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GOVERNOR

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

January 11, 2017

**Kennebec/Penobscot Room
Augusta Civic Center
76 Community Drive, Augusta, Maine**

**DRAFT MINUTES
BOARD MEETING 3:00-4:00 PM
PUBLIC FORUM 4:00-5:00 PM
BOARD MEETING 5:00-6:00 PM IF NEEDED**

Present: Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Connors, Couture, Hicks, Nelson, Tomlinson

Department Update on the Status of the Board Director Position

Presentation By: Ann Gibbs
Director, Animal and Plant Health

- Gibbs informed the Board that there was no new information regarding the vacant Director position. She explained they are still waiting for the Governor to sign off so that the hiring process can begin.

2. Minutes of the December 16, 2016 Board Meeting

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Amend and/or Approve

Presentation was provided by Ann Gibbs.

- **Flewelling/Stevenson: Moved and seconded to adopt the minutes**
- **In Favor: Unanimous**

3. Request from Maine Migrant Health Program and Eastern Maine Development Corporation to Help Support a Worker Safety Training Program for Summer 2017

Since 1995 the Board has supported a Migrant and Seasonal Farmworker Safety Education program. During 2016, 704 individuals received Worker Protection Standard training, 704 individuals received take-home exposure training, and 698 received heat stress training. This represents a 228% increase over the number of farm workers trained in 2015. Funding to support this effort is being requested in the amount of \$3,860, a 5% increase over the amount requested last year. The funding has been accounted for in the Board's FY'17 budget.

Presentation By: Chris Huh, Program Manager, Farmworkers Jobs Program,
Eastern Maine Development Corporation

Elizabeth Charles McGough, Director of Outreach, Maine Migrant Health Program

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

- Huh stated that 2016 was an extremely successful year for the Migrant and Seasonal Farmworker Safety Education program, and they substantially surpassed their training goals. Huh added that Maine Migrant Health's (MMH) excellent planning to get everything in place played a large role in allowing them to greatly exceed their goal. MMH also had an experienced outreach staff member who had done the work the previous year and had all the contacts in place. Huh stated that they had learned a lot about anticipating the growers' needs and learning what times/days of the week were most convenient for the growers. They also included educational giveaways this year such as water bottles, bandanas, etc. Huh concluded that they are excited for the coming year and their goals will be similar to last year's.
- McGough told the Board she had spoken with Patterson about the funding of this outreach position in memory of Carol Eckert. She stated that Eckert had learned of MMH through her time on the BPC and helped out as a volunteer clinician for them. McGough added that they would be honored to receive this funding in honor of Eckert. Morrill agreed this is an excellent idea, it was discussed at the last Board meeting and it is an initiative that was near and dear to Eckert.
- McGough suggested two funding levels. The first was that an additional \$1,000 could be used to purchase items, such as bandanas and water bottles, with Eckert's name on them to give away to farm workers upon completion of the safety training. Another idea McGough offered was for an additional \$1,500 to be used to increase the hourly rate of the summer staff person to make their wage commensurate with that of other staff and make recruiting easier. The money would also go toward funding some of the overnight accommodations incurred by trainers as they travel around the state.
- Jemison asked if the individual that conducted the training this past summer would be returning next summer and whether they were a native English or native Spanish speaker. McGough replied that the individual had committed to working through 2017, but because of his level of experience, he would not be the main trainer. Instead they plan to hire an individual that he will train. McGough added that they recruit for individuals bilingual in English and Spanish, but typically it has been a native English speaker due to our demographics in Maine.
- Morrill stated the total funding amount with the two additions would be \$6,630, which is still less than a 50% increase. Jemison asked if there were available funds in the budget. Morrill and Gibbs confirmed that there were funds to cover the cost. Morrill added that this meshes well with the Board's mission on education and stated that the Board appreciates all of McGough's and Huh's hard work.

- **Jemison/Granger: Moved and seconded to fund the initial request and the two additional levels in honor of Carol Eckert for an extra \$2,500**
- **In Favor: Unanimous**

4. Discussion of a ‘Statute of Limitations’ on the Pursuit of Complaints by the Board

At the December 16, 2016 Meeting the Board ratified a consent agreement with Jasper Wyman & Son, of Milbridge, Maine. Darin Hammond, the Senior Manager of Farm Operations, attended the meeting as a representative for the company. On December 22, 2016 Hammond sent a letter to the Board expressing his concerns regarding the Board’s investigation of complaints associated with pesticide applications made more than a year before the complaint was filed.

Presentation By: Darin Hammond
 Manager of Farm Operations, Jasper Wyman & Son

Action Needed: Discussion of a ‘Statute of Limitations’ for Investigation of Complaints

- Hammond stated the reason he wrote the Board was because he felt the consent agreement at the December Board meeting may have raised questions. Hammond said if an individual is unhappy with an applicator, they can file a false claim against them. Hammond said that the complaint from which the recent consent agreement originated was filed 20 months after the application was made, and no complaint had been made when Wyman’s mowed the area, only after they sprayed it. Hammond suggested the Board create a statute to set a limit on how long after an application a complaint can be made, unless the complaint is associated with a public health concern. Hammond told the Board that regarding the recent consent agreement, he did not feel Wyman’s was at fault and that there needs to be a method to allow a person can address the Board, before a complaint becomes a consent agreement, if they feel they are being wrongly accused.
- Randlett responded that individuals are able to come before the Board if they disagree with a consent agreement and then that individual’s case is presented to the Board. Connors added that he thinks that process is written on the cover letter mailed with all consent agreements.
- In regard to a statute of limitations, Randlett responded that with state agencies and civil actions in Maine there are generally no limits on civil violations. Randlett advised the Board not to consider developing any limiting policy to put restrictions on Board or staff to investigate or pursue action against an alleged violation. He added that there are times when it would be appropriate and necessary to pursue complaints that are greater than 20 months old. Randlett told Board members if a statute of limitations was enacted by them, it would be ineffectual and unenforceable because the Attorney General’s office would not be bound by it. He concluded that a statute would not be wise and he would investigate a complaint past a statute if it was in the interest of the public to do so.
- Stevenson told Hammond that at the last meeting the Board was ready to debate that consent agreement until they realized Wyman’s had already signed it. Flewelling added that the Board may have refused it but that Hammond told them to go forward with it. Morrill explained that in the last two years there had been a number of unique circumstances where a consent agreement was not signed and the Board decides not to pursue it further, and they have also rejected signed, paid consent agreements and sent a refund back to the individual. Hammond thanked the Board for listening and stated it was good to get clarification that he can come before the Board to dispute a complaint.

5. Discussion of Board Approved Products for Control of Browntail Moth within 250 feet of Marine Waters

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates the use of insecticides used to control browntail moth within 250 feet of marine waters. Section 5 limits insecticide active ingredients to those approved by the Board. Since that time, a number of newer chemistries have been registered for use and far more data is available on the efficacy of many products. On November 4, 2016 and December 16, 2016 the Board discussed the browntail moth populations and the available products. Subsequently, the staff was directed to update the list of approved products for browntail moth control. The Board will now consider the list.

Presentation By: Lebelle Hicks
 Pesticide Toxicologist

Action Needed: Amend or Approve the List of Products for Browntail Moth Control

- Hicks looked at EPA's most recent toxicity information and compared that with label use rate directions to help determine modified risk quotients for those chemistries that could be used on browntail moth. Hicks created two tables detailing the results. Morrill asked about the difference between the two tables. Hicks responded that Table One lists chemistries with a modified risk quotient of 500 or below, except for permethrin which is above 500 for freshwater. Table Two lists the chemistries that have a modified risk quotient greater than 500, except for cyfluthrin and acephate which are 93 and 454, respectively, for freshwater.
- Morrill asked Hicks to explain the last column of the tables which listed some of the chemistries as "not registered for this use." Hicks replied that that column referred to each chemistry's registration status during the 2006 ERAC, and that each of the compounds considered are currently registered for use on moths. Morrill asked if we could delete the last column to eliminate confusion about these active ingredients being registered for browntail moth. Hicks responded that the column could be removed.
- Morrill asked why permethrin is in the first table with a freshwater modified risk quotient of 833 and also why acephate is in Table Two with 454 for freshwater. Hicks responded that acephate's modified risk quotient was close to 500, so that is why it was included in Table Two. Hicks explained that she placed permethrin in Table One because it was used during the last outbreak and it has food crop sites on the label. Hicks added that it is the Board's call to move permethrin to Table Two if they wish.
- Jemison stated that for the purpose of preventing resistance he would like to know what groups these chemistries are in. Hicks stated she selected compounds from different groups for that reason and then went through the two tables and named each chemistry's group.
- Morrill asked if there was any further discussion and if Jemison had concerns about the list. Jemison said he does not because the licensed applicators out there know what is approved and hopefully they will know to rotate what they use. Hicks reminded the Board that this is just between the 50'-250' zone.
- Katy Green asked if *Bt* had been considered for the list. Hicks answered that if they get data showing that *Bt* is efficacious it can be added to the list. Green noted that the list included only one chemistry for an organic option. Hicks stated that that is correct, in this 50'-250' zone for foliar applications only, and this list does not include other types of applications, like injections.
- Randlett asked if the list would be posted on the website. Morrill asked that staff send the info out to applicators.

- **Jemison/Flewelling: Moved and seconded to approve the chemistries in Table One, except for permethrin, for use in the 50'-250' area from the mean high tide mark, in Accordance with Chapter 29 Section 5 for control of browntail moths.**
- **In Favor: Unanimous**

6. Discussion of Interpretation of the Definition of 'Biological' within Chapter 29

On January 25, 2008, the Board adopted Section 5 of Chapter 29 which regulates insecticides used to control browntail moth within 250 feet of marine waters. On November 4, 2016 and December 16, 2016 the Board discussed browntail moths and the definition of 'biological' pesticides. When the rule was originally written, strains of *Bacillus thuringiensis* (*Bt*) were the only 'biological pesticide' active ingredients available and labeled for use on browntail moth. Since that time, a number of questions have arisen relative to other products which may qualify as 'biological'. Subsequently, the staff was directed to prepare an interpretation of 'biological' to clarify which products fall under that exemption.

Presentation By: Megan Patterson
 Manager of Pesticide Programs

Action Needed: Accept/Reject the Proposed Interpretation of 'Biological'

Presentation provided by Ann Gibbs.

- Gibbs read the two definitions submitted in the Board packet. Gibbs stated the first definition was thought to be more inclusive, encompassing organisms and products derived from those organisms. The second definition limits products to organism based.
- There is a consensus among the Board that definition one is the better choice.
 - **Jemison/Flewelling: Moved and seconded to accept definition one of 'biological'**
 - **In Favor: Unanimous**
- Stevenson noted that definition one stated that active ingredients are limited to organisms and their biochemical derivatives, and asked if that included inert ingredients. Hick's stated that it did not include inert ingredients.
- There was a discussion about ensuring that the definition they adopt not allow chemistries that would be harmful to aquatic invertebrates.
- Morrill clarified that this definition would only apply to Chapter 29 and be pertinent only when making an application for browntail moth within 0'-50' of the water. It was suggested to word the definition so that any biological organism is permissible, but any biological derivatives would require approval from the Board, in the form of a list, similar to the rule for the 50'-250' zone. Randlett stated this would be acceptable. Hicks said there is no efficacy data on *Bt*, but she is comfortable with Spinosad from the information gathered during the risk assessment. She is not aware of any marine data for Azadirachtin. Jemison asked if Hicks had asked the manufacturer. She replied that she had not, but she will do that and get back to the Board. Staff will bring a policy and list to the next meeting.
 - **Jemison/Flewelling: Moved and seconded to amend motion to accept definition one of biological with a wording change so that it reads that a biological pesticide "includes any microbial pesticide that contains the micro-organism and biological derivatives as approved by the Board"**
 - **In Favor: Unanimous**

7. Review of BPC Budget

At the December 16, 2016 Meeting, the Board suggested that a review of the Board's annual operating budget may be timely. The staff will present information pertaining to the current budget and an overview of the budget process.

Presentation By: Megan Patterson
Manager of Pesticide Programs

Action Needed: Review of BPC Budget

Presentation provided by Ann Gibbs.

- Gibbs provided Board members with a copy of the budget which was just presented by the Governor two days ago. Gibbs directed the Board to look at the revenue versus expenditures and pointed out that they are very close and there is only about \$20k in excess.
- Flewelling asked what the 'legislative transfer of revenue' line with a total of \$135k referred to. Gibbs answered that that money goes to University of Maine Cooperative Extension.
- Gibbs explained the 'DICAP transfer' is something the Board has no control over, and that a certain percentage of all dollars have to go to this to 'keep the lights on'.
- Gibbs told the Board she is not completely familiar with this budget, but any specific questions that she cannot answer she will find the answer. Granger asked who was supported by the \$277,444 on line 32 in the 'dedicated Non-BPC' column. Gibbs stated it may be the full-time positions, but she will verify that.
- Morrill stated that approximately \$520k is listed as being spent on non-BPC expenditures, which is interesting. Morrill asked what the 'transfers' line under the 'dedicated non-BPC' column refers to. Gibbs responded that she will look into this.
- Stevenson asked what additional staff are funded by the Board. Gibbs replied there is an apiarist, state horticulturalist, two assistant horticulturalists, and an IPM Coordinator. Morrill stated the importance of knowing what positions were funded and where. He commented that the Board is also funding the director's position which is currently vacant.
- Several additional questions were asked and Gibbs recapped the questions the Board would like answered:
 - Why is so much DICAP being taken out?
 - Exactly whose salaries are paid under the 'personal services' group?
 - How many positions are currently unfilled?
 - What specifically is line 40 and what does it cover?
 - What specifically is line 85 and what does it cover?
 - Clarification on the numbers that make up line 64
 - Entire 'Non-dedicated BPC' column needs explanation
 - Is there any available cash on hand?
- Morrill concluded that he looks forward to continuing this discussion next meeting and getting more clarity on the budget. He requested staff keep the budget on the agenda for the next meeting.

8. Other Old or New Business

- a. Legislative Report on Water/Sediment Sampling
- b. Update on Homeowner Education Activities
 - Morrill stated this memo was included in the Board packet and if the audience has ideas for educating the public to please send those ideas to the Board.

- c. Updated Memo Detailing Sampling Results from Gulf of Maine Coastal Pesticide Study
 - Tomlinson corrected the duplicate columns that were discussed at the December Board meeting.
- d. Letter from Jody Spear
- e. Letter from Paul Schlein
 - Morrill stated that the Board also received letters from MOFGA and NRC which continued the discussion that the Board compile and release data for pesticide sales and use in Maine. Morrill added that the Board has discussed this many times and it is good to keep this topic on the forefront and we need to begin the discussion on narrowing the focus on what data to select. He suggested tasking a group with narrowing the data collection to a specific charge that is manageable. Granger suggested a member of the Board be in the group. Stevenson added that getting clarification on what there is for money in the budget will help them decide how much can be put into data collection.
 - Green asked for clarification that the Board was saying a group would be formed. Morrill stated it was a suggestion and he would first like to mine down into the info and get clarity on what to collect data on. Green stated they would like data collected on the active ingredients on the list in their letter. Hicks stated there should be set criteria for putting together a list of active ingredients on which to collect data. She also had concerns that there were no fungicides on the list, of which there are some with chronic and environmental risk. Morrill responded that he agreed that a set criteria for a list should be part of the discussion and he hesitates to make it an agenda item until they have time to think about it some more and come up with a definitive end goal. Stevenson seconded that they need time to plan strategically; they just saw this year's budget and the Board needs to set priorities for the upcoming year. Morrill stated that the Board recognizes the current method of data collection is not working for some folks and they need to find a way to get more meaningful data. Hicks offered to put together a spreadsheet that has environmental fate parameters and the likelihood of an active ingredient ending up in the sediment. Stevenson suggested also having a discussion around using Pega to collect data.
 - Green responded that the point of their letter and the list was to get some forward movement on this issue because they have repeatedly been told by staff that the task of collecting the data was too onerous. Green asked the Board how they are fulfilling their mandate of reducing pesticide use if we do not know what is being used. Randlett stated the statute directs the Board is to 'minimize reliance', not 'reduce use'.
 - Granger commented that reducing the amount of use would be best done by using our money to educate and promote IPM, rather than counting pounds of active ingredient used. Reducing reliance is not as simple as counting pounds of pesticide used. Morrill stated that data collection should parallel homeowner education. Green asked the Board if collecting pounds was not the way to do it, then what was. Morrill replied that the Board does not have that answer yet and we need to narrow down the focus of what we want answered and determine what we can do with the budget we have.

9. Schedule of Future Meetings

February 17, 2017; March 31, 2017; and May 12, 2017 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- **The Board added June 23, 2017 and August 4, 2017 as tentative Board meeting dates**

10. Adjourn

- **Flewelling/Granger: Moved and seconded to adjourn at 5:33**
- **In Favor: Unanimous**