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

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

June 23, 2017

Room 118
Marquardt Building
32 Blossom Lane, Augusta, Maine

MINUTES
9:00 AM

Present: Bohlen, Flewelling, Granger, Morrill

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves
- Staff Present: Chamberlain, Connors, Couture, Hicks, Lay, Patterson

2. Minutes of the March 31, 2017, and May 12, 2017, Board Meetings

Presentation By: Cam Lay
Director

Action Needed: Amend and/or approve minutes from board meetings

- **Flewelling/Morrill: Moved and seconded to adopt the amended minutes from the March 31 and May 12, 2017 meetings**
- **In Favor: Unanimous**

3. Overview of Regulations Regarding the Use of Unmanned Aircraft for Pesticide Application

At the March 2017 meeting, the Board discussed current pesticide regulations and the use of unmanned aircraft to apply pesticides. Following that discussion, the Board requested that staff invite Federal

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Aviation Administration staff to provide an explanation of the current aviation regulations pertaining to the use of unmanned aircraft for the application of pesticides.

Presentation By: Daniel Jockett
FAA Aviation Safety Inspector

Action Needed: None; informational only

- Jockett works out of the Portland jetport and covers Maine, New Hampshire, and Vermont. Jockett gave the Board an in-depth presentation on the process for obtaining certification to operate an Unmanned Aircraft System (UAS), for pesticide applications. It is estimated that agricultural use of UASs will increase greatly in upcoming years.
- Jockett stated an aircraft is defined as any device used, or intended to be used, for flight. It has been determined via public law that UASs are aircraft. FAA created new regulations and revised the Code of Federal Regulations, 14 CFR part 101 which was already in place for balloons, amateur rockets, radio-controlled model aircraft, and other non-standard aircraft. 14 CFR part 107 applies to commercial operations. It is the first set of rules for operation of small UASs (<55 lbs.), and it took effect on August 29, 2016.
- Basics of 14 CFR Part 107 state that to become certified to operate a UAS commercially you must:
 - be at least 16 years old
 - pass an aeronautical exam
 - obtain a remote pilot certificate
 - pass background check from FAA
 - conduct a pre-flight inspection for the UAS before any take-off
 - have no medical issues affecting safety
 - maintain visual line of sight during operation
 - stay below 400' or within 400' of a structure
 - stay under the maximum ground speed of 100 mph
 - ensure the UAS weighs less than 55 lbs., including payload
 - fly during daylight or civil twilight only
 - not operate over people
 - have no more than one UAS per operator
 - carry an external load only if it is secure and does not affect flight control
- Jockett added that for agricultural use the pilot must also obtain certification under Part 137, the section that covers agricultural aviation.
- Some of the rules can be exempted via a waiver, which an agricultural operator would require. The waiver portal can be found at: www.faa.gov/uas/request-waiver/. The operator must justify their ability to fly safely in the airspace in order to receive a waiver.
- Jockett stated the FAA is in the process of putting together regulations for UASs heavier than 55 lbs., but currently the only way to operate one is to obtain a waiver for exemption.
- Authorization for waivers can be obtained for a one time use or for multiple uses. Examples of waivers that can be obtained include: operation from a moving vehicle or aircraft, operation with no visual line of sight, operation of multiple small UASs, etc.
- Jockett stated that before applying to a district flight standards office for certification under Part 137 the operator must first petition FAA for any exemptions needed to operate. For example, all aircraft pilots are required to have a shoulder restraint harness, but this makes no practical sense

for a UAS operator so an application for exemption must be made. There is no fee for the certification process. Other requirements for applying to the district office include:

- possession of an aircraft
 - attendance at precertification meeting- submit documents at this time for review to ensure they meet all requirements
 - completion of the demo and inspection phase- this is where exemptions will be granted, and the FAA inspector will ensure that the UAS is capable of dispensing pesticides and the operator is capable of operating it
 - completion of the certification phase -when the certificate is issued
 - acceptance of intermittent surveillance once certified to make sure operator remains in compliance
- An audience member asked how this related to using a UAS to make an application on your own property. Jockett answered that if you want to apply on your own field you need to apply to FAA to get an exemption. He added that more than 70 companies have obtained the exemption to make agricultural applications to their own property.
 - Jockett stated that before flying, an operator should go to the website and look at the Before You Fly app, which will let you know if you are within five miles of an airport.
 - Hicks asked if any of the chemical companies are developing labels that will be applicable for use with UASs. Jockett responded he was not aware of any.
 - There was a discussion about hacking of drones. Jockett stated there is currently a technology that allows an individual to direct a beam at a flying drone which will make it drop, but there are efforts going on to counteract this. FAA does not respond to these kinds of privacy issues unless an individual is operating contrary to one of the regulations. If that is the case, then FAA has the duty to investigate.
 - Bohlen asked if there was equivalence with UAS of a plane's airworthiness review. Jockett responded he essentially does that and he will not issue a certificate to operate a UAS if it does not pass inspection.
 - Patterson asked if anyone has become certified to apply pesticides in Maine. Jockett responded not yet, but they have been contacted by an individual interested in using a UAS to make applications for browntail moth. There are units registered in Seattle and California that are over 55 lbs.
 - Morrill asked if there was a course to help walk people through the process. Jockett stated there was not yet a course for drone operators.
 - Patterson asked if there was a timeline for when the rule will be in place for the larger drones over 55 lbs. Jockett stated there is no deadline yet and a timeline has not been established.
 - The Board thanked Jockett for taking the time to come speak to them on this topic.

4. Continuing Discussion of Funding for University of Maine Cooperative Extension PSAT and PSEP Positions

At the May 12, 2017, meeting, the Board tabled discussion of a request from Jim Dill of the UM CES for \$65,000 per year in recurring funding for a combined UM PSEP (Pesticide Safety Education Program) and PAT (Pesticide Applicator Training) position. Dr. Dill provided draft job descriptions for both positions. Details of Dr. Dill's presentation and the discussion to table the motion are in the minutes of that meeting.

Presentation By: Cam Lay

Director

Action Needed: Determine whether to provide funding for this position, and in what amount

- Morrill stated that historically this position looked at the applicator training manuals. This individual recently retired and Dill would like the position to also include coordination of the programming and working with the staff more closely to develop educational programming.
- Dill stated that the term PAT has been changed to PSEP. He added that the program is supposed to be somewhat self-sufficient, but as UMCE began charging more to fund it, the BPC stepped in and said they could not afford this.
- Patterson stated the agricultural manuals particularly require updating, especially the Worker Protection Standard (WPS) information in them. Board staff has discussed the possibility of including WPS info with the manuals as an addendum. When future WPS updates occur, the addendum could be updated instead of locating and updating the WPS section in each of the manuals. The aerial manual currently does not have any content regarding drones. Some manuals are written by UMCE and some manuals are purchased from other states.
- Flewelling asked if all manuals included IPM info. Dill replied that they do.
- Bohlen stated he is not clear what the proposal consists of at this point. From a policy point of view, he would be in support of finding ways to fund this not just as a position but as a set of specific deliverables. Bohlen would like to see a plan of what they will be doing in the upcoming year. In that plan he would like to see something about drafting guidance for drones.
- Dill suggested that he and Patterson could go through the manual list and decide which ones need updating this year.
- Bohlen suggested adding into a motion that it will be understood that this position will be reviewed annually for funding. Morrill suggested having a yearly list of deliverables. Bohlen added he would like to see a proposal letter outlining what they plan to do in the following 12 months so the Board can decide if this arrangement is hitting their priorities or not. Dill stated that sometimes priorities can change throughout a year and gave the example of the drones. Bohlen suggested if there is a priority change throughout the year that could be discussed with staff. There was a discussion regarding the logistics of this. Flewelling added that he wants to make sure the Board is not micromanaging.
- Dill will meet with Patterson and give her a list of what they plan to do for the upcoming year. Bohlen stated that a letter or a summary would suffice. At the end of the year they will state what items have been done and their plans for the next year. Morrill added he would like to see included in the list that they will function as a liaison to communities as an information resource. He stated he is not seeing UMCE engaged in the discussion at the municipal level, especially in respect to assisting with ordinances. Morrill suggested the money be earmarked for the following duties: liaising with communities, public outreach, manuals, training. There should also be a start date and an end date of when to report back to the Board so there will not be a discontinuation of funds. Dill stated he disagrees with having this position liaising in the communities. He did not think a new person coming in would be the best individual to do this.
 - **Morrill/Flewelling: Moved and seconded to table until next meeting**
 - **In Favor: Unanimous**

5. Continuing Discussion of Rulemaking Priorities

At an earlier meeting, the Board discussed undertaking rulemaking to address Section 5 of Chapter 29 concerning browntail moth. Rulemaking is time-consuming and expensive so a list of all potential rulemaking was developed and, at the March 31, 2017, meeting, the Board pared that list down to Chapters 27, 29, and 36. The Board will now discuss whether to proceed with rulemaking and consideration of amendments.

Presentation By: Cam Lay
Director

Action Needed: Determine whether to initiate rulemaking and schedule a hearing

- Morrill stated rulemaking should be postponed and revisited this winter.
- Chamberlain asked the Board if they would like staff to come back with the full list at that time. Morrill responded that staff should come back with the housekeeping items first.
- Bohlen asked if they needed to keep the legislative calendar in mind. Chamberlain answered they would need to get the items to the legislature by the second week of January, so if they postpone until winter nothing would go in for this year's session.
- There was a discussion of how this would affect the browntail moth spraying since policy is not enforceable. Chamberlain stated there have not been issues so far, but there may be a fall spray season. Morrill stated he would like to see how the fall spray season goes before they make any adjustments.
- Granger noted that he does have an issue with the Chapter 29 Section 5 exemptions. He would like to add in language allowing basal bark applications (spray applications to the lower portion of the trunk of a tree). Granger does not want to require homeowners to have to hire someone to make this kind of treatment.
- There was discussion about also amending Chapter 27 and Chapter 36 if they were going to do any rulemaking.
- Hicks added she would like to see biologicals exempted from Chapter 29, Section 6 so that they can be used within 25' of the high water mark.

- **Morrill/Bohlen: Moved and seconded to postpone rulemaking until winter**
- **In Favor: Unanimous**

6. Regarding Interpretation of "Dominated by Emergent or Aquatic Plants" as Used in Chapter 29 Section 6A(V)

At the May 12, 2017, meeting, the Board discussed whether the definition of wetlands in Chapter 29 Section 6A(V)(c) is intended to include small areas without standing water which contain plants typically associated with a wetland habitat. The Board also discussed whether manmade depressions containing surface water, such as equipment ruts and roadside ditches, should be considered as wetlands for the purpose of this section. The Board requested that staff draft a policy based on the discussion. That policy is attached for the Board's review.

Presentation By: Cam Lay
Director

Action Needed: Revise and/or adopt policy

- The Board thanked staff for drafting the policy.
 - **Granger/Morrill: Moved and seconded to adopt policy**
 - **In Favor: Unanimous**

7. Chapter 29 Variances

At the April 24, 2015, meeting the Board began a two-year trial period in which staff could issue new variances from Chapter 29 for pesticide applications within 25 feet of surface water in railroad and DOT rights-of-way under criteria detailed in a memo from Henry Jennings and related Board discussions. The staff would like the Board to now provide guidance for drafting a formal policy for initial variances and renewals. The original memo and minutes are attached for reference. Staff would like to know if flood-control levees and utility lines should be included in the policy as well.

Presentation By: Cam Lay
Director

Action Needed: Evaluate trial program, provide guidance for draft policy

- Lay asked the Board to clarify when it is acceptable for staff to issue repeat variances and what they consider a repeat variance. If a product being used has been changed to one with a similar formulation or use pattern (to manage resistance, for example), is that still considered a repeat variance? The Board agreed that changes of that nature still resulted in a “repeat” variance.
- Morrill told staff the way they are currently handling the variances seems to be working, but if we are continuously granting variances maybe the Board should take a look at the rule. Chamberlain responded all the variances are for Chapter 29 Section 6, which discusses broadcast spraying within 25’ from the water, and they are mostly for railroads and invasives. Chamberlain added it is valuable to receive those variances to see what products the applicators are using and have a discussion about what methods and equipment they are using.
- Bohlen stated he does not feel he needs to view the variances, but he does want to know when they are approved because it is useful to get a count of how many are being issued.
- The Board agreed that unless there are any significant changes they are comfortable with staff granting repeat variances.

- **Flewelling/Morrill: Moved and seconded to authorize staff to grant repeat variances indefinitely.**
- **In Favor: Unanimous**

8. Consideration of Consent Agreement with Jason Douin of JD Landscapes Inc. 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 the application of a pesticide by an unlicensed individual.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors stated Douin's staff were observed finishing an application. No one from the company was licensed. Douin came to the BPC office and met with Connors and Couture. He admitted to doing occasional applications. Douin paid the proposed penalty amount and signed and returned the consent agreement.
- Flewelling asked if Douin has since obtained a license. Connors responded that he has not.

- **Flewelling/Morrill: Moved and seconded to approve the consent agreement**
- **In Favor: Unanimous**

9. Other Old or New Business

- a. Letter to Joint Standing Committee on State and Local Government from Board regarding LD 1505 An Act to Create Consistency in the Regulation of Pesticides.
 - Morrill thanked staff for the letter to the committee as asked last meeting.
- b. Pega business management software update and demo.
 - Morrill asked if Pega was currently working and being utilized by staff. Chamberlain stated that it is and they are currently in development of Release 3. The software is now being put out to external users. Both Modern Pest and Lucas Tree have begun to use it and staff are working on dealing with the influx of information coming in from the external use and detailing how that information will be handled. Chamberlain added that so far there have been a few hiccups but it seems to be functioning well. It has streamlined the process and users are receiving their licenses in a timely manner.
 - Flewelling asked if pesticide distributors were also included in Pega. Chamberlain responded that they are included and staff is currently working on moving product registration out of house to allow external users to enter their own info.
 - Morrill thanked Chamberlain for all her hard work on this project.
- c. Status of complaint summary report: in progress, will be complete by next meeting.
 - Connors stated he will have the report for next meeting. The Access database component is complete and the Pega portion just needs to be proofed.
- d. Articles and correspondence submitted by Board constituents:
 - Email and CNN news article submitted by Heather Spalding
 - Letter from Emera, Inc.
 - Morrill asked staff to reach out to Emera Inc. and let them know who the director of the BPC is. This has been accomplished.
 - Email from Nancy Jezior
 - Morrill asked Patterson if she would address Jezior's questions. Patterson responded that she had already sent her the information she requested about what products were being used at golf courses.
 - Email and letter submitted by Lynn Hower Allen and Parkinson's Disease support group
 - Email from Scott Longfellow

Additional documents sent 6/20/17

- Email from Jody Spear

- In regards to Spear's letter, Flewelling asked if applicators have to give application information by law. Lay replied not if the individual's residence is more than 500' away. She also wanted to know why there were blanks on the applicator sign. Lay explained to her that not all information was required by law.
- Email from Gerry Blase
- Email and letter from Nancy Odin
- Email from Timothy Mulherin

There was no further comment from the Board on these submissions.

e. Legislative items:

- LD 174 An Act To Limit the Use of Pesticides on School Grounds—Committee Amendment
 - If passed, this bill would require annual submittal to the BPC of all pest management activity in schools and posting of the information on the BPC website. Morrill asked if staff was prepared to do this and if the bill had a fiscal note. Chamberlain responded that a fiscal note was required but when it is opened it stated "no fiscal note is required." Chamberlain asked Mary Wells where the ball got dropped. The bill is currently in appropriations. Staff were not asked if they needed additional resources to do this. Lay stated that staff would of course comply with Legislative instructions, but without additional resources the most that could be done would be to scan and post the information, as received, on the web site.
- Public Law 2017 Chapter 59 An Act To Modify the Definition of "General Use Pesticide" (LD 594)—signed by the Governor on May 11, 2017
 - This law changed the definition of "general use pesticide" to match the definition in BPC rule and thus include 25b products. This clarifies that individuals who only use 25b products will need to obtain an Agricultural Basic or Private pesticide applicator license.

f. Variances Renewed:

- Dubois Contracting, vegetation control on Fort Kent dike
- Maine Department of Transportation, control of woody brush on roadsides in various towns
- Stantec, Inc, control of Japanese knotweed in Phippsburg

10. Schedule of Future Meetings

August 4, September 15, October 27, and December 8, 2017, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- The August 4, 2017, meeting will be held in Fairfield at the John E. Dority Safety & Performance Training Center at 10 Mountain Avenue.

Adjustments and/or Additional Dates?

11. Adjourn

- **Granger/Morrill: Moved and seconded to adjourn at 11:51 AM.**
- **In Favor: Unanimous**

