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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

September 23, 2016

**Conference Room
Maine DOT John E. Dority Training Center
10 Mountain Ave, Fairfield, Maine**

MINUTES

8:30 AM

Present: Bohlen, Eckert, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Fish, Hicks, Patterson, Tomlinson, Tourtelotte

2. Minutes of the August 19, 2016, Board Meeting

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

- Jemison pointed out that the statement on page three which reads ‘50 two-and-a-half pound bags’ should be ‘50 two-and-a-half gallon jugs’
 - **Granger/Stevenson: Moved and seconded to adopt as amended**
 - **In Favor: Unanimous**

3. Consideration of Enforcement Action Against Stone Wall Farms, Lincoln, Maine

In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. This case involves the use of a pesticide in a careless, negligent or faulty manner and the use of a pesticide in a manner inconsistent with product labeling, which resulted in the death of two dogs.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

- Connors reviewed the details of the case for the Board. He stated that on April 23, 2016, Alfred Fugazzi mixed one ounce of Lannate® with four slices of crumbled bread and placed it in three locations in the field he leased and farms. At 3:00pm that day Ann Thornton, walking her English setter and dachshund, entered the field with her dogs off leash, but near her. The dogs ate some of the Lannate® treated bread crumbs and perished.
- Connors listed several violations Fugazzi made with the application:
 - Use of a pesticide in a negligent or faulty manner
 - Use inconsistent with the label:
 - The max application rate for Lannate® is 1lb. per acre and Fugazzi used one ounce on 4 slices of bread.
 - The water soluble bags are not supposed to be cut, torn or opened. Fugazzi opened the bags in order to get to the Lannate® to put on the bread crumbs
 - Required personal protective equipment not worn: respirator, eyewear, apron, chemical resistant gloves and footwear
 - No records of application were kept
- Randlett stated the most significant violation was the reckless manner of use, but other violations were considered. He continued that three types of penalties can be invoked. The most commonly used is the civil penalty, which carries a maximum fine of \$1,500. Randlett said there is a provision in the law that would make a violation criminal if the conduct was intentionally or knowingly done. The third type is the revocation or suspension of license.
- Connors presented a PowerPoint presentation showing the route Thornton took with her dogs, the location of the three piles of breadcrumbs and posted entrances to the property. In the photos taken after the incident, signs were present at the main entrance to the farm and where Thornton entered the field with her dogs. The signs read: 'Sprayed-Keep Out'.
- Connors stated that on April 23, 2016 the responding officer reported that Thornton told him no sign was present where she entered the property. Thornton made a statement to the BPC inspector that on April 23, 2016 no signs were posted. A photo taken on April 26, 2016 showed that a sign was in place.
- Fugazzi stated he is very aware he used the Lannate® in an incorrect manner. Fugazzi continued that crows are a severe and annual problem at his farm; 200-300 at a time. The day he made the application using the treated bread he stated he had had to replant, call in extra help to do so, could not keep the row cover on his seedlings, and lost his temper. He said he remembered he had some bread in his truck. Fugazzi also relayed to the Board that he has had trouble with vehicles driving into the field, so he blocked the road with rocks. As a lessee, Fugazzi stated, he does not allow anyone into the field and is upset his efforts to keep people from entering the field were ignored by individuals letting their animals run through his planted crops.
- Granger asked Randlett if the land was legally posted from his understanding. Randlett responded that it appeared to be posted, but does not know if this is particularly relevant in respect to whether a violation was committed or even to whether the use was conducted in a reckless manner. Randlett continued that use in a reckless manner applies not only to the public, but to wildlife as well, and other wildlife, such as deer or an endangered species, may have come into contact with the bread. Randlett concluded that the postings may be a

consideration when deciding if the application was posted correctly, but has limited relevance when talking about the use of this pesticide and if it was done in a way to cause harm.

- Granger asked if the posting was sufficient for the application. Eckert stated the sign was for spraying, and the area was not posted for this bait application.
- Connors stated he spoke with Robin Dyer, State Director/Certified Wildlife Biologist for the United States Department of Agriculture, USDA, and was informed that there are legal methods that can be taken to deter crows. Farmers can obtain a permit to shoot by contacting Inland Fisheries and Wildlife (IFW). Jemison added that Avipel® is an option for the field corn. Connors voiced that Dyer informed him sound cannons and effigies are additional options. Fugazzi interjected that Dyer visited his field and told him that poisoning was legal for dairy farms, but not vegetable growers. Dyer said Fugazzi could shoot the crows, but Fugazzi stated once he would shoot one crow, all the others would disappear. Fugazzi said he purchased two noise cannons and the neighbors destroyed one and he finally shut the other one off because he received so many complaints.
- Jemison asked Fugazzi about using Avipel®. Fugazzi stated Avipel® is only for the corn, and he has cucumbers, squash, and other crops that the crows go after. Jemison said the Special Local Needs 24(c) for Avipel® expires in 2017 and maybe they can take a look at broadening the listed crops for the product. Jemison asked staff to contact the Avipel® Company before the next meeting and find out if any other states are registering it for vegetable seeds other than field corn. Hicks responded that she would look into this.
- Thornton told the Board she has walked that route for the four years she has lived there and stated the location of the bait shown on the PowerPoint presentation is not where her dogs ate it. Thornton stated her dogs were maybe a foot into the edge of the field when she saw them eat something. She continued that 20 seconds after eating it, the dogs dropped. Thornton also said, with regard to posting, she knew about the sign at the front of the property, but had never seen postings on the back of the property. Thornton concluded the dogs were with her that day, and did not wander into Fugazzi's planted field or onto the row covers.
- Jemison asked if Fugazzi has a Good Agricultural Practices (GAP) certification. Fugazzi does not.
- Randlett asked that the Board not arrive at any conclusions today, but to discuss the matter as a Board and to direct the staff. Randlett continued that the other appropriate thing to do would be to provide some guidance to Connors regarding the Board's perceived seriousness of the offense and the range of acceptable conclusions.
- Bohlen interjected he wished to abstain from the decision because he came in late.
- Jemison stated it would be helpful to him to know how the farm was operating other than this incident. He asked if a standard inspection was done in addition to responding to the complaint, and if this was an isolated event or have there been other inappropriate findings. Tourtelotte responded she had conducted an inspection at the farm one month after the incident and found no issues. Connors stated there have been nine inspections at this farm over the years and there has never been a warning letter or consent agreement sent to them.
- Granger added that farmers know pesticides are dangerous and take steps to post and try to keep people out, and when people ignore those signs and go onto posted land, they leave themselves open to things like this happening. Granger asked staff to keep this in mind.

- Eckert stated there are definite and serious violations and there needs to be a serious penalty. She added that the application was not safe and perhaps not effective either. Jemison stated he completely agreed, but also wants to explore ways to ensure this does not occur again.
- Morrill stated staff needs to remember they are to take into consideration the pesticide violation and not the trespassing violation. He added that if the label had been followed, we would not be sitting here. Morrill also raised the issue regarding this behavior being learned or found somewhere and wondered if this was an isolated incident.
- Morrill suggested that the staff move forward with negotiating a consent agreement and stated this is one of the most serious violations they have had come before them.
- Fish stated that in the past there has been discussion of methomyl being used as bait to target animals, not only birds, but rodents and other things. He added that it is a reoccurring problem that needs to be checked. Fish suggested there needs to be an educational component and a deterrent.
 - **Morrill/Stevenson: Moved and seconded to move forward with negotiating a consent agreement**
 - **In Favor: Five; Abstained: One**

4. Consideration of Enforcement Action Against Joseph Fazekas, Harpswell, Maine

In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. This case involves an unauthorized pesticide application.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

- The Fazekases and Ryan Dumas, the lawyer representing them, were present. Dumas asked permission to place an audio recorder near Connors to make a recording of the proceedings. Connors agreed.
- Connors stated this case involved the unauthorized application of glyphosate to a shorefront property in Harpswell, Maine owned by Debbie Thomas and Ned Douglas. Connors indicated the location of the Douglas/Thomas and Fazekas properties on the assessor map he provided to the Board. Connors explained view easements the Fazekases have on the Douglas/Thomas property to allow them to maintain their view of the ocean.
- Connors related the details of the case beginning with the damage first being noticed by an arborist in the area and being reported to the BPC on July 2, 2015. On July 10, 2015, a BPC inspector visited the Douglas/Thomas property and took photos and samples. The inspector took some of the photos and samples to a plant pathologist at the Maine Forest Service. The pathologist responded by email that it was clear an herbicide had been used. The pathologist stated if it was naturally occurring, it is usually host specific and this was a wholesale killing of all vegetation in the area. The two vegetation samples were sent to the lab and combined and tested as one sample. The results showed the presence of glyphosate at 8.9 ppm. A consent agreement was sent to the Fazekases on June 28, 2016 and Connors received back a letter from Fazekases' legal counsel contesting the agreement. Connors visited the site and took photos on August 15, 2016.

- Jemison asked how effective glyphosate is when sprayed on the soil. Granger stated glyphosate is not at all effective via soil; it is a systemic pesticide that must be taken in through green foliage. Granger added that the top part of a mature tree would not die from an application of glyphosate at its base, and he does not believe the large pine, shown in the photo, died from glyphosate. He continued that a lot of the photos did not look symptomatic of Roundup® damage, but some of them did. Granger concluded it looked like more than one pesticide was used, and it appeared as if the bottom of the large pine died more recently than the top. Patterson stated there was a hole at the base of the tree, but it was not evident if it had been drilled.
- Randlett stated it now comes to the Board for consideration, and they need to give the staff direction regarding whether to continue to pursue enforcement. Randlett told the Board they could: do nothing, refer to Attorney General's office, or send the case back to staff to continue negotiation.
- Dumas stated his clients became aware of this this summer when they received the consent agreement in the mail. Dumas continued that the Fazekases have view easements to maintain their view of the ocean, and there is no direct evidence that their clients applied anything. Dumas also added that the maple tree is the tree they were interested in trimming. The prior two years they have asked to trim the maple tree and were told no. The Fazekases left the matter there because they were selling the property anyway and have since moved. Dumas stated the primary view that is blocked is the one blocked by the maple tree, not the area that had damage.
- Eckert commented she would like to know what happened but does not think pursuing an action against the Fazekases will give us that answer. Bohlen also agreed he does not see a pathway to finding a resolution that would let the Board find out what happened.
- Jemison asked what the original consent agreement was set at. Mr. Fazekas stated it was \$1,000.
 - **Granger/Bohlen: Motioned that the staff pursue no further enforcement action in this matter.**
 - **In Favor: Unanimous**

5. Consideration of Consent Agreement with Granite Bay Care, Inc., Portland, 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 the indoor application of an unregistered pesticide by an unlicensed applicator to an area open to use by the public.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors informed the Board that Granite Bay Care, Inc. provides assisted living to individuals. The BPC received a call from the parents of a patient alleging that unlicensed Granite Bay Care staff applied borax and Raid® roach traps/spray. A BPC inspector went to the facility and it was determined that employees at the facility were making unlicensed applications.

- Connors stated that one product, Bed Bug Bully, was not registered in Maine at the time of the inspection. The product was purchased on Amazon. A discussion of the ingredients in Bed Bug Bully followed. Connors stated Tomlinson is the staff member who pursues unregistered products.
- Connors said he sent a consent agreement for \$250 to Granite Bay Care and the company agreed to the facts as documented.
- Morrill asked if the company was told they need to use licensed applicators in the future. Connors responded that the inspector did inform them of the requirement and the importance of making legal pesticide applications.
 - **Eckert/Bohlen: Motioned to approve consent agreement**
 - **In Favor: Unanimous**

6. Overview of Historical Maine Lawn and Landscape Pesticide Use Estimates

At the August 19, 2016, meeting, the Board requested an explanation of the methodology used by Board staff to estimate Maine lawn and landscape pesticide use trends. The analysis utilized annual sales and use reports submitted to the Board by pesticide dealers and commercial applicators. Gary Fish, the State Horticulturist, will provide an overview of past estimates.

Presentation By: Gary Fish
State Horticulturist

Action Needed: None—Informational Only

- Fish delivered a PowerPoint presentation and discussed the popularized graphic which indicates a 700% increase in pesticide sales.
- Fish stated he began recording pesticide sales in 1995 and used data from a few different reports. The largest reports were yearly dealer reports of pesticides sold into the state. Fish explained that these are dealer reports of what was purchased, so we have no idea what was sold to an end user and, if after being sold, if it was used. Fish added that he also used restricted use pesticide dealer reports, because they generally sold general use pesticides as well. He also included annual reports from commercial applicators and would try to account for the products sold to commercial applicators so that products were not double counted. Fish stated he gleaned through all these reports for the information on the products he knew homeowners used.
- Fish estimated it took him approximately 24 working hours each year the report was compiled and that it took such a short time because he did not do a lot of work with the data, but tried to get an estimate as quickly as possible. Fish stated that he used the same process each year he compiled the report.
- Fish said he tried to make it clear whenever he spoke to people that it does not represent what was actually used, and that graphic represented pounds of pesticides, not pounds of active ingredient, a.i. The large majority of the items are less than 5% a.i, especially the weed ‘n feed which is approx. 2% a.i. and the rest is fertilizer. Fish stated the only accurate component of the graphic is probably the trend line because he used the same process each year. The changing attitudes about landscaping, pesticides, mosquito and insect borne diseases are reasons, Fish felt, that pesticide use has trended up.
- Fish concluded that all he intended to point out with this graph was that people were using a lot of pesticides and he was trying to communicate ‘think first spray last’, which has been the

Board's motto for many years. That was the only point behind this, Fish reiterated; it was not meant to alarm everyone.

- Morrill thanked Fish for the presentation clarifying the graph and asked if Fish has ideas on how to improve the current intake of data to raise the level of accuracy. Hicks responded that she has also used the data and agrees with Fish that it is a mess.

7. Review and Discussion of Board Homeowner Education Efforts

At the August 19, 2016, meeting, the Board requested a presentation of an updated outreach plan at the following meeting and progress updates at all subsequent meetings. Over the last several months, the Board discussed various ideas and approaches for improving education of homeowners on the use of Integrated Pest Management and the proper use of pesticides. Staff will provide an update to the Board about activities planned for the winter and spring of 2016 and 2017.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Determine next steps

- Patterson explained to the Board some of the recent homeowner education outreach undertakings by staff. Patterson stated the staff has been setting up talks for the coming spring with garden centers and have been in contact with both Tom Estabrook and Jeff O'Donal. A booth has been reserved at the Maine Flower Show in Portland and there have been discussions about presenting there. The staff will be signing up for the Bangor Flower Show, once it is available. Discussions have taken place with Kelly Donnelly, who is in charge of the Bangor Flower show and she has asked the staff about presenting there as well.
- Patterson informed the Board that staff will be attending the Independent Garden Centers Annual Meeting and coming up with a few topics and presentation dates.
- Patterson has been setting up GovDelivery where the public can visit the BPC page and sign up for topics of interest. This would allow the general public who is not normally involved with the BPC to go to GovDelivery and find and sign up for BPC events/presentations and receive other information. This information goes out automatically and is coordinated with Facebook and Twitter accounts.
- Patterson and Couture have been working on compiling a list of expert speakers, including Fish and Kathy Murray, to give invited presentations on topics.
- Patterson relayed to the Board that the GotPests website received about 10k hits last month and woodpeckers were near the top of the list of concerns, as well as tomatoes and other garden-related topics. We have also begun revamping the retail signs.
- Morrill asked if there were any questions from the audience or if anyone had ideas on how to reach out to homeowners and how to educate the general public. Fish offered himself and his staff to assist with homeowner education. Fish stated he recalled doing these things for many years and he felt it had some impact, but that more impact comes from trying to get sensational advertising to attract attention. Fish added that presenting at garden centers takes up a lot of staff time and we get a small bang for our buck. He suggested focusing more on trying to find advertising that will attract more attention and be more effective. Fish also stated that the BPC gets greater impact out of the GotPests website and other online and big media ventures.

8. Overview of Pesticide Sales and Use Data Submitted to the Board

At the August 19, 2016, Meeting, the Board requested a presentation detailing current pesticide sales and use reports. The staff will explain the current requirements and the nature of the information that is received by the Board.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: None—Informational Only

- Patterson listed the types of reports the pesticide sales information is derived from, and what information is contained within those reports. Patterson explained many items are exempt from reporting requirements, such as: indoor household use items, all aerosols, insect repellents, pet products, disinfectants, any products with less than 3% a.i., and others. Patterson covered some of the problems with the data that is collected, such as inaccurate EPA registration numbers, data discrepancies, the issues with making a one to one ratio comparison between liquid and solid products, how some of the information needed to do those calculations cannot be found on the labeling of homeowner products, issues with obtaining specific gravity, and issues with the percentage of the reported weight of products that is attributable to packaging.
- Patterson stated that from 1998-2000, reports on pesticide sales were provided to the legislature and the legislature did not find it particularly useful and asked Board staff to collect the information in a more useful manner. In 2000-2001 the Board was directed to research methods of data improvement. Patterson related to the Board that the legislature then asked to have reports based on pounds of a.i., so the BPC had one staff member dedicate all of her time to calculating this data, and she was able to compile a database for 500 products in three months. Chamberlain added that we currently register over 11,000 products.
- Patterson stated California collects pesticide sales and use data, but they have a sophisticated program for collecting this and reports are submitted to them electronically. They have a multiple data accuracy checks they run on each report and have to frequently send reports back to companies to be fixed, resubmitted, and rechecked.
- Eckert asked if there was a way to get some of this data federally. Fish responded that the EPA does not specifically record what is sold in Maine; they do reports, usually three years behind, and issue information on general overall distribution of pesticide sales throughout the country. Patterson stated that in the past Board staff has worked on agricultural pesticide use/sales and that information is much more descriptive than what we are able to collect on homeowner products.
- Morrill stated that Bohlen and Henry were interested in this topic and it should be discussed again at the next meeting.

9. Other Old or New Business

- a. Chapter 29 Variance for Vegetation Control Service, Inc.
 - b. Revision of Chapter 29 Variance for Vegetation Control Service, Inc.
 - c. Chapter 29 Variance for Maine Coast Heritage Trust
 - d. Chapter 29 Variance for Town of North Yarmouth
- e. Inclusion of articles in the Board Packet
- Chamberlain stated there has been discussion recently about what has and has not been included in the recent Board packets. Chamberlain explained that a few months ago, because of ongoing work with Pega, she stopped being able to go through the news and pull out articles. In the near future, the Board packets will only include items sent to the

Board by constituents, because staff does not have time to go through the newspapers thoroughly anymore. Chamberlain stated all items for the Board packet need to be sent to pesticides@maine.gov, by 8:00 AM, three days in advance of the scheduled Board meeting, and not to any individual staff members. This way the staff can ensure nothing inadvertently gets left out. Board members may also submit articles.

- Jodi Spear asked the Board if they had comments on the correspondence sent to them from her and Paul Schlein. There were no comments from the Board.

10. Schedule of Future Meetings

November 4, 2016; December 16, 2016; January 11, 2017 and Feb 17, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Jemison suggested having the meetings at the Fairfield DOT building on a regular basis. There was also a discussion about changing the meeting start time to 9:00 AM.
- Eckert asked Randlett about the legality of participating by phone. Randlett stated these are public meetings and it is not encouraged because they want all Board members to be present to the fullest extent when voting and making decisions. Randlett added that in a rare instance if someone really was unable to attend they could call in, but it is not encouraged.
- Morrill stated that going forward if there is a scheduling conflict with Jennings' schedule, the Board and staff will postpone and move the meeting date so that Jennings can attend all meetings.
- The Board decided to hold the next meeting in Augusta, but change the start time to 9:00 AM.

11. Adjourn

- **Granger/Stevenson: Moved and seconded to adjourn at 11:45am**
- **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.