

# MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the Hurley Building, 19 Staniford Street; Conference RM A &B, 6<sup>th</sup> FL; on Wednesday April 4, 2018

The Meeting was called to order at approximately 10:06 A.M.

## BOARD MEMBERS IN ATTENDANCE

Commissioner John Lebeaux (Chair)	Present
Marc Nascarella, DPH, Designee for Commissioner Bharel, MD	Present
Michael Moore, DPH, Food Protection Program	Absent
Ken Simmons, DFG, Designee for Commissioner Amidon	Present
Kathy Romero, DEP, Designee for Commissioner Suuberg	Present
Ken Gooch, DCR, Designee for Commissioner Leo Roy	Present
Richard Berman, Commercial Applicator	Absent
John Looney, Public Member	Present
Brian Magee, Toxicologist	Absent
Laurell Farinon, Conservation	Present
R. Christopher Brittain, Public Member	Absent
Steven Bird, M.D., Physician	Absent
Steven Ward, Farmer	Present

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

## OTHER INDIVIDUALS PRESENT:

C. Whiting Rice, The Whiting Group  
Laura Kelley. POCCA Cape Cod  
Patrick Ellis, Town of Brewster  
Sarah Grubin, Dept. of Agricultural Resources  
Brittany Lewis, Dept. of Agricultural Resources  
Ted Burgess, Burgess Pest Management  
Bill Siegel, Orkin  
Robert Leon, New England Pest Management/General Environmental Services  
Clayton Edwards, Dept. of Agricultural Resources  
Hotze Wijnja, Dept. of Agricultural Resources  
Ryan Petitti, TruGreen  
Sean Keady, Representative Fernandes  
Nicole Keleher, Dept. of Conservation and Recreation  
Jessica Burgess, Department of Agricultural Resources  
Taryn LaScola, Department of Agricultural Resources

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

- Pesticide Board Agenda
- December 7, 2017 Minutes Pesticide Board Meeting
- Motion Requesting a “Recommendation of Suspension and/or Cessation of 2018 VMP approval process pending clarification, amplification, and resubmission of a manifestly deficient VMP”
- Document prepared by C.W. Rice

## **A. Approval of the December 7, 2017 Meeting Minutes**

Commissioner Lebeaux presented the Minutes from December 7, 2017 Meeting for the Boards consideration.

**Voted:** To accept the minutes of December 7, 2017  
**Moved:** Jack Looney  
**Second:** Kathy Romero  
**Approved:** 8 - 0

## **B. Pesticide Program Update**

Taryn LaScola (T.LaScola) provided an update to various items within the pesticide program.

### **eLicensing Issues and Status Update:**

- MDAR is caught up with issuing renewals. The calls that are currently coming in are relative to people asking for their licenses and questions about using the system to sign up for the pesticide exam.
- This is a busy time of year for pesticide exams. The exams are very full at this time. MDAR added four exams from last year.
- Steve Ward stated that applicators appreciated the efforts of the licensing team.
- Laurell Farinon asked why MDAR thinks there is an increase in licensing. T. LaScola responded that she believed it was due to a good economy, increased mosquito and tick applications, and the Department’s direct supervision rule.

### **Eversource Vegetative Management Plan (VMP) Status Update**

- The VMP was received on Dec. 18, 2017 and the hearings were held on March 1<sup>st</sup> in Sandwich and March 6<sup>th</sup> in Chatham. Both hearings had a listening session afterwards in order to address any questions that came up during the hearing comments.
- The comment period closed on March 30<sup>th</sup> and MDAR is currently reviewing the comments.

### **Pesticide Use on Cannabis Decision**

- MDAR has made the determination that registered pesticides will not be allowed for use on Cannabis. This includes Hemp and Marijuana. The Environmental Protection Agency (EPA) has made it clear that due to the federal legal status of Cannabis, pesticides cannot be used. MDAR has explained this to the Registered Medical Dispensaries. In addition, MDAR has also spoke with the Cannabis Commission to make sure that our regulations are referenced in their regulations.

### **Advisory Council Updates**

- First meeting of the Advisory Council has been established. It will be held on May 4<sup>th</sup>. T. LaScola offered to send around the Advisory Council agendas to Board members

### **Update on Federal Certification and Training (C&T) Rule**

- EPA has made a number of changes made to the certification and training rule. The biggest impact to the MDAR is the fact that it will have to review all of their exams to ensure that it meets the new criteria set in the C & T rule. MDAR will also have to update the State Plan with EPA. The exams do not need to be reviewed by a particular date as long as MDAR documents that it in the process of reviewing the exams in the State Plan.
- Pesticide applicators will be affected regarding “ direct supervision” . There may be some changes such as an annual training requirement. MDAR is seeking clarification as to whether or not its' current regulations would meet the federal change. MDAR's pesticide regulations will need to be updated to reflect the federal changes (section 10 and 9).

### **Environmental Bond Bill (EBB)**

- MDAR proposed language in the EBB that would amend Section 14A in 132B. This would allow the MDAR to issue fines for any violation of 132B or 333CMR. This change would eliminate the 90 day corrective action out of the process. The currently regulations only allows for MDAR to issue fines for particular violations. Any fines for violations outside of those specific violations have to go through the Attorney Generals' office. This change would allow for the whole process to go through MDAR.
- Steve Ward asked if there was an appeal process. T. LaScola answered that there was there is an appeal process. The appeal process consists of an individual requesting a hearing, having a hearing officer make a recommended decision to the Board. The Board then decides to whether or not to accept, amend or deny that decision. T. LaScola also stated that the fine is capped at \$1000 per day per violation.

## B. New Business

Motion requesting a “Recommendation of Suspension and/or Cessation of 2018 VMP approval process pending clarification, amplification and resubmission of a manifestly deficient VMP”, Bruce Taub (B. Taub)

- B. Taub addressed the Board stating that he and many other people are on new ground. He believes that the 2018 VMP is deficient. He recognized that he did not know how pertinent the discussion was going to be as he had intended to present this at the last Board meeting which was set for a date prior to the comment period closing. However, due to the cancellation of that meeting and the rescheduling of the meeting to this date, the comment period had closed. B. Taub proceeded to inform the Board about what the motion included. He had prepared an addendum to the motion which was passed around to the Board. The addendum that contained certain reports relative to spray totals in terms of concentrate and gross applications for different ROW and different towns. There is only a report for 2013 and 2014. B. Taub pointed out that under a public information request he had asked for the records for 2015-2017 and that he was told there is no report for 2015-2017. B. Taub stated that without the last three years of spray totals, no one can meaningfully comment on the VMP and that MDAR cannot approve the VMP. He explained that that is the foundation of the motion. He stated that he had intended to request that the Board tell the MDAR to not take comments due to the deficiency. However due to the fact that the comment period had closed prior to the Board meeting, he is not able to issue that request. In lieu of that, B. Taub stated that the Town of Brewster, Water Department, Conservation Commission and Public Works Department prepared comments to submit. He brought 6 copies to share with the Board. B. Taub summarized that the comments include information about distances to vernal pools, maps. He stated that he believes that there is a breach and that Board should send the VMP back. He also stated that he would like to know how comments made about the VMP are “refined” by MDAR.

J. Looney, S. Ward, L. Farinon, and K. Gooch received the packets...the other two placed on the table. J. Looney stated that he would like time to review the comment packets before any action is taken and would like to know what MDAR thinks about the comments. L. Farinon asked about the FOIA request relative to lack of data on 2015-2017. T. LaScola responded that the request was for individual application records within specific locations and that MDAR only collects annual pesticide use reports.

J. Burgess stated that the VMP does not come to the Board for review and approval. She explained VMP approval process by stating that MDAR takes every single comment and scans them into an electronic format. Those items are sent to the Right of Way (ROW) Advisory Panel. MDAR does not summarize the comments. The ROW advisory panel provides comments and recommendations relative to the approval of the VMP. MDAR will then make the final determination. She went on to

state that MDAR is not ready for a decision on the VMP yet, due to the fact that it has not reviewed the VMP yet and is still reviewing comments

B. Taub responded by stating that he is asking the Board to advise MDAR that it can't go forward with the approval until the VMP is corrected. He re-instated that the lack of 2015-2017 records. J. Burgess stated that MDAR does not have the information that is being looked for as it is not required to obtain it.

### **Questions about the VMP process, C. Whiting Rice**

CW Rice asked the Chairman Lebeaux if he could speak to the Board. He agreed. CW Rice stated that on pg. 36 in the VMP it speaks to daily logs to be maintained about the applications. After asking for the records from Eversource they were told that MDAR had the information. Chairman Lebeaux reiterated that the request was for information that we don't have.

J. Looney: brought up the issue that it is important to keep powerlines clear as it impacts the health of the residents if they lose power referenced the last few storms. P. Ellis from the Brewster Water Department responded by stating he believes that the issues on the cape were not specific to the major transmission lines that are treated by Eversource and that it was more likely that it was individual trees on powerlines in residential areas.

L. Kelley then spoke and stated that she is concerned that they were promised less of the herbicides would be used and the current VMP has more products listed.

Chairman Lebeaux summarized that due to new materials being distributed time would be needed and the Board would not be taking action today as time would be needed to review.

CW. Rice provided a sheet that summarizes some questions relative to what the VMP process entailed. He indicated that some questions were already answered during the meeting. He wanted to know how the public gets to see the advisory panels concerns. He believes that the public needs to have transparency to the process. He also stated that he had a concern that a utility company representative and an applicator were on the ROW advisory panel and asked if that was a conflict of interest. CW. Rice asked if have time with MDAR to learn more about the process. Chairman Lebeaux stated that MDAR would be happy to discuss questions relative to the process.

## **C. Meeting Adjournment**

**Voted:** To adjourn Wednesday April 4, 2018 Meeting.  
**Moved:** John Looney  
**Second:** Kathy Romero  
**Approve:** 8 - 0

The meeting was adjourned at approximately 10:54 A.M.