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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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AUGUSTA, MAINE 04333-0028

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COMMISSIONER
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DIRECTOR

BOARD OF PESTICIDES CONTROL

November 13, 2015

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

MINUTES

8:30 AM

Present: Eckert, Flewelling, Granger, Morrill

1. Introductions of Board and Staff

- The Board, Staff, and AAG Mark Randlett introduced themselves
- Staff Present: Chamberlain, Fish, Jennings, Hicks, Patterson, Tomlinson

2. Minutes of the August 28, 2015, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- **Flewelling/Eckert: Moved and seconded to adopt as amended.**
- **In Favor: Unanimous**

3. Draft Response to the Legislative Committee on Agriculture, Conservation and Forestry Concerning Rules for Public Parks and Playgrounds

On July 16, 2015, the Joint Standing Committee on Agriculture, Conservation and Forestry of the 127th Legislature sent a letter to the Board requesting a review of its rules “in order to determine whether the standards for pesticide application and public notification for public parks and playgrounds should be consistent with the standards that have been established for pesticide application and public notification in school buildings and on school grounds under CMR 01-026, Chapter 27.” The Board discussed the issue at the August 28 meeting and directed the staff to draft a response based on that discussion. The Board will now discuss the draft.

Presentation By: Henry Jennings
Director

Action Needed: Review the draft response to the Joint Standing Committee on Agriculture, Conservation and Forestry and provide guidance to the staff

- Jennings stated that the staff had taken the points made by the Board and organized them in the letter. Plenty of time to modify if the Board wants to make changes.

- Flewelling and Granger noted that they were pleased with the letter.
- Eckert noted that it describes what is already being done; maybe we don't want to get into describing what we might do? Jennings said that the Board provided specific instructions about the content of the letter: the Board did not want to speculate on what could be done, other than to place more emphasis on training; emphasize caution in applicator training that when working in parks and playgrounds where there will be children present and they should be sensitive to that. Bohlen observed that if suggestions are included in the letter, the Committee will just respond by saying "do that." Instead, he suggested opening a dialogue with the committee; if there's more that they think should be done they can let us know. Perhaps members of the Board will want to speak to the committee if there is a hearing.
- Eckert stated that the training we should encourage is IPM. Jennings noted that in its truest sense, IPM is about minimizing risk.
- Morrill queried the audience for comments; none were forthcoming.
 - **Consensus reached to have Morrill sign the letter for the Board and send it to the Committee.**

4. Letters from Various Constituents

Paul Schlein submitted comments and suggestions to the Board as part of the July 10, 2015 meeting packet in reaction to a letter from Justin Nichols recommending changes to the Board's posting requirements. Schlein later submitted a revised version of his letter and asked that the Board review it. Related letters supporting Schlein's views were also received from Maine Organic Farmers and Gardeners Association (MOFGA), Friends of Casco Bay, and Natural Resources Council of Maine (NRCM). The Board will now review and discuss the letters.

Presentation By: Henry Jennings
Director

Action Needed: Discuss the letters received from constituents and determine what, if any, action is required

- Paul Schlein thanked the Board. He noted that he had attended over 100 meetings while working for the Board and that it is interesting to now sit in the audience. He felt his role then was to advocate for public health, and that it still is. He would like to see things prioritized a little differently. The Board should provide education to both the public and the professional community. IPM and BMPs are excellent in theory, but they need to be practiced. There has been an exponential increase in home use of pesticides in Maine; over six million pounds in Maine. If those people had received more information, there wouldn't have been such an increase. The focus should be about health, safety and welfare. If certain pesticides are presenting a risk, then they deserve scrutiny by the Board.
- Katy Green, MOFGA, said that Schlein's letter spoke for itself. She said that it was interesting that the Board joked at the Machias meeting that they must not be doing anything controversial because not many people came to the public hearing. It isn't that there isn't anything, people just don't know that the Board exists and what it does; there is more that the Board could be doing.
- Ryan Parker, NRCM, remarked that there seems to be a disconnect between the principals of IPM and pesticide usage in the state.
- Bob Tardy noted that in the statutes the Board is charged to promote IPM; the money is there but has gone other places. The Board should understand that it's not Jennings' budget, nor the Commissioner's budget, it's the Board's budget. For years he's advised the Board to use it or lose it.

- Jody Spear said that the July minutes indicated a letter about posting would be sent to applicators and asked whether such a letter had been sent (Note: letter was sent, but was not included in the next Board packet). Her letter (which was distributed to the Board at the meeting) focused on negligence and fines which were not addressed at the July meeting. The Board should reopen discussion about the egregious Nichols' complaint. There was discussion about mixing products in that case; four herbicides were used. Is this done all the time? Why would they be together?
- Granger replied that it is common for a lot of crops. As a Christmas tree grower, the spectrum of activity for some of those products is not sufficient; some affect grasses, others affect broadleaves. Mixing in the tank saves time. It's very common to mix products.
- Spear asked whether it is the synergistic effects that are beneficial. [Spear subsequently requested that the minutes reflect that she said she was concerned about adverse synergistic effects.] Hicks replied that if the active ingredients appear in a single product then there are studies done. She would have to see if those active ingredients are used together in a product. Spear said that she would like an answer. She would also like to know what products were used. The minutes say it was three, elsewhere it says four. The minutes should be correct.
- Tim Hobbs asked whether the labels allow mixing. Morrill replied that the label recommends what you can and can't mix; would be product specific. Hicks noted that the label would include prohibition on mixing if active ingredients were incompatible. Spear asked for each of the products that you know were used, would there be information on mixing? Fish said that there are not prohibitions on mixing those four ingredients together. The first three are commonly found in combination broadleaf control products. The fourth has recently been added as a crabgrass control and is often mixed with broadleaf products.
- Morrill suggested the Board would look into it, noting that at the July meeting they did suggest to enforcement to review it again because they thought it needed more scrutiny. Jennings reiterated that a communique was sent to applicators about phone numbers on signs; they need to have people answering the phones.
- Fish said that in recent training this case was emphasized specifically and that phones need to be answered by someone who knows what's going on and can answer questions.
- Ryan Parker asked whether all applicators participated in these trainings. Fish said no, but they all received the letter.
- Morrill steered the discussion back to Schlein's letter. The focus should be on the trend of increased use of home pesticides and more education to the public.
- Eckert noted that these issues have been bubbling for 20-25 years or more. We've known that lawn care use is increasing, especially in the southern part of the state. It's not easy to get a handle on it; people aren't licensed; it's not a captive audience. Other than educational outreach, we can't get to them. Education, though not easy, is the easiest way to deal with this. There may be regulatory issues as well. The Board emphasizes IPM and BMPs with the landscaping industry and hopes that things are done right. It promotes notification and transparency. These are not new issues, but these are valuable issues to focus on over the next year. The synergistic issue is a very complex one without an answer. There are a lot of products and a lot of combinations. It's hard to know how anyone would get a handle on testing them all. Currently, it isn't being done and probably won't get done completely except for common combinations. In Eckert's field, it's common to use too many drugs on people as they get older. Even in that setting where there is more testing, there still isn't good information on what the effects will be. Unfortunately that is an issue that's not going to be solved.
- Jody Spear added that some of the inert ingredients, solvents for example, are not going to be listed.
- Hicks noted that they aren't listed, but they are tested.

- Schlein asked, just because these multiple products are used in a commercial product, does that mean there can't be negative synergistic effects? Hicks replied that individual labels include inerts and inactives. She could compare labels of products with a single active ingredient to labels with multiple active ingredients; that's all she can do.
- Granger commented that most pesticides have a range of dosages. Commonly when you combine products, you use the lower rate because there's some carryover effect so you can get the same amount of control with less total product. So typically you apply less per acre than if the products were applied separately. Eckert asked if that would cause less resistance; Granger replied yes.
- Morrill said he would like to look at the budget. Where are we putting our resources? Where is our money best spent? It has been brought up that there is an increase in lawn care pesticides. Is that because of reporting? How much increase is active ingredient? In recent years there has been a shift from licensed applicators to unlicensed homeowners. For the Board, it's easy to focus on applicators. Somehow we need to shift the focus toward broader public education and homeowners. It's a difficult issue to wrap our heads around—providing more education to the general public. There was a conference this fall on tick borne diseases with a very good speaker. The cost was \$100. The general public probably won't spend that much. Those are the types of conference that the general public might benefit from. Maybe we can facilitate making certain conferences available to the public? The staff could focus a lot more on public education and capturing those people that we've struggled to capture in the past.
- Hicks commented that she has a problem with focusing on strictly on the "minimize reliance" standard. Risk is the key measure, not volume of pesticides.
- Morrill agreed that it is difficult to compare apples to apples. Where is the increase? A decrease in use might not be the best thing as far as risk. Eckert agreed that the goal should be to minimize risk. It's not about amount. Hicks added that it ties in to exposure, use patterns, etc.
- Katy Green said that she concurs with what Hicks said. The statute specifically directs the state to reduce reliance on pesticides, but does not speak to risk. Homeowners are using products they don't need. Hicks added that they don't know what they're doing with them.
- Schlein commented that as far as communicating to homeowners and the general public, Yardscaping was very effective, but it hasn't gotten much attention lately. The staff used to go to a lot of events, worked on the Yardscaping garden and went to conferences and the flower show where something like 60,000 people attend each year. Portland is an area where a lot of pesticides are used. Perhaps there could be a media campaign to reach the public. The ducky ad was considered highly successful; the second ducky ad focused on weed 'n feed products, which is a huge issue. The ad was released and then pulled and shelved. It should be aired as much as possible.
- Flewelling asked why homeowner use of pesticides has increased; do people want better lawns? Jennings replied that the increase can be largely attributed to rise in popularity of weed 'n feed products, which are generally less than 1% active ingredient. Aggressive marketing by a few large lawn product distributors has been effective. They do a good job of convincing the public that a weed free lawn is the desired goal.
- Schlein said that the public isn't aware that there are alternatives that can give them a lawn that's just as good. There is proof that switching to those alternatives is good for business. Schlein has been doing research on doing a stewardship publication using the Yardscaping model to get information to homeowners emphasizing using nitrogen only fertilizer. It's surprising that it's very difficult to find those products; the only nitrogen-only fertilizer is part of a weed 'n feed.
- Eckert said that we need ideas about what's driving this. The Board needs data, this is just ideas. There are a whole lot more people south of Augusta where there are many developments, lots of housing, large stores and malls etc. The growth in homeowner pesticide

use may be that it is be driven by that. Municipal ordinances may promote more work for professional companies; some companies offer organic landscaping services.

- Schlein said that he spoke to the code enforcement officer in Ogunquit who said that businesses who are embracing the organic model are getting more work. In Toronto, after a phase-in period, there was a 30% increase in landscape and lawn care companies, a definite increase in companies that offer alternatives.
- Ryan Parker said he would like to respond to Flewelling's comments. He has been farming for 10 years. If you're going to have a monoculture, it's impossible to do without chemicals. He also commented about marketing; the point is to sell people things they don't want or need.
- Jennings noted that as residential property values go up, people invest more in landscaping.
- Schlein said that he appreciates that the Board acknowledges that something needs to be done. Suggested they pass a resolve directing the staff to come up with a list of things that need to be done; work with other organizations and agencies. Also come up with better data.
- Morrill said that he would like to move into a discussion of the budget.

5. Review of BPC Budget

Board Chair Deven Morrill suggested that a review of the Board's annual operating budget might be timely since the Board is reviewing suggestions for additional educational efforts and because questions have arisen about the costs of pesticide continuing education programs.

Presentation By: Henry Jennings
Director

Action Needed: Review the BPC budget

- Morrill stated that Schlein's letter spawned the idea of studying the budget and suggested that the Board should have some input. He would like the Board to review the budget on an annual basis. Where is the money going? What should it be spent on? He would like to get a better understanding of where the money is going. Is there money available to spend on education? If we have the opportunity to educate the public, it would reduce reliance on pesticides.
- Jennings explained that the document in front of the Board is the budget that is presented to the Legislature; if it is approved it provides the legal authority to spend money. Dicap is the Department overhead, which pays for IT, computers, cell phones, licensing for software, attorney general, accountants, who process bills and prepare budgets, and human resources. Stacap is the statewide overhead, and is levied by the State Controller's Office. It pays for office space, lights, internet, insurance, etc. The legislative transfer is one of the two grants to Cooperative Extension (\$135K), the other grant to Cooperative Extension (\$65K) is listed below. The two grants together equal about 10% of the BPC's total revenue allocated to Cooperative Extension for IPM related purposes. The total revenue in the BPC budget and total expenses are just about equal. Typically we have vacancies and don't spend all that's allotted. If every position is filled, and we spent all the money projected on things like travel, grants, mailings, etc., then it would be pretty close. The Board is also paying for five other employees in the Department doing pest management related tasks. Professional Services includes laboratory services because the state lab can't do what we need. Sediment samples are \$400 plus around \$75 shipping; around \$400 for water samples; \$200-300 for enforcement samples. It may be more if testing for multiple active ingredients that can't be done with the same test. The part-time office temp is also included in Professional Services. That may go away if the Pega solution does what we want it to do. The General line includes obsolete pesticide collection, Board member costs, rulemaking, postage, shipping, printing and binding. The Technology line was going to be for licensing of Pega software but that should go down or disappear because the state is negotiating an enterprise level license agreement. Grants

include the \$65K to Cooperative Extension, \$30K to DHHS for mosquito monitoring and WPS training. In terms of money left, if we are fully staffed and spend all the grants, there might be 100K left in the near term. Authorization would be required to spend above the allotments in the biennial budget. If the Board believes it's prudent to allocate more time and money on homeowner education, the staff is completely on-board. We have four websites, including GotPests, which is geared toward homeowners. IPM at its best is providing easy access to the best available information to the public. If the Board wants, we could do something like a media campaign or go back to the Flower Show. We tried talking at the Maine Municipal Association conference, but they put us in a break-out session so we don't get many people. We had a booth, and didn't get many visitors.

- Flewelling asked who the target audience would be. Jennings said that is for the Board to decide.
- Morrill said the Board should have this discussion every year. Maybe have a planning session to determine specific priorities. He is interested to see that almost 30% is spent on positions that aren't really under our umbrella, as well as money that goes to Cooperative Extension.
- Flewelling asked if those people were helping to fulfill the Board's goals. Morrill suggested that the Board should ask that question. Maybe could lean on them as a better resource; look at what they're doing and how it works toward fulfilling the Board's mission.
- Granger suggested that the Board look at the whole scope of state activity. He worked for 37 years for the Department. A large part of his job was homeowner education. The same is true today; well trained staff at the Maine Forest Service lab answer questions from the public all the time. Not all homeowner education should be the job of the Board; there is a whole team of people just within the Department. If that isn't enough, adding a person or two here isn't going to change that. Get that team together and determine what we're trying to accomplish.
- Bob Tardy noted that when the Board first started funding additional positions there had just been an increase in the registration fee. The Department was going to cut two positions, and because of the increase, the BPC had extra money so they picked up those two positions. Eventually it went to five positions, something we should fight going forward.
- Fish noted that the team has been together for a long time. We have refrigerator magnets with numbers for BPC, Cooperative Extension and Maine Forest Service lab, all places homeowners can go to get solutions to pest problems. We have relied on others to carry our message, Forest Service, Arborists. We are getting something for our money. And the GotPests website is a collaborative effort as well.
- Dave Struble asked how much bang for the buck are we getting? What are we getting from the website, magnets, etc.?
- Morrill agreed. The staff has been doing this for a long time, but we don't seem to be reaching the audience that we need to reach. Marketing and education is about reaching those we're concerned about and those applications we're concerned about. The Board needs to look at where resources are and refocus.
- Fish replied that they had been working on a program to look at marketing educational programs within the Department, but it was discontinued. It was effective in helping us find better ways of advertising and educating. What we found is that the most effective ways are really very expensive.
- Schlein commented that one of the outcomes of those focus groups was that the ducky ad was one of the most effective ways of reaching people. Clark's suggestion of convening various groups is an excellent idea. He doesn't see how that precludes the Board from funding Yardscaping. Why couldn't the Board do that immediately?
- Morrill noted that a lot of educational outreach is focused on applicators, but maybe we need to take some resources and direct toward homeowners.

- **Consensus that it would be helpful to ask those receiving BPC funds, including Cooperative Extension, to explain what they are doing.**

- Eckert noted that municipalities don't seem to know what the Board does; not coming to us for assistance. Morrill agreed that the public in general doesn't realize the resources, rules, umbrella of the Board.
- Schlein noted that his former position of public information officer was created to address concern over the growing number of ordinances, to help the public understand. The public doesn't feel that they're getting the help they need. He is not in favor of local ordinances, and thinks the state should be addressing the concerns. However, if the state went, then municipalities will. More education would diffuse some of that.
- Morrill said that the Board has to be cognizant of staff time. Every inquiry takes time. Let's make sure we're not asking for something we don't really want. What do we have for available funds? What can be best done for education? Morrill would like to know where \$625K is going; direct those programs to help spread BPC messaging. He thinks it makes sense to put more emphasis on general public outreach. The Board should do Flower shows and venues like that to reach people other than applicators. Why was the recent tick conference \$100?, If that had been open to the public for free, that would have been good.
- Jennings suggested that staff come back with some major points from this discussion. Maybe plan a planning session. He noted that it is difficult to reach homeowners without a lot of money. It's easy to identify that this is a priority; it's harder to put together a plan that will accomplish what we're trying to do. Everyone should be invited to the table to see if there's a way better coordinate and put together a program that can be effective. Morrill added that the goal should be to put some educational pieces into effect before next spring.

6. Consideration of a Consent Agreement with JBI Helicopters, Inc. of Exeter, New Hampshire

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 on 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 to resolve the matter. This case involves drift from an agricultural pesticide application that impacted a neighboring residential property.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that this was an application of fungicide to forage corn in which pesticide drift occurred. Samples were taken at the home across the road from the target field and in the untreated buffer which came back positive for both active ingredients. Violations included the lack of required aerial application checklist and off-target drift. People were present at home at time of application. Samples taken at house and at mailbox had relatively high levels of both active ingredients. This was the first time Connors had heard of aerial spraying of forage corn. The company was trying to see if there was a market for applying this way. The wind was from the treated area toward the house. The pilot record and Bangor airport all agree.

- **Flewelling/Granger: Moved and seconded to accept consent agreement negotiated by staff**
- **In Favor: Unanimous**

7. Other Old or New Business

a. Summary of Obsolete Pesticide Collection

- Patterson gave a brief overview. There were about 85 participants, up a little from last year. There was a lot of media outreach to do coverage, which really helped.

b. Update on transition plan to three year license/certification cycle

- Fish explained that the BPC recently passed rules to change the license cycle for dealers and align license and certification periods. With the new licensing system we're working on, we're going to delay implementation for about a year because we want to make sure it's up and running. Would incur more costs to implement changes with the old system. Will have to make sure we are being fair with recertification credits. Proportionally what they have and keep going into new certification.

c. Staff Update

- Jennings explained that Schlein's position had been vacant for two years because a strategic decision was made to reclassify the job. He was a public relations representative, which was always a target for cuts. The position is really about education, so we changed to an Environmental Specialist III. Anne Chamberlain moved into that job; and we hired Megan Patterson into Chamberlain's old job. The BPC is now fully staffed except for a seasonal inspector position.

d. Variance Permit for control of Japanese knotweed in Minot

e. Variance Permit for control of invasive plants in ROWs in Falmouth

e. Other

- Hicks said that the Environmental Risk Assessment Committee is down by two members and they will be looking for replacements.
- Eckert said that she had been asked when chlorpyrifos was going to be cancelled. She thought it was gone. Hicks replied that it was no longer available to homeowners and that EPA is trying to get rid of it for some food products. Granger commented that it is a critical pesticide in the Christmas tree industry. There is not enough research done on Christmas tree pests and only two insecticides currently available for the gall midge and the twig aphid. The industry will be in trouble if it is taken away.

8. Schedule of Future Meetings

December 18, 2015, and January 13, 2016 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- **February 19 and March 25, 2016 were added as meeting dates**

9. Adjourn

- **Granger/Eckert: Moved and seconded to adjourn at 10:55 am**
- **In Favor: Unanimous**