

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the Massachusetts Division of Fisheries & Wildlife, 1 Rabbit Hill Road in Westborough, MA

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

BOARD MEMBERS IN ATTENDANCE

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

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

OTHER INDIVIDUALS PRESENT:

Louis Bettencourt, Helena Chemical Company; Jessica Burgess, Esq., MDAR; Taryn Lascola, MDAR; and Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Minutes from the Friday, May 9, 2014 and Wednesday, October 6, 2014 Board Meetings

A. Welcome by Jack Buckley

Jack Buckley graciously welcomed the Board and others in attendance to the new Headquarters for the Division of Fish & Wildlife; which is located on the same site as the former Richard Cronin building. The new, state of the art, Richard Cronin facility is a “smart building” providing maximum energy efficiency.

Opened in August 2014, the building décor is intended to convey a sense of Massachusetts history and science and is considered to be the State’s largest zero energy building. The facility provides working space for some 150 employees, including those within the Division of

Fisheries & Wildlife, Natural Heritage and Endangered Species Program and the Office of Fishing and Boating Access.

With its sprawling public meeting rooms, State Agencies and others are encouraged to use the facility and schedule meetings using its online system. As Headquarters for the 2nd oldest Agency in Massachusetts State Government, Department of Fish and Game, the facility sits on the same 900 acre site which encompasses an actively managed and stocked pheasant area.

B. Minutes from the Friday, May 9, 2014 and Wednesday, October 6, 2014 Board Meetings

Lee presented the Meeting Minutes for both the Friday, May 9, 2014 and Wednesday, October 6, 2014 Board Meetings.

Voted: To accept the minutes as prepared for the Friday, May 9, 2014 Meeting.

Moved: Richard Bonanno
Second: Marc Nascarella

Approved: 6 – 1 – 0
Opposed: None
Abstention: Jack Buckley

Voted: To accept the minutes as prepared for the Wednesday, October 6, 2014 Board Meeting.

Moved: Richard Bonanno
Second: Marc Nascarella

Approved: 4 – 3 – 0
Opposed: None
Abstention: Richard Berman, Brian Magee, Laurel Farinon

C. Discussion of proposed amendments to 333 CMR 13.03 Exclusions from Pesticide Application. The Department would like to address the possibility of amending the existing regulatory requirements for requesting an exclusion from wide-area pesticide applications

Jessica Burgess, Esq. outlined how legislation was recently proposed to amend the exclusion part of the State Pesticide Regulations, 333 CMR 13.03. It was later decided that the proposed legislation should not move forward, but rather that the Department should work with the Pesticide Board, Mosquito Control Projects, and the Public using the existing process for revising regulations.

Currently such requests for exclusion from pesticide applications must be sent via certified mail, prior to March 1st and to the city/town clerk by the property owner or tenant. Such exclusion requests are only valid for only one year.

There is much confusion over the existing system and a strong desire to change the requirements which are no longer working well for the public or the Mosquito Control Projects.

The Department is seeking formal direction from the Board to move forward on this matter and prepare draft regulations for presentation to the Board, public hearings and final consideration/approval by the Board.

Some of the ideas the Department is exploring include developing a process that is less rigid, more fluid and modern—perhaps one that could provide the opportunity to seek exclusion via an online or web based system.

The Board raised a number of good questions and issues with regard to the existing system including confusion over the submissions to city/town clerks, duration of exclusions, how such “excluded properties” are not treated or how “non-excluded” abutting properties are treated, opportunity for exclusion provided to state agencies, and concerns for impacts on pollinator health and how such issues and concerns might be included in a newly proposed exclusion system.

Based on the limited discussions with municipalities thus far, the general consensus is that cities and towns do NOT want to be the gateway for such exclusions and thus the Department would seek to remove this burden from municipalities with any proposed regulations for seeking exclusion.

The Department will seek the input of stakeholders, including pollinators, organic farmers, and others prior to writing the proposed regulations and moving forward with any public comment.

Voted: To direct the Department to work on proposed amendments to 333 CMR 13.03 Exclusions from Pesticide Applications.

Moved: Richard Berman

Second: Richard Bonanno

Approved: 7 - 0

D. Discussion of Hearings Pursuant to M.G.L. c. 132B, Section 13 of the Massachusetts Pesticide Control Act

Jessica Burgess, Esq. explained how under the Statute, requires that the Pesticide Board appoints a hearing officer and that MDAR Legal Office was unable to find an official vote, on record, whereby the Pesticide Board particularly identifies the Department as the Hearing Officer.

To help clarify the matter and address such concerns, the Department is now seeking to have the Board provide such an official vote, on record, whereby it appoints the Department or its designee as hearing officer for any appeal under MGL c. 132B The Massachusetts Pesticide Control Act.

As done historically, the hearing officer would handle the matter of the hearing, hear the evidence, and put together a recommended decision; which, would then be presented to the Board for their consideration.

After listening to the prepared motion, Jack Buckley asked that the Department restrict the definition of the Hearing Officer to State Employees; such as, those from other State Agencies.

Richard Berman asked if the language might be provided in writing for review prior to any vote on the matter.

Jessica explained that due to the shortage of attorneys within the Department, hearing officers are often not attorneys, but are individuals whom have had no involvement in the case and are selected for their ability to be a neutral third party when hearing the case. The MDAR seek flexibility as it might seek a hearing officer through DALA, another Division Director within MDAR, or someone from another State Agency.

Jessica clarified that there are statute and regulations¹ (standards) that instruct how to choose a hearing officer and the conduct hearings from start to finish. In addition, she emphasized that regardless of who is the selected as the hearing officer, the recommended decision for every case that is heard, must then be presented to the Board for their vote.

Voted: To appoint MDAR, or its designee, in accordance with M.G.L. c. 30A and the regulations promulgated thereunder, to act as hearing officer in matters appealed under M.G.L. c. 132B and to present recommended final decisions to the Pesticide Board in accordance with M.G.L. c. 132B.

Moved: Jack Buckley
Second: Richard Bonanno

Approved: 7 - 0

¹ MGL c. 30 A and 801 CMR 1.01 and 801 CMR 1.02

E. Presentation by Dr. Thomas W. French, Assistant Director, Division of Fisheries & Wildlife

Dr. French explained that the DF&W does have laws and regulation relative to the use of poisons to control wildlife. There are laws that provide the right to control wildlife that are causing property damage, threatening the health of livestock, or causing hazards to public safety.

The Agency does routinely provide permits for the use of pesticide Avitrol (a.i. 4-Aminopyridine) to control pigeons and other targeted species. Avitrol is actually considered to be an aversion agent or repellent, because its primary affect is to frighten other members of the flock. It's typically applied at a rate of 1 part treated to 29 parts untreated whole corn. The lethal dose for a pigeon is one treated kernel of corn. Under these treatment scenarios, most birds are eating untreated corn; however, the one bird that does eat the treated corn will start to stumble and vocalize fear calls. Target species such as, crows and gulls, have strong fear calls and the one treated bird will set the whole flock into motion. As an aversion or frightening agent, Avitrol actually works better in crows as compared to pigeons. Pigeons do not have a strong fear calls and the flock react primarily to the physical behavior of the treated bird. The physical behavior, tumbling around, can have a limited affect on the pigeon flock; therefore, it's used primarily as a poison in pigeon control programs.

One of the primary characteristics of Avitrol is that it does NOT bioaccumulate in either birds or mammals. Target species that do not get a lethal dose will live and predators eating such survivors will also not accumulate the toxin in their systems—resulting in very low risks for secondary poisoning. These characteristics enable the Agency to commonly permit the use of Avitrol for such bird control programs conducted by properly licensed or certified pesticide applicators.

The Agency does not allow the product to be used in the crack corn formulation that is intended for starlings and sparrows due to the probability of poisoning by non-target species; such as, cardinals, finches and wild native birds. This combined with its permitted use, restricted to urban settings, limits control programs to pigeons. In addition, the Agency has site specific permits from March 16th through November 14th to further limit potential exposure to bird which may be nesting or breeding.

Applicators are supposed to collect the dead or dying birds; however, the Agency does receive complaints from the public about sick and dying birds that are not collected. Pigeon hawks, Coopers hawk, and Peregrine falcons are all pigeon feeding birds that the Agency remains vigilant to guard against exposure and conserve.

Ovocontrol (a.i. nicarbazin) is also used in pigeon control and acts as a birth control agent that must be eaten every day by the targeted birds in urban settings. The product has no impact on predator species and the Agency does not require a permit for its use. The Agency also does not believe that the product works well to reduce the pigeon population, since the daily feeding on the quality grain increases survivorship and there is constant infiltration of new untreated birds from other areas into the open urban area.

Starlicide (a.i. Denver Research Code / DRC-1339) is another product that is regulated by the Agency; moreover, it is only approved for certain birds and can only be used by the U.S.D.A. Wildlife Services. It is not a product that private pest control companies are allowed to purchase or use, unless they are working as part of a supervised control program under the U.S.D.A. Wildlife Services. Starlicide does NOT work well against hawks, owls, eagles, falcons and most mammals; however, while it's highly toxic and causes irreversible damage to the sensitive target species (black birds, crows, starlings, and gulls). The toxicant does not bioaccumulate but is highly metabolized and poses low risk of secondary poisoning. Since it does NOT provide rapid knock down but takes some time to work. Throughout many states, including Massachusetts, it is primarily used on dairy farms to keep salmonella, from bird droppings, out of the dairies. It is most frequently used in the winter when there are mixed flocks of black birds (e.g. starlings, red wing black birds and grackles) attracted to the feed provided to dairy cows.

Although not under their direct control, the Agency does have concerns for rodent control programs; especially, given the scale of use and issues with respect for secondary poisoning. The use of anticoagulants is especially of concerns given that are not typically well metabolized and do bioaccumulate. Given the ability to move up the food chain, the Agency has strong concerns for secondary poisoning in raptors; such as, hawks and owls and with certain mammals predator species (foxes, coyotes, wild cats). As resistance has developed to the first generation anticoagulants, the manufacturers have produced newer chemistries that are not only more effective against the targeted rodents, but last longer in their tissues and increase concerns for the risk of secondary poisoning.

There are other non-anticoagulant rodenticides that are employed. These materials however are not without risks and their lack of unique gross symptoms can make it difficult to determine their involvement in poisoning events. At least with the anticoagulants, bruising and internal bleeding, were readily observed in poisoned wildlife, especially avians. There also exist excellent laboratory methods for their specific identification. All of these made easier, the work of identifying the anticoagulants as causal agents in secondary poisoning.

It's important to note that the Federal Migratory Bird Treaty Act does NOT allow for incidental take allowances and while the U.S. Fish and Wildlife Service submits data to the U.S. EPA to aid in their risk assessments, it remains very vulnerable to outside lawsuits as a result of such illegal taking of protected species. Given these legal concerns, the U.S. Fish and Wildlife Services could be forced to take action prohibiting certain rodent control activities currently regulated by the U.S. EPA.

In Massachusetts, Dr. Maureen Murray, a wildlife veterinarian from the Tufts School of Veterinary Medicine, conducted a study of 161 birds and found that 86% of raptors carried sub-lethal levels of second generation anticoagulants. According to the study less than 10% of the birds tested had had lethal levels, but given their propensity to bio-accumulate in tissues, these could reach lethal levels.

Dr. French stated that wildlife sometimes do cause unacceptable damage to property and there is a very old Massachusetts state law giving homeowners the right to kill wildlife, including moose and bears, to protect their property without first asking for permission. To better help address

such problems caused by wildlife, the Agency administrates a Problem Animal Control (PAC) Agent licensing program. This program requires that individuals complete a number of training and written testing requirements relative to trapping and handling problem wildlife and compliance with applicable State laws and regulations.

F. Other Business

Richard Bonanno introduced the discussion of the work currently being undertaken to protect pollinators and inquired what the Department was doing to help address these issues. Rich also asked if the MDAR envisioned issuing additional protections for pollinators—and whether such protections would take the shape of regulations or guidelines.

Lee provided a brief overview of the issues and a summary of the specific cases that the Department has investigated in recent years. He indicated that there were more reports of bee kills in Calendar Year 2014 than in the previous 30-years. Any additional protections for pollinators issued by the MDAR would likely take the shape of guidelines due to the complexity of these issues; which cannot be resolved via a pesticide regulatory strategy alone.

Taryn Lascola, Chief Inspector, explained that she was working to help bridge the gap between beekeepers and pesticide inspectors. To help address this particular area, inspectors will receive additional training on bee toxicity concerns.

Hotze Wijnja, Environmental Chemist explained that he is working with State-FIFRA Issues Research and Evaluation Group (SFIREG) which is looking to develop guidance for states on how to develop their own “State Pollinator Protection Plans” in accordance with the White House Memorandum for Pollinator Protection.

G. Next Meeting Date / Location and Adjournment

The next Board meeting date is March of 2015.

The Official Business of the Meeting was adjourned at approximately 11:39 a.m. after the exit of Marc Nascarella, Ph.D.; whereby, the Board no longer had a quorum. The informal discussion of other business concluded at 11:50 a.m.