

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormack Building, 1 Ashburton PL; Conference RM 1, 21st FL; on Thursday, December 7, 2017

The Meeting was called to order at approximately 10:05 A.M.

BOARD MEMBERS IN ATTENDANCE

Commissioner John Lebeaux (Chair)	Present
Marc Nascarella, DPH, Designee for Commissioner Bharel, M.D.	Absent
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	Present
John Looney, Public Member	Present
Brian Magee, Toxicologist	Absent
Laurell Farinon, Conservation	Present
R. Christopher Brittain, Public Member	Present
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:

Bob Mann, NALP; Paul Mendelsohn, NALP; Laura Kelly, POCCA; Todd Kelly, POCCA; Steve Leibowitz, POCCA; Brian O'Malley, MD, POCCA; Ted Burgess, Burgess Pest Man.; David Flynn, Burgess Pest Man. / NEPMA; Galvin Murphy, Yankee Pest Control; Bill Siegel, Orkin; Robert Leon, General Environmental Services/NEPMA; Bruce Taub, Esq. Counsel for Town of Brewster; Aileen L'Etoile, Orleans; Jessica Burgess, Esq. Counsel for MDAR; Hotze Wijnja, Ph.D., MDAR; Taryn Lascola, MDAR; Bruce Bouck, DEP; Michael McClean, MDAR; Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Pesticide Board Agenda
- September 7, 2017 Minutes Pesticide Board Meeting
- Prehearing Conference Report
- POCCA Initial Supporting Documentation
- Horsley Witten Group
- Petitioners Opposition to Motion to Dismiss
- MDAR Motion to Dismiss
- Ever Source Motion to Dismiss

- Order to Show Cause
- Order of Dismissal
- Notice of Withdrawal - Yarmouth
- Notice of Withdrawal - Chatham
- DALA Transmittal Letters for all 2017 Appeals
- DALA Recommended Final Decision

A. Approval of the Thursday, September 7, 2017 Meeting Minutes

Commissioner Lebeaux presented the Minutes from the Wednesday, June 7, 2017 Meeting for the Board's consideration.

Voted: To accept the minutes of the Thursday, September 7, 2017 Meeting.

Moved: John Looney

Second: Richard Berman

Abstained: Laurel Farinon and Kathy Romero

Approved: 7 – 0 – 2

B. Pesticide Board Advisory Councils Recommendations - Review and Approval

Taryn Lascola presented the Board with an overview of the receipt and review of applications for members of the Pesticide Board Advisory Council.

The below five candidates were selected representing and a vote is needed from the Pesticide Board approving the selection of the new members.

- Robert (Bob) Mann, NALCP
- Russell Bragg, Tree Tech
- George Williams, Univar
- Robert (Bob) Leon, General Environmental Services
- Gerard Bettencourt, Minute Man Pest Control Services

Board member Steve Ward commented that none of the Pesticide Board Advisory Council candidates presented were farmers and he would like to see a farmer on the Council.

Board member John Looney also inquired as to any alternate members that might be selected to serve as may be needed.

Taryn confirmed Steve's observations and noted that, setting aside the one application by an agricultural research scientist, there were no other applications submitted by farmers. All other applications submitted will be held for future consideration as new members may be needed and terms conclude. There are no alternate member positions in the current make-up of the Council. If a vacancy should arise, the Department would work to find a new member and again present the selection before the Board.

Voted: To approve the selected candidates as members of the new Pesticide Board Advisory Council.

Moved: Kathy Romero
Second: Richard Berman
Opposed: Steve Ward
Approved: 8 – 1

C. Town of Brewster and Marjorie Lau v. Department of Agricultural Resources (DALA Docket No. MS-17-447 and 456) – Review of the Recommended Final Decision of the Division of Administrative Law Appeals

Attorney Jessica Burgess, Esq. explained that the Division of Administrative Law Appeals magistrate presided over the matter and issued a recommended decision to the Pesticide Board. In order for the decision to become final the Pesticide Board has to review the record and the decision and take a vote to accept, reject or modify the decision.

The Department originally received five requests for appeal. Three were from the municipalities of Brewster Chatham, and Yarmouth and two were from private individuals from Vineyard Haven. The Towns of Yarmouth and Chatham voluntarily withdrew and one of the private individuals was dismissed by DALA for failure to participate, leaving the Town Brewster and one private individual from Vineyard Haven with the appeal for a hearing.

The recommended final decision of the DALA Magistrate was for the Pesticide Board to dismiss the appeals. The Magistrate found there was no standing. Specifically that the Town failed to make a sufficient showing that the proposed spraying would interfere with the Town’s obligation to provide residents with drinking water. The individual who opposes the spraying of the row of way has failed to show how the harm done to the water supply she alleges would differ from the harm that the general public might suffer. The town also failed to plead sufficiently in its appeal when it argued that the spraying of a right-of-way less than 50-feet above the aquifer violates Department’s regulations. The decision issued on October 6, 2017 was to recommend that the Pesticide Board dismiss the appeals.

Voted: To accept the DALA Magistrate’s recommended final decision.

Moved: Richard Berman
Second: John Looney
Abstentions: R. Christopher Brittain
Approved: 8 – 0 – 1

Commissioner John Lebeaux asked the Board for a motion authorizing him as Chair to sign the necessary documents.

Voted: To authorize Commissioner John Lebeaux to sign the necessary documents.

Moved: Kathy Romero
Second: Laurel Farinon
Approved: 9 – 0

D. Cape Cod and Martha's Vineyard - Hydrology and Alleged Contaminants as Presented by Protect Our Cape Cod Aquifer (POCCA)

Commissioner John Lebeaux introduced Ms. Laura Kelly, President of Protect Our Cape Cod Aquifer (POCCA) and landscape architect coordinated an informational discussion with assistance from Cape Cod resident Steve Leibowitz, Cape Cod Naturalist Todd Kelly, and Dr. Brian O'Malley, MD.

Ms. Laura Kelly explained how her organization is working to educate home owners, business owners, and both Town and State government officials about vegetation management and matters related to drinking water on Cape Cod. She and her co-presenters showed maps of the drinking water lenses, their depths, and overlaid these features with the distribution power line ROWs as maintained by Eversource. She asks the Pesticide Board to consider the information presented and take action to protect the Cape's drinking water supply when the next 5-year vegetation management plan (VMP) is submitted for the Department's approval.

Some of the main points presented are outlined as follows:

- That there are other non-toxic ways to maintain the ROW other than the use of thousands of gallons of herbicides;
- That the use of these herbicides can have unintended consequences;
- That the EPA designates Cape Cod as a sole source aquifer with some 96% of the Cape's drinking water coming from the aquifer and 100% on Martha's Vineyard;
- That based on the highly permeable soil characteristics of the Cape, the aquifer is highly susceptible to contamination;
- That the depth to groundwater on the Cape is quite shallow – with some areas being only 8 feet in depth and others as deep as 50-feet;
- That given all of the unique characteristics related to its soils, geology, and hydrology it's important to treat Cape Cod differently from other areas of the State;
- That the protection of native vegetation on Cape Cod is another reason why herbicides should not be used to maintain the Eversource ROWs;
- That vegetation management strategies in the ROW might better utilize select native species resulting in minimal maintenance requirements and supporting wildlife found in and moving through those areas;
- That the toxic properties of many chemicals applied to the environment are often learned much later and may result in groundwater contamination, risks to public health, and costly remediation efforts over long periods of time; and
- That it is the will of the people on Cape Cod to protect the drinking water and that in May of 2016, the Barnstable County Assembly of Delegates approved a resolution calling on the MDAR to deny approval of any power line vegetation management plan (VMP) in Barnstable County which included the use glyphosate and other herbicides.

Members of the Pesticide Board with assistance from MDAR Staff, Chief Inspector Michael McClean and Environmental Chemist Hotze Wijnja, then engaged in a detailed discussion of the types of herbicides, quantity of materials used, and methods of application for vegetation management along the Eversource ROW on Cape Cod.

E. eLicensing and Status Reports

Taryn Lascola indicated that the new eLicensing system was indeed up and operational and that the Department was working to approve all of the renewal applications submitted online.

An informational letter and ePLACE PIN / Account Link Letter was mailed to each licensee in August of 2017; such that, each person might create their new account, link their existing pesticide records and renew their credentials for CY 2018. The Department also sent renewal reminder post cards to all applicators in October with names and numbers of MDAR contact people.

Since that time, the Department has received an extremely high volume of calls from people who still need the ePLACE PIN / Account Link Letter. Given the volume of calls and needed assistance, the Department has a growing backlog of renewals that need to be reviewed and processed.

The Department petitioned the EEA to waive any late fees this year for users of the new ePLACE Portal. This request was granted and now implemented in the new system; such that, anyone completing their renewal before the end of June 2018 will indeed be able to obtain their CY 2018 Credential without additional fees. The Pesticide Program has strategized to tackle the many issues and catch up with renewal processing. In addition it is working with EEA to better leverage the resources available through ePLACE Help Desk.

F. Pesticide Program Updates and Status Reports

The Department had a hazardous waste pesticide disposal event earlier this year. The Department participated through a collaborative effort with Massachusetts DEP and funding by U.S. EPA. The event was well received and considered to be quite successful. Some of the highlights are as follows:

- 143 individuals registered for participation with 105 actually dropping off waste pesticides
- Some 21,000 lbs. of waste pesticides were collected
- A total of \$50,000 in funding was provided with participants sharing the cost of disposal
- The average cost of disposal was approximately \$3 per pound

G. Legal Updates

There were no pressing legal updates that needed to be discussed.

H. Meeting Adjournment

Voted: To adjourn Thursday, December 7, 2017 Meeting.

Moved: John Looney
Second: Kathy Romero
Approved: 9 – 0

The Meeting was adjourned at approximately 12:00 p.m.