

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the Hurley Building, 19 Staniford ST; Conference RM 612 a & B; on Tuesday, September 25, 2018

The Meeting was called to order at approximately 10:00 A.M.

BOARD MEMBERS IN ATTENDANCE

Taryn LaScola-Miner, Designee for Commissioner John 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 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	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:

Galvin Murphy, Yankee Pest Control, NEPMA, NPMA; Bob Mann, NALP; Laura Kelley, POCCA; Bill Siegel, Orkin; Ted Brayton, Griggs & Browne; Bruce Taub, Esq. Counsel for Town of Brewster; C. Whiting Rice, The Whiting Group; Jessica Burgess, Esq. Counsel for MDAR; Hotze Wijnja, Ph.D., MDAR; Carol Szocik, MDAR; Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Pesticide Board Agenda for September 25, 2018
- Pesticide Board Minutes from the June 19, 2018 Meeting
- Environmental Discussion Document written for the Pesticide Board and Relative to Environmental Conditions on Cape Cod and the Regulatory Matters Pertinent to the Proposed Eversource VMP and YOP from C. Whiting Rice, The Whiting Group, June 19, 2018
- Letter to the Board with Attachments Pertinent to the Use of Legal Names by Eversource or NSTAR from C. Whiting Rice, The Whiting Group, June 19, 2018
- Recommended Decision to Revoke Two Pesticide Licenses, Carol Szocik, Hearing Officer, MDAR

A. Approval of the Wednesday, June 19, 2018 Meeting Minutes

Taryn Lascola-Miner Commissioner Lebeaux presented the Minutes from the Wednesday, April 4, 2018 Meeting for the Board's consideration.

Voted: To accept the minutes of the Wednesday, April 4, 2018 Meeting.

Moved: Richard Berman

Second: John Looney

Abstained: John Looney

Approved: 9 – 0 – 1

B. Hearing Officer's Recommended Decision to Revoke Two Pesticide Licenses

Carol Szocik was Hearing Officer on August 15, 2018, for the Department's Pesticide Enforcement case involving the following two individuals. Ms. Szocik presented her Recommended Decision to revoke the license for one year.

- Kevin Biggins, AL-0044897
- Christopher Biggins, AL-0044792

As outlined in the eight-page Hearing Officer Report, Ms. Szocik stated that the above individuals were found to have made unauthorized pesticide applications using products stolen from their employer where they took measures to hide their fraudulent activities and violated numerous State pesticide laws and regulations.

Pesticide Inspector Jesse Diamond gathered written statements and other evidence related to this case. The investigation carried out by Inspector Diamond, including statements from the pesticide applicators themselves, confirmed the violations. The numerous specific violations and details of the investigation were outlined in the report by Ms. Szocik and further supported by some 17-exhibits provided therein.

Members of the Pesticide Board expressed concern for these serious violations. Due to the nature of these illegal activities, the Board expressed a desire to not only support the Hearing Officers Recommended Decision, but inquired as to what procedures might be employed to increase the length of time by which the licenses may be revoked.

Attorney Jessica Burgess, Esq., MDAR Legal Counsel then clarified that the Pesticide Board has the Final Decision and that State laws allow the Department to revoke pesticide licenses for up to a maximum of two-years.

After a thorough discussion amongst its Members with consultation from the Department's Legal Counsel, the Board made its Final Decision.

Voted: To accept the Recommended Decision by the Hearing Officer to revoke the licenses of Kevin Biggins, AL-0044897 and Christopher Biggins, AL-0044792 for one-year.

Moved: Ken Simmons

Second: Richard Berman

Abstained: Taryn Lascola-Miner

Approved: 9 – 0 – 1

Director Taryn Lascola-Miner then asked the Board to consider a motion seeking to have the Board's Final Decision signed by MDAR Commissioner John Lebeaux rather than being signed by his Pesticide Board Designee.

Voted: To have the Board's Final Decision revoking the licenses of Kevin Biggins, AL-0044897 and Christopher Biggins, AL-0044792 for one-year signed by MDAR Commissioner John Lebeaux.

Moved: Richard Berman

Second: John Looney

Approved: 10 – 0

C. *Pesticide Program Updates*

Director Taryn Lascola-Miner stated the following:

- That the Pesticide Program is preparing for annual pesticide applicator license renewals. All licensed applicators that have created an ePLACE Portal Account and used their accounts to renew their license for Calendar Year (CY) 2018 receive an email notification inviting them to renew their credentials for CY 2019. Those individuals who failed to comply with an audit of the Retraining / Recertification requirements do not receive such notification.
- That the Department is again working with the Environmental Information and Public Access (EIPAS) Development Team within the Executive Office of Energy and Environmental Affairs (EEA) to develop a new online pesticide product registration system. The new system would have pesticide registrants also using the same ePLACE Portal that is used by pesticide applicators.
- That the Department had many pesticide enforcement complaints in CY 2018. A number of those complaints were related to mosquito and tick pesticide applications.
- Due in part to the new Federal Regulations 40 CFR Part 171, Certification of Pesticide Applicators, the Department is looking to open up State Pesticide Regulations including 333 CMR 9.00, 333 CMR 10.00, and 333 CMR 13.00. There are minor changes needed in the Dealer Regulations related to record keeping. The regulations pertinent to certification and licensing of pesticide applicators have not undergone updating in quite some time. Lastly, the standards for application regulations need some modification to address the up and coming proposed uses of unmanned aerial vehicles (UAV). The Department would like to take a closer look at mosquito and tick pesticide applications to see if there are ways to help address growing problems in this area of pest management. In particular, the Department has received complaints about drift from the commercial application of mosquito insecticides applied via ultra-low volume (ULV) backpack equipment. These complaints are not related to applications made by mosquito control districts under the purview of the State Reclamation and Mosquito Control Board.

- The past August, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit Court) revoke all tolerances and cancel all registrations for the pesticide chlorpyrifos within 60-days of their decision. The Department is looking for guidance from the U.S. EPA.
- The Environmental Bond Bill included language that amended MGL c. 132B Section 14 A changing the Department's abilities to issues fines. The Department may now issue fines directly for any violation of 333 CMR as long as it is not the first violation. While the Department may issue warnings, administrative orders, license suspensions, revocations, etc.; however, it cannot issue a fine unless it is a repeat violation.

C. Pesticide Board Advisory Council

Robert (Bob) Mann, Member of the Advisory Council and Representing the National Association of Landscape Professionals stated that the Council had its Meeting previously at the Division of Fish and Wildlife Headquarters in Westborough. Bob provided a brief overview of the issues discussed including the following:

- The rules about remote participation at Pesticide Board Advisory Council Meetings;
- The issues related to mosquito and tick pesticide applications including use of FIFRA 25B (minimal risk pesticide products) and drift related to fine droplet sizes from backpack ULV equipment;
- The issues related to changing state pesticide laws to allow pesticide applicator apprenticeship programs and a company registration program.

Bob Mann indicated that the Advisory Council was willing and ready to help the Department with any regulatory changes in the various sections the Department now proposes to open up. He also stated that the next Advisory Council Meeting is on Friday, November 30, 2018.

Pesticide Board Member Steve Ward asked about representation on the Council by a farmer or other member representing agriculture.

While explaining that there were currently no members on the Council specifically representing agriculture, Bob state that he would be glad to speak with Steve to help address any concerns he might have relative to the Advisory Council issues discussed.

Attorney Jessica Burgess, Esq., MDAR Legal Counsel explained that it was critical to limit such Advisory Council discussions to a one to one communication to avoid any potential chain communication or other perceived violations of open meeting laws. She also clarified that under open meeting laws, any person including farmers or agricultural representatives might attend the Council's Meetings.

D. Legal Updates

Attorney Jessica Burgess, Esq., MDAR Legal Counsel explained that there were no significant legal updates to present before the Board.

She explained that as of the current date, the Department does not have a final decision on the proposed Eversource Vegetation Management Plan (VMP). The ROW Advisory Panel did meet twice to

review the draft VMP. At the second Meeting, the Panel voted to recommend approval of the VMP pending additional modifications.

Attorney Burgess also clarified that even when the VMP is approved, pesticide applications could only be carried out under the submission of an acceptable Yearly Operational Plan (YOP). The proponent of the YOP is also obligated to share it with the public and the various municipalities impacted and that such YOP's also carry a 45-day public comment period.

E. A Discussion of Materials Provided by C. Whiting Rice of The Whiting Group

Director Taryn Lascola-Miner explained that at the last Board Meeting, C. Whiting Rice, of The Whiting Group, had handed out copies of an informational packet. At the Meeting, Commissioner Lebeaux suggested that the Board review the packet of information and review it at a future meeting.

Taryn explained that while the discussion of the submitted packet and related topics was not required to be part of today's Pesticide Board agenda, Mr. C. Whiting Rice had requested an opportunity to stand briefly before the Board.

What follows is a brief overview of the concerns and issues stated by Mr. C. Whiting Rice on behalf of The Whiting Group and other associated parties:

- They would like to have some form of dialog with staff, Pesticide Board or Pesticide Advisory Council as may be appropriate and they would like to see that the Rights of Way Management regulations found at 333 CMR 11.00 are opened up and modified to address the various issues and concerns expressed here and in the documents previously submitted.
- They are specifically seeking to have a dialog with the Department relative to the setbacks from the public and private drinking water wells. The State's regulations do not describe those setbacks as being horizontal or vertical distances. While the Board did discuss these issues and reached the conclusion that such regulatory distances were to be horizontal, his group disagrees with such interpretations based on the unique hydrology of the Cape.
- They are seeking to have the Department approve VMPs and YOPs with conditions. According to C. Whiting Rice, past YOPs have included language describing how applicators were to maintain daily logs describing the applications including amounts of materials applied, locations of the applications, wind and related weather conditions. When they sought the records from the Department, they were told that such records would come directly from Eversource. As a result of this experience, they would like to have the Department approve of VMPs and YOPs with conditions for reporting.
- They are concerned with the legality of ROW herbicide applications on certain properties that fall under specific easement restrictions which declare that no chemical controls may be applied.
- They would like to see the Department take a more detailed examination of the VMP and YOP comments received from municipalities. He believes that case law supports that the

Department must take such comments into greater consideration during the review and approval process.

- They would like to see the Pesticide Board further review the use of glyphosate in-light of all the controversy and new information on this chemical.
- They would like to see the Department address concerns relative to perceived confusion or ambiguity with how the utility Eversource or NSTAR represents itself on VMPs, YOPs, and other related applications submitted by the utility.

Pesticide Board Member John Looney asked if the Department had a hydrologist or geologist associated with the Department or DEP who might be able to comment. He briefly described work that his Department did years ago on the Cape and Nantucket and that work supports the unique geology found on the Cape. He expressed that the Board did need a greater degree of accuracy concerning the groundwater lenses on the Cape. He further stated that in order for the Board to make a more informed decision that he would like to have someone from the State make a presentation before the Board.

Director Taryn Lascola-Miner asked the Board if it would like to further review the packet of information provided by C. Whiting Rice and place the issues on a future meeting agenda.

C. Whiting Rice asked of the Board might immediately address its ability to approve VMPs and YOPs with conditions.

Attorney Jessica Bures, Esq. MDAR Legal Counsel stated that the Department may approve, deny, modify, or ask for additional information during the approval process. She also clarified that just because the Department issues an approval, it does not supersede or overrule another legal obligation that exists. Even when Eversource receives permission from the Department, they still have the legal obligation to comply with all other legal requirements outside the purview of the Pesticide Board.

F. Brief Statement from Laura Kelley, POCCA

Laura Kelley, President of Protect Our Cape Cod Aquifer, made a brief statement to the Board. She expressed her gratitude to the Board for listening to the points outlined earlier by C. Whiting Rice as they relate to reforming the current ROW regulations and protecting our natural resources. Laura expressed concern for the lack of reports describing the specific applications of ROW herbicides on the Cape; especially, those related to glyphosate that might impact the health of exposed honey bees. She asked the Board to use its authority to improve the protections afforded to the environment in Massachusetts; especially, pollinating insects.

G. Meeting Adjournment

Voted: To adjourn Tuesday, June 19, 2018 Meeting.

Moved: John Looney
Second: Richard Berman
Approved: 10 – 0

The Meeting was adjourned at approximately 11:16 a.m.