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GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

April 6, 2018

Room 118 Marquardt Building
32 Blossom Lane
Augusta, Maine

MINUTES

9:00 AM

Present: Adams, Bohlen, Flewelling, Granger, Jemison, Morrill, Waterman

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves.
- Staff: Bryer, Chamberlain, Connors, Couture, Gibbs

2. Minutes of the February 23, 2018, Board Meeting

Presentation By: Ann Gibbs, Director, Animal and Plant Health

Action Needed: Amend and/or Approve

- Jemison has a couple suggestions he will leave with Gibbs
- Bohlen stated that in the minutes it mentions the Freedom of Information Act on page two. It should have referenced the Freedom of Access Act.
 - **Flewelling/Morrill: Moved and seconded approval of minutes as amended**
 - **In Favor: Unanimous**
- Gibbs updated the Board that Cam Lay resigned and the department is in the process of filling the position with an interim director. Flewelling asked if it would be someone on staff. Gibbs replied yes, she had already asked interested employees to apply and received two applications. Gibbs added that they are going to conduct an informal

interview and asked if Morrill would serve as the Board's representative for that process. Gibbs asked if the Board would grant Morrill authorization to approve someone for the position of interim director.

- Morrill asked if the Department would still actively place ads for a new director. Gibbs said they would but because of the hiring freeze they must first receive permission from the governor to advertise the position.
- There was discussion about the previous hiring process and that the Board gave the final approval for that hiring. Morrill stated that this time the Board would like to be involved in that process from the start. Morrill stated he would be fine representing the Board but he would like to extend an invitation to all Board members. Granger asked if it was appropriate to talk with Morrill during this process if he is the only member involved. Randlett replied if the Board is discussing a decision then it should be done in a public meeting. Other representatives from the Board could be involved in the process, and the Board could authorize them in advance to act on behalf of the Board. Or the representatives could bring information to a meeting and the entire Board could decide together.
- Morrill stated he would like other members involved if they wished to be. Jemison stated he felt involvement in the interim was less important than being involved in the hiring for the permanent position.
- Morrill stated the goal will be to have an acting director in place before next Board meeting.
- Granger stated he would like to be involved and suggested they have three Board members involved. Gibbs stated that one of the interviews for the interim position was happening today.
- Jemison volunteered to be the third Board member to participate in the process.
 - **Morrill/Flewelling: Moved and seconded to nominate himself, Granger, and Jemison to be on the hiring committee for the interim director and be authorized to approve the hiring on behalf of the Board.**
 - **In Favor: Unanimous**

3. Continuing Discussion Around Unmanned Aerial Systems (UAS)

At the February 23, 2018 meeting the Board had a brief discussion about UASs and directed the staff to research the topic and provide more information. Enclosed are several documents for the Board to study. The Board will now discuss what steps it wishes to take next in regards to regulating UASs for pesticide applications.

Presentation by: Anne Chamberlain, Policy and Regulations Specialist

Action Needed: Determine Next Steps to be Taken

- Chamberlain told the Board that the State of Wisconsin had chosen to amend their aerial manual to include info about UASs instead of doing rulemaking and that a copy of Wisconsin's manual was in the Board members' folders.
- Chamberlain gave the Board an excerpt from chapter 10 which defines aerial applicator. She deferred to Randlett who agreed that according to the BPC definition, an aircraft is not required to be manned. As the regulations are written an individual would be able to

operate a UAS with a commercial aerial license if they had met all FAA requirements. Any applicator would also need to have the category for the site they are applying to.

- Chamberlain also provided the Board with an article from Harvard that explained the regulatory hurdles on a federal level.
- Chamberlain told the Board that Chapters 22, 29, and 51 relate to aerial applications, and referenced a flow chart for the Board detailing pertinent items from those chapters. Notes of the discussions around UAS from previous board meetings was also included in the board materials.
- Chamberlain explained any potential applicators would need to meet all requirements detailed in Chapter 22, including creating a site plan, a site-specific application checklist, and 1000' buffer zones for sensitive areas likely to be occupied. Some requirements must be completed the day of the application and some beforehand. Drone operators would be required to comply with all regulations that an aerial applicator would need to do.
- Chamberlain told the Board that Chapter 51 includes requirements for notification, posting notification for aerial applications. They are specific depending on the target site.
- Adams asked Chamberlain if the aerial applicator would still be required to notify individuals on the registry when planning to make an application. Chamberlain responded that they are not required to if they are doing aerial applications.
- Chamberlain told the Board all Chapter 29 requirements, including regulations surrounding water quality and the portion regarding browntail moth, must also be complied with by drone applicators. An inquiry had been sent to all the state pesticide agencies; none replied that they have done any rulemaking around drones.
- Bohlen stated drones might be beneficial in making more precise applications of small amounts and therefore reducing overall use. He added that he did not view the existing rules as a problem in regards to putting individuals at risk, but they may become too prohibitive in the future.
- There was discussion about whether the notification requirements would really fit the precision drone applications.
- Bohlen would like more information regarding a drone's risk profile before discussing the best way to protect public safety.
- Flewelling stated he has been employing drones for observation. Morrill stated he also has a drone and is working out the insurance piece currently.
- Morrill stated the board maybe went into this thinking the rules weren't adequate or appropriate, but after Chamberlain's presentation they agree the rules currently in place are comprehensive.
- Randlett stated the Board often holds public info gathering meetings on topics. He added that the Board could advertise this to the public to come to the meeting to voice their concerns.
- Bohlen stated that from a risk management perspective he would like more information on the track record of drones, and on how carrying small amounts of product change the risk profile. He always would like to know if they are using higher concentrations, and any other pertinent information. Bohlen asked if staff could find more information. Chamberlain responded that the staff would continue to research and would share anything found.
- Morrill suggested revisiting this at the August meeting and put out a call to have an informational gathering session in the fall.

- Adams stated he is not aware of enough public information out there about the regulations we do have in place. He has concerns people may be making drone applications and have no idea it is illegal.
- Bohlen stated this is a good point because there is potential for someone to walk through all the rules and not know they are doing anything wrong.
- The board requested there also be included a statement in the solicitation for public comment ensuring the public understands that using drones for spraying is not legal without proper certificates, exemptions and licensure.
- Heather Spalding commented that she appreciated Adams suggesting that and that it is a solid deliverable to the public.

4. Consideration of Consent Agreement with Black Kettle Farm of Lyman, Maine

The Board's Enforcement Protocol authorizes 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 the application of a pesticide at a rate exceeding the maximum labeled application rate; lack of personal protective equipment; and failure to maintain OSHA safety data sheets at a central information display.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors told the Board that during a routine inspection with an organic farm in Lyman it was determined there were three issues that lead to a consent agreement. There were no Safety Data Sheets, there was a lack of proper label-required gloves, and the use exceeded the maximum allowable label rate. A \$150 consent agreement was paid.
- The Board discussed the maximum allowable label rate of the product.
 - **Flewelling/Bohlen: Moved and seconded approval of the consent agreement.**
 - **In Favor: Unanimous**

5. Consideration of Consent Agreement with Penquis, Bangor, Maine

The Board's Enforcement Protocol authorizes 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 the application of an herbicide to a school playground by an unlicensed person and without authorization by the school's IPM Coordinator.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors told the Board that in the town of Milo, Penquis oversees a pre-kindergarden class at the Milo Elementary School and they own playground equipment. A Penquis employee sprayed herbicide in the pre-kindergarden area. The individual was not licensed and the IPM Coordinator did not authorize the application. The consent agreement is for \$250.
- Morrill asked if there was educational outreach to Penquis to ensure this does not occur again. Connors responded that he spoke with the applicator and a Penquis individual. He will include informational content when he sends the consent agreement back.
- Jemison asked why they did not just use a weed-wacker.
- Bohlen wondered if this happens often in situations where a group is running a program within a school. He added that Murray may want to let IPM Coordinators know that if they have any subleased areas on school property the IPM Coordinator should contact those individuals and let them know about the regulations around pesticide applications.
- Morrill stated it is also important to let groups using school grounds throughout the summer know this, and agreed that Murray should discuss this with IPM Coordinators.
- Bohlen asked that staff make sure Kathy Murray is informed this has happened.
 - **Adams/Flewelling: Moved and seconded approval of the consent agreement.**
 - **In Favor: Unanimous**

6. Consideration of Consent Agreement with Riverview Psychiatric Center, Augusta, Maine

The Board's Enforcement Protocol authorizes 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 the application of an herbicide by an unlicensed person on the grounds of the Center.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors told the Board that a BPC staff member noticed an employee spraying ornamentals at the Riverview Psychiatric Center. They signed and paid a \$200 consent agreement.
 - **Bohlen/Granger: Moved and seconded approval of the consent agreement.**
 - **In Favor: Unanimous**

7. Consideration of Consent Agreement with White's Weed Control of Palmyra, Maine

The Board's Enforcement Protocol authorizes 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 a broadcast application of an herbicide within 25 feet of water without a variance.

Presentation By: Raymond Connors, Manager of Compliance

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

- Connors told the Board the Town of Newport had contracted with White's Weed Control to treat for poison ivy along a causeway that crossed Sebasticook Lake. A BPC Inspector met with officials from the town. There was no buffer around the water and Pat White stated he did spray the area of dead vegetation from the waterline to tar. White thought the town had applied for a variance to spray within the 25' buffer. The consent agreement was for \$250.
- There was discussion about whether a variance would have been approved. The Board would not have approved it with powered equipment and the toxicologist would have had to review the pesticides being used.
 - **Adams/Jemison: Moved and seconded approval of the consent agreement.**
 - **In Favor: Unanimous**

8. Other Old or New Business

- Letter from Lauchlin and request from Jesse O'Brien to be on the agenda.
 - Jesse O'Brien addressed the Board. He owns Downeast Turf farms and sells grass, seed, fertilizers, and some hardscapes. He stated that they have grown turf without pesticides or from seed to grass with little to no pesticides, but they cannot grow all their turf in all fields without pesticides.
 - O'Brien was asked to be on the task force for the South Portland Pest Management Advisory Committee (PMAC). He stated that the new ordinance will be going in effect beginning May 1, including regulation of pesticide use on private property. O'Brien added that even though he was against the ordinance they asked him to participate in the PMAC.
 - The ordinance should be posted on the South Portland website within a week. O'Brien stated that one of the problem he has is that is that they do not use BPC and UMaine as resources for the website, and he thinks that is unfortunate.
 - O'Brien told the Board he finds there is a lack of leadership in the state on this issue from both the BPC and Cooperative Extension.
 - Flewelling asked O'Brien if individuals feel we are not doing our job or they do not like the job we are doing. He added that he thinks this is a sovereignty issue, not a pesticide issue, and the Board is tasked with making policy for the state, not municipalities.
 - Jemison added that citizens are not aware of the inspections and the safeguards in place, and it is frustrating that individuals are trying to do this correctly but not knowing the full extent of what is already in law and what is available.
 - Granger stated the BPC supports several ancillary positions, and there are a lot of sources of good info that could be addressed to help with issues of the town. Granger continued that when providing money to support these other positions the Board should be more detailed about what they expect be done with that money.

- Bohlen added that there is a relevance for the Board to decide how they are allocating resources. Bohlen asked that the Board remember these conversations when they begin discussing the Budget in the coming months.
 - Morrill stated the Board had seen a lot of turmoil in the last few years and it is his hope that they can return to some sort of normalcy with the next hire.
 - Riley Titus, of Responsible Industry for a Sound Environment (RISE), was present to represent pesticide distributors and producers. He stated that the group has been following this issue as several towns have been discussing it.
 - Titus stated that pesticide registration fees provide a good deal of money for the pesticide program and some of these local issues seem to be in contradiction to the state policies. IPM is recognized in statute, and the definition includes cultural, mechanical, and chemical controls and he is seeing prohibition on those. He asked the Board how that plays into the state's authority, and if the towns have been reaching out to them for education. Titus commented that it appears municipalities are regulating further a product that is already highly regulated. He asked what the direction or guidance to these municipalities from Cooperative Extension looked like. Titus also stated that from what he has heard today it sounds like many people are looking for some information.
 - Titus told the Board that from the point of a registrant that pays a lot of money into the program, he would be happy to follow-up with any of his information.
 - Morrill said the BPC does have some wonderful resources and that the Board needs to figure out how to use these resources to their best use.
 - Jemison said part of the problem is that when people distrust science and government it will not make that much difference what the Board does. He added that the information is out there and available if people want it.
 - Adams asked if the consensus in the PMAC group was that organic pesticides are safer. O'Brien replied yes; these products still kill things and it concerns him when he hears they are always safer.
 - Morrill stated he is concerned. There have been several town ordinances for years, but the newer ordinances are much more widespread and affect people on their private property.
 - Morrill suggested having a public forum to hear what the public would like the Board to do. The Board discussed Jim Dill's grant and how that may be an avenue where they can get some measurable results. Morrill said the Board needs to revisit this topic at the next Board meeting. Jemison suggested sending a request to the towns asking them to let the Board know what is and is not working.
 - Adams asked if the question was addressed. Is the perception that the Board is not responsive or effective? If this is not the primary issue, then what is? Should the Board request different deliverables in return for Extension funding. Alternatively, should the funding be differently allocated—possibly to the IPM Council, etc.? What are the Board's expectations?
 - Morrill stated that the Board may find something towns are doing at the municipal level that may work, and should be instituted at the state level.
- Legislative Update – LD 1853
 - Spalding mentioned a letter Joint Standing Committee on Agriculture, Conservation and Forestry had received from the Joint Standing Committee on State and Local Government asking them to think carefully about the BPC and

how it is working. There were concerns raised regarding statutory changes in membership structure, related shifts in the balance of the Board, and lack of availability or interest to assist constituents by Board and staff.

9. Schedule of Future Meetings

May 18, 2018 and July 13, 2018 are proposed Board meeting dates in Augusta. August 24, 2018 has been proposed for a tour of Green Thumb Farm in Fryeburg and Weston's Christmas Tree Farm in Fryeburg followed by a Board meeting locally. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

10. Adjourn

- **Bohlen/Flewelling: Moved and seconded to adjourn at 11:25 am**
- **In Favor: Unanimous**