



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

June 7, 2024

9:00 AM Board Meeting

MINUTES

1. Introductions of Board and Staff

- Adams, Carlton, Ianni, Jemison, Lajoie, Neavyn
- Assistant Attorney General, Carey Gustanski
- Staff: Boyd, Couture, Peacock, Pietroski, Vacchiano

2. Public Hearing on Proposed Rule Amendments to Chapters 31, 32, and 50

The Board will hear testimony on the proposed amendments:

Chapter 31 – Seven amendments are proposed:

1. Incorporation by reference of 40 CFR 171.201, which adds federal standards for direct supervision of non-certified applicators supervised by commercial applicators.
2. Addition of the word “soil” to option III of the 1B “Agricultural Plant” category, this clarifies that this category is for soil fumigation and aligns it with the federal category “Agricultural Crop Pest Control”.
3. Addition of “maintenance of public roads” to the description for category 6A and B “Vegetation Management”.
4. Incorporation by reference of 40 CFR 171.103(d)(13) and 40 CFR 171.103(c)(1 through 10) (2023), which adds federal competency standards for option III of 1B “Agricultural Plant” category related to soil fumigation.
5. Incorporation by reference of 40 CFR 171.103(d)(14) and 40 CFR 171.103(c)(1 through 10) (2023), which adds federal competency standards for the 7B category, “Industrial, Institutional, Structural and Health Related Pest – Fumigation” category related to non-soil fumigation.
6. Incorporation by reference of 40 CFR 171.103(d)(15) and 40 CFR 171.103(c)(1 through 10) (2023), which adds federal competency standards for the 11 category, “Aerial Pest Control” related to aerial application of pesticides.

ALEX PEACOCK, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



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

7. Additional breakouts of competency standard subcategories for 1B “Agricultural Plant” and 6A and B “Vegetation Management” to clarify the competency standards for each subcategory.

Chapter 32 – Five amendments are proposed

1. Incorporation by reference of 40 CFR 171.201 and 40 CFR 171.105(a) (1 through 11), which adds federal standards for direct supervision of non-certified applicators supervised by private applicators.
2. Incorporation by reference of 40 CFR 171.105(d) (2023) to (a) Soil Fumigation, which adds federal standards for private applicators under the soil fumigation category.
3. Incorporation by reference of 40 CFR 171.105(e) (2023) to (b) Non-Soil Fumigation, which adds federal standards for private applicators under the non-soil fumigation category.
4. Incorporation by reference of 40 CFR 171.105(f) (2023) to (c) Aerial, which adds federal standards for private applicators under the aerial category.
5. Updating the date for federal standards referenced from (2017) to (2023) under Chapter 32 (5)(a through c).

Chapter 50 – Three amendments are proposed

1. Require electronic reporting for commercial applicators annual use reports and dealers annual sales reports. This requires these parties to electronically report to a board-approved software solution.
 2. Outlines a transition period in 2024 and 2025 with reports required to be submitted electronically by 2026 (reporting year 2025) or seek an exemption waiver.
 3. Describes a waiver process for those who do not have access to an electronic device capable of submitting electronic reports.
- Heather Spaulding, Deputy Director of MOFGA, stated that it was good to see the Board working to expand and improve pesticide use reporting. She added that MOFGA would like to see comprehensive data collection and analysis with a little more transparency. Spaulding commented that the phase in time was reasonable and should help commercial applicators comply.
 - Eric Venturini, Executive Director of the Wild Blueberry Commission stated that he was still concerned about requiring commercial applicators to share information publicly, especially if it could include location information in the future. He added that this information could be detrimental to the standing of a business. Venturini brought up the topic of confidentiality and asked how the Board would determine what would be confidential and what would not be.
 - **Carlton/Jemison: Moved and seconded to close the oral portion**
 - **In Favor: Unanimous**

3. Minutes of the April 5, 2024 Board Meeting

Presentation By: Alex Peacock, Director
Action Needed: Amend and/or Approve

- **Carlton/Jemison: Moved and seconded to approve the April 5, 2024 minutes as amended**
- **In Favor: Unanimous**

4. Bartlett Tree Expert's Request for 24(c) Registration for Arbotect

The University of Maine Cooperative Extension with support from Bartlett's Tree Experts have requested a Special Local Need [24(c)] for the use of Arbotect (100-892) as an injection for the treatment of Beech Leaf Disease. Arbotect is currently registered in the state as an injectable fungicide for Dutch Elm Disease and Sycamore Anthracnose. The proposed SLN would add trees in the Fagus genus to the sites for use, and target pests would be expanded to include the nematode that has been determined to be the cause of Beech Leaf Disease, *Litylenchus crenatae mccannii*.

Presentation By: Julia Vacchiano, Registrar
 Action Needed: Approve/Disapprove SLN Request

- Vacchiano explained that F A Bartlett Tree Expert Co., with support from UMaine Extension, had requested to add the nematode determined to be the cause of Beach Leaf Disease, BLD, to the list of approved target pests for Arbotect.
- Dr. Alicyn Smart, Associate Extension Professor and Extension Plant Pathologist for UMaine Cooperative Extension explained the symptoms of BLD, its spread across the State and the need for an efficacious product.
- Ianni asked how applications in a limited area in residential settings would mitigate the spread throughout the State of Maine.
- Dr. Smart responded that she wished there was a better option and spoke about the relevance of these trees in residential landscapes and how important they were to landowners. She added that it was still not completely understood how the disease was spread. Dr. Smart noted that by protecting trees in separate residential areas it would help maintain their genetic diversity.
- Carlton noted the importance of the trees and that he was willing to consider anything that could protect them.
- Neavyn commented that upon reviewing the product, he was less concerned about human toxicity but asked if there were any implications on other flora and fauna.
- Dr Smart responded that this active ingredient had been used on livestock since the 1980's. She added that she had tried to find data about phytotoxicity or effects on wildlife but could not find much.
- Matthew Borden, Plant Pathologist with Bartlett Tree Research Laboratories, stated they considered this low risk due to its longevity and that it would be injected rather than used as a soil drench or broadcast spray that would require multiple applications. He added that it had been documented that there was a negative impact on soil mycorrhizae, but that the death of the trees from the disease also affected native bird and animal food sources. Borden stated that due to the long history of this active as a Dutch elm disease treatment, negative health effects were not anticipated, and they felt it was the best choice out of the other options available.
- Dr. Smart asked how long it would take for the SLN to go into effect if it was approved.
- Vacchiano said if the SLN was approved all paperwork would be submitted to the EPA and BPC would hopefully receive a response in a week or two.

- **Jemison/Carlton: Moved and seconded to approve the SLN request**

- **In Favor: Unanimous**

5. Request to Designate Eagle Lake Water District Wellheads as a Critical Pesticide Control Area

Staff have received a petition to designate Eagle Lake Water District Wellheads as a critical pesticide control area as outlined in Chapter 60: Designation of Critical Pesticide Control Areas. Staff has provided the information provided by the requesting party. Once received, the Board shall conduct rulemaking according to 5 MRSA Ch. 375, subchapter II and allow for local representation on board decisions regarding the designation according to Title 22 § 1471-V. This request was presented at the April 5, 2024 meeting and was tabled.

Presentation By: Alex Peacock, Director
Action Needed: Discussion/Amend/Approve rulemaking

- Adams stated that the only other request to designate an area as a critical pesticide control area had been associated with a specific health issue that was easy to identify. Regarding this request, the Board was being asked to consider possible contamination that had not yet happened.
- Gustanski noted that the merits of the request were not up for discussion today. He added that the Board needed to receive public comment, and then they could discuss it in detail.
- Peacock spoke about the process of the last petition received.
 - **Carlton/Jemison: Moved and seconded to schedule a public comment period to begin on July 19 and with written comment received for an additional ten days thereafter**
 - **In Favor: Unanimous**

6. Draft Director Appointment Policy

At the April 5, 2024 Board meeting, members approved the appointment of Alex Peacock as BPC's new director. Further discussion led to a request for the Board to clarify the appointment procedure via policy. Staff have brought forward draft policy for the Board to review.

Presentation By: Alex Peacock, Director
Action Needed: Discuss; Approve/Disapprove adoption of policy

- The Board did not vote on the draft policy at this time. They requested staff strike option three and bring the policy back to the next meeting for consideration.

7. Consideration of Consent Agreement For Orkin LLC DBA Mainely Ticks

On June 3, 1998, the Board amended its Enforcement Protocol to authorize 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 involved several applications by unlicensed applicators and use of a pesticide inconsistent with its product label.

Presentation By: Alex Peacock, Director

Action Needed: Review and/or Approve

- Peacock summarized the violations for the Board.
- There was Board discussion about the revocation of licenses and if an applicator operated without a license at multiple locations, if each application could be considered a separate violation. Gustanski said an argument could be made that each action may be a separate violation.
- Peacock stated that the individuals responsible for the applications had since been relieved of their duties.
 - **Carlton/Jemison: Moved and seconded to approve consent agreement**
 - **In Favor: Unanimous**

8. Board Member Appointment Updates

Staff are presenting the Board with the current appointment status of all board members.

Presentation By: Alex Peacock, Director

Action Needed: None

- Peacock thanked Jemison for his nearly 22 years of service to the BPC.
- Craig Lapine, Director of the Bureau of Agriculture, Food and Rural Resources, thanked Jemison for his long service and dedication to the Board and relayed that DACF Commissioner Amanda Beal also sent her regards. He thanked Jemison for his thoughtful and insightful decision-making and willingness to share his expertise. Lapine concluded that Jemison's coming retirement was well deserved, but the Board and Maine were still sorry to be losing him.
- Jemison recalled when he was asked many years ago to join the Board he anticipated it would be for two or three terms, but he found great importance in what the Board did and generated and that he was able to use it in his own work. He added that staff and directors were always amazing and thanked everyone for all they did and that he really believed in the BPC's mission.
- There was discussion about who would be filling Jemison's position on the Board.

9. Other Old and New Business

- a. Variance Permit for CMR01-026 Chapter 29, Stantec Consulting Services, Inc.
- b. Variance Permit for CMR01-026 Chapter 29, Basswood Environmental, LLC
- c. Variance Permit for CMR01-026 Chapter 29, F.A. Bartlett Tree Expert Co.
- d. Review of Pesticide Notification Procedures
- e. EPA Update: EPA Publishes Update on Herbicide Strategy Progress
- f. EPA Update: EPA Proposes to Cancel All but One Use of Pesticide Acephate to Protect Human Health
- g. Pesticide Registration Review: Proposed Decisions for Several Pesticides
- h. Staff memo: Reporting Requirements for Dealers and Distributors

10. Schedule of Future Meetings

The next scheduled Board meeting date is July 19. The Board will decide whether to change and/or add dates.

Tentative dates for the next Board meetings are September 6 and October 25.

10. Adjourn

- **Carlton/Adams: Moved and seconded to adjourn at 10:30 AM**
- **In Favor: Unanimous**