

# MASSACHUSETTS PESTICIDE BOARD MEETING

## ***Minutes of the Board Meeting held at the McCormack Building, 1 Ashburton Place on Wednesday, June 1, 2016***

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

### **BOARD MEMBERS IN ATTENDANCE**

John Lebeaux, MDAR Commissioner (Chair)	Present
Marc Nascarella, DPH, Designee for Commissioner Bharel, M.D.	Present
Michael Moore, DPH, Food Protection Program	Present
Ken Simmons, DFG, Designee for Commissioner Peterson	Present
Kathy Romero, DEP, Designee for Commissioner Suuberg	Present
Ken Gooch, DCR, Designee for Commissioner Leo Roy	Absent
Richard Berman	Present
John Looney	Absent
Brian Magee	Absent
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:**

Bob Mann, Lawn Dawg / MALCP; Bill Seigel, Orkin; Ted Burgess, NEPMA / Burgess Pest Management; Galvin Murphy, Yankee Pest Control; Timothy Sibicky, TruGreen; George Williams, Univar Environmental; Kevin Moran, Residex; Mary Duggan, NEMMC&WMD; Tim Deschamps, CMMCP; Taryn Lascola, MDAR; Jessica Burgess, Esq., MDAR; Kim Skyrn, Ph.D., MDAR; Hotze Wijnja, MDAR; Trevor Battle, MDAR; Michael McClean, MDAR; Kate Kerigan, EEA; Jona Kuci, EEA; and Steven Antunes-Kenyon, MDAR

### **DOCUMENT(S) PRESENTED**

- Minutes from the Wednesday, March 2, 2016 Board Meeting
- MDAR Pesticide Applicator Continuing Education (PACE) Program Summary Sheet

### **A. Minutes from the Wednesday, March 2, 2016 Board Meeting**

Commissioner John Lebeaux presented the Minutes from the Wednesday, March 2, 2016 Board Meeting for the Board's consideration.

**Voted:** To accept the minutes from the Wednesday, March 2, 2016 Board Meeting.

**Moved:** Richard Berman

**Second:** Ken Simmons

**Approved:** 7 – 0

## ***B. Appointment of Director as Per MGL c. 132B, s. 4***

Commissioner John Lebeaux introduced Taryn Lascola to the Board as his choice for the next Director of the Pesticide Program within the Division of Crop & Pest Services.

Taryn described her start with the Pesticide Program in Calendar Year 2000 and her professional growth working up the chain of command within Pesticide Enforcement. She briefly described how that experience has helped prepare her for the position as Director of the Division.

Richard Berman and Laurel Farinon described their positive interactions working with Taryn and relayed their support for the Commissioner's nomination of Taryn as Director.

**Voted:** To accept the nomination of Taryn Lascola as the new Director of the Pesticide Program within the Division of Crop & Pest Services and serving through May 31, 2021.

**Moved:** Laurel Farinon

**Second:** Kathy Romero

**Approved:** 7 – 0

## ***C. Legal Updates***

### **Status of Proposed Amendments to 333 CMR 13.03: Exclusions from Pesticide Applications**

Jessica Burgess, Esq. presented an overview of the current status of these proposed regulatory revisions. The MDAR prepared a regulatory amendment package for submission to Administration & Finance (A&F). The Department did receive approval to move forward with these amendments and as per MGL c. 30 A will now initiate public hearings.

### **Status of Proposed Regulations 333 CMR 10.07: Under the Direct Supervision of Certified Applicator**

As related by Jessica Burgess, Esq. at the March Pesticide Board Meeting, the Department has worked directly with the EEA and A&F to provide information needed for their review and determination of the next steps. The MDAR looks forward to providing an update on the status at the next Pesticide Board Meeting.

## ***D. MDAR Program Updates***

### ***MDAR Pesticide Applicator Continuing Education (PACE) Program: Policy change on the number of acceptable credits from online training sources.***

Taryn Lascola presented the Pesticide Program's proposal to increase the number of acceptable contact hours or continuing education units (CEUs), allowed from computer and web based training sources, from the current one-third ( $\frac{1}{3}$ ) up to the one-half ( $\frac{1}{2}$ ) of the credits needed to comply with the Department's recertification / retraining requirements found in Pesticide Regulations 333 CMR 10.08.

Taryn introduced Trevor Battle, PACE Coordinator; whom, provided an overview of the current PACE Program. Trevor described the variety of trainings submitted to the Department for approval. Trainings programs must meet specific criteria as described in the Pesticide Regulations. PACE Applications should be submitted for consideration at least two-weeks prior to the training event. Upon approval, Trevor will issue the applicant a certificate of attendance with his signature. Training sponsors provide copies of the certificate of attendance with his signature to those in attendance at the workshop. For computer based or web based courses, the process is similar; however, the training provider usually mails or emails the certificates of attendance to those partaking. Approved trainings are listed online with the relevant information as to the number of CEU's and the credential types and categories to which they apply.

Taryn described the training requirements outlined in 333 CMR 10.08 and then outlined the current policy relative to accepting only one-third ( $\frac{1}{3}$ ) of the required credits from computer and web based trainings. She also described how such electronic trainings have improved over-time in terms of content, security, and interactivity and how such trainings are quite essential for certain commercial certification categories where opportunities for face to face / in-person training are few and far between. Taryn also related how the pest control industry has repeatedly asked that the MDAR review the current policy and consider increasing the number of acceptable credits from computer and web based training programs.

Taryn described how Trevor did inquire with other Northeast States as to their treatment of computer and web based trainings and number of acceptable credits. Upon the review, it was determined that the newly proposed policy would be a "middle path"; whereby, some states allow all credits to be earned from computer and web based training programs, while other states do not allow any.

Taryn summarized the intent of the Department to modify the current policy and increase the number of acceptable contact hours or continuing education units (CEUs), allowed from computer and web based training sources, from the current one-third ( $\frac{1}{3}$ ) up to the one-half ( $\frac{1}{2}$ ) of the credits needed to comply with the Department's recertification / retraining requirements.

The Department remains a strong advocate of traditional face to face or in-person training programs where there may be additional opportunities for interaction between presenters of training content and for interaction within the workshop attendees themselves. Additionally, Pesticide Program Staff; especially, the Pesticide Inspectors, do present training content at many in-person workshops.

Richard Berman inquired if the Department might find it acceptable to allow a single training contact hour or CEU to be applied across multiple categories when such training was applicable to core content.

Staff summarized part of the retraining or recertification regulatory language, within 333 CMR 10.08, that would seem to preclude the application of one-contact hour to multiple categories.

Richard remained steadfast that he would like to discuss the matter further at another time and with permission from the Chair (Commissioner John Lebeaux), he then outlined his desire for the Department to implement the use of Pesticide Program Advisory Councils. The role of such groups is described in the Massachusetts Pesticide Control Act and further discussed in the State Pesticide Regulations—especially with respect to the development of pesticide policies and adoption and repeal of pesticide regulations.

Richard added that while he supports the Pesticide Program’s efforts to update the PACE policy, he would like the MDAR to use the advisory councils as outlined in statute and regulations. Specifically, he asked the Pesticide Program to review the current policy requiring all applicants, regardless of licensure experience from other states, to complete the Massachusetts core examination prior to seeking a commercial certification category. He indicated that this policy was put into place by the former Director without any input from the commercial pest control industry.

Commissioner John Lebeaux acknowledged Richard’s objective as stated and added that with the appointment of the Department’s new Director of the Pesticide Program, that implementation and use of Advisory Councils is a matter the Department will examine more closely and discuss at a future Meeting.

In the vein of the Department’s PACE Program, Taryn also informed the Board that she was gathering a small stakeholder working group, from industry, UMASS, and professional associations for agriculture and other green industry groups to discuss potential improvements in the MDAR PACE Program and the methods used by workshop providers to conduct trainings and issue the corresponding certificates of attendance.

### ***Pollinator Protection Plan – Status and Updates***

Taryn Lascola described how the Department did complete some seven (7) listing sessions after release of the Department’s draft Pollinator Protection Plan. It was estimated that some one-hundred (100) people attended these events and that during this extended comment period the Department collected some 2,300 comments by email.

At this point the Department is looking to compile the comments in order to capture the concerns and determine if and how they might be included in the Department’s Plan. With this objective in-mind, Taryn acknowledged that completing such work would take some time as Summer is a very busy season for the Apiary Program and for everyone in the Division of Crop & Pest Services.

Commissioner John Lebeaux also added that an unavoidable consequence of extending the comment period for the Draft Pollinator Protection Plan, is to delay the Department’s ability to quickly complete further work on the Draft Plan. With the busy growing season upon us, the time-frame under which the Department will need to work on the next phase must also and necessarily be extended.

Michael Moore inquired as to the general tone of the listening sessions. Taryn Lascola responded that the listening session did go well. She explained that since a collective of county beekeeper associations had submitted their own pollinator protection plan, that throughout the listening sessions, this group effectively highlighted where the Department’s draft plan did NOT

incorporate their concerns. She summarized that there were at least 5 or 6-main concerns that were repeatedly expressed throughout the listening sessions and that the Department indeed looked to build on the ideas and suggestions collected, as appropriate.

### ***Updates on eLicensing and Work on the Environmental Information and Public Access System (EIPAS)***

Steven Antunes-Kenyon briefly reviewed how the Board discussed the Department's Agency Process Optimization (APO) efforts a.k.a. business process redesign for Department's Examination and Licensing / Certification Program at the last Meeting in March. As part of that APO workshop, an eLicensing solution was discussed at length and presented as the future objective to help resolve many of the issues related to the Department's nearly 30-year old current examination and licensing data system.

In March, the Department presented the Environmental Information and Public Access System (EIPAS) to the Board as EEA's enterprise level application being developed over several years for agencies within the Secretariat. As one of the anticipated EIPAS components, the Department looked forward to participating in the project in one of the future "releases."

Recently one EEA program that was slated to participate in the next EIPAS release, determined that they were unable to participate as scheduled. As a result, an opportunity was given to the MDAR to assess their potential to participate and potentially step into the newly opened slot. The Department decided to take advantage of this opportunity and has begun the related work. Staff from MDAR are now working closely with DEP IT staff, spearheading the EIPAS effort, along with EEA's development contractor GCOM.

Steve presented Kate Kerigan and Jona Kuci from the EEA whom are helping to lead the EIPAS effort and are looking for additional stakeholder input through this public meeting of the Pesticide Board. One of the key issues that the Board and stakeholders need to be aware of is that the EIPAS system is being developed or configured to provide online accessibility for the approval of "authorizations" to include permits, licenses, etc. This will be done through an interface designed for individual access—NOT organization level access on behalf of others. Some of the important issues related include the following:

- That individuals will be required to establish and maintain their own unique log-in credentials (e.g. email address and password);
- That important legal attestations within the EIPAS system will prohibit employers from conducting electronic transactions on behalf of their employees;
- That companies and organizations that cannot provide e-payment or otherwise refund their employees for online payments, will need to utilize the "PAY BY MAIL" option—gathering together the requisite forms/payment coupons for submission of checks.
- That companies need not worry that EIPAS is configured for auto payments—on behalf of employees whom have separated service with their organizations; and
- That the EIPAS system is being configured to work within the framework of current Pesticide laws and regulations—current fees and applicable examinations and required license credentials are NOT currently being changed or modified to facilitate other industry desired efficiencies.

A lengthy dialog ensued between the Pesticide Board along with MDAR Staff and stakeholders present--representing the pest control industry and projects within the Massachusetts State Reclamation and Mosquito Control Board (SRMCB). Within the context of concerns and limitations expressed for the

EIPAS system, the Board and other stakeholders present discussed their experiences with other States and Massachusetts State Agencies using electronic payment systems.

### ***Updates from Pesticide Enforcement***

Taryn Lascola provided an overview of work being carried out to address a serious and long-time offender of State Pesticide Laws and Regulations. The Department has worked with the Office of the State Attorney General for the past couple of years to help move the case forward and address the violations. A press release from the AG's office went out during the last week of May.

Jessica Burgess, Esq. added that the AG's Office provided the offender with the terms of an agreement to avoid the significant financial penalties. The deferred financial penalties in play include a \$50,000 fine, should the individual fail to comply with the terms of the AG's agreement.

The individual must not engage in any unlicensed pesticide applications. After a period of two (2) years, the individual will be eligible to sit for the Massachusetts Pesticide Exam and obtain licensure. Upon licensure, the individual would then have a 10-period of time under which they must comply with all State Pesticide Laws and Regulations.

### ***New Business***

Commissioner John Lebeaux provided a brief update on the current vacancies within the Pesticide Board. Work is now being completed to swear-in the appointee for the farmer seat and the Governor's Office is quite close to approving the appointment of the other public member seat. In addition, communication from the Governor's Office indicates that the Board may have someone for the physician seat, which has not been filled for some time.

### ***E. Meeting Adjournment***

**Voted:** To adjourn Wednesday, June 1, 2016 Meeting.

**Moved:** Richard Berman

**Second:** Ken Simmons

**Approved:** 7 – 0

Meeting adjourned at 11:30 a.m.