

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

225 Turnpike Road, 3rd Floor, Southborough, MA 01772
www.mass.gov/agr



Maura T. Healey
GOVERNOR

Kimberley Driscoll
LIEUTENANT
GOVERNOR

Rebecca L. Tepper
SECRETARY

Ashley E. Randle
COMMISSIONER

PESTICIDE BOARD MEETING MINUTES

July 11, 2024

BOARD MEMBERS IN ATTENDANCE

Commissioner Ashely Randle, MDAR (Chair)	Present
Meg Blanchet, DPH, Designee for Commissioner Goldstein	Present
Michael Moore, DPH, Food Protection Program	Present
Misty Anne Marold, DFG, Designee for Commissioner O'Shea	Present
Kathy Romero, DEP, Designee for Commissioner Heiple	Present
Nicole Keleher, DCR, Designee for Commissioner Arrigo	Present
Richard Berman, Commercial Applicator	Present
Brian Magee, Toxicologist	Absent
Steven Ward, Farmer	Present
Jack Looney, Public Member	Present
R. Christopher Brittan, Public Member	Present
Steven Bird, Toxicologist	Absent

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

A. REVIEW OF MINUTES FROM JANUARY 23, 2024 AND MARCH 20, 2024:

Motion: S. Ward to accept both sets of minutes

Second: J. Looney

Discussion: None

In Favor: All

Opposed: None

B. PESTICIDE PROGRAM UPDATES, TARYN LASCOLA

Petition for Individual Review of Anti-coagulant Rodenticides: The Pesticide Subcommittee received a petition from Harvard Animal Law and Policy Clinic on behalf of several wildlife rehab facilities requesting that the subcommittee conduct an individual review of anti-coagulant rodenticides AND to suspend the registration while the review is taking place. Currently, MDAR has sent the petition to the other Subcommittee members and MDAR is reviewing the petition.

MDAR has made efforts to reach out to facilities that work with domestic animals and wildlife informing them that the pesticide program wants to know when rodenticide incidents occur. A notice was placed in the MA Vets Association newsletter and MDAR is working with DFW to send out the request to its wildlife rehab stakeholders. This effort is being made because MDAR has been asked many times if it responds to a lot of rodenticide issues. While MDAR has heard of incidents, historically MDAR does not receive a lot of

notifications or complaints regarding rodenticides issues. Without MDAR enforcement being involved and as the regulatory agency it cannot say that there are a lot of issues.

Discussion: M. Marold asked if there was a form or a contact person for people to make the reports to. T. LaScola stated that there is an online form that was cited along with the enforcement programs contact information.

R. Berman stated that FIFRA contains language that requires that manufacturers report adverse effects or incidents to EPA. He asked if EPA would let the states know about it. T. LaScola stated that she has not been notified by EPA in the past. He also noted that rodenticides registration was currently being reviewed by EPA.

J. Looney asked if MDAR has followed up on any incidents where pets have ingested rodenticide. T. LaScola stated that MDAR has and in some cases, it has confirmed that rodenticides were ingested and in other cases it was found that rodenticides were not involved.

Comments from the public: R. Malfi stated that she believed that EPA does not follow up given her conversations with incident reporting databases.

Heather from MA Audubon asked if MDAR wants to know about confirmed cases of poisoning or suspected cases. She also noted there was a cost associated with testing. T. LaScola stated that someone should contact MDAR regardless and MDAR would make the determination as to how and if they could follow up.

There was a question about whether the state conducts its own assessment of pesticides. T. LaScola stated that EPA does a thorough review before the product is registered. EPA also conducts registration reviews of the active ingredients/products. MDAR does not conduct its own specific assessment, but MDAR does keep a track of trends and incidents and if it feels that there is a large enough issue it is brought to the Board and Subcommittees attention.

Performance Audit of the Rights of Way Program: In 2022, MDAR was notified that the Office of State Auditors was auditing the MDAR Rights of Way ("ROW") program. The audit was focused on:

- whether MDAR ensured that pesticide applicators who used pesticides on ROW were licensed.
- whether MDAR conducted investigations to ensure the proper use of pesticides on ROWs
- whether MDAR educated the public and pesticide applicators on the proper use and handling of pesticides on ROWs in accordance with its own SOP's.
- whether MDAR ensured that applicants to the ROW Program submitted Vegetation Management Plans and Yearly Operational Plans in accordance with the regulations.

Overall, the audit concluded that MDAR met most of the directives. The one item that the auditor did not think MDAR met was the education to the public and applicators on the proper use and handling of ROW in accordance with its own SOP's. This was due to:

- 13 out of 22 towns responses where five cities and towns told them that they were unaware of MDAR's ROW Program. They also noted that MDAR did not maintain a list of entities that own or maintain ROWs
- MDAR does not conduct outreach regarding ROW Program requirements to entities that own or maintain ROWs

MDAR was allowed to respond to the finding in which MDAR responded that the finding did not match the stated directive because the finding was relative to education of towns/entities that have rights of ways, and the directive was relative to education of pesticide applicators. The SOP's that the auditor referred to are MDAR SOP's that inspectors follow. There are sections within the SOP's that stated an inspector may be called upon to conduct outreach efforts to the regulated industry. MDAR noted that even while they do not

have extra resources to conduct its own education and outreach efforts, it does participate in efforts when outside entities request them to speak to their stakeholders. MDAR reaches hundreds of applicators in this manner, which include ROW applicators.

C. REQUEST TO APPROVE 333 CMR 9.00 AND 14.00, TARYN LASCOLA

T. LaScola provided an overview of the process 333 CMR 9.00 and 14.00 have been through and why they were updated.

333 CMR 9.00 (Dealer Regulations): In 2017, EPA updated its requirements regarding certification and training. To come into compliance, MDAR needed to update some of its regulations. The first section MDAR looked at was the dealer regulations. Overall, only a few elements needed to be added. MDAR drafted the regulations and at the July 1, 2020, meeting, the Board approved the draft regulations to go to hearing. In summary draft changes made were:

- Copy edits and provide clarity
- Name and address of the residence or principal place of business of Person to whom the restricted use pesticide was Distributed, or if applicable, the name and address of the residence or principal place of business of each noncertified Person to whom the restricted use pesticide was Distributed for application by a certified applicator;
- License information of the Person who has purchased the restricted use pesticides which shall include, but not be limited to:
 1. License number and **category** in which the individual is certified; and
 2. **Expiration date** of the certified applicator's certification.
- More specific on product information...calls out: product name and EPA registration number

The hearing was held on Feb. 23rd, 2023. There were no comments made about the draft updates.

Motion to Approve: J. Looney

Second: C. Brittan

Discussion: None

In Favor: All

Opposed: None

333 CMR 14.00 (School regulations): During the March 29th, 2019, meeting, one of the Mosquito Control Districts ("MCD") approached the Pesticide Board to request that larvicides be exempted from the requirement to be on a schools IPM plan. This request was made because the MCD's had a difficult time getting schools to update their plans to include larvicide products. Without the product listed on the plan, MCD's could not treat storm drains/catch basins on school property leaving gaps in mosquito control coverage. The Board voted for MDAR to move forward with reviewing and updating the regulation. The draft change made stated that larvicides applied by a MCD under 252 or other state agency would be exempt from having to be listed on the plan.

The hearing was held on Feb. 23rd, 2023. There was one comment from the Sierra Club that was not in support of this exemption. Additionally, the Conservationist Advisory Council had also discussed this exemption and was not in support of it either.

Motion to Approve: J. Looney

Second: R. Berman

Discussion: None

In Favor: All

Opposed: None

D. REQUEST TO UPDATE 333 CMR 13.00

333 CMR 13.00 is the Standards of Application section in the pesticide regulations. This covers requirements relative to use of pesticides including but not limited to, operating in careful manner and prohibitions on using a pesticide that may cause an unreasonable adverse effect. This regulation also includes requirements for all types of applications such as notifications, sign posting, information that needs to be left behind, etc.

The regulation was last amended in 2016 when the “Exclusion from Pesticide Application” section was changed to allow for a more streamlined approach for the public to request exclusions from wide area applications. Prior to this 2016 amendment, the regulation has not been updated in several years. With the changes in pesticide applications and how operations are conducted, MDAR staff have identified inconsistencies in the regulation, lack of clarity, and increased issues/concerns with certain types of applications. All of this has led to MDAR staff to recognizing the need to review and amend the regulation.

Therefore, MDAR asked the Board to allow it to review section 13.00 and make draft changes it deems necessary. If this request is approved, MDAR will present draft changes to the Board at a later date for its review and approval to move forward with a hearing.

Motion to Approve: R. Berman

Second: J. Looney

Discussion: None

In Favor: All

Opposed: None

E. PESTICIDE ADVISORY COUNCIL RECOMMENDATION TO THE BOARD, BOB LEON

B. Leon summarized the letter that their Council submitted to the Board. He noted that the Conservationist Pesticide Advisory Council did not take into consideration the funding that might be required to do this and the safety concerns.

Discussion:

S. Ward stated that he supported this letter.

J. Looney also indicated that he agreed that having location may be an issue but that there is some level of transparency in place. He also stated that research and studies that may use this information need to be looked at carefully as making comparisons to other states is not always equal.

R. Berman stated that he agreed with Ward and Looney and pointed out that the annual use reports do not include homeowner use. He also stated that he believed the current system is working.

M. Marold asked if there have ever been any safety issues with pesticide storage. T. LaScola stated that there had been theft in the past. She also clarified that the use report asks for the address of the submitter and the request from the Conservationist Pesticide Advisory Council request was specific to the geographic location of the application.

E. PESTICIDE ADVISORY COUNCIL UPDATES, BOB LEON

B. Leon stated that the Council is still recommending that a license be required for 25b products. He stated that the Council continues to discuss the two-year waiting period between obtaining a commercial applicators license and a commercial certification license.

F. CONSERVATIONIST PESTICIDE ADVISORY COUNCIL UPDATE, CLINT RICHMOND

C. Richmond stated that the Council met once since the last meeting. The Council was in support of adding the elements that were in the hard copy use reports such as sites, total acreage and methods of application. The Council was also starting to review and discuss the pre-notification requirements in the regulations.

Discussion: M. Marold asked what the Councils concern about renters and pre-notification. C. Richmond asked T. LaScola to clarify. T. LaScola provided a summary of the requirements.

C. Richmond asked if R. Malfi would summarize what was in the letter previously submitted recommending that locations be added to the use reports. R. Malfi stated that it was valuable to collect the location of applications. She also stated that some of the information that is publicly available from other organizations are specific to agriculture and given the small amount of pesticide use by agriculture in Massachusetts, it would be beneficial to add the location. She also stated that location could be organized by county or municipality and if posted publicly it could be anonymized as they are not recommending that the request to the geographical location is not to obtain specific personal information.

G. POSTED ONLINE USE REPORTS, STEVE WARD

S. Ward stated that he was concerned relative to MDAR posting the annual use report by company name/individual. He stated that this is a security/safety issue given the fact that in the agricultural sector a farm name and address can be where the applications take place.

K. Schwalbe from the Farm Bureau and Brian Wick from the Cranberry Growers Association stated that farmers in general are concerned about it as well.

T. LaScola stated that regardless of whether the information is posted online, the information is public and if someone submits a public records request then the information has to be made public.

G. NEW BUSINESS

There was no new business.

H. ADJOURN

Motion: J. Looney

Second: S. Ward

Discussion: None

In Favor: All

Opposed: None