

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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CONSERVATIONIST PESTICIDE ADVISORY COUNCIL

MEETING MINUTES

Date: September 9, 2022

A. ROLL CALL

Kimberly Pearson, Brewster Natural Resources Advisory Commission	Present
Clint Richmond, Sierra Club	Present
Regina LaRocque, MGH Center for Environment and Health	Present
Laura Mattei, Sudbury Valley Trustee	Present
Rosemary Malfi, Northeast Organic Farming Association	Present

The Conservationist Pesticide Advisory Council ("Council") did meet or exceed the minimum number three (3) of members present to form a quorum and conduct business.

DOCUMENT(S) PRESENTED:

Minutes
Draft Regulations

B. REVIEW OF MINUTES FROM JULY 8, 2022:

Motion: K. Pearson

Second: L. Mattei

In favor: All

C. PESTICIDE PROGRAM UPDATES

Neonicotinoid Classification Change

T. LaScola stated that the classification change for neonicotinoid pesticide products occurred beginning July 1, 2022. She explained that the Pesticide Program ("Program") sent out notices to applicators and manufacturers throughout the 2021 and 2022. Additionally, the Program created a list of all the products that would become Restricted Use. The list was posted in May and over the past few months there had been some changes made to the list due to some errors made in determining if a product was or was not going to change from general use to restricted use. The number of changes were made were minimal. Frequently asked questions documents were developed explaining the change and direct supervision. Overall, the switch went as smooth as it could. Pesticide Inspectors are now conducting marketplace inspections to ensure that products are off the shelves. If products are found on the shelves that should not be there, the inspectors are working with the stores to ensure the products are taken off. She also thanked the Program staff in ensuring the transition went smoothly.

R. Malfi asked how products are determined if they are disposed of as hazardous waste or if they are shipped back to the manufacturer. T. LaScola answered that it is up to the retailer as to what they want to do with the product.

Eversource Vegetation Management Plan ("VMP")

The VMP was received. The Program will review the plan, a hearing will be scheduled for the VMP, a 45-day comment period will be announced, and the Rights of Way Advisory Panel will review the plan as well.

K. Pearson asked if the plan could be viewed now and when the hearing would be held. T. LaScola stated that the Program needs to review it first and then it will be made public for the hearing when it is scheduled.

C. Richmond asked how long the VMP was for and who the entity was that reviews the plan. T. LaScola stated that the VMP is a 5-year plan, and the ROW Advisory Panel reviews the plan. She offered to resend the ROW presentation that was developed for a prior meeting to the meetings. J. Burgess explained that the ROW Advisory Panel doesn't usually meet as they are not taking a collective action or deliberating. However, if there is a VMP that MDAR feels deliberation is needed, it will call a meeting of the ROW Advisory Panel and the meeting will be an open meeting. She noted that there was an open meeting of the ROW Advisory Panel for the last Eversource VMP. She also explained that that a public hearing and public comment period must be held for VMP submissions.

D. REGULATION UPDATE

T. LaScola provided an overview of the regulatory process for pesticide regulations. She stated that if a new regulation is to be developed or existing regulations changed, the Pesticide Board ("Board") must first approve the change/addition of regulations. MDAR drafts the regulation and the draft needs to be approved by the Board before it goes through the required public hearing process. The Board may also make changes to the draft regulation. After the hearing is held, MDAR may adjust the draft regulations (based on the comments). A final draft is then submitted to the Board for approval. The Board may also make changes at this point. Once a final draft has been approved by the Board, the regulation begins to move through the promulgation process. The draft amendments to 333 CMR 10 and 14 were approved by the Board to move to a public hearing.

333 CMR 9.00 Amendment (Pesticide Dealers Regulations):

T. LaScola stated that due to changes made to the Federal Insecticide Fungicide Rodenticide Act ("FIFRA") MDAR had to update 333 CMR 10 (Dealer Regulations). The updates were very minimal in that it added a few items to the record keeping requirements. Any other changes made in the section were copy edits.

R. LaRocque asked if there was any intent to have the record keeping digitized. T. LaScola stated that Dealers are required to submit an annual sales report. As MDAR plans to digitize the annual use reports, sales reports will be added as well.

333 CMR 14.00 Amendment (Pesticide Use in/on School Property Regulations)

T. LaScola stated that a representative from a Mosquito Control District ("MCD") asked the Pesticide Board to consider amending the regulations so that larvicide could be exempt from having to be listed on the schools Integrated Pest Management ("IPM") plan prior to use. It was explained that the MCD's have a hard time getting the schools to update their plans to include the products thus not allowing the MCD's to use larvicide in the catch basins or storm drains. This leaves "holes" in their mosquito control and could lead to having to use adulticide if not able to kill the larvae. The Board asked MDAR to send notices out to schools informing them that there may be a change to the regulation. When MDAR reported that there were not comments from the schools, the Board directed MDAR to amend the regulations. The change in the regulation would allow for an MCD or organization established under M.G.L.c. 252. to apply a larvicide in a catch basin/storm drain on school property if the product is not listed on the plan.

Discussion

C. Richmond wanted to request that MDAR provide a list of products that are used in catch basins/storm drains to the Board. He stated the reason why he brings this up and why there is a call for a vote on this topic is because he is concerned with the blanket exemption for all larvicides, and he believes it should be limited to biological larvicides. R. LaRocque agreed with C. Richmond.

T. LaScola responded that she believed the reason that Board and MDAR was supportive of the change is due to the limited risk of exposure to children. R. LaRocque indicated that exposure could occur from an overflowing storm drain or catch basin.

C. Richmond wanted to make sure that the Board knows and hears how the Council feels about this amended regulation prior to the Board making a final vote. J. Burgess stated that MDAR could send out the Councils approved meeting minutes pointing out the discussion/concern prior to the next Board meeting.

L. Mattie stated she didn't know why larvicides needed to be exempt in the first place. R. LaRocque added that she also did not see why it was necessary and would object to the regulatory change.

C. Richmond stated that he was going to suggest that the regulation only apply to biological larvicide or 25b products.

Motion: R. LaRocque moved that Council support the amended regulation as written.

Discussion: There was much discussion as to what that motion meant given the fact that most of the discussion was not supporting the regulation

No: K. Pearson, R. Malfi, C. Richmond, L. Mattie, R. LaRocque

In Favor: None

Motion does not pass

Motion: C. Richmond motioned to that the amended regulation limit the exemption to biological larvicide and minimum risk pesticides (25b)

Second: R. Malfi

Discussion: R. LaRocque stated that she does not believe the regulations needs to be amended at all from its original language. L. Mattie stated that biologicals can affect environmental systems and she is concerned this would lead to an increase in the use of larvicides. R. Malfi stated that she was indecisive on this. She stated that she understood that if there are problematic areas and that using a larvicide could reduce the adult population but in an ideal world there would be an increased communication between the school and the MCD's. However, she noted that that schools are overburdened and IPM plans are probably not the first thing on their mind. She stated that she tended to support what C. Richmond is proposing.

C. Richmond withdrew his motion given the fact that the Councils minutes will reflect this discussion and the discussion can continue at the October meeting. He also stated that it may be helpful for an MCD to present to the Council.

G. NEW BUSINESS

None

K. ADJOURN

Motion: K. Pearson

Second: R. LaRocque

In Favor: All