

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormick BLDG, 1 Ashburton Place, on Wednesday, December 7, 2011

The meeting was called to order at approximately 9:30 A.M.

BOARD MEMBERS ATTENDANCE

Lee Corte-Real, MDAR Designee for Commissioner Soares,	Present
Michael Moore, DPH, Food Protection Program	Present
Martha Steele, DPH, Designee for Commissioner Auerbach	Present
William Clark (Conservation/Environmental Protection Member)	Present
Jack Buckley, DFG, Designee for Commissioner Griffin	Present
Kathy Romero, DEP, Designee for Commissioner Kimmell	Present
Ken Gooch, DCR, Designee for Commissioner Lambert	Present
Richard Berman	Present
Cheryl Barbanel, M.D.	Absent
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 IN PRESENT:

Five staff members of the MDAR Pesticide Program and 19-members of the public attended the Meeting and completed the attendance sheet.

A. Minutes

The minutes from the March 2, 2011 Meeting were presented for consideration.

Voted: To accept the minutes of the March 2, 2011 Meeting.

Moved: Laurel Farinon

Second: Richard Bonanno

Approved: 11 – 0

B. Policy Consideration: Interpreting the Application of Pesticides Under the Direct Supervision of a Certified Applicator

Discussion

Taryn Lascola, Pesticide Inspector provided a brief overview of the proposed policy changes as were presented at the March 2, 2011 Meeting.

Taryn Lascola clarified why MDAR was seeking these changes, highlighted some of the current amendments, and emphasized that that the applicator needs to see the site for termiticide, fumigation, and rodenticide applications. She explained that “Direct Supervision” would mean that the supervising and certified applicator needs to see the actual site of application. The latest amendments to the draft policy add that pictures may also serve as site inspection, but must then entered into the file and maintained as part of the records.

Richard Berman indicated that phone contact should be sufficient given current cell phone and other communication technology. He believes that a written record of communication is not necessary and that oral communication is sufficient.

Richard Berman provided a brief history of why the original policy was created—due to use of certain materials in the past; such as, chlordane and the former lack of comprehensive labeling--which is now the rule. According to Richard, MDAR is one of the only State Lead Agencies (SLAs) for pesticides that require certification for termiticide usage. Most other SLAs permit purchase and use without usage certification credentials. He also clarified that fumigation applications are sufficiently different; such that, they did not belong in the same policy.

Richard Berman further stated that U.S. EPA was also going to address the “direct supervision” matter in the near future.

Richard Bonanno indicated that MDAR may already have the enforcement authority to address the cases presented and he questioned whether the Agency needed any additional authority in the matter.

Brian Magee related that he did not think “direct supervision” was an optimal solution. He explained that improved training programs would provide the best solution to the problems presented. Such improved training should provide verifiable instructions. He expressed that the draft requirements requiring additional communication would not provide the solution to the problems outlined; however, additional communication plans may be appropriate when conditions meet certain criteria.

Jack Buckley expressed that the current enforcement tools used for oversight in this matter appear not to work sufficiently based on the problems outlined in the MDAR one-page summary. Jack also expressed a concern for the number of individuals being supervised by any one certified applicator. This supervision capacity concern was also shared by Bill Clark.

Jack highlighted that the one-page summary raises some very serious issues and requested some clarification on the scale or severity of the problem. He pointed out that the **Conclusion** of the memo states that in “...most situations...” the problem is occurring. He interprets this to mean that more than 50% of the time these issues affect the pest control services now being provided to the public and that based on the memo there is a very serious problem here.

Laurell Farinon and Martha Steele also expressed concerns for this issue. They and other Board Members found the issues quite troubling and likewise expressed the need to move quickly in addressing the matter.

The Board then engaged in a discussion of the potential need to “cap” the maximum number of individuals a certified applicator might supervise.

Taryn Lascola and Michael McClean provided a description of what they see as inspectors out in the field. They related several specific cases that occurred in the past and emphasized that there are only 4-pesticide inspectors and they given their limited numbers, they could only do so much to address the issues raised under the current requirements.

Richard Berman stated that draft policy goes beyond providing guidance and has the effect of making regulations. He added that the Department/Board may be overstepping its authority—should it adopt the proposed policy vs. employing the States process for drafting actual regulations.

Jack Buckley added that if the Department/Board should be overstepping its authority with respect to addressing the matter via the adoption of a revised policy, that MDAR Commission (Scott Soares) should expeditiously address the matter given the concerns raised. Jacks specifically asked that this be reflected in the Minutes. He also added that whatever measures are adopted, policy vs. regulation, they should be enforceable.

Richard Berman conveyed that he and the pest control industry opposed much of the current draft policy. He stated that should the draft policy take the shape of regulations, that the pest control industry might then have an opportunity to address the States (Pesticide Board Subcommittee) re-classification of subsurface termiticides as State Restricted Use Pesticides (SRUP). The SRUP classification for such products is a primary cause for the Industry opposition to the draft policy.

Brian Magee raised the idea that direct supervision requires the applicator to call his/her supervisor. It might be appropriate to have the licensed applicator onsite if they are required or they must call their supervisor before proceeding. Such communications could be documented and become part of the record.

Brian Magee suggests that the Policy be amended to state that a commercial certification holder “...shall be available to be on site within 60 minutes” vs. the current draft

language indicating “thirty (30) to sixty (60) minutes.” He also suggested that it might be helpful to place a limit on the time an individual is allowed to maintain only the core license before going on to become a certified applicator.

Richard Bonanno expressed that the issue is addressed in-part by current regulations, labeling and other the Pesticide Program requirements. He added that there may be a resolution short of adopting new regulations.

Lee Corte-Real related that until receiving the NEPMA letter, dated 12/06/2011, he was not aware of the very significant opposition by industry to the draft policy under consideration.

In summary, based on the variety of points and concerns shared at this Meeting, Lee expressed the desire to take the draft policy back for additional discussions with Pesticide Program staff and concerned industry members.

The Board provided an opportunity for members of the public—in attendance at the Meeting to provide brief comments.

- Marillian Missih (NEPMA/Buono Pest Control): Marillian expressed that on behalf of the Pest Control Industry, she believes that there is a very good relationship with the Department (MDAR). The Department has shown that it is always willing to listen and as a result Industry is quite comfortable bringing issues to the Department’s attention. The draft policy; however, is significant issue that the Industry opposes and if instead, the intention of the Department was to educate Industry on the matter, than Association would offer to provide such training at its expense.
- Sean Greenhow (Greenhow/NEPMA): Sean introduced himself as a proprietor of pest control company in Newton. He expressed his appreciation for the constructive dialog with the Department on the Direct Supervision issue and looks forward to working with the Department to further address this matter.
- Kevin Moran (Entomologist/Residex): Kevin indicated that Rich Bonanno brought up an important issue. With respect to the much discussed termiticide misapplication, that in-fact, much of the issue is already addressed by product labeling and existing State pesticide laws and regulations. If the subsurface termiticides were not re-classified (by the Subcommittee) as SRUP, the “Direct Supervision” issue would not apply. He further emphasized that it is not clear that we need to take additional measures to address this issue. He welcomes the opportunity to engage in further training with Department and pointed to the current lack of study guides for the State’s Pesticide Applicator/Certification Exams.
- Scott Goldman (New England Pest Control/NEPMA): Scott expressed that there are thousands of applications whereby there are no problems and given the very small number of cases presented, it seems possible that the issue may be overblown. He pointed to the need for clarification on the number of actual problems related to the “Direct Supervision” policy.

No motions were made or votes taken.

Brief Updates

Lockbox System for Processing Pesticide Examination and Licensing Fees and Product Registration Fees

The Department now uses an address maintained by Bank of America (BOA) to receive and process fees associated with both its Pesticide Examination and Licensing Program and its Pesticide Product Registration Program. This system, in-large part, is an effort to remove check cashing from the Department's role and reduce related security concerns with respect to handling private and financial information. It also facilitates rapid processing of fees and deposits into the respect state accounts. There exist a number of issues relative to data collection and fee processing; which, the Department and the Bank are trying to resolve.

Accepted Labels State Tracking and Repository (ALSTAR)

The Department is now participating in program led by the Center for Environmental and Regulatory Information Systems at Purdue University. This program may be viewed as another effort to utilize currently available technology; such that, the participating states are able to reduce their burdens associated with collecting hard copies of pesticide product labeling. The program has pesticide product registrants submitting registration support documentation into CERIS maintained mailboxes for state approval. Upon State approval, the container labeling is then made available to the public.

Licensing Renewals

Calendar Year 2012 Pesticide Applicator Licensing renewals are running slightly ahead of scheduled; especially, given the challenges the program has faced with respect to its use of the new lockbox system.

NPDES

As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The phrase "navigable waters" of the U.S. is no longer used and there is now considerable ambiguity as to what qualify as waters of the U.S.

On October 31, 2011, EPA issued a final NPDES Pesticide General Permit (PGP) for point source discharges from the application of pesticides to waters of the United States. In most states, the NPDES permit program is administered by "authorized" states. Forty-five of fifty States are authorized to implement the NPDES permit program.

Massachusetts is one of the 5-states that not authorized and thus the permit program in Massachusetts is implemented by the U.S. EPA.

Mosquito control projects already participate in a permitting program under the Clean Water Act; however, it will also be required to file under NPDES.

Notice of Intent (NOI) filing requirements will take effect in January 2012. The NPDES permitting program includes certain thresholds that trigger the requirement to file an NOI and capture larger discharges while not requiring such filing for smaller discharges. Aquatic applications, for example would need to exceed an application threshold of 80 acres surface area before triggering NOI filing.

Aquatic herbicide applications to lakes and ponds will be covered. MA DEP already licenses such applications and will work with U.S. EPA to streamline these filings. DEP has permit writers who work with EPA even though Massachusetts is not an authorized State to implement the NPDES program on its own.

Terrestrial applications for agriculture and non-agriculture do not require a permit. Agricultural run-off is also exempt under the Clean Water Act. Cranberry growers plan to file under NPDES given the “U.S. waters” ambiguity issue and their reliance on ditch and surface water systems.

There are provisions within the NPDES requirements to help address concerns for risks to threatened and endangered species and there are some annual reporting requirements and visual monitoring requirements that are associated with the program.

No motions were made or votes taken.

D. Meeting Adjourned

Voted: To adjourn the Pesticide Board Meeting.

Moved: Richard Berman

Second: Jack Buckley

Approved: 11-0

The Meeting was adjourned at approximately 11:20 A.M.