

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormack Building, 21st FL, Conference RM 1 on Wednesday, March 1, 2017

The Meeting was called to order at approximately 10:03 A.M.

BOARD MEMBERS IN ATTENDANCE

Taryn Lascola, MDAR, Designee for Commissioner Lebeaux (Chair)	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	Absent
Richard Berman, Commercial Applicator	Present
John Looney, Public Member	Present
Brian Magee, Toxicologist	Present
Laurell Farinon, Conservation	Present
Chris Brittain, Public Member	Present
Steven Bradley Bird, M.D., Physician	Absent
Steve Ward, Farmer	Absent

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, MALCP; Bill Seigel, NEPMA; Ted Burgess, NEPMA; Jessica Burgess, Esq., MDAR; John Lebeaux, MDAR Commissioner; Hotze Wijnja, MDAR; William Mehaffey, NEMMC; John Moak, NEMMC; Galvin Murphy, NEPMA; Ted Brayton, NEPMA; Bob Leon, NEPMA; and Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Minutes from the Wednesday, December 7, 2016 Pesticide Board Meeting
- U.S. EPA Certification of Pesticide Applicators Rule; Comparison of the Major 2016 Revisions to the Existing Rule
- Advisory Council Member Documents
 - Member Application Form
 - Advisory Council Guidelines

A. Minutes from the Wednesday, December 7, 2016 Board Meeting

Taryn Lascola presented the Minutes from the Wednesday, December 7, 2016 Board Meeting for the Board's consideration.

Voted: To accept the minutes from the Wednesday, December 7, 2016 Board Meeting.

Moved: Jack Looney
Second: Laurel Farinon
Abstentions: Ken Simmons and Michael Moore
Approved: 8 – 2 - 0

B. Federal Regulations – EPA Finalizes New Certification of Pesticide Applicator Regulations (40 CFR Part 170) Federal Regulations – EPA Finalizes New Certification of Pesticide Applicator Regulations (40 CFR Part 170)

Taryn Lascola presented the revised Federal Regulations published in the Federal Register last December. In these regulations, the U.S. EPA was looking to tighten up how the States handle the “direct supervision” on non-certified applicators and the overall training and certification processes of applicators using Restricted Use Pesticides (RUP).

While the existing MDAR Pesticide Regulations are already in agreement with many of the new federal requirements, the Department will be impacted with respect to completing a comprehensive review of all private and commercial certification exams. The Department might have to re-write some of the exams to comply with the more specific criteria outlined in the new regulations; moreover, the MDAR might have to write a few new category exams.

State Lead Agencies (SLA) will also have to submit a new Certification and Training Plan to U.S. EPA via the new CPARD system that details how the State will comply with the new regulations. The newly submitted plans will have to follow specific EPA guidance criteria. In April the EPA is providing training on the new regulations and required submittal of the new C & T Plans via CPARD that Steve Antunes-Kenyon will attend.

Pesticide applicators across the country will also be affected by new training requirements for non-certified applicators using RUPs. The EPA has outlined the criteria for annual training of such applicators.

Laurel Farinon asked if the new annual training requirements for non-certified applicators of RUPs will place a new burden on the MDAR – in terms of providing training or tracking such completed training.

Taryn explained that it is the responsibility of the certified supervising applicator to provide the annual training and maintain records of such training. The Pesticide Program Inspectors will indeed have to include this training in their record inspections.

No motions were made or actions requested.

C. Pesticide Program Updates and Status Reports

Pollinator Protection Plans

Taryn Lascola briefly noted that the Department's Pollinator Protection Plan was almost complete.

Advisory Councils

Taryn Lascola explained how the Department has created forms for use in the process of selecting members for the Pesticide Program Advisory Council.

Richard Berman indicated that the creation and update of the Consumer Information Bulletins (CIB) is just one example of the type of assistance the Advisory Council might play. Richard also inquired about the creation of separate advisory councils for the various sectors of Massachusetts pesticide applicators, e.g. Lawn Care, Agriculture, Structural, etc.

Updates on eLicensing

Steve Antunes-Kenyon explained that the MDAR continues to work with staff from EEA and contractor GCOM that is working to develop the Energy and Environmental Information and Public Access System. He indicated that the MDAR was approximately 50% to 75% done the development testing, but that there remain a number of bugs and missing components that still require development and testing.

The next big step will be to move the application to a new environment for quality assurance (QA) and user acceptability testing (UAT). The April release date – as originally planned has now been pushed back to June. In summary, Steve indicated that the work was going well and that the MDAR was cautiously optimistic and that an external stakeholder participation event was planned, but final approval and details need to be finalized with the EEA.

E. Legal Updates

Right of Way: Eversource Yearly Operational Appeal (YOP)

Jessica Burgess updated the Board on the appeal received from four municipalities on Cape Cod challenging the Department's approval of the Yearly Operational Plan (YOP), expiring in December 2016, from Eversource Energy. She explained that when the Pesticide Board Agenda was posted the MDAR did not have the decision from the DALA Magistrate. Late Monday a decision was granted on the motions filed; however, this did not give the MDAR sufficient time to place it on the Agenda.

Both the MDAR and Eversource filed motions to dismiss for lack of standing, arguing that the four towns did NOT argue sufficiently that they faced any actual harm and the DALA Magistrate agreed as outlined in the eight-page decision.

Given the timing of the DALA Magistrate decision and the fact that the Board needs time to review this decision, the MDAR would like to schedule another Meeting to consider the matter. This will give

MDAR an opportunity to present the matter formally, have the Board vote, and provide an opportunity for other parties to attend.

The four towns cannot appeal the decision made by DALA until the Board votes on the matter. It's for this reason that the MDAR does NOT want to delay scheduling another Meeting where the MDAR will present the matter for the Board's consideration.

One of the issues that did come up through this matter was the process used to approve the YOPs. It is a yearly plan and by the time the public comment period ends and MDAR approval is granted, an appeal will almost always be found moot. This conversation is ongoing and it's one of the points that the DALA Magistrate makes in the decision.

For the current Eversource YOP, the public comment period ends on March 27, 2017. At this time, the MDAR is receiving a number of very similar comments—and the MDAR does anticipate an appeal.

There was discussion between the two parties related to the Vegetation Management Plan (VMP). The VMP is a five year plan that is up for renewal at the end of Calendar Year 2017. The VMP is also appealable and may be an alternative avenue to address the concerns of the four towns related to the Eversource ROW management.

The Board may accept or reject the DALA Magistrate recommended decision. Once the Board votes, that is the final decision; however, it may be appealed. The Board is NOT required to hear testimony as the next Meeting is NOT an opportunity for a second hearing. The administrative hearing has played itself out. The Board makes its decision based upon the record that is provided to them by the MDAR. The MDAR will prepare an informational packet for the Board's consideration.

No motions were made or actions requested.

Exclusion Regulations

Jessica Burgess, Esq. explained that requests for exclusions from pesticide applications are now sent directly to the MDAR. A website is being developed to help facilitate this new process. An online form is printed and sent via mail or email to the State Reclamation and Mosquito Control Board (SRMCB) Operations Coordinator. A paperless online submission form is currently under development.

Mosquito Control Districts (MCDs) are sending letters to their member communities and all parties who previously requested exclusions to explain the changes. The Massachusetts Municipal Association (MMA) and other parties are notified of the new process—that exclusion requests are made directly to the MDAR.

The old process required submission of requests by March 1st of each year. The new process allows parties to submit their requests anytime of the year. All requests are effective 14-days from receipt and expire at the end of each calendar year.

Municipalities may indeed request a list of all Wide Area Exclusions requests are a matter of public record.

Other Legal Updates

Jessica Burgess, Esq. explained that the Department submitted 2-pieces of legislation to amend the Governor's Supplemental Budget.

The first piece helps to address the Department's ability to issue fines for violations by amending an existing section of the Massachusetts Pesticide Control Act. Currently the Pesticide Program may issue fines for unlicensed pesticide applications and violations of the Act to Protect the Health of Children and Families from Harmful Pesticides. All other fines currently must be issued through the Office of the Attorney General (AG). Historically, the MDAR has found that it's difficult and quite time consuming to complete company investigations and enforcement cases with the AG's Office. The legislation submitted will give this additional fining authority to the MDAR which greatly helps to streamline the process of addressing violations.

The second piece of legislation regards the creation of a new pesticide business registration requirement and would create a new section in the Massachusetts Pesticide Control Act. The MDAR believes such a requirement would create additional consumer confidence; especially, because so many of the calls received seek to verify a company's authorization to engage in pest control practices.

Pesticide Enforcement has found that in some cases it's the business practices that are leading individual pesticide applicators to violate state and federal laws. When such an applicator leaves a problematic business or has his/her credential suspended or revoked, the business simply replaces them with another applicator, thus preventing the root problem from being addressed. Such a business registration requirement would provide additional tools for Pesticide Enforcement to address those businesses that are not working to be in compliance with State laws.

Richard Berman voiced a number of concerns for the proposed pesticide business registration requirement. He expressed disappointment that the Department had not brought this proposal to the Board prior to submitting the legislation. Richard stated that such a requirement was significant change in practice and that it's an issue the Pest Control Industry would really like to talk about. In particular he asked if the fines collected would go to a dedicated fund and how the revenue generated, from the business registration program, would be spent.

Jessica and Taryn explained that revenue from the business registration program as well as that from agricultural inspections would go to a dedicated trust fund. They indicated that trust fund was created by law some time ago; however, there was no dedicated revenue going into the fund when the trust was initially created. The Trust was created by MGL Chapter 20 section 32. This law created the Agricultural Inspections and Infrastructure Trust Fund consisting of fee revenue generated from apiary inspections, poultry inspections, animal rescue and shelter registrations, and registration of pesticide companies. It states that the funds from the four specific programs must be used for certain program related activities as specified.

Richard added that he would like to see the legislation pulled out of the House Ways and Means Committee; such that, the Board and the Pest Control Industry may discuss it further. In particular he expressed concerns for how the fund may be used. He noted that the State of New York also has a business registration requirement that generates revenue and that such fees as well as fines collected are used to help fund the NY Agency in a manner that incentivizes the issuance of such fines. With this in mind, he would like to see the MDAR officially outline its intentions for such a program.

Brian Magee inquired as to what other matters, besides fees, were involved in the proposed business registration requirement.

Taryn Lascola indicated that the submitted legislation does not specify other components; however, the MDAR would seek an annual business registration and collection of information. This would include basic contact information, insurance information, and how many pesticide applicators were employed by such business. She further explained that the MDAR does not currently have any laws or regulations requiring this information and that the lack of this information has made finding some pesticide businesses especially challenging.

In New England, Massachusetts and Rhode Island are the only states that do not have a pesticide business registration requirement and there are more than 28–states across the U.S. having similar registration requirements.

The above matters as well as the following were touched upon by the Board with contributions from attending members of the public.

- How registration would work with larger companies and their regional branches;
- How registration would work for companies that had no physical presence in the state; and
- Why the registration requirement was proposed to be annual versus a one-time registration.

While, Taryn and Jessica both indicated that decisions regarding such issues had yet to be worked out, Richard Berman replied that this was yet another area where the Pesticide Advisory Council would help the Department.

No motions were made or actions requested.

F. New Business

Under new business Jack Looney engaged the Board in a brief discussion of the herbicide glyphosate. He expressed an interest in the issue of food residues and potential health concerns. Certain health professionals from whom Jack receives care or guidance have indicated that some grains may contain significant residue levels of glyphosate and advise their patients to reduce their consumption of such products.

Hotze Wijnja, MDAR Environmental Chemist, Taryn Lascola with additional contributions from Board Members Michael Moore and Marc Nascarella joined Jack in a brief discussion of the pesticide residues including how they are regulated and which agency addresses concerns for their consumption.

No motions were made or actions requested.

G. Meeting Adjournment

Voted: To adjourn Wednesday, March 1, 2017 Meeting.

Moved: Jack Looney
Second: Laurel Farinon
Approved: 10 – 0

Meeting adjourned at approximately 11:15 a.m.