

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormack Building, 1 Ashburton Place on Thursday, June 4, 2015

The Meeting was called to order at approximately 10:00 A.M.

BOARD MEMBERS IN ATTENDANCE

John Lebeaux, MDAR Commissioner	Present
Michael Moore, DPH, Food Protection Program	Absent
Marc Nascarella, DPH, Designee for Commissioner Bartlett	Present
William Clark (Conservation/Environmental Protection Member)	Present
Jack Buckley, DFG, Designee for Commissioner Griffin	Absent
Kathy Romero, DEP, Designee for Commissioner Cash	Present
Ken Gooch, DCR, Designee for Commissioner Lambert	Absent
Richard Berman	Present
John Looney	Present
Brian Magee	Present
Richard Bonanno	Present
Laurell Farinon	Absent

The Board did meet or exceed the minimum number (7) of members present to form a quorum and conduct business.

OTHER INDIVIDUALS PRESENT:

David Henley, EMMCP/Suffolk MCD; Ted Burgess, Burgess Pest Control; Bill Siegel, NEPMA; Priscilla Matton, BCMCP; Kristin Memmott, Tufts University; Timothy Sibicky, TruGreen; Taryn Lascola, MDAR; Jessica Burgess, Esq., MDAR; Hotze Wijnja Ph.D., MDAR; and Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Minutes from the Thursday, March 5, 2015 Board Meeting
- Recommended Final Decision, Division of Administrative Law Appeals; Helena Chemical Company, Petitioner v. Department of Agricultural Resources, Respondent
- MDAR Catch Basin Applicator Exam Preparation Manual

A. Minutes from the Thursday, March 5, 2015 Board Meeting

Chairman John Lebeaux presented the Minutes from the Thursday, March 5, 2015 Board Meeting for the Board's consideration.

Voted: To accept the minutes as prepared for the Thursday, March 5, 2015 Board Meeting as written.

Moved: John Looney
Second: Richard Bonanno

Opposed: 0
Abstentions: 2 (Brian Magee and Bill Clark)
Approved: 6 – 2 – 0

B. Helena Chemical Company v. MDAR – Division of Administrative Law Appeal (DALA) Recommended Decision to Dismiss based on Petitioner’s Withdrawal of Appeal and Settlement of the Case

Jessica Burgess, Esq. opened the discussion by providing a summary of the case. The MDAR had issued an order against Helena Chemical Company for violations of the Massachusetts Pesticide Control Act. Although Helena filed an appeal, over the course of several months the parties negotiated a settlement which required that Helena withdraw its claim to an adjudicatory hearing. The DALA has now issued its Recommended Final Decision for the MDAR to dismiss Helena’s appeal as moot.

For procedural purposes, the Department asks the Board, by a vote, adopt the DALA Recommended Final Decision.

Voted: That the Board accepts the DALA Recommended Final Decision for the Department to dismiss Helena’s appeal as moot.

Moved: John Looney
Second: Richard Berman
Approved: 8 – 0

C. Current Status of the New MDAR Catch Basin Larvicide Permit Program

Lee Corte-Real described how the Massachusetts legislature created a new class of pesticide credential known as the “Permitted Catch Basin Applicator.” This credential was created primarily for the abatement of West Nile Virus (WNV). The MDAR is now working to implement these amendments to the Massachusetts Pesticide Control Act.

Lee indicated that the MDAR had completed the development of the needed training materials. The training manual, exam application and schedule are now on the Department’s website. Lee acknowledged that the MDAR was grateful for the assistance of David Henley, Superintendent of the EMMCP / Suffolk MCD; whom, generously gave of his time in the development the manual and related materials.

The Pesticide Board discussed the use larvicides in catch basins by permitted applicators and how product decisions might be made. It was emphasized that all permitted applicators must be employees of the Commonwealth or its political subdivisions and that only those dry formulations of mosquito larvicides with labeling that does NOT include the signal word DANGER or WARNING. The labeling for such MDAR-approved mosquito larvicides products may include the signal word CAUTION or not required a signal word under U.S. EPA requirements. Other, more specific treatment decisions were likely to be made by those state and municipal agencies, including Boards of Health, Mosquito Control Programs

under the State Reclamation and Mosquito Control Board, by whom the permitted applicators are employed.

C. Pesticide Program Updates

Executive Order for Regulatory Review

Jessica Burgess, Esq. explained that while there is a moratorium on the promulgation of new regulations, the MDAR is working internally and with State Mosquito Control Projects and Districts to develop proposed changes to the regulations. She anticipates that the MDAR will have more to share with the Board in the next few Meetings.

The Governor's Executive Order for Regulatory Review requires that all regulations go through a specific review process or they will be sunset in March of 2016. The MDAR is complying with this mandate; whereby, all Department regulations have completed the first phase. The MDAR will keep the Board informed of its progress. Should Pesticide Board-related issues arise, the MDAR will bring them to its attention for its input.

Pollinator Protection

Richard Bonanno explained that the Massachusetts Farm Bureau has worked to bring stakeholders together creating the MA Pollinator Stewardship Group. The purpose of the Group was to identify areas where additional information is needed, seek assistance from the University of Massachusetts, and provide guidance for the development of pollinator protection plans. A wide range of stakeholders, including those listed below, participated in the Pollinator Stewardship Group and helped to draft the framework for a comprehensive pollinator protection plan.

- Agricultural Commodity groups
- Mosquito Control Projects/Districts
- MDAR Pesticide Program
- University of Massachusetts Extension Service
- Commercial Pesticide Applicators

The MDAR also began working with the State-FIFRA Issues Research and Evaluation Group (SFIREG) on another pollinator protection plan and this has created some confusion among the stakeholders working with the Farm Bureau.

Rich explained that the Farm Bureau convened the Pollinator Stewardship Group to review the related issues, including those listed below, with the hope that stakeholders might do a better job to work together and protect pollinators.

- Resources of MDAR Apiary Program
- Impacts of new beekeepers with respect to having the needed background or understanding of hive health and the need for mentoring
- Impacts on hive health from mites and diseases
- Lack of forage and the potential assistance that might come from actions or contributions from the public, nurseries, farms, etc. to help with this issue
- Effects on pollinators from pesticides
- Assistance and research that might come from the University
- Lessons learned from wild and native pollinators which were greatly affected by mites and how surviving wild bees may hold the key to assist researchers in their understanding of the issues

Hotze Wijnja from the MDAR explained that the MDAR has indeed started work on the Massachusetts State Pollinator Protection Plan as part of a Federal effort for each state to address its own concerns and specific issues. The Department's work is in conjunction with the State-FIFRA Issues Research and Evaluation Group (SFIREG), where focus of the pollinator protection plans are the bees and beekeepers that reside within the respective State. Objectives of the State plans will include improving communication between beekeepers and growers and protecting and enhancing habitat and forage areas used by pollinators.

Richard Bonanno added that neonicotinoid insecticides; such as, imidacloprid have received a lot of attention relative to pollinator protection concerns. This is due to the fact that these pesticide are systemic--and taken up by the plant and transported or translocated into other plant tissues. There is much controversy over the potential for these systemic pesticides to cause sub-lethal effects to bees and other native pollinators. Research on this issue continues and the results will help point to the best strategies for the protection of pollinators.

Bill Clark emphasized that there is a lot interest in this issue and inquired about other efforts being made by the Department. Some local officials have gone so far as to propose local bans on the use of certain pesticides thought to be impacting bees.

Taryn Lascola from the MDAR also added that the Department is working to secure funding for additional outreach and education specific to the pollinator protection. The Pesticide Program Enforcement staff work to investigate alleged pesticide-related bee kills. Taryn explained that for those pesticide products that are toxic to bees, current labeling includes language for the protection for bees. Under the current framework, it is assumed that pesticide applications made--following label directions and restrictions, will NOT have direct impact on bees. What remains unclear is the understanding of the impact of those sub lethal and translocated residues on bees from these systemic pesticide uses.

Richard Berman indicated that the commercial pesticide applicators did participate in the Farm Bureau Pollinator Stewardship Group. He added that the Industry has also worked on outreach and education to help assure that the products being used and practices employed pose minimal risks to bees and other pollinators.

Chairman John Lebeaux reiterated that the MDAR does have an Apiary Program with seasonal inspectors and that most recently the Department was able to clear all the administrative hurdles necessary to post the position of MDAR Apiary Program Coordinator. The MDAR is currently reviewing the pool of applications submitted for the position and hopes to fill the position in the near future. The Department will work to have the Apiary Program Coordinator meet in the field with MDAR Pesticide Program Inspectors to assist those investigations of alleged pesticide-related bee kills.

Plant Nutrient Regulations, 330 CMR 31.00 Plant Nutrient Application Requirements for Agricultural Land and Land Not Used for Agricultural Purposes

Jessica Burgess, Esq. explained that the MDAR had gained approval from the Governor's Office to move the Plant Nutrient Regulations on for promulgation with the Office of the Secretary of State. The regulations were submitted two weeks ago and the MDAR hopes to see them published in the Massachusetts Register in some two weeks. In the version submitted to the Secretary, a 6-month delay for the promulgation of those requirements applicable to agricultural lands--specifically sections 330 CMR 31.03 and 31.04 was incorporated. This delay is to help provide time for outreach and training with respect to the related requirements.

“Under the Direct Supervision of a Certified Applicator” – Status of Proposed Regulations

Jessica Burgess, Esq. explained that these draft regulations are still waiting approval from the Governor’s Office, but that they are being treated part of the regulatory review process. As soon as there are any updates, the Department will inform the Board.

Richard Berman raised the subject of resurrecting “advisory councils” as discussed in Massachusetts State Pesticide Laws and Regulations as a means to provide input to the Department and Board. The commercial pesticide industry would like the Department to reinvigorate the role of the advisory councils. Richard stated that he would submit a list of names, for the Department’s consideration, to participate in such advisory councils.

Bill Clark inquired as to the status of e-licensing for the Department’s Pesticide Program.

Lee Corte-Real provided a short summary of both long past and recent past efforts and failures. He also outlined some of the more current efforts underway by the Executive Office of Energy and Environmental Affairs (EOEEA). The Board then engaged in a broad discussion of the issues, past and present, related to the continued need for an e-licensing solution.

Chairman John Lebaux added that Lee Corte-Real was indeed taking advantage of the Early Retirement Incentive Program (ERIP) and that he was grateful for Lee’s assistance while settling into the position as Commissioner.

Lee acknowledged his long career with the Department and thanked the Pesticide Board for the many conversations, discussions, and exchanges of ideas.

D. Meeting Adjournment

Voted: To adjourn Thursday, June 4, 2015 Meeting.

Moved: John Looney
Second: Richard Bonanno

Approved: 8 – 0

Meeting adjourned at 11:21 a.m.