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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

June 27, 2014

Cafeteria, Madison Area Memorial High School, 486 Main Street, Madison, Maine

MINUTES

10:00 AM

Present: Bohlen, Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Randlett, introduced themselves
- Staff Present: Bills, Connors, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the March 28 and May 16, 2014, Board Meetings

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- **Flewelling/Granger: Moved and seconded to approve the March minutes**
- **In favor: Unanimous**
- In the May minutes, Jemison noted that on page 8, agenda item 9, first bullet, “bill” was misspelled, “absence” was misspelled and there was an extra period in front of the word “Lakes”.
 - **Eckert/Granger: Moved and seconded to approve the May minutes as amended**
 - **In favor: Unanimous**

3. Public Forum (limited to one hour)

At this time, the Board invites anyone interested to address its members with questions or concerns about any pesticide-related issues.

Presentation By: Henry Jennings
Director

Action Needed: None required

- Dave Colson, Maine Organic Farmers and Gardeners Association (MOFGA), said that the requirement for the Ag Basic license is not well known and that there are several groups across the

state willing to assist. A discussion ensued about how to make people aware of the new license requirement.

4. Interpretation of the Term “food production” in the Context of the Agricultural Basic Pesticide Applicator License

Questions have arisen about the term “food production” in the statute that requires certification for a “private applicator of general use pesticides for food production” (Title 22, Sec. 1471-D [2-D]). The staff is asking the Board to interpret the meaning of the term in this context.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide guidance to the staff on how to interpret the statute

- Jennings explained that there have been several questions from growers on whether they need a license. He referred to Fish’s memo. Examples include a greenhouse grower who disinfects pots prior to planting; a greenhouse grower using disinfectants on capillary mats and benches when no plants are present; various post-harvest treatments; and disinfecting of bins, storage areas, etc. The Board needs to be true to the language of the statute, while interpreting what it thinks the intent was. Applying common sense and practicality would be helpful to the staff. There are food safety and environmental concerns, and food safety was probably foremost in the legislator’s minds.
- Granger said that it started as a concern that folks are putting pesticides on food that don’t have any training. If people are going to be eating food that has been treated, the growers ought to know what they’re doing. It should apply to any core practice that is apt to leave a residue on the food. It ought to be related to making sure that people using pesticides on food know the rules about pesticides. If sanitizing equipment presents no likelihood of getting residues on food, then it should not be included; post-harvest treatments go directly on food, they should be included. Look at in terms of residues on food. Stevenson agreed.
- Hicks noted that sanitizing equipment is crucial to control bacteria, etc., so from a food safety issue it is important. Bohlen argued that the risk caused by poorly done sanitation is a food issue, not a pesticide issue; the Board’s authority relates to pesticide use, not food-borne pathogens.
- Eckert suggested including anything from planting the seed or whatever, to the post-harvest treatment, when product is sold or transferred.
- Jemison suggested that any product that has an EPA number should be included; it’s easier to define. Bleach has an EPA number; it is the start of the process.
- Flewelling noted that people doing sanitation must have a license of some kind.
- Jennings stated that there are people in food production using products without an EPA number.
- Bohlen said that EPA number is one trigger, but the Board needs to put boundaries around what constitutes food production. Post-harvest treatment is straight-forward, others are trickier. What about producing seeds for home gardens? This is not the sale of a food product, but is there a risk in that person not having training?
- Granger mentioned neonicotinoids.
- Morrill said that should be included because the end goal is for the plant to be eaten.
- Hicks suggested borrowing a standard from MOFGA: growers can use a registered disinfectant or sanitizer in production as long as it doesn’t come in contact with food.
- Bohlen asked about soil; sanitation early on, soil pathway.
- Morrill said it should start with soil. Flewelling agreed, saying it shouldn’t start with the container. Morrill suggested using “growing medium” instead of “soil.”
- Granger expressed concern that this would not be a clean definition and asked whether it could be based on products having an “agricultural” label. Hicks noted that if a label has Worker Protection

Standard information on it, it could be considered agricultural. Morrill said that you could have identical products without that information.

- **Consensus was reached for staff to draft a policy where food production is defined as beginning with soil treatments and ending with the transfer of the food product.**

5. Overview of Board of Pesticides Control Posting/Notification Requirements

At the March 28, 2014, meeting, the subject of Board of Pesticides Control sign requirements came up as the Board reviewed a complaint filed by Donna Herczeg. There was Board sentiment to review the BPC sign requirements at a future meeting and determine whether they are serving the intended purpose. The staff has summarized those requirements and will share the results with the Board.

Presentation By: Henry Jennings
Director

Action Needed: Determine whether the signs are serving the intended purpose

- Jennings explained that this item came from the March meeting, when Donna Herczeg spoke. One of her concerns was about signs used in lawn care. Some Board members expressed an interest in having a fuller understanding of all sign requirements. The staff attempted to summarize them in the memo. At one time there was an attempt to consolidate all notification requirements in Chapter 28, where the self-initiated request, non-agricultural registry, and residential sign requirements are contained. However, new rules for schools and indoor applications contain separate notification requirements. At the last meeting there was a discussion about adding biting fly (7E) and general vegetation management (6B) if done in a fashion that isn't related to a ROW. Chapter 51 is the oldest chapter with notification requirements; those were around budworm spraying which goes back to 1983. The Legislature made a finding that one way to reduce conflict and concern was to increase communication, so it required public notice for forest insect applications. A couple of concerns that were voiced about residential signs are that the signs have become so busy it is difficult to find pesticide information on them. When Chapter 28 was enacted, the Board wasn't opposed to advertising, but maybe the advertising piece has gone beyond what was anticipated. The question the Board asked in March was: Are the regulations serving the original purpose?
- Eckert noted that, at the time, they wanted companies to think that signage could be a good thing; this company is doing a good thing, being a good public citizen by letting people know; trying to put a little sweetener on it. She is always amazed at how small the sign is allowed to be. If you see something like this on a lawn, you don't see the sign, you notice the holder. You know they sprayed, but don't know what. Are the signs doing what we want them to do? Should they be bigger? The simpler they are, the better, so people can easily identify their purpose.
- Jemison said that he remembers the rules as having a "Board-approved" symbol and minimum information. The Board could keep it simple, such as company name and phone number. The most important thing is that people can see the "Caution, pesticide application" component. That was the purpose. Some of the pictures of signs that Donna Herzog brought were difficult to recognize as an application sign.
- Morrill noted that there were two issues with those signs: (1) One of them was facing the wrong way, and (2) what can be on the sign? It seems like all the required information was there. Maybe there should be a defined border around the required information. Every company uses a different size sign; they should be able to use whatever they want. He prefers not to want to regulate what additional information can be on the sign. Add a border that defines required information and the sign should to point toward ingress.
- Hicks pointed out that the staff gets a lot of calls from the public from these signs; the logo does more to identify a company than a phone number. It's advertising, but it's also useful.

- Jennings said that it does tell you who the company is, but does it tell you that an application was done? One of the requirements is that signs be light-colored with dark, bold lettering. One sign that Donna Herczeg brought in was bright colors. This kind of color scheme can really draw attention to bright colors and detract from the pesticide information in black-and-white text.
- Stevenson suggested that the staff go to the particular companies and tell them they are not following the rule. He agreed that there should be borders around the required information; if they put extra stuff around that, it's fine. There is a perception out there that the original intent was a strategy to frighten people away from making applications. It's a source of pollution, although good for marketing. When you see them on the pallets, you realize how many are put out there.
- Tim Hobbs noted that, if you look back at the minutes, Herczeg's issue was companies using the signs for marketing. If someone is concerned about pesticides, they will know that's what it means. Make sure there's a balance; one person complaining about marketing needs to be kept in perspective. If the rule about contrasting colors is followed, the signs do work.
- Eckert asked whether the Board should be more open to different signage or posting that accomplishes the same purpose.
- Flewelling said he is happy with how the rule is currently written. He is okay with advertising on it and doesn't like to tell people how to do business.
- Jemison suggested making the required information on white, with black letters, with a black border around it, 4x5 inches. Outside of that, they can do anything they want.
- Morrill said the way the rule is written is fine. It gives the option of using multiple-color signs; some companies use different colors for different types of applications.
- Jemison said that if there are too many colors the information is lost in the busy-ness. He is okay with colors as described in rule, but make sure that area (with the required information) is clearly visible.
- Morrill agreed that signs should follow the current rule. Signs called into question probably did not. This fact should be pointed out to the companies.
- Jennings noted that the way it's written now, the information could be spread all over the sign; Jemison advocated that it should be all together in a boxed area.
 - **Consensus was reached that the rule should be left as is and enforced as currently written.**

6. Mosquito-Borne Disease Update

During 2012 and 2013, the Board completed two sets of rulemaking in order to allow governmental entities in Maine to conduct adult mosquito-control programs to prevent mosquito-borne diseases. In addition, there have been two bills in the Maine Legislature affecting public-health-related mosquito control. The Maine Department of Agriculture, Conservation and Forestry also submitted a plan to the Legislature for preventing mosquito-borne diseases. Finally, the Maine Department of Environmental Protection is finalizing a Pesticide General Permit that would allow for wide-area, aerial-spray programs for control of forest and public health pests, and is working with BPC staff on amending the permit for the use of Bt as a larvicide for mosquito control. The staff will update the Board on the status of these activities and mosquito-borne disease trends.

Presentation By: Henry Jennings
Director

Action Needed: None—informational only

- Jennings noted that the only document included in the Board packet was the bill enacted by the Legislature. The Department of Agriculture, Conservation and Forestry (DACF) put in a bill in the first session and it was met with concern in the agricultural community and groups concerned about

pesticide use. A lot of people are opposed to the use of pesticides until something is frightening enough. The bill basically says that we're really scared of pesticides and we're really scared of mosquito-borne diseases, so only use pesticides if we really have to. The Department of Health and Human Services makes the determination of when the critical phase is met. DACF has responsibility for mosquito-control programs, but this responsibility is dependent on funds. The rulemaking that the Board did was around whether landowner consent should be required for public-health mosquito control. The Legislature did approve the amendments, so the Board will need to do a final adoption at the August meeting. Massachusetts makes it very clear that once a public health emergency is declared, landowner prerogative is out the window. The Board did put in rule that government agencies will attempt to exclude four areas: certain agricultural land, public water supplies, aquaculture and fish hatcheries, and endangered species.

- In order for government entities to exclude agricultural areas, the DACF must receive a digital map. Last year, Katy Green from MOFGA provided maps of MOFGA farms in York and Cumberland counties. They are looking for easier ways for this to be accomplished.
- Testing of mosquitoes begins July 1. The Maine Vector-borne Disease Working Group, through the Maine CDC has been producing an Arboviral Plan for about 10 years. It's good on monitoring and communication, but weak on response. There is a group now, with people from CDC and DACF and others, working on how the response plan would work. 2012 was a big year across the country and Maine for West Nile Virus (WNV), and Maine had its first confirmed case of WNV in a Gorham resident. There is some evidence that hot dry years are WNV years. Last year the concern was EEE; there were 26 positive pools for EEE, both the highest number of positive pools and the earliest ever detections. Maine has tested horses, emus, pheasants; moose and deer blood tested positive for EEE. It's been found in all 16 counties. This year they are testing human blood.
- One important factor is how long is mosquito season? The viruses cycle between mosquitoes and birds; when virus levels reach a certain level, humans are then at risk. This seems to occur in mid-August to September when virus levels get high enough. Most years Maine won't need to do any spraying because by the time virus levels get high enough, it is too cold to spray in the evening which is the preferred timing for efficacy purposes. The Maine CDC communicates with towns, encourages them to move times of outdoor activities so they're not playing outside at dusk.
- Dr. Sears left CDC.

7. Other Old or New Business

- a. Letter from Emera Maine about substation spraying
 - b. Variance Permit for Dubois Contracting
 - c. Variance Permit for the Maine Department of Transportation
 - d. Variance Permit for Bartlett Tree Company
 - e. Variance Permit for RCL Services
 - f. Ogunquit Ordinance
 - g. Other
- Jennings noted that the variance permits were just "fyi." The staff issued them because they are repeats or they fall under a policy allowing the staff to issue them. Flewelling asked if any railroads are really close to water. Jennings replied that in some places they're basically going through the lake; some places the railroad track is the lake frontage. He noted that the Board had agreed to look into this issue during the coming winter.
 - The Ogunquit ordinance was "void and of no effect" because the town did not notify the Board. They forgot a lot of exemptions, such as paints and stains. Flewelling asked if it was enforceable as

written. Jennings replied that back in the 1980s the Maine law court made a determination that towns have the right to be more restrictive than the state in terms of pesticide use. That is why the Legislature put in statute that the Board should be notified, and the Board maintains a centralized listing. They notify us in advance in case there is a conflict that we could make them aware of, but we have no right to stop them.

- Randlett noted that ordinances can be more restrictive, but there are two statutes that apply. The one requiring notification to the Board, and an agriculture statute which prohibits municipalities from making ordinances that prohibit the use of BMPs for agriculture.

8. Schedule of Future Meetings

August 8 (public hearing for rulemaking), September 12, October 24 and December 5, 2014 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

- **No adjustments made nor additional dates added**

9. Adjourn

- **Eckert/Stevenson: Moved and seconded to adjourn at 11:56 AM**
- **In favor: Unanimous**