jobs Program, Eastern Maine Development Corporation

Elizabeth Charles McGough, Director of Outreach, Maine Mobile Health Program

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

- McGough proposed utilizing the grant similarly to how it has been used in past years. MMHP is aiming to staff a position that provides Worker Protection Standard, WPS, safety training to those around the state with a bilingual capacity in English and Spanish.
- McGough added that MMHP had a celebration with Eckert's family in September and dedicated a Maine mobile unit to Eckert. She added that WPS Training in 2017 was done in Eckert's honor and English, Spanish, and Creole language water bottles were also handed out in Eckert's memory during the trainings.
- Morrill stated Eckert was a Board member true to the Board's mission and this cause is one that is also true to her mission as a doctor.

- **Jemison/Adams: Moved and seconded to fund this request.**

- **In Favor: Unanimous**

4. Recent Staff Activities Highlights and Updates

- Megan Patterson received the William Twarog Manager of the Year Award for the Dept. of Agriculture in December.
- The staff has provided significant assistance to DEP and DHHS regarding pesticide use and pesticide residues on medical marijuana.
- Staff has determined through consultation with the deer program at IFW that the "4-Poster" automated pesticide dispensing system for treatment of deer for ticks is not legal in Maine because it is a baiting device.
- Users are rapidly adapting to the Pega system. As of last Tuesday morning, some 421 users were registered, with 84 more in progress. 2527 product registrations had been accomplished, and 220 license had been renewed.
- An offer has been made to a candidate for the toxicologist position.
- Dr. Jack Waterman of Waldoboro submitted an application for the BPC medical seat. We have also had expressions of interest from four other physicians in the last couple of weeks.

Presentation By: Cam Lay
Director

Action Needed: Informational only.

- The Board congratulated Patterson on being awarded the William Twarog Manager of the Year Award for the Department of Agriculture, Conservation, and Forestry.
- Lay explained to the Board that staff from the Departments of Health and Human Services and Environmental Protection reached out to him for information regarding which chemistries they should be looking for when they begin testing medical marijuana for pesticide residues. There will likely be future collaboration between the departments on this topic.
- Lay updated the Board on where they were in the process to fill the toxicologist position.
- Lay stated that Dr. Jack Waterman may be filling the empty medical seat on the Board. The necessary paperwork has passed through the governor's office and is awaiting the legislature's approval.

5. Presentation from Monsanto and Dow AgroSciences Regarding Their Recent Registration Requests for Several New *Bt* Corn Products

At the last meeting the Board denied requests from Monsanto Company and Dow AgroSciences LLC for registrations of several new *Bt* corn products. Monsanto and Dow Agrosciences have requested time to present additional information to the Board regarding these requests.

Presentation By: Dow AgroSciences and Monsanto Company

Action Needed: Information only. Alternative: The Board should decide whether to entertain an amended request for registration of any or all of these products.

- Representatives from Monsanto and Dow AgroSciences presented more information to the Board regarding their registration application for new *Bt* corn products with an additional mode of action.
- Dave Tierney, Director Government Affairs Monsanto, thanked the Board for approving previous products and explained the need for this product in Maine. He pointed out that it has been approved in all other 49 states and Canada and if the Board approved the request today the seed would be available in Spring 2019. Tierney added that the Board's granting of their registration request would give the company the ability to move seed freely throughout the U.S. and Canada.
- James Valent, Agronomist Monsanto, presented on identification and management of corn rootworm. He stated that options for management were: crop rotation, soil applied insecticides, corn traits, or no management. Valent said that rotation is rarely a viable option for corn growers so they usually rely more on insecticides, which are not always effective, and result in additional broad spectrum chemistries entering the soil. Valent explained that corn traits are specific to the pest they buy the trait for. He added that corn rootworm is not predictable and populations can explode in one year, so having this product available when needed is crucial.
- Valent explained to the Board that SmartStax PRO provides a new mode of action to prolong existing *Bt* technology. This is the first product with a third mode of action- RNAi target specific to the DNA sequence of the rootworm. Valent added that with this product they are also seeing a reduction in the above ground corn rootworm pests.
- Valent pointed out that as they introduce new products, the previous two generations of products will be phased out in a two- to three-year process.
- Stephanie Burton, DOW AgroSciences, stated that Maine currently has over 90 *Bt* corn products registered. Some have action below or above ground only, but most are a combo of the two.

- Burton added that the new products are similar to the previously registered traits, but with an additional mode of action. They will be launching the new products and over time they will replace the two mode of action hybrids that are currently on the market. Burton stated that farmers have consistently chosen products with rootworm controlling traits and not registering these will limit what Maine farmers can use.
- Jemison stated that the registration request at last meeting was for western corn rootworm and if there were other rootworms along with that request he did not see them. If we use a product that is only for western corn rootworm on something that isn't that then we are breaking the law. Jemison said that was why he was against supporting this at the last meeting. He added that there was no documented need, this does not promote good agronomy in his opinion, and farmers can get a better outcome with rotation than with this product. Jemison said that the Board was also not aware that the other options will be phased out. Jemison concluded that he was still tempted to turn down the registration request.
- Granger commented that the Board was divided on this vote at the last meeting. He stated that the material he saw submitted with the registration request showed there were ten insects this chemistry could control. Granger stated that no matter what we use the pest is eventually going to develop resistance, and we need to get used to the idea that products will change. He does not want to take any options out of the hands of the farmers. Granger added that not everyone can rotate with alfalfa because it will not survive the winter in some of the cold icy soils. He concluded that he supported the registration last time and he will again today.
- Morrill asked for clarification on exactly what pests the products are labeled to control.
- Valent answered that above ground it can suppress the European corn borer, corn earworm, western bean cutworm, and black cut worm. Below ground it can suppress western and northern rootworm, as well as some secondary pests from the seed treatment.
- Jemison stated he is worried Maine could begin to see the *Bt* resistant corn rootworm that is present in the west. He added that this new mode of action was developed for a problem we don't have and that is why he was against it. Jemison said he does not want to keep any needed chemistries out of our farmers' hands.
- Valent agreed rotation works best but it's not feasible with the high percentage of corn being grown for dairy.

- **Morrill/Adams: Moved and seconded to table discussion until after the public comment session.**

- **In Favor: Unanimous**

4:00pm Enter Public comment session:

- During the public comment session multiple individuals expressed their support of approving the registration request.

Morrill closed the public forum and thanked the public for their comments.

Regular Board meeting reconvened at 4:28pm.

- Randlett informed the Board that it is up to them to decide whether they have enough information to make a decision about the registration request, or they can discuss it further at the next Board meeting. He added another option is that the applicants could amend their submission.
- Adams stated he was present at the last meeting, but had not been sworn in by the governor yet so could not vote. He thought at that time that there was no economic threshold for this product and has since come to find out that there is.
- Jemison added that there were only two perspectives in the room at the last meeting, but now the Board has several perspectives and he would like to re-evaluate the submission again.
 - **Adams/Granger: Moved and seconded to reconsider the registration application**
 - **In Favor: Unanimous**
- Randlett stated it would be prudent to delay a decision on the registration request until the next meeting in order to allow other individuals from the public time to weigh in on the subject.
- Jemison agreed and stated he would like to have some time to review the registration request more carefully.
- Granger said the Board made the decision at the last meeting to deny the registration application because they did not have info from farmers, but there were several farmers in the room today who have been very clear they want to have this product available to them. Granger added also that the Board had thought there was no significant pest pressure from western corn rootworm in Maine and have found out today that there is and that there is even some resistance in some populations.
 - **Adams/Granger: Moved and seconded to approve the registration application**
 - **In Favor: Three; Opposed: Jemison**

6. Constituent Request to Address the Board Regarding Right of Way Treatment Issues

Mr. Spencer Aitel requests time to address to the Board on the record (*i.e.* as an agenda item) regarding his concerns about the treatment of roadside rights of way adjacent to Two Loons Farm, an organic agriculture business owned and operated by Mr. Aitel. The Board currently has an open investigation concerning an application made by a Maine DOT contractor in June of 2017 along a right of way adjacent to Mr. Aitel's property.

Presentation By: Spencer Aitel, Two Loons Farm

Action Needed: Information only

- Jemison requested that staff provide the Board with some background when items like this come before them.
- Aitel stated he has a 500-acre farm that has been organic since 1996 and noted that he has no rootworm problems because he rotates every year.
- Aitel said he was baling off Route 32 and saw a DOT spray truck coming towards him. When he was about 150' from the truck, the DOT-contracted applicator began spraying. Aitel stated he told the applicator this is an organic farm and he could not spray here and that the applicator argued with him that he could spray there. The truck moved down the road about 100' and began spraying again. Aitel said he reported the incident to DOT because the organic farm is his livelihood and he did not want to lose his organic certification.

- Aitel told the Board that a while later on Route 3 he saw the spray crew spraying more of his property. He called the individual's boss, Bob Moosmann, and said, "You told me this guy was not going to come back and he did." Aitel said they also mowed the road side after they sprayed, which did not seem to him very IPM-friendly.
- Aitel stated the largest issue is in how they are approaching organic farms and, also that in his opinion, they are violating the label by the manner in which they are spraying. He added that the Garlon label said do not apply where run-off will flow onto agricultural land. Aitel further said that there was also an issue with DOT's applicators recognizing agricultural lands and there is no acknowledgement of cross culverts and of non-target species being sprayed.
- Aitel told the Board that in the DOT contract it states not to spray within 100' of organic farms. There has been no attempt by DOT to inform their applicators of the location of organic farms.
- Aitel feels organic farms are being singled out to maintain their own roadsides because of the type of farm they are, and he wants DOT to acknowledge their responsibilities and make their spray program not penalize organic farms. Aitel told the Board that since they grant DOT the variances they need to make sure DOT is following regulations.
- There was a discussion about 'No Spray' agreements and Granger asked Aitel if he had 'No Spray' signs out. Aitel answered that he has them up by his house, but not at all the fields. He reiterated that the signs should not make the difference because it is in DOT's own contract that they are required to stay away from agricultural and hay fields.
- Granger asked if the organic community would be willing to come up with some signs that could be placed by roadsides.
- Adams stated that in the case of applicators making contracted applications it should be the person who pulls the trigger that should be responsible. He added that it seemed like protection was afforded in the DOT contract, but it wasn't realized by the contractor.
- Morrill asked if there is an enforcement investigation pending on the matter. Connors responded that there is. Morrill told Aitel that the Board will make a decision when the enforcement action is brought before it. Morrill added that he agreed there needs to be better communication to people that hay is a crop, and that there appears to be some miscommunication going on between DOT and their contractor.
- There was further discussion about the details of DOT's variance.
- There was discussion about the status of the digitized organic cropland project that Katie Green did and if it could be used as the beginning of a database.
- Patterson responded that we have the maps Katie made but they become outdated very quickly. This is a serious flaw in this approach, and is difficult to overcome because so many people rent and lease land and its use constantly changes. There was discussion about the feasibility of using FSA records, which are updated every six months
- Recommend using USDA Farm Service Agency records that are updated every six months. The farmer has to give permission for it to be collected by any other entity.

7. Discussion of Absorbing Fees for Credit Card Payments for Licenses and Product Registrations

License and product registration fees have typically been paid by check or by electronic funds transfer. Demand from the regulated community to be able to pay by credit card is considerable. There is not, unfortunately, at this time a process in place to allow us to recover the fees associated with credit card payments. Raising the licensing or registration fees requires legislation, and affects all users of the system, whether they pay with credit cards or not. There is an effort underway to allow all state agencies to recoup the expense of credit card payments through "convenience fees," as (for example) IFW does for hunting licenses. Until that system is in place we have been absorbing the fees for licensing and

product registration. We would like the Board to agree that this is the proper course of action and approve the continuation of this process until the effort to allow convenience fees is either successful or withdrawn.

Presentation By: Cam Lay
Director

Action Needed: Approve or disapprove absorbing credit card fees.

- Lay stated staff have been accepting credit card payments through Pega and there is a minor cost we have been absorbing. The fee for taking credit card payments for registrations ranges from 2.5%-3%. Lay and staff believe it is worth paying this fee. There is a motion in government to allow departments to charge the interest. Lay will continue to monitor this.
- Morrill added that overall it is much more efficient than processing a check.
- Randlett stated that the Board needs to make sure this is fitting for the budget and that financial requirements for the department are being met.
- The fee is getting charged at the PayMaine level.
- Morrill commented that when the budget discussion begins the Board wants to be part of it.
 - **Granger/Jemison: Moved and seconded to allow staff to continue absorbing the credit card fees.**
 - **In Favor: Unanimous**

8. Consideration of Consent Agreement with Service Master Elite of Saco, 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 application of pesticides (disinfectants) to the interior of a structure in Lewiston by an unlicensed applicator during mold remediation work.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors stated that in July 2017 staff received a complaint that Service Master Elite of Saco was doing mold remediation work without pesticide licenses. An inspector followed up and determined the company was using Benefect[®] Botanical Disinfectant.
- The company has signed the consent agreement and paid the fine.
- This Service Master Elite location had never had any type of applicator license. Jemison asked if the individual knew the disinfectant was a pesticide. Connors stated he did not know, but if he is using the product for hire in a commercial capacity then he should. Granger asked if we are doing an adequate job of getting the word out that people using pesticides need to have a license.
- Connors told the Board that this is not the first time a Service Master franchise has been involved with a consent agreement.

- Morrill asked if the company had since obtained an applicator license. Connors replied that they have not.
- Patterson noted that this location may not be licensed but there are other Service Master locations licensed.
 - **Granger/Jemison: Moved and seconded to approve consent agreement.**
 - **In Favor: Unanimous**

9. Referral of Unresolved Consent Agreement with PLD Group of Augusta, 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 application of pesticides for bed bug control to the interiors of structures in Augusta and the Augusta area by an unlicensed applicator. The company was offered a consent order in 2017 to resolve this case but has as yet failed to complete the settlement agreement.

Presentation By: Raymond Connors
 Manager of Compliance

Action Needed: Approve/Disapprove referral of this case to the Office of the Attorney General for prosecution.

- Connors explained to the Board that there has been a running history with this company and we have received many calls that both employees and the owner are making pesticide applications. Connors relayed some of the complaints to the Board.
- In August 2016 staff received a complaint from a 6-unit apartment building that an employee of the company set off two bedbug bombs and left the tenant two bombs to set off later. On August 17, 2016, a BPC inspector followed up with the owner of the company and the alleged applicator who both told the inspector that they do not make pesticide applications.
- On August 24, 2016, the inspector met with the complainant and who showed the inspector the can of "Hot Shot" insecticide that the PLD Group employee had given her. Two other tenants in the same building stated that the same employee had also made pesticide applications in their units for bedbugs.
- On November 7, 2016, a different tenant located in an apartment building in Winthrop called and stated an employee had made applications to her unit.
- Connors stated that there is enough evidence to show the company was using pesticides. Connors has attempted to collect payment for the consent agreement many times. The owner returned the signed consent agreement without payment. Connors offered him an opportunity to come before the Board and state his case. The consent agreement is for \$1,500.
 - **Granger/Adams: Moved and seconded to refer the case to the Office of the Attorney General for prosecution.**
 - **In Favor: Unanimous**

10. Other Old or New Business

- a. Articles and correspondence submitted by Board constituents:
- b. Variances approved (all Chapter 29, Section 6):
 - VanDusen, Maine DOT Environmental Office, invasive plants in remediated and constructed wetlands

11. Schedule of Future Meetings

February 23, 2018 and April 6, 2018, May 18, 2018 and July 13, 2018 are the next proposed Board meeting dates.

12. Adjourn

- **Morrill/Granger: Moved and seconded to adjourn meeting at 5:45pm.**
- **In Favor: Unanimous**

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.