

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormack Building, 1 Ashburton Place on Wednesday, March 02, 2016

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

BOARD MEMBERS IN ATTENDANCE

John Lebeaux, MDAR Commissioner	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	Present
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:

Richard Pollack, Harvard University; Clifford Youse, Plymouth County Beekeepers Association; Wayne Andrews, PestVex LLC/Beekeeper; Bob Mann, Lawn Dawg / MALCP; Ted Burgess, NEPMA / Burgess Pest Management; Steve Oles, NEPMA; David Henley, E. Middlesex and Suffolk Mosquito Control; Tim McGlinchy, CMMCP; Brian Farless, Suffolk County Mosquito Control Project; Taryn Lascola, MDAR; Jessica Burgess, Esq., MDAR; Kim Skyrn, Ph.D., MDAR; Hotze Wijnja, MDAR; and Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Minutes from the Monday, December 14, 2015 Board Meeting

A. Minutes from the Monday, December 14, 2015 Board Meeting

Commissioner John Lebeaux presented the Minutes from the Monday, December 14, 2015 Board Meeting for the Board's consideration.

Voted: To accept the minutes from the Monday, December 14, 2015 Board Meeting.

Moved: Michael Moore
Second: Marc Nascarella

Abstentions: John Lebeau, Richard Berman, and Laurell Farinon

B. MDAR 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 has worked with the Massachusetts Municipal Association and they are helping to conduct the outreach directly with town clerks and BOH representatives. This is being done prior to the “official outreach and public comment period”. The MMA has indicated that these regulatory changes will be well received given that such issues are best handled by MDAR / SRMCB Mosquito Control Districts.

The MDAR has a tentative draft of these revisions which change the way exclusions from pesticide applications are made. Under the draft, the requests will NOT be sent to the town clerks but to the MDAR; whom, will transfer this information to the mosquito control districts working to honor such requests. Such requests for exclusion will expire on a calendar year basis.

The MDAR requested the Board’s vote to continue its work on these proposed regulations and move forward with the public hearing process and all other interagency work needed to move these draft regulations forward.

Voted: To have the Department move forward with the draft regulations 333 CMR 13.03 and next phase of stakeholder engagement and public hearings when the necessary approvals from EEA are received.

Moved: Michael Moore
Second: Laurell Farinon
Approved: 8 – 0

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

Jessica Burgess, Esq. presented an overview of the current status of these regulatory revisions that were approved by the Board in October of 2014. As the Board recalls, the delays in promulgation of the new regulations, were due to inability to get them promulgated by the Secretary of State before the end of the Deval Patrick Administration. All pending regulatory changes had to be reviewed by the new administration before moving them forward. The Department has now received approval to move these new regulations forward.

The necessary package of information was prepared for the EEA and Administration and Finance (A&F) sign-off and the MDAR expects these regulations to be promulgated by the Secretary of State within the next few months. The MDAR will keep the Board updated on the status of these regulations.

Richard Berman inquired about the MDAR’s plan for education and outreach upon promulgation of these regulations.

Tarn Lascola explained that this was a fundamental strategy that is carried out with all new regulatory requirements. It's the MDAR's plan to reach out to the industry associations and pesticide dealers to help spread the word once these regulations are promulgated. The MDAR will also perform outreach during workshops where credits for continuing education will be earned.

Status of Executive Order for Regulatory Review

Jessica Burgess, Esq. provided an update on the Department's work as part of the Regulatory Review. All the regulations have been reviewed and marked as keep, amend, or rescind. There will be some regulations that go beyond the March 31 deadline as they required additional work; however, the Department has made its recommendation and is rescinding a number of dairy regulations that are no longer being used.

Jessica explained that as part of this process, the MDAR was asked to update all regulations that reference the "Department of Food and Agriculture" or "Bureaus" or "Divisions" or other agency names that have changed or no longer exist. Consequently there are other regulations beyond 333 CMR 10.07 and 333 CMR 13.03, discussed earlier, that will be included in the Department package of regulatory changes. For example, the regulations 333 CMR 2.00 and 333 CMR 3.00, do reference a number of defunct agency or division names and will need to be updated as part of this process.

Voted: To have the Department move forward with requested changes to defunct names of divisions or organizations, in the pesticide regulations, provided that such changes are limited to the names of agencies or divisions as discussed at today's meeting.

Moved: Michael Moore
Second: Laurell Farinon
Approved: 8 – 0

C. MDAR Program Updates

State Pollinator Protection Plan

Kim Skyrn, Ph.D., the Department's Chief Apiary Inspector and Apiary Program Coordinator provided an update on the Department's work on the State Pollinator Protection Plan. The MDAR worked to develop the Department's Pollinator Protection Plan and incorporate the concerns and ideas shared by other stakeholder groups and submitted to the Department for review.

Within a short-period, the Department will roll out the current draft of the Pollinator Protection Plan and immediately work to collect public comment and feedback. The MDAR is planning a meeting with stakeholders and hopes to conduct a series of listening sessions in March. The MDAR hopes to use the information collected to revise the draft of the Pollinator Protection Plan in the month of April and roll-out a new plan in the month of May.

John Lebeaux reiterated that while the process of developing the State Pollinator Protection Plan, is using public outreach and comment in a manner similar to other regulatory processes, that this is NOT a regulatory effort.

Kim explained how this work is part of a national effort that was set in-motion by President Barack Obama in a 2014 via a Presidential Memorandum to create a federal strategy to promote the health of Honey Bees and other pollinators. The Presidential Memorandum did not include native pollinators but only managed pollinators; such as, honey bees, bumble bees, alfalfa leaf cutter bees, and leaf cutter or mason bees. While clarifying that the State Pollinator Protection Plan also includes native pollinators, Kim emphasized that the Plan was not a regulatory document, but a set of guidelines that contains best management practices for stakeholders.

In response to questions from Michael Moore about related pending state legislation, Commissioner Lebeaux explained that the Department is aware of the various bills that seek to address the protection of pollinators. As appropriate the MDAR is meeting with state legislators whom are sponsoring such bills and seeking to provide them with information on the currently available science on the matter.

In response to questions from Marc Nascarella about the use of such guidance documents, MDAR staff explained that the MDAR has a long history of using such guidelines or guidance documents. Documents like the State Pollinator Protection Plan are used to help provide policy interpretations and strengthen the working relationship between the regulated community and other parties with whom the Department works. Some other MDAR Program examples including the following:

- MDAR Composting Program
- MDAR Pesticide Mixing Loading and Storage Guidelines
- MDAR Agriculture Preservation Restriction (APR) Program

New Changes in the Federal Worker Protection Standard (WPS)

Taryn Lascola explained that the WPS is a Federal Rule that was put into place in the early 1990's to help protect agricultural workers and pesticide handlers by requiring training, notification, decontamination, and other protections.

This federal rule was significantly revised in 2015 and the EPA is providing training to States to help them better understand the new requirements. State programs will then help inform the agricultural community about the change in the WPS Rule.

This year (2016) is being used for compliance assistance and to help the agricultural industry prepare for the coming new requirements. Most of the changes in the WPS Rule do NOT take effect until 2017 and there are three elements that do not go into effect until 2018.

Agency Process Optimization for the Examination and Licensing / Certification Program

Steven Antunes-Kenyon provided an overview of the recently completed Agency Process Optimization (APO) efforts a.k.a. business process redesign for Department's Examination and Licensing / Certification Program.

The APO event was coordinated by the EEA and conducted by the consulting company Accenture. As John Lebeaux explained the push to examine programs through the business process redesign lens was initiated from the Governor's Office in the Spring of 2015. At that time many state agencies attended business redesign training programs and selected programs to use in their projects. John and Alisha Bouchard attended such a training and chose the Pesticide Examination and Licensing Program as their model project for the program.

In February the MDAR created an APO team by enlisting Jennifer Forman-Orth, Rebecca Davidson, and Joao Tavares, in addition to the core Pesticide Program Examination and Licensing staff of Hoang Vo, Sandra Payne and Steven Antunes-Kenyon. The APO Team was led by Accenture over the course of more than 4-days to map out the entire examination and licensing process and timeline fully exposing every step of the process and resources involved.

The consultants with Accenture provided excellent instruction and helped the MDAR APO Team develop a strategy to make both short-term and long term improvements within the existing system.

This work also provided an opportunity for external stakeholders to participate and share the experience of defining the problems and designing a strategy of improvement. Participants included Phyllis Hodge, Chris Ford, Bob Mann and Greg Cormier.

As Bob Mann, Lawn Dawg explained, his participation along with the other external stakeholders led to not only a greater appreciation for the problems of the existing system/process for constituents but also a deeper understanding for the frustrations of MDAR staff working in the program and using the outdated and incompatible data systems.

In the end, the APO team mapped out a future state representing what all agree is needed via an eLicensing solution. As part of a long-term project under the EEA, the eLicensing solution is planned as part of the Environmental Information and Public Access System (EIPAS). Whereas, the EIPAS will include a number of components from other agencies, the Pesticide Program Examination and Licensing/Certification will be just be one element. EIPAS will be developed over a number of years and components like the Pesticide Program Examination and Licensing/Certification will be included in future versions or releases. The EEA EIPAS Team have indicated that it could be some 18-months before they are able to work on the Pesticide Program Examination and Licensing/Certification component.

New Business

Pesticide Board Vacancies

Commissioner John Lebeaux described how two seats on the Board had become vacant due to the recent resignations of Richard Bonanno and William (Bill) Clark. John is working diligently with the Governor's Office on Boards and Commissions to expedite the appointment of selected candidates to these open seats.

CEU from Approved Online Training Programs

Taryn Lascola explained that the Pesticide Program has been asked to review the current policy on the number of currently accepted contact hours or CEUs from online/electronic training sources. Based on the current policy, individuals may only earn one-third of the total credits needed from online sources. Taryn indicated that it's the Pesticide Program's intention to have the Department bring this issue before the Board when a director is appointed to the Division of Crop and Pest Services.

Reciprocity of Pesticide Licensure / Certification

Taryn Lascola described how, through a vote of the Pesticide Board, the Pesticide Program formally ended reciprocity with other states in the year 2003. One of the reasons, cited for ending reciprocity at that time, was the concern that states may or may not be testing individuals sufficiently with respect to Integrated Pest Management (IPM). IPM had become a focal point for the Program as it was a key component in the changes to the Massachusetts Pesticide Control Act through the Act to Protect Children and Families from Harmful Pesticides. Again, Taryn indicated that it's the Pesticide Program's intention to have the Department bring this issue before the Board when a director is appointed to the Division of Crop and Pest Services.

Policy Requiring All Applicators to Pass the Pesticide Core Exam

Steve and Taryn explained that some years ago, under the Direction of Lee Corte-Real, the Pesticide Program implemented a new policy requiring that all applicators new to Massachusetts take the Applicator License (core) Exam. This new requirement would apply to all applicators regardless of pesticide applicator licensure/certification experience in other states and has been carried out for several years. The current requirement creates significant confusion for individuals with significant pesticide applicator licensure/certification experience in other states and is often viewed by constituents as an unnecessary impediment to becoming certified in Massachusetts. It's yet another issue to be examined by the new director and potentially discussed before the Pesticide Board as may be appropriate.

Reciprocity of Approved Continuing Education Training Programs

As initiated by Richard Berman, the Pesticide Board and staff briefly discussed and review the current Memorandum of Agreement with adjacent states to accept those contact hours or continuing education units earned by pesticide applicators and dealers attending workshops or trainings that were approved by the State Lead Agency in the adjacent State. The MDAR PACE program seeks to review and approve of only those workshops or training programs that are actually taking place in Massachusetts.

Vacant Director of Division of Crop and Pest Services

John Lebaux explained that the Department reposted the open position for a Director of the Division of Crop and Pest Services. This came after being dissatisfied with the response to the posting earlier in 2015, after Lee Corte-Real retired.

After revising the job description and reposting the position, the Department did receive a good response, commenced interviews, and is working to finalize the selection process. John anticipates having a new Director of the Division of Crop and Pest Services to present to the Board in the near future.

D. Meeting Adjournment

Voted: To adjourn Wednesday, March 2, 2016 Meeting.

Moved: Richard Berman

Second: Michael Moore

Approved: 8 – 0

Meeting adjourned at 11:05 a.m.