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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

June 15, 2012

Important—please note meeting location and time:

AMHI Complex, 90 Blossom Lane, Deering Building, **Room 233**, Augusta, Maine

MINUTES

8:30 AM

Present: Bohlen, Jemison, Eckert, Ravis and Granger

1. Introductions of Board and Staff

- The Board and staff introduced themselves
- Staff present: Jennings, Fish, Hicks, Connors, Schlein, Tomlinson, Bills

2. Minutes of the May 11, 2012 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- Jennings asked the Board's opinion on the new format of the minutes, pointing out that Bills was able to type most of it during the meeting, which saved a lot of staff time. The Board agreed that it was acceptable, although they would prefer summaries and less detail. They also suggested that action items and decisions be highlighted in some way.

Granger/Ravis: Moved and seconded approval of minutes

In Favor: Unanimous

3. Public Information Gathering Work Session

Public Law 2011, Chapter 510, repealed the statutory mandate for the deposit system for restricted-use pesticide containers. In order to implement the intent of the legislation, the Board will need to repeal Chapter 21 of its rules and the corresponding record

requirements in Chapter 50. In addition, after reviewing the Board's report pursuant to Resolve 2011, Chapter 59, covering the use of Integrated Pest Management at schools, the Joint Standing Committee on Agriculture, Conservation and Forestry encouraged the Board to pursue rule amendments recommended in the report. Finally, the Board has developed a number of interpretive policies over the years in response to questions about the meaning or intent of its rules or statutes. However, policies are not enforceable. Therefore, the Board believes it is prudent to incorporate interpretations into rule. Five different definitions have been targeted for rule incorporation. The Board is now soliciting informal public input on its rulemaking concepts prior to formally initiating rulemaking. Written comments may be sent to the Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to henry.jennings@maine.gov.

Presentation By: Henry Jennings

Action Needed: Determine what rule changes the Board wishes to pursue this year

- Jennings pointed out that the governor has approved rule-making on all four rules requested.
- No one had signed up to talk. The audience was encouraged to comment.
- **Chapter 10**
 - Re low-risk pesticide.** Eckert remarked that it might be the mechanism of application or the container and that should be clear in the definition. Jennings replied that the policy talks about baits and granulars and essentially things that don't get airborne. Hicks added that risks assessment includes substance and method.
 - Re Government Employee.** Granger questioned whether this applies to those who spray, those who advise, and/or those who supervise. Jennings replied that primarily the statute says government employees who apply as part of their job need to be licensed, including state, federal and municipal employees. It was unclear whether quasi-governmental agencies, eg non-profits, housing authority, need to be licensed. The Attorney General at that time said that they were government employees. It has stood up in policy for a long time, but policies are not enforceable so it should be moved into definition. Jemison mentioned that Cooperative Extension has a policy that those making pesticide recommendations need to be licensed. Granger suggested we look at making that part of Board policy. Bohlen said his recollection from enforcement actions is that this is a place where people don't understand the rules and where are the situations where people don't know they are covered, eg. school employees who think they are maintenance and so they don't fall under this.
 - Re Other.** Lauchlin Titus asked the Board to consider adding "certified crop advisor" to Chapter 10 so that at some point the Board can consider allowing those who have that certification use their continuing education credits for the required pesticide credits. Jennings remarked that we would have to get the governor's approval to add that to the rule-making.

- **Chapter 21**
No discussion.

- **Chapter 27**

Kathy Murray talked about the process that was used in gathering the data. Felt it was thorough. Pat Hinckley, from Dept. of Education Facilities said she was very pleased with the collaboration and talked about the process that will be used in the future to get schools to report the name of the IPM Coordinator. Fish asked Hinckley how she thought the schools will react if we require training for the IPM Coordinator and she replied that many of them want training, but they are concerned about time and funding. She suggested getting them together once a year as face-to-face meetings are important, but also having on-line training, which is especially helpful for new staff, which happens a lot because of turnovers. Bohlen commented that he hopes that when we do rule-making we can get some people who are actually doing this to provide input because there are always things we can't think of. Tim Sorrel, an IPM Coordinator from SAD 58 said he thought online training would be great, because he's new and doesn't know where to begin, but also would like to meet, network, and find out how others are doing. He is worried about budget constraints. Bohlen commented that he is especially interested in how recordkeeping is working in school settings; people who have dealt with it, what's practical. Hinckley suggested doing some surveys and Murray remarked that she is working with a non-profit group that's doing a national survey. Deven Morrill said that from the applicators' standpoint, the BPC should keep the burden on applicators to a minimum. He likes the recommendation to reduce and consolidate paperwork and suggests we clarify wording to actually address outdoor as well as indoor; seems like it's geared toward indoor. Clarify what the expectations are for outdoor applicators without increasing the burden on outdoor applicators. A discussion followed about how the log book would work and whose responsibility it would be. Fish pointed out that the goal is to increase communication between applicators and the IPM Coordinator and Bills mentioned that communication prior to a decision to use pesticides was as important as records of applications. Heather Spalding, MOFGA, reminded the Board that what precipitated this whole discussion was legislation to ban the use of pesticides on school grounds and we should encourage/facilitate the use of organic approaches.

- **Chapter 50**
No discussion

4. Consideration of NuFarm Americas Inc. Request for a FIFRA Section 24(c), Special Local Need Registration for NuFarm Ethephon 2 Plant Growth Regulator (EPA #228-660) for Use on Greenhouse Tomatoes

Bayer CropScience is no longer supporting the FIFRA Section 24(c) registration for Ethrel Brand Ethephon Plant Regulator (EPA #264-267). However, NuFarm Americas Inc. is willing to support Backyard Farms' request for a 24(c) registration for NuFarm Brand Ethephon 2 Plant Growth Regulator for use on greenhouse tomatoes. Use of this

product aids in providing consistent quality of tomatoes year-round, by accelerating ripening and minimizing crop loss due to softness, cracking, and other deformities.

Presentation By: Mary Tomlinson
Registrar and Water Quality Specialist

Action Needed: Approve/disapprove 24(c) registration request

- Tomlinson explained the need for the new registration and pointed out that the use and the rate would be the same as the previous permit.
- Jemison pointed out that the letter from NuFarm said that the use was not for food or feed, but that tomatoes are generally considered food. Hicks said the actual application does give a tolerance for tomatoes and that it is definitely a food use and the NuFarm person misspoke in his letter. Tomlinson said that she would request a new letter from NuFarm. Tomlinson further explained that the reason for the change was that Bayer was dropping the product because they could no longer make money with it. Bohlen said he had looked at the NuFarm website and they label themselves as a post-patent producer. Titus pointed out that big companies regularly drop old products and these other companies pick them up. Eckert asked whether anyone other than Backyard Farms would be using this product and Tomlinson said that the permit is specifically for Backyard Farms. A brief discussion followed about how the product is actually used and the required REI and PPE.

Eckert/Granger: Moved and seconded that the Board accept the special local needs permit.

In Favor: Unanimous.

5. Development of the Board's Pesticide Notification Message

At its May 11, 2012 meeting, the Board directed the staff to develop a brief outreach message about pesticide notification intended to inform the public about its rights and responsibilities. Following the May 11 meeting, the staff distributed a draft poster to Board members seeking their input. Members unanimously supported the poster and it was subsequently e-mailed to municipalities, agricultural associations, environmental organizations, and members on the Board's mailing lists. The Board will now discuss development of additional outreach materials and strategies covering Maine's pesticide notification laws.

Presentation By: Paul Schlein
Public Education Specialist

Action Needed: Provide guidance to the staff

- Schlein reminded the Board that at the last meeting they agreed the staff should work on two phases regarding notification. For the first phase the staff developed a poster, which the Board, via email, approved, and which was sent to over 4,000 emails including municipalities, environmental and agricultural organizations and the Board mailing list. He pointed out the page in the Board packet of the message on the Town of Gray's website. He asked for input on the proposed text for the Board's website and also suggestions on what else should be done to promote the message and pointed out that a suggestion had been made to require retail establishments where pesticides are sold to include a sign about notification next to the sign they are already required to post.
- Katy Green suggested the poster be sent to people who had been on the notification registry and had provided an email address.
- Bohlen said that the words "self-initiated request for notification" is too bureaucratic and suggested replacing with "ask the applicator, ask your neighbor, ask the farmer." He also suggested that it be pointed out that even if not legally required, most people are reasonable, they just need to be asked.
- Hicks pointed out that website doesn't give information about the requirements for homeowners who are interested in using pesticides. She suggested changing the applicator button to pesticide user, or even have a section for licensed applicators and a section for unlicensed users. Several Board members remarked that it seems unlikely homeowners will go to the website, that most people don't even bother to read the label, but they agreed that it wouldn't hurt to have the information available. Schlein asked if there are other things we can do to get people to go to the website.
- Dave Bell mentioned that the overall tone of the website is good, it's factual. Should be stressed that the by-request is for all outdoor applications, there seems to be a bias toward assuming that applications are only made by a commercial company, as opposed to a non-professional. He asked if he could send specific recommendations for the website.
- Katy Green pointed out that for those who don't already know, it's not obvious who you have to ask. Schlein asked if the poster would get people to go to the website and she said she thought it would.
- Hicks suggested that the best time to get to homeowners is at the point of sale and suggested a mailing to dealers who sell to homeowners asking them to make homeowners aware of the rule.
- Dave Bell said that we need to define who is ultimately responsible for the notification: the landowner, occupant, lessee, farmer leasing the land, commercial applicator. He said that it is unclear who should be asked. Eckert suggested using the word neighbor. Even if they're not the right person, they can direct to the right person.
- Bohlen stressed that the front line message and the legal details are different. The front line message should encourage communication.
- Granger said that the public generally has the perception that organic farmers do not use pesticides. He wants us to stress that organic farmers do use pesticides. Several people spoke up to say they disagree, that the word farm encompasses every type of

farm. Some said that if we're going to mention one type specifically we need to mention all.

- A brief discussion about organic lawn care ensued. Heather Spalding said that the Northeast Organic Farming Association has land care standards and accreditation
- There was a brief discussion about a sign for retail establishments. There was concern expressed about either replacing the current sign, adding another sign requirement, making the sign larger and/or having too many messages on one sign. It was agreed the staff would work on some options and bring them to the next meeting.
- It was also agreed that the staff would work on a new mockup of the web pages for the next meeting.
- A discussion followed about whether to send a press release out about the poster. Bohlen said it would be useless without a hook and suggested that harvest season might be enough of a hook, it needs to be something timely, related to what's happening. Lauchlin Titus said that we should not tie it in with a crop or harvest as people do not want to think about pesticides when buying food. He suggested tying in to a disease or pest, such as the spotted wing drosophila.
- The Board agreed that the staff should pursue getting an interview on local access TV and possibly producing a video to post on the website.

6. Development of Forestry Best Management Practices Intended to Prevent Discharges of Pesticides to Waters of the State

Due to recent federal court rulings, as of October 31, 2011, discharges of pesticides to waters of the state are prohibited unless covered by a Maine Pollution Discharge Elimination System Permit. Maine has not finalized a general pesticide permit intended to cover pesticide applications made over or near water. Use of Best Management Practices (BMPs) will help prevent discharges of pesticides. Consequently, the Board will consider development of BMPs for various application sectors beginning with forestry.

Presentation By: Mary Tomlinson
Registrar and Water Quality Specialist

Action Needed: Provide input to staff on the draft BMPs

- Tomlinson gave a brief overview of the situation and said that she and Jennings met with DEP and that it was decided that the BPC should develop BMPs for forestry.
- Bohlen asked if the BMPs had any legal connection with the Clean Water Act NPDES program, or are they simply recommendations. Questions ensued about the ultimate purpose of the BMPs
- Dave Bell asked if these would be tied to a state general permit. Jennings replied that he thinks they will have relevance to a permit when one is created but that DEP gave a clear indication that it would be a while before that happened and that it would be

helpful to get BMPs done sooner. If applicators follow BMPs, there shouldn't be any discharges.

- Struble explained that even if DEP puts together a general permit they do not have the legal authority from the legislature to authorize discharges to certain waters. It would need to go through a statutory process.
- Granger pointed out that this has to do with water classification. They do not have a right to allow pollution of AA waters. Struble agreed, saying that a lot of people are concerned because there's a lot of AA waters in the woods.
- Dave Bell stated he believed that all salmon waters are also designated as Class AA waters. Bohlen stated that discharges to AA waters are not allowed.
- Jemison wondered about sensitive areas. There is label language directing applicators to avoid spraying areas with standing waters attached to surface waters. He doesn't know if it's on every label about avoiding saturated ground. He thought that most of them wouldn't say not to apply to saturated ground. Labels use the term "avoid" too much. They should say "do not."
- Granger said that he is uncomfortable calling them BMPs because a BMP is something that is broader and used for more things than just pesticide applications. One of the PowerPoint slides from the meeting with DEP was talking about permitting tools available, such as establishing standards up front that the applicator agrees to follow. These BMPs appear to fit that model. Why don't we develop standards relative to the permits rather than get into BMPs which have a lot of other uses. If you have them tied to Pesticide General Permit, and the government creates a new law, then they will go away. Take the ones relative to standards and create a list of standards relative to the permit.
- Jemison asked if it is going to be a blanket permit issued to the entire state.
- Bohlen explained that the way a general permit operates is that it categorizes a set of applications that are similar. The way it actually works is that you are permitted to apply following itemized standards. The concept of a general permit is that businesses will only have to do one permit, not for individual events. He said that he was reading these as groundwork for things that might be considered for general permit.
- A lengthy discussion ensued about what to call the recommendations, what the ultimate purpose of the recommendations are, what the legal significance of them is and whether the BPC would be developing additional BMPs for other application sectors. Several of the audience members expressed concern of the recommendations becoming law at some point. Some expressed concern about the recommendations becoming standards as part of the permit development process. Tim Hobbs was concerned about whether the BPC would be developing BMPs for agriculture, and if so, the industry would prefer to become involved earlier on the process.
- Jennings explained that the BPC was strictly looking to develop BMPs to cover the terrestrial application types listed in the federal permit: mosquito spraying and forestry. He stated that DEP could issue a general permit, but DEP does not currently have the statutory authority to permit discharges to AA waters. Developing a permit would not be a quick process, as it involves public notice and a comment period, so it wouldn't likely be completed this year. DEP is hoping the BPC can develop BMPs for forestry applicators to use this year.

- Bohlen and Jennings expressed the view that – until DEP finalizes its Pesticide General Permit – the recommendations would provide evidence that applicators are implementing all known strategies for preventing unlawful discharges. Consensus was reached to refer to the recommendation as “Draft Interim Guidelines” for now, and to include a statement – both in the recommendations and the meeting minutes – that makes it clear that the recommendations are not intended to serve as standards for the purpose of permitting. Jennings asked if the Board would be willing to provide interim approval until the July 27 Board meeting, so that they could be used for any forestry site preparation applications.
- Jemison inquired about whether the recommendations before them are acceptable to the forestry community. Struble indicated that nothing stuck out as a problem, but he hadn’t heard from many foresters. Jennings said that Ron Lemin, Patrick Strauch and Mark Doty had reviewed them to date.

Ravis/Bohlen: Moved and seconded that the Board adopt this document as “Draft Interim Guidelines” and include language to the effect of “Not intended to be adopted as standards for NPDES permit” and further that the Board authorizes the staff to share this document with the forestry community with the understanding that the document will continue to evolve and change. (It was also recommended that every version be clearly dated.)

In favor: Unanimous

7. Review of the 2011 Complaints/Inquiries Summary

In 2007, the Stakeholders Committee on Drift recommended that the Board produce and review an annual summary of complaints received by the Board’s office. Summaries from 2008 and 2009 led to Board recommendations for improving the report. The Board will now review the 2011 summary.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: None—informational only

- Connors briefly outlined the annual summary of complaints, noting that he felt that 2010 was the anomaly as it was quite a bit different than other years and that increased complaints/inquiries for 2010 were the real changes.
- A discussion followed about which incidents should be included in the summary.
- Bohlen mentioned that he would like to see more summarizing ie: how many have to do with notification? With unlicensed applicators? With unauthorized applications? Tim Hobbs said that there were 42 with no violations; 11 for information; 4 drift

issues; 3 inadequate notification; 6 unlicensed applicator and 4 unauthorized applications.

- He further pointed out that of the 17 ag complaints, 5 resulted in a violation. Others were informational or no violation. Hicks said that 15% were enforcement actions, either a consent agreement or a letter and that \$5500 was collected. Eckert asked if there are trends, for instance is structural going up because there is now a rule. Connors said that mold type complaints are rising.
- A discussion ensued about how to classify inquiries vs. complaints. Hicks mentioned that she, Fish and Jennings get many inquiries and send out a lot of information, but those don't show up on this list. She said this list includes those where an inspector ends up going out. Tim Hobbs suggested that it might be worth noting these kinds of calls because the Legislature might be interested in what types of calls come in, stating that when the Legislature was drafting policy around drift they wanted to use data.

8. Consideration of a Consent Agreement with Atlantic Pest Solutions of Brunswick

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved a pesticide application onto a property without the authorization of the property owner.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors gave the details of this case. Atlantic purchased a small company and was told by the former owner that all his customers were on a two-time treatment plan. A customer called requesting a treatment, which was done. Later, Atlantic did a second application, believing that to be the agreement, but this homeowner said that he had never agreed to that, but was on a call-as-needed basis only. Atlantic sent letters to all customers of the former company saying they would continue with the former owner's plan; this customer accepted that as meaning he would receive a single treatment when he called, whereas Atlantic interpreted this as a two-time treatment when he called. Ralph Blumenthal admitted the error, saying it was an administrative error, apparently a miscommunication.
- Granger said that this seems like a situation where everyone was trying to do the right thing. He asked if the staff ever does warning letters. Connors replied that penalties range from warning letters to consent agreements and that the staff looks at what's

been done historically. Jennings said this Board has made a point that they will not tolerate unauthorized applications.

Eckert/Ravis: Moved and seconded approval of the consent agreement

In Favor: Unanimous

9. Other Old or New Business

- a. Notice by Maine Public Service of scheduled hydraulic spraying of substations and associated facilities—H. Jennings
- b. Variance Permits for Chapters 22 and 29 to DeAngelo Brothers, Inc.—H. Jennings
- c. Other?

10. Schedule of Future Meetings

The July 27 meeting is scheduled to be held in Presque Isle. Several logistics of the trip still need to be finalized.

September 7, October 26, and December 7, 2012, are tentative Board meeting dates. The staff will continue to work on scheduling a meeting during the Maine Agricultural Trades Show on January 8, 9, or 10. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- A discussion followed regarding details of the July 26-27 trip to Presque Isle. Jennings asked if the Board approved of an “open forum” the evening before the meeting. Members agreed to that idea. He reported that he had rooms and a 12 passenger van reserved. Bruce Flewelling had offered to host the group on the field trip Thursday afternoon. Katy Green asked if the Board would like her to arrange a visit to an organic farm. Members thought that was a good idea as well. Jennings said he would get back to them with further details.

11. Adjourn

Ravis/Granger: Moved and seconded that the meeting adjourn at 11:55

In Favor: Unanimous