



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

February 23, 2018

Marquardt
Augusta, Maine

AGENDA
9:00 AM

1. Introductions of Board and Staff
2. Minutes of the January 10, 2018, Board Meeting

Presentation By: Cam Lay
Director

Action Needed: Amend and/or Approve

3. Overview of Board Member Responsibilities

It is beneficial to periodically review the legal framework under which the Board operates, particularly with respect to communications between Board members outside of the public Board meetings.

Presentation by: Mark Randlett, Assistant Attorney General.

Action Needed: Information only.

4. Other Old or New Business
 - a. CMP 2018 Foliar Herbicide Plan
 - b. Planning for Future Rulemaking related to emerging topics including new Federal Certification and Training Requirements, associated State Plan changes, and Unmanned Aerial Systems (UAS)
 - c. Recent staff activities memo.

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG

5. Schedule of Future Meetings

April 6, 2018, May 18, 2018 and July 13, 2018 are the next proposed Board meeting dates (at the Marquardt Building) are the next proposed Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

8. Adjourn

NOTES

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



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PAUL R. LEPAGE
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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

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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

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FOLIAR HERBICIDE PLAN FOR CENTRAL MAINE POWER TRANSMISSION LINE RIGHTS-OF-WAY

During the 2018 calendar year, Central Maine Power Company (CMP) will be treating approximately 9,000 acres as part of our regular vegetation management program. Some of this acreage is comprised of agricultural and industrial uses, and only needs to be patrolled. Integrated vegetation management techniques are employed on the remaining acreage to minimize the use of herbicides.

The first phase of the program requires that a contract crew patrol each right-of-way cutting all hardwood species over 8 feet tall and most of the softwood species. The stumps of trees capable of resprouting are treated with a herbicide. This reduces the amount of foliage that must be treated each cycle. Areas not suitable for foliar herbicide application during the summer are to be entirely cut at this time, and stump treatment to be used where appropriate.

The second phase of this year's program requires that the contract crew patrol each transmission line a second time, treating all remaining tree species capable of growing into the conductors or that block access to the right-of-way. The herbicides are applied with a backpack, hand pressurized spray tank. The tank pressure is low, so the potential for off target movement of the mix is minimized. A contract crew composed of 5 to 8 people will selectively treat the capable species.

A no spray zone is maintained around wells, municipal water supplies or any open water. The buffer zone will vary depending on the topography, a minimum of 25 feet is maintained on all water and a minimum 100-foot buffer is maintained on drinking water supplies. These buffers provide an additional margin of safety.

A low-pressure foliar application technique will be used on the majority of right-of-way scheduled this year. The herbicides and adjuvants, including a drift control agent, are mixed in water at rates of 1/8% - 5%. A hand-pressurized backpack sprayer is used to selectively apply the mix directly to the leaves of the undesirable species. The large droplet size, low tank pressure, and drift control agents, combined with the selective application technique, reduces the potential for drift to a very minimal level. The following is a list of herbicides CMP may use depending on species composition, density and environmental factors:

- Garlon 4 Ultra EPA Reg. No. 62719-527
- Arsenal Powerline EPA Reg. No. 241-431
- Milestone VM EPA Reg. No. 62719-537
- Rodeo EPA Reg. No. 62719-324
- Stalker EPA Reg. No. 241-398
- Aquifact (adjuvant)
- HY-Grade I (carrier)
- Bark Oil (carrier)
- Liberate (adjuvant)
- Penetron (adjuvant)

Propylene Glycol (carrier) - used in winter cst mix

Before a treatment technique or herbicide is selected, a review of the right-of-way is conducted including a list of landowner maintenance agreements, known municipal water supplies, and brush densities. This information helps CMP personnel select the herbicides and determine the mix rates.

A form is given to each crew foreman before the job starts listing all special arrangements, herbicides, and mix rates. All the work is performed by licensed contract crews. The contract crews will post a sign on the first structure on each side of all public roads stating the date and herbicide used. If herbicides are not applied near the road crossing structure, the first structure where herbicides are used will be posted.

Each town that has a transmission right-of-way scheduled for herbicide work in 2018 will be notified in advance. A landowner maintenance agreement is available to any landowner or municipality objecting to the use of herbicides. The landowner agrees to keep brush to a height less than 10 feet and a CMP inspector looks over each area annually. CMP personnel will notify the staff of the Board of Pesticide Control at the start of the season of general work locations. Daily locations are available at CMP's General Office.

The following list identifies the CMP transmission section numbers and general locations for 2018 scheduled work. Plan and profile maps for each right-of-way are on file at the General Office in Augusta.

2018 CMP TRANSMISSION VEGETATION MANAGEMENT SCHEDULE

Line	Line Name
5	Detroit to Guilford
5A	Jct. L. 5 to Corinna
17	Meadow Road to Camden
21	Meadow Road to Park Street
21A	Jct. L. 21 to Glen Cove
41	Bowman Street to Gardiner
49	Coopers Mills to Meadow Road
60	Coopers Mills to Bowman Street
62	Crowley's to Surowiec
64	Larrabee Rd. to Surowiec
66	Wyman Hydro to Athens
67	Detroit to Albion Rd.
72	Gulf Island to Crowley's

72A	Jct. L. 72 to Phillips Elmet
82	Athens to Detroit
83	Heywood Road to Wyman Hydro
83C	Jct. L. 83 to Scott Paper (Hinkley)
84	Winslow to Albion Rd.
85	Detroit to Guilford
105	Vallee Lane to Old Orchard Beach
106	Vallee Lane to Old Orchard Beach
201	Larrabee Rd. to Crowley's
203	Detroit to Bucksport
211	Rumford to Woodstock
212	Monmouth to Larrabee Rd.
222	Wyman Hydro to Harris Hydro
222A	Jct. L. 222 to Lor #1 AFB
241	Heywood Road to Lakewood
241A	Jct 241 to Rice Rips
242	Heywood Road to Winslow
257	Albion Road to Coopers Mills
258	Albion Road to Coopers Mills
259	Albion Road to Heywood Road
264	Wyman Hydro to Lakewood
269	Bowman Street to Monmouth
374	Buxton to Surowiec
385	Buxton to Scobie, NH
388	Poles 352 to 451
388	Coopers Mills to pole 352
391	Buxton to Scobie, NH
3023	Albion Rd. to structure 405 and (486-487)
3023	structures 405-486, 487- 488
3023BH	structure 488 to Orrington
3026	Larrabee Rd. to Surowiec



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PAUL R. LEPAGE
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WALTER E. WHITCOMB
 COMMISSIONER

To: Board Members
 From: Staff
 Re: Rulemaking
 Date: March 21, 2017

Based on your request at the February 17, 2017 meeting, we have grouped the potential rulemaking items by the following criteria:

- Housekeeping—Fairly minor and should require very little discussion.
- Incorporating Policies—Will require some discussion on whether and how to incorporate the policy in rule but the objective is already written in policy.
- Requires Discussion—Questions have been raised and a decision needs to be made on whether the rule needs to be amended. These will probably take the most time.

It's very difficult to understand these without all the background information so the after the table, each item is listed along with the relevant section of rule, the policy if applicable and the issue.

Chapter		
27 Section 2(B)(4)ii	Change wording “a list of pesticide applications conducted on school grounds” to clarify that all pesticide applications must be included in log	housekeeping
27 Section 2(B)(5)	Change wording from “made in school buildings and on school grounds” to clarify that it includes the exterior of buildings	housekeeping
27 Section 3(A)	Add insect repellents to the list of exemptions	housekeeping
27 Section 3(C)	Change wording “When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt...” to clarify that all applications are exempt not just mosquito control applications.	housekeeping



28 Section 3(B)(2)(d)v	Clarify that the telephone number on the sign must be a working number	housekeeping
31 Section 2(A)(II) Section 3(B)(VII)c	Change Forest Pest Control to Forest Pest Management Change Disinfectant and Biocide Treatments to 1 Disinfectant and Biocide Treatments 2 Swimming Pool & Spa 3 Mod Remediation & Water Damage Restoration To align with exams	housekeeping
36	Certification and Licensing Provisions/Monitors and Spotters for Forest Insect Aerial Spray Program. Requirements were repealed in statute. Repeal entire chapter	housekeeping
50 Section 1(C)	Definition of “spray period” was repealed in Title 22 so Spray Period Records should not be required. Also if Chapter 36 is repealed there will be no monitors During discussion of removing the requirements for monitors and spotters, the Legislature suggested that the spray application maps should be provided to the BPC after application.	housekeeping Requires discussion
10 Section 2(P)(2)(d)ii	Incorporate Policy Concerning Denying Access to the Public for Seven Days to Areas “Open to Use by the Public”	Incorporate policy
26 Section 1(E)	Incorporate Interim Interpretative Policy on the Applicability of CMR 01-026 Chapter 26 (Clarify the definition of “occupied buildings” to mean fully enclosed indoor spaces inside building and that open air structures are not buildings for the purpose of the rule)	Incorporate policy
29 Section 6	Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Plants that Pose a Dermal Toxicity Hazard	Incorporate policy
29 Section 6	Incorporate Interim Policy to Delegate Authority to the Staff to Approve Requests for Variance from CMR 01-026 Chapter 29 for Control of Invasive Plants	Incorporate policy Requires discussion
29 Section 5	Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters	Requires discussion
31 Section 1	Do unlicensed applicators have to be employees of the same company as the Master or Operator? Question has arisen around employees of temp agencies and volunteers. Clarify	Requires discussion
41	Refuge in a bag.	Requires discussion

HOUSEKEEPING

1) Chapter 36

Suggested Change

Repeal Chapter

Discussion

Requirements for monitors and spotters for forest insect aerial spray programs were repealed in statute because they are no longer necessary with the GPS equipment used by aircraft.

2) Chapter 31 Section 2(A)(II) and 3(B)(VII)(c)

Suggested Change

Change Forest Pest Control to Forest Pest Management

Change Category 7c Disinfectant and Biocide Treatments to

7c1 Disinfectant and Biocide Treatments

7c2 Swimming Pool & Spa

7c3 Mod Remediation & Water Damage Restoration

To align with exams

3) Chapter 27 Section 2(B)(4)(ii)

Section 2. Requirements for All Schools

B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:

- (4) maintain and make available to parents, guardians and staff upon request:
 - ii. a list of pesticide applications conducted on school grounds, including the date, time, location, trade name of the product applied, EPA Registration number, company name (if applicable) and the name and license number of the applicator. If the product has no EPA Registration number, then a copy of the label must be included.

Discussion

Is it unclear that applications made in and to school buildings are included in 2(B)(4)(ii)?

4) Chapter 27 Section 2(B)(5)

Section 2. Requirements for All Schools

- B. Each school shall appoint an IPM Coordinator who shall act as the lead person in implementing the school's Integrated Pest Management policy. The IPM Coordinator shall be responsible for coordinating pest monitoring and pesticide applications, and making sure all notice requirements as set forth in this rule are met. In addition, the IPM Coordinator shall:
- 5) authorize any pesticide application not exempted under Sections 3A(2), 3A(3), 3B, 3C, or 3D made in school buildings or on school grounds and so indicate by completing and signing an entry on the Pest Management Activity Log prior to, or on the date on which the minimum notification requirements must be implemented; and

Discussion

Is it clear that applications made to the exterior of school buildings are included in Section 2(B)(5)?

5) Chapter 27 Section 3(A)

Section 3. Exemptions

A. The following pesticide uses are exempt from the requirements of Sections 4 and 5 of this rule:

- (1) application of ready-to-use general use pesticides by hand or with non-powered equipment to control or repel stinging or biting insects when there is an urgent need to mitigate or eliminate a pest that threatens the health or safety of a student, staff member or visitor,
- (2) application of general use antimicrobial products by hand or with non-powered equipment to interior or exterior surfaces and furnishings during the course of routine cleaning procedures, and
- (3) application of paints, stains or wood preservatives that are classified as general use pesticides.

Section 4. Notification

Section 5. Integrated Pest Management Techniques

Discussion

Should insect repellents be added to the list of exemptions?

6) Chapter 27 Section 3(C)

Section 3. Exemptions

- C. When the Maine Center for Disease Control has identified arbovirus positive animals (including mosquitoes and ticks) in the area, powered applications for mosquito control are exempt from Section 4B(1) and 5C. Applicators should post the treated area as soon as practical, in a manner consistent with Section 4B(2).

Section 4. Notification

- B. When school is in session, schools shall provide notice of pesticide applications in accordance with Sections 4B(1) and 4B(2). When school is not in session, notice shall be accomplished by posting of signs as described in Section 4B(2) of this rule.
- (1) The school shall provide notification of each application not exempted by Section 3 performed inside a school building or on school grounds to all school staff and parents or guardians of students. Notices given shall state, at a minimum: (a) the trade name and EPA Registration number of the pesticide to be applied; (b) the approximate date and time of the application; (c) the location of the application; (d) the reasons for the application; and (e) the name and phone number of the person to whom further inquiry regarding the application may be made. These notices must be sent at least five days prior to the planned application.

Section 5. Integrated Pest Management Techniques

- C. Prior to any pesticide application the following steps must be taken and recorded:
- (1) monitor for pest presence or conditions conducive to a pest outbreak,
 - (2) identify the pest specifically,
 - (3) determine that the pest population exceeds acceptable safety, economic or aesthetic threshold levels, and
 - (4) utilize non-pesticide control measures that have been demonstrated to be practicable, effective and affordable.

Discussion

Should Section 3(C) be amended to say that powered applications for control of the identified arthropod vector are exempt, rather than powered applications for mosquito control are exempt.

7) Chapter 28 Section 3(B)(2)(d)(v)**Section 3. Public Notice and Posting Requirements for Certain Pesticide Applications****B. Posting****2. Posting Requirements**

- d. The sign must bear:
 - i. the word CAUTION in 72 point type;
 - ii. the words PESTICIDE APPLICATION in 30 point type or larger;
 - iii. the Board designated symbol;
 - iv. any reentry precautions from the pesticide labeling;
 - v. the name of the company making the pesticide application and its telephone number;
 - vi. the date and time of the application; and
 - vii. a date and/or time to remove the sign.

Discussion

Include language to indicate that the number in Section 3(B)(2)(d)(v) must be a working number, ie not where someone is going to get caught in a phone tree. It was also suggested that the person answering that phone should have knowledge of the application and can answer questions about it.

INCORPORATING POLICIES**1) Chapter 10 Section 2(P)(2)b****Section 2. Definitions**

P. "Custom application" means an application of a pesticide:

- 2. To a property open to use by the public;
 - b. Property open to use by the public includes but is not limited to: shopping centers, office and store space routinely open to the public (i.e. rest rooms, self-service areas and display aisles), common areas of apartment buildings, occupied apartments, public pools and water parks, schools and other institutional buildings, public roads, organized recreational facilities, golf courses, campgrounds, parks, parking lots, ornamental and turf areas around condominiums, apartment buildings, stores malls and retail areas of greenhouses and nurseries if the public is allowed access before the pesticide restricted-entry or re-entry interval elapses.

Policy:

The Board determined that because indoor applications pose greater risks to building occupants, lodging places and apartment buildings should not be included as exemptions to areas open to the public. Therefore all pesticide applications to lodging places or apartment buildings must be made under the direct supervision of a licensed commercial applicator unless the public is excluded from the entire building for the full seven days.

Further Discussion based on Board meeting minutes:

Amending the language in Section 2(P)(2)b would make it clear that applications are "Custom applications" and subject to rule. There was mention of whether seven days is sufficient for indoor applications. Would necessitate amending section 2(P)(2)(d)ii. See next.

2) Chapter 10 Section 2(P)(2)(d)ii

Section 2. Definitions

P. "Custom application" means an application of a pesticide:

2. To a property open to use by the public;

d. Notwithstanding this definition, property shall not be deemed to be open for use by the public in the following cases:

ii. where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application;

Policy

The Board determined that because pesticide applications to recreational areas, trails and parks pose minimal risks, the exemption from consideration as a "property open to use by the public" is appropriate when the public is excluded from treated areas for seven days. Therefore pesticide applications under those circumstances will not require supervision by a licensed commercial applicator.

3) Chapter 26 Section 1(E)

Section 1. Definitions

E. Occupied Building. For the purposes of this regulation, Occupied Building means any public, private, commercial or institutional structure used or occupied by persons on a regular, long-term basis as a residence or for occupations. These include but are not limited to rented residential buildings, condominiums, licensed childcare facilities and nursery schools, and governmental, commercial and institutional buildings.

Policy

The Board determined that its intent in promulgating Chapter 26 was to regulate the use of pesticides in enclosed buildings in which reduced airflow affects dissipation of airborne pesticides. Consequently, the Board adopted an interim interpretation of the term "occupied buildings" to mean fully enclosed indoor spaces inside buildings.

4 and 5) Chapter 29 Section 6

Section 6. Buffer Requirement

A. No person shall make an outdoor terrestrial broadcast application of pesticides, except for applications made to control arthropod vectors of human disease or stinging insects, within twenty-five (25) feet from the mean high water mark of:

I. Any lake or pond, except ponds that are confined and retained completely upon the property of one person and do not drain into or have a surficial connection with any other waters of the State;

II. Rivers

III. Any stream depicted as a solid or broken blue line on the most recent edition of the U.S. Geological 7.5-minute series topographic map or, if not available, a 15 minute series topographic map;

- IV. Estuarine and marine waters as defined under 38 M.R.S.A. §361-A (5); or
 - V. Wetlands, except man-made wetlands that are designed and managed for agricultural purposes, which are:
 - a. connected to great ponds at any time of the year; or
 - b. characterized by visible surface water; or
 - c. dominated by emergent or aquatic plants.
- B. An applicator may vary from the standards imposed under Chapter 29, Section 6 (A) by obtaining a permit to do so from the Board. Permit applications shall be made on such forms as the Board provides and shall include at least the following information:
- I. The name, address and telephone number of the applicant;
 - II. The area(s) where pesticides will be applied;
 - III. The type(s) of pesticides to be applied;
 - IV. The purpose for which the pesticide application(s) will be made;
 - V. The approximate application date(s);
 - VI. The type(s) of application equipment to be employed; and
 - VII. The particular reasons why the applicant seeks a variance from the requirements of this section, including a detailed description of the techniques to be employed to assure that a reasonably equivalent degree of protection of the water body will be obtained.
- C. Within 30 days after a complete application is submitted, the Board or its staff shall issue a permit if it finds that the applicant will:
- I. Achieve a substantially equivalent degree of protection as adherence to the requirements of this section would provide; or
 - II. Demonstrate an appropriate balance of risk and benefit; and
 - III. Will conduct the application in a manner which protects surface waters as defined in Chapter 29, section 6 (A).

The Board may place conditions on any such permit, and the applicant shall comply with such conditions. Except as required by the permit, the applicant shall undertake the application in accordance with all of the procedures described in his variance request and all other applicable legal standards. Permits issued by the Board under this section shall not be transferable or assignable except with further written approval of the Board and shall be valid only for the period specified in the permit.

Policy 1

The Board delegates the authority to the staff to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of invasive plants. "Invasive plants" may include, but are not limited to: plants listed by the Invasive Plants Atlas of New England website, http://www.eddmaps.org/ipane/ipanespecies/current_inv.htm.

The request for a variance must include a detailed description of the area, photographs showing the area and relation to water, an agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland. The variance must also include a multi-year control strategy, a plan for re-vegetation of the site, and

demonstrate knowledge of efficacy and appropriate practices. The variance may be granted for up to a three year period, conditional upon compliance with all variance requirements.

Policy 2

The Board delegates the authority to approve requests for variance from CMR 01-026 Chapter 29, Section 6, for the control of plants that pose a dermal toxicity hazard. Those plants may include, but are not limited to:

- Wild Parsnip (*Pastinaca sativa*)
- Giant Hogweed (*Heracleum mantegazzianum*)
- Poison Ivy (*Toxicodendron radicans*)
- Poison Oak (*Toxicodendron toxicarium*)
- Poison Sumac (*Toxicodendron vernix*)
- Poison Hemlock (*Conium maculatum*)

The variance must include agreement to use low-pressure, handheld application equipment, and the spray must be directed away from the water with no drift or direct discharge to the water body or wetland.

Discussion

Unless the rule requires it, Board will not receive any kind of notice/plan.

REQUIRES DISCUSSION

1) Chapter 50 Section 1(C)

Section 1. Records

- C. Spray Period Records for Major Forest Insect Aerial Spray Programs
 - I. Each monitor employed on a major public or private forest insect aerial spray application program shall prepare written spray period records describing each spray period.
 - II. The spray period records shall include the following information: Date and time of the spray period; Area actually sprayed; Pesticide used; Weather conditions before, during and immediately after spraying; Spray behavior, including visible drift to nontarget areas; and Notation of any reason why a spray period was terminated prior to completion of area. The records shall also include a map showing any nontarget areas that were sprayed.
 - III. The spray period records shall be made available for inspection by representatives of the Board as soon as practicable following the close of each spray period and, in any event, before the next spray period and before the end of the day. The spray records shall be maintained on file and available for inspection by representatives of the Board for a period of at least two years.

Discussion

- 1) Definition of “spray period was repealed in Title 22 so it needs to be defined elsewhere or the requirement for reports should be removed.
- 2) If Chapter 36 is repealed, there is no definition of “monitor” (Section (C)(I)).
- 3) During the discussion of removing the requirement for monitors and spotters the Legislature suggested that the spray application maps should be provided to the BPC after application.

2) Chapter 31 Section 1

1. Individual Certification and Company/Agency Licensing Requirements

- A. Any commercial applicator must be either:
 - I. licensed as a commercial applicator/master; or
 - II. licensed as a commercial applicator/operator; or
 - III. supervised on-site by either a licensed commercial applicator/master or a commercial applicator/operator who is physically present on the property of the client the entire time it takes to complete an application conducted by an unlicensed applicator. This supervision must include visual and voice contact. Visual contact must be continuous except when topography obstructs visual observation for less than five minutes. Video contact does not constitute visual observation. The voice contact requirement may be satisfied by real time radio or telephone contact. In lawn care and other situations where both the licensed and unlicensed applicator are operating off the same application equipment, the licensed applicator may move to an adjoining property on the same side of the street and start another application so long as he or she is able to maintain continuous visual and voice contact with the unlicensed applicator.
- B. All commercial applicator licenses shall be affiliated with a company/agency and shall terminate when the employee leaves the employment of that company or agency.
- C. Individuals certified as commercial applicators are eligible to license with one or more companies/agencies upon submission of the application and fee as described in Section 6 of this regulation. The individual’s certification remains in force for the duration of the certification period as described in Section 5 of this regulation.
- D. Each branch office of any company, agency, organization or self-employed individual ("employing entity") required to have personnel licensed commercially under state pesticide law shall have in its employment at least one master applicator. This Master must be licensed in all categories which the branch office of the company or agency performs applications and any Operators must also be licensed in the categories in which they perform or supervise pesticide applications. This master applicator must actively supervise persons applying pesticides within such employing entity and have the ability to be on site to assist such persons within six (6) hours driving time. Whenever an out-of-state employing entity is conducting a major application project they must have a master applicator within the state.
- E. Exemptions
 - I. Employing entities only performing post harvest treatments to agricultural commodities are exempt from master licensing requirements.

- II. Persons applying pesticides to household pets and other non agricultural domestic animals are exempt from commercial applicator licensing.
- III. Swimming pool and spa operators that are certified by the National Swimming Pool Foundation, National Spa and Pool Institute or other organization approved by the Board are exempt from commercial applicator licensing. However, these persons must still comply with all provisions of C.M.R. 10-144, Chapter 202 – Rules Relating to Public Swimming Pools and Spas Administered by the Maine Bureau of Health.
- IV. Certified or licensed Wastewater or Drinking Water Operators applying registered disinfectants to waste or drinking water as part of their employment.
- V. Adults applying repellents to children with the consent of parents/guardians.
- VI. Persons installing antimicrobial metal hardware.

Discussion

Do unlicensed applicators have to be employees of the same company as the Master of Operator?
 Questions have arisen around employees of temp agencies and volunteers.

3) Chapter 41

Section 5. PLANT-INCORPORATED PROTECTANTS

- E. Product-Specific Requirements
 - I. Requirements for plant-incorporated protectant corn containing *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production.
 - a. Prior to planting plant-incorporated protectant corn containing any *Bacillus thuringiensis* (Bt) protein and the genetic material necessary for its production, the grower must have completed a Board-approved training course and possess a valid product-specific training certificate.
 - b. Product-specific training certificates shall be issued following each Board-approved session. The certificates will remain valid until December 31 of the third year after issuance.
 - c. Non-Bt-corn growers whose crops are or will be located within 500 feet of a prospective Bt-corn planting site can request that the Bt-corn grower protect the non-Bt-corn crop from pollen drift.
 - i. the request must be made prior to planting of the Bt-corn crop;
 - ii. the request must identify the non-Bt-corn crop to be protected; and
 - iii. the growers may agree on any method for protection but, if an agreement cannot be reached,
 - 1. the Bt-corn grower must plant any refuge required by the Bt-corn grower agreement, grower guide or product label in a configuration that provides maximum protection from pollen drift onto the adjacent non-Bt-corn crop; or

2. if no refuge is required, the Bt-corn grower shall maintain at least a 300-foot Bt-corn-free buffer to non-Bt-corn crops.
- d. Bt-corn growers are encouraged to follow all best management practices developed by the Board or the Department of Agriculture, Conservation and Forestry.

Discussion

Section E(I)(c)(iii) How does this apply to refuge-in-a-bag? Does it need to be re-worded?

Chapter 29 Section 5

Section 5. Restrictions on Pesticide Applications to Control Browntail Moths Near Marine Waters

Pesticide applications for control of browntail moths within 250 feet of the mean high tide mark adjacent to coastal waters and extending upriver or upstream to the first bridge are subject to the requirements of this section:

A. Exemptions

The prohibitions and restrictions in Section 5 do not apply to biological pesticides, to the injection of pesticides directly into the soil or shade and ornamental trees or to the application of pesticides by licensed commercial pesticide applicators using non-powered equipment.

B. Prohibitions and Restrictions

- I. A person may not apply a pesticide to control browntail moths on shade or ornamental trees within 50 feet of the mean high water mark.
- II. A person may not apply a pesticide to control browntail moths on shade or ornamental trees in coastal areas located between 50 and 250 feet from the mean high water mark except in accordance with this subsection.
 - a. Only products with active ingredients specifically approved by the Board for this purpose may be applied.
 - b. Applications may be performed only with a hydraulic hand-held spray gun or air-assisted sprayers.
 - c. Applications may be performed only in a manner in which the applicator directs the spray away from marine waters.
 - d. Applications may not be made when the wind is blowing toward marine waters.
 - e. Applications may be performed only when the wind is equal to or greater than 2 miles per hour and blowing away from marine waters.

Discussion

How does rule need to be amended to address current situation?



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

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PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

Memorandum

To: Board of Pesticides Control

From: Cam Lay, Director.

Subject: Recent Staff Activities and Updates.

The Board may be interested in the following activities since our last Board meeting on January 10, 2018.

- 1) Ms. Pamela Bryer, PhD, began work as our toxicologist on January 29, 2018. Ms. Bryer obtained her doctorate in Environmental Toxicology from Texas Tech University. She also has a BA and MS in Zoology from the University of Maine at Orono. She has work experience in industry as an environmental consultant in air quality permitting in Texas and Pennsylvania, in academic institutions as an assistant professor of environmental toxicology at Lamar University in Texas, and in government as a compliance officer with the Maine Drinking Water Program. Dr. Bryer is active in increasing experiential learning for children in the STEM fields, and serves on the board of the Friends of Maine Coastal Islands National Wildlife Refuge.
- 2) Dr. Jack Waterman of Waldoboro has been confirmed for the BPC medical seat. Dr. Waterman is a Board Certified Family Medicine physician.
- 3) The field staff returns to full-time status on February 19th.

CAM LAY, DIRECTOR
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