



STATE OF MAINE
 DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
 BOARD OF PESTICIDES CONTROL
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Memorandum

To: Board of Pesticides Control
 From: Alexander Peacock, Director
 Subject: Enforcement Protocol updates

October 25, 2024

Background:

During previous presentations and ratification of enforcement actions through administrative consent agreements, the Board has asked Staff to alert them prior to settlement of an administrative consent agreement when certain factors of an enforcement case exist, such as harm to human health or the environment and repeat offenders. Draft language has been added to the existing enforcement protocol for the Board's consideration.

Board recommended criteria from previous meetings:

February 9, 2024

Adams introduced a topic regarding increasing penalties for violators of BPC rule and noted that the Board successfully navigated through licensure suspension for repeat offenders (of unauthorized applications). He voiced concerns about companies that kept violating rules repeatedly.

There was further discussion about repeat violators. Bohlen suggested the Board be notified upfront if there was a pattern of repeat violations.

Peacock said that if the Board had specific parameters regarding when they would want to review a case, staff could bring that forward.

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Ianni asked staff to provide a list of triggers they thought were important for the Board to possibly be brought in earlier in the process.

February 23, 2024

Adams suggested a protocol that would trigger when certain cases should be brought before the Board before the completion of consent agreement negotiations. The Board agreed. Examples suggested included bodily harm, environmental harm and repeat offenders.

Jemison noted that it was often difficult to determine intention, but there had been cases over the years where harm was caused by pesticides to change the view from a property. He suggested that cases like this be added to the list that be brought before the Board before the finalization of a consent agreement.

Conclusions:

Draft language has been added to the Enforcement Protocol for consideration.

Paragraph 6b draft language:

6. If the Board makes the determination that a violation appears to have occurred which warrants an enforcement action, the Board may choose among one or more of the following courses of action:

b. Matters warranting enforcement action that involve impacts to bodily harm and human health, environmental harm and degradation and patterns of repeat offenses by the same entity shall be presented to the Board prior to negotiating an administrative consent agreement.

Enforcement Spreadsheet

It has also come to attention of staff that historically the Board was presented an enforcement spreadsheet annually that indicated the workload being handled by enforcement staff.

Staff plans to reinstitute this policy and present the Board an Enforcement Spreadsheet Overview annually. Staff anticipates providing an overview at the December 6, 2024 Board meeting.

Maine Board of Pesticides Control Enforcement Protocol

The Board adopts the following enforcement protocol to be utilized in routine enforcement matters arising under the Board's statutes and regulations.¹

1. Persons wishing to report potential violations should refer such matters, as soon and in as much detail as possible, to the Board's staff. Where such reports are submitted by telephone, the Board requests that confirmation be made in writing. As a general rule, where requested by the individual making the report, the Board shall keep the identity of that person confidential, except as the Attorney General may advise in a particular case that such information is subject to public disclosure under the Maine Freedom of Access Law.
2. As soon as practicable after receipt of a report of a potential violation, the Board's staff shall investigate. The precise method and extent of investigation shall be at the discretion of the staff, considering the potential severity of the violation and its consequences, the potential the violation may have for damage to the environment or human health, and other matters which may place demands upon staff resources at the time.
3. Following staff investigation, if the staff determines that a violation has occurred of sufficient consequence to warrant further action, the Board's staff may proceed as follows:
 - a. In matters not involving substantial threats to the environment or public health, the Board's staff may discuss terms of resolution with the Attorney General's office and then with the violator without first reporting the matter to the Board. This procedure may only be used in cases in which there is no dispute of material facts or law, and the violator freely admits the violation(s) of law and acknowledges a willingness to pay a fine and resolve the matter. The terms of any negotiated proposed resolution shall be subject to the Board's subsequent review and approval, as provided in section 6b.
 - b. In matters involving substantial threats to the environment or the public health or other extraordinary circumstances, or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. The staff shall prepare a written report summarizing the details of the matter. Copies of the report shall be mailed to the alleged violator and any complainants so they may make comments. The report and any comments will then be distributed to the Board prior to their next available meeting. The staff will also notify the alleged violator and other involved parties about the date and location of the meeting at which the alleged violation will be considered by the Board.
4. At the Board meeting, the Board shall hear from its staff and, if requested, from the alleged violator(s) and/or their attorneys, as well as from other interested members of the public, to the extent reasonable under the circumstances and in a manner which the Board's chairman shall direct. Ordinarily, such a meeting will not be conducted as a formal adjudicatory hearing. Before making a decision regarding any action(s) which it may wish to take in response to an alleged violation, the Board may choose to go into executive session to discuss with its counsel the various enforcement options available to it and other related matters which are not subject to public disclosure under the Freedom of Access Law. However, all Board decisions shall be made on the public record and not in executive session.

¹ In emergency or other unusual situations, the Board and/or its staff may depart from this protocol, in a manner consistent with State

law, when necessary to the handling of particular enforcement actions.

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5. Following receipt of the staff report and other information presented to it and completion of whatever further inquiry or deliberations the Board may wish to undertake, the Board shall make a decision regarding which course(s) of action, as described in Section 6, it deems appropriate in response to the alleged violation. Any such decision will ordinarily be based upon the Board's judgment as to whether a violation of its statutes or regulations appears to have occurred which is of sufficient consequence to warrant an enforcement action, but shall not require that the Board be satisfied to a legal certainty that the alleged violator is guilty of a particularly defined violation. In disputed matters, the ultimate decision as to whether a violation is factually and legally proven rests with the courts.
6. If the Board makes the determination that a violation appears to have occurred which warrants an enforcement action, the Board may choose among one or more of the following courses of action:
 - a. In matters involving substantial violations of law and/or matters resulting in substantial environmental degradation, the Board may refer the matter directly to the Attorney General for the initiation of enforcement proceedings deemed appropriate by the Attorney General. Also, with regard to more routine violations with respect to which the Board finds sufficient legal and/or factual dispute so that it is unlikely that an amicable administrative resolution can be reached, the Board may choose to refer the matter directly to the Attorney General.
 - b. Matters warranting enforcement action that involve impacts to bodily harm and human health, environmental harm and degradation and patterns of repeat offenses by the same entity shall be presented to the Board prior to negotiating an administrative consent agreement.
 - c. On matters warranting enforcement action of a relatively routine nature, the Board may authorize and direct its staff to enter into negotiations with the alleged violator(s) with a view to arriving at an administrative consent agreement containing terms (including admissions, fines and/or other remedial actions) which are satisfactory to the Board, to the Attorney General and to the alleged violator(s). The Board will not ordinarily determine in the first instance the precise terms which should be required for settlement but may indicate to the staff its perception of the relative severity of the violation. In formulating a settlement proposal, the staff shall take into consideration all of the surrounding circumstances, including the relative severity of the violation, the violations record and other relevant history of the alleged violator(s), corrective actions volunteered by the alleged violator(s) and the potential impact upon the environment of the violation. The staff shall consult with the Attorney General's office before proposing terms of settlement to the alleged violator(s). Following successful negotiation of an administrative consent agreement with the alleged violator(s), the staff shall report back to the Board the terms of such agreement for the Board's review and, if it concurs, ratification. All administrative consent agreements shall become final only with the Board's and the Attorney General's approval.
 - d. In the event that an administrative consent agreement cannot be arrived at as provided in paragraph b., the staff shall report the matter back to the Board for further action by it. Such action may include referral to the Attorney General for appropriate action.
 - e. In addition, in appropriate cases, the Board may act to suspend the license of a certified applicator as provided in its statute, may act to refuse to renew the license of a certified applicator and/or may request that the Attorney General initiate proceedings in the Administrative Court to revoke or suspend the license of any such applicator. Where provided for by its statute, the Board shall give the licensee involved the opportunity for a hearing before the Board in connection with decisions by it to refuse to renew a license or to suspend such license.
7. Whereas the Board is establishing this protocol in order to clarify and facilitate its proceedings for the handling by it and its staff of enforcement matters, the Board recognizes that the Attorney General, as

chief law enforcement officer of the State, may independently initiate or pursue enforcement matters as he deems in the best interests of the State and appropriate under the circumstances.

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