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GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**April 24, 2015**

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

**MINUTES**

**8:30 AM**

Present: Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Randlett introduced themselves.
- Staff Present: Chamberlain, Connors, Fish, Hicks, Jennings

2. Minutes of the December 5, 2014 and January 14, 2015 Board Meetings

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

December 5, 2014, Minutes:

- Jemison suggested that item 3, next to the last bullet be changed from “encourage the bigger trails to think ahead” to “encourage managers of bigger trails to think ahead” and item 7, first bullet the word “his” be corrected to “this”.
  - **Stevenson/Jemison: Moved and seconded to adopt minutes as amended**
  - **In Favor: Unanimous**

January 14, 2015, Minutes:

- **Flewelling/Jemison: Moved and seconded to adopt minutes as written**
- **In Favor: Unanimous**

3. Section 18 Emergency Registration Renewal Request for HopGuard to Control *Varroa* Mites in Honey Bee Colonies

The Division of Animal and Plant Health, in the Maine Department of Agriculture, Conservation and Forestry, is requesting that the Board recertify the petition to EPA for a FIFRA Section 18 specific exemption for use of HopGuard (potassium salt of hop beta acids) to control *Varroa* mites in managed bee colonies. State Apiarist Tony Jadczyk is seeking approval to continue use of this product, which has provided consistent control against *Varroa* mites during the last three seasons, and is an important

alternative in resistance management and organic honey production. He points out that a healthy bee keeping industry is needed to support Maine agriculture, and that this product is essential to honey production and commercial bee operators. The request is supported by the registrant, BetaTec Hop Products, a wholly owned subsidiary of John I. Haas, Inc.

Presentation by: Henry Jennings  
Director

Action Needed: Approve/Deny Request to Petition EPA for a Section 18 Specific Exemption Registration for HopGuard for Use with Bees.

- Jennings explained that this was the third year for this registration. It is a lower toxicity product than others used, provides an alternative mode of action, and can be used for organic honey production. There is no data to suggest that approval of this registration request is inappropriate. The manufacturer is working toward a Section 3 label.
- Tony Jadcak, State Apiarist, said that this product is called HopGuard II; the only change is that it has been reformulated with a mylar base, more cardboard and more hop juice, which is the active ingredient. There were problems with bees tearing the cardboard out of the hives too quickly; the mylar is to slow down the removal of material by the bees. The downside is that the beekeeper has to go in and remove the remains. It is allowed to be used while the bees are making surplus honey.
  - **Flewelling/Stevenson: Moved and seconded to approve the request for registration**
- Morrill asked whether this product would receive a Section 3 registration this year. Jadcak replied that the company has said it would, but is not sure what the holdup is.
- Stevenson asked how many commercial beehives there are in Maine. Jadcak said that last year there were 909 beekeepers with approximately 10,000 hives, which is back up to pre-*Varroa* numbers (1994-95). There were approximately 83,000 hives shipped in last year; the blueberry crop was the biggest on record. There is more land going into blueberry production.
- Morrill asked whether there had been any demonstrated bee kills as a result of this product. Jadcak said that a couple of years ago there was some mortality when it was used in really cold weather; it seems to be okay in the 20s, but lower temperatures can be a problem.

○ **In Favor: Unanimous**

#### 4. Final Adoption of Amendments to Chapters 22 and 28

On July 16, 2014, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, 28, 31, 32, 33 and 41. A public hearing was held on August 8, 2014, at the Deering Building. The Board reviewed the rulemaking record on September 12, 2014, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. On October 24, 2014 the Board adopted amendments for Chapters 20, 31, 32, 33 and 41 and provisionally adopted amendments to Chapters 22 and 28. The Joint Standing Committee on Agriculture, Conservation and Forestry held public hearings on February 24, 2015 and voted out ought-to-pass on two resolves on February 27, 2014 and they were enacted as emergency legislation and became law without the governor's signature on March 29, 2015. The Board has 60 days from the effective dates of the resolves to finally adopt the rules.

Presentation by: Henry Jennings  
Director

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapters 22 and 28

- Jennings noted that these two rules were major substantive and so required legislative review. There wasn't a lot of discussion about the rules at the hearing or work session; the governor allowed them to become law without signing them. The Board can't change anything at this point: it can only vote on whether to finally adopt the amendments or not.

#### Chapter 22

- **Jemison/Morrill: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business and the response to comments and for Chapter 22 as written.**
- **In Favor: Unanimous**

#### Chapter 28

- **Jemison/Stevenson: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business and the response to comments and for Chapter 28 as written.**
- **In Favor: Unanimous**
- **Consensus was reached to support using enforcement discretion during the transition period and encourage applicators to begin posting immediately. Staff was directed to post information on the website and to send an email to applicators clarifying what the requirements are.**

#### 5. Development of Guidelines for the Board Related to the Issuance of Variance Permits for Spraying Railroads Adjacent to Surface Waters

At the May 16, 2014, meeting, the Board granted a one-year variance from Section 6 of Chapter 29 to Asplundh Tree Expert Company—Railroad Division to make broadcast herbicide applications less than 25 feet from surface water. At that time, the Board also directed the staff to develop guidelines/criteria for issuance of railroad variances prior to next season. Robert Moosmann of MDOT has developed some draft guidelines and the staff has been researching the Board concerns. The staff will present its findings and seek feedback from the Board.

Presentation By: Henry Jennings  
Director

Action Needed: Establish Criteria for Granting Railroad Variances

- Jennings explained that—for the last 28 years—the Board has been issuing variances to railroads from the Chapter 22 requirement to identify sensitive areas within 500 feet of the application site. Based on the current rulemaking, on May 25, companies conducting applications under category 6A will no longer be required to identify sensitive areas, so variances will no longer be necessary. For the last six or seven years the Board has been issuing two variances to railroads: one for Chapter 22 and one for Chapter 29 relating to broadcast spraying within 25 feet of water. Now we are focused on the latter. Companies are willing to maintain a 10 foot buffer, so we're only talking about a 15 foot strip. The staff had discussions around root uptake and ground water concerns, but this variance to Chapter 29 is only about surface water. The staff spent a lot of time looking for best management practices (BMP); there are a fair number for roadsides and transmission lines but not much for railroads. The management goals are very different: roadsides need to keep woody plants in control; railroads need to eliminate all vegetation in ballast. Bob Moosmann's document did an excellent job

of explaining what they're trying to do and why. This is rock ballast, usually with a steep embankment. It has the characteristics of a high risk area, but the variance only relates to a 15 foot wide strip. It looks like rock on the surface, but there is organic matter underneath. The staff began thinking we needed BMPs but ended up thinking it's really just about the products and the timing. The entire discussion started around a particular product that was listed in a variance request and whether that product was appropriate for this use. The Board could do a risk assessment covering all products, but that would take a lot of resources, so the staff decided to focus on the surface water advisories. Then the staff received a comparative risk assessment of products, submitted by Bayer, which was not in agreement with the label advisories. In talking with Brian Chateauvert from Railroad Weed Control, who has done the bulk of this work in Maine in the last 30 years, it became apparent that we need to consider weed resistance. One key component of resistance management is being able to change modes of action and chemistries. If resistance develops the application rates will go up, which will conflict with the water quality protection goals. Maybe the Board should focus on encouraging applicators to use other practices such as staying away from soap-like surfactants, using a sticker/extender instead; avoid spraying when rain is forecast; avoid spraying early in the year when the water table is high; using the lowest effective rates; using multiple chemistries. The staff discussed various options quite a bit, but there isn't sufficient information available that lets us tell them which products to use and which products to not use. Their programs already include their risk assessment balanced against the need for efficacious control. Remember that this variance is all about a 15 foot strip; there is no current evidence that this is causing issues. Bayer's assessment indicates a concern for sensitive vascular plants. When EPA does a risk assessment for aquatic risks they assume a worst case scenario as far as application rates, the volume of water being impacted. Dilution may be the solution, because the scenarios we're anticipating in Maine involve a higher volume of water than what's used in the EPA model.

- Hicks said there was nothing inherently wrong with Bayer's assessment. There were three products used in Maine that weren't included; she tried to find toxicity data for them. EPA hasn't done anything on glyphosate in recent years; in an earlier review that she did of glyphosate she found that much of its toxicity is from the surfactant, not from the glyphosate itself. Hicks handed out a chart comparing the products; the ones in gray were not included in Bayer's assessment.
- Bohlen noted that this discussion is on a 15 foot strip, sometimes along lake shores. Are there implications for this policy on operations elsewhere? If the Board makes recommendations for areas adjacent to water, how will that affect what is done away from the water. Chateauvert replied that they treat 12 feet in both directions from the center of the track. At a road crossing, where visibility is needed, they go out further. Where there's water they narrow the pattern and shut off some nozzles. Applicators essentially use the same chemistry throughout the project. There's no way to change chemistry on the fly. There are two tanks but they have to get out of the vehicle and manually change over. The separate tanks are used to extend the length of track that can be treated before stopping and loading on additional water. Along Sebago they apply glyphosate for five miles and once they're away from the water they change the mix, but they can't do that everywhere. When the booms are shut off, a gutter comes up to collect drips.
- Morrill asked what the protocol is within 10 feet of the water. Chateauvert said that if there is a weed issue, the railroad company goes in and turns up stones. This is very expensive. Usually the abutment is way back from the water and you can spray right up to the bridge. He noted that they are making just one application a year, at maintenance rates. For Streamline the maximum rate is 11.5 (ounces per acre) and they are using 6 (ounces per acre); The maximum rate for Esplanade is 10 (fluid ounces per acre) and they're using 4.75 to 5 (fluid ounces per acre).
- Morrill remarked that Bob Moosmann's report is great; really explains the treatments, the why and how. The Board is looking at the same variance permits year after year; if it's the same variance then it is a good rule. The product label directions also provide protection. Morrill isn't sure the Board should handcuff applicators by limiting product choices. He doesn't want to have to issue permits every year; why create a rule and then provide variances so no one has to follow it. Jennings

suggested there may be a public benefit to the variance since it generates this kind of discussion. The Board could grant multi-year permits. There may be circumstances where you would want the 25 foot buffer.

- Stevenson asked whether variances come before the Board; Jennings said that the first one does, but the Board has said the staff can re-issue variances if there are no changes. Or the Board can choose to see them every year. Last year when a specific variance (which included Streamline) came before the Board you granted a one-year variance but asked the staff to study the subject. Morrill noted that the Board has always said “follow the MDOT model” but couldn’t really define what that was, so it wanted to look at BMPs. Hicks noted that the biggest BMP is to follow the label. Morrill agreed, and the second is to follow the Board’s drift rule. Chateauvert noted that there is a large disincentive to mess up. Jennings remarked that there is not a high risk of drift because they are using large droplets and low boom height.
- Bohlen commented that the aquatic risk is more about rain events. The suggestions on the memo address those risks.
- Morrill agreed that that the ideas in the memo are good. He prefers to leave off specific product names; a better product might come along. He asked what “significant rain event” means. Fish suggested half an inch. Jennings said that in a drought half an inch isn’t very much, but if the soil is saturated then it’s a lot. Morrill suggested changing the language from significant rain event to rain forecast within 12 hours.
- Bohlen noted that the intent is to say that if it’s going to rain, don’t spray. The concern is about an elevated water table. It’s not just about precipitation. Can the language be rephrased to specifically address the water table, location specific?
- Granger said that a lot of herbicides are more effective at lower rates early in the season. He suggested leaving it to the judgment of the applicators.
- Bohlen suggested saying consider the condition of the water table when spraying early in the season. Chateauvert noted that if the ground is saturated, they shouldn’t be spraying anyway.

- **Morrill/Stevenson: Moved and seconded: if variance permit request meets the criteria (from memo, as amended above) the staff can approve the variance for two years, otherwise bring requests to the Board; review the policy in two years.**
- **In Favor: Unanimous**

6. Review of Interim Guidelines for Forest Pesticide Applications Intended to Prevent Discharges of Pesticides to Waters of the State

On June 27, 2012, the Board approved *Interim Guidelines for Forest Pesticide Applications* with the statement: “These guidelines were not developed for and are not intended to serve as standards for permitting purposes.” At that time there was not a general pesticide permit to cover pesticide applications made over or near water and these guidelines were intended to help prevent discharges of pesticides. In April, 2015, the Maine Department of Environmental Protection finalized a general permit for aerial application of forest pesticides and referenced BPC Best Management Practices. Additionally, at the Joint Standing Committee on Agriculture, Conservation and Forestry work session for LD 817, An Act Regarding Aerial Pesticide Spray Projects, there was discussion about adding references to technological advances for aerial spraying. Should anything be added to improve this document? Should the condition be removed given that the document has been referenced in a state permit?

Presentation By: Henry Jennings  
Director

Action Needed: Provide Guidance to the Staff

- Jennings explained that there is now a pesticide general permit under the Clean Water Act (NPDES) in Maine which applies to two circumstances in which spraying is likely to occur and where surface waters are obscured by forest canopy. This set of guidelines contains, per the Board's request, the statement, "these guidelines were not developed for and are not intended to serve as standards for permitting purposes," but the general permit references BPC best management practices. Applications covering less than 6,400 acres are covered by the general permit automatically. Projects involving over 6,400 acres require the decision maker to file a Notice of Intent with the Maine Department of Environmental Protection (DEP). Does the Board want to retain that statement since the document is being referenced in the general permit? A separate issue is around the spruce budworm bill. The Department of Agriculture, Conservation and Forestry submitted a bill to eliminate the requirement of additional aircraft to accommodate the monitor and the spotter, because new technology makes them unnecessary. During the work session, the ACF committee said they want maps produced by the applicator to be submitted as part of the required annual report. The Board could add that requirement to Chapter 50, include that requirement in the BMPs or ignore the committee
- Granger asked whether these were BMPs already approved by BPC or did DEP develop them and attribute them to BPC. Bohlen replied that the Board put them together to try to provide some protection for aerial applications; so it would be hard for someone to say they weren't being careful and go after them on a Clean Water Act violation. The Board decided to put the provision in because they hadn't been vetted to that level.
- Jennings said that they were vetted. Most of them came from the forest industry. There was some concern that DEP would try to make them law. He isn't sure what relevance the statement has now that the permit is out. DEP was very good to work with on this. They really made the permit as workable as possible. They found the BMPs on our website and decided to mention them in the permit.
- Bohlen remarked that it's kind of weird how there's a DEP permit and what's intended to be guidance and not regulatory has been dragged into it; it becomes de facto regulation. The Board hasn't checked back to see if there are some things that don't work. Jennings noted that putting it on the agenda was a way to solicit feedback, but we didn't get any.
- Granger said that it is a corruption of what BMPs were intended to be: an objective for farmers to work toward, with a recognition that they might not be able to adhere to all of them. The best of the best among various techniques. BMPs weren't meant to be regulatory but rather a standard that you're trying to achieve. These have become de facto rules; not so much guidelines as standards that you need to conform to in order to get a permit. Granger is concerned that this opens the way for all BMPs to become regulatory instead of aspirational.
- Jennings agreed that that is a valid concern which a lot of people have expressed. There should be a way to construct a preamble to address the concern. We could develop language that not all guidelines apply and applicators must choose those that work for the site. It would make it difficult for anyone in an enforcement role to say that if you didn't follow one of them you're in violation.
- Bohlen commented that it seems odd to say follow the label as a BMP since it's a legal requirement. It is typical of DEP permits to highlight other legal requirements.
- Jemison said that he agrees with Bohlen; it degrades the purpose of BMPs to have things that are actual legal requirements mixed in. The staff could look through them and highlight those that are legal requirements vs. BMPs and separate them. Jennings noted that they are just there to remind people of things they need to do; just there for educational reasons. We could take them out.
- Randlett suggested checking with DEP before changing too much to see what their intent is. If they have an expectation that all will be complied with, vs. just using them as general guidelines and are okay with only using those that fit the situation. Jennings said they were just reiterating the language from their statute which allows permitting of pesticide discharges.
- Tim Hobbs noted that he understood that DEP doesn't want to do individual permits; they wanted to make this as simple as possible. They were looking for a simple way to capture those people already

doing applications because what they were doing was working, so they wanted to say if you're already doing those things, you're covered.

- Morrill said that he shares Granger's concerns; these were originally guidelines, not every application would follow all of them every time. Now they are moving toward being requirements. He agrees with Bohlen that we need to continue having discussions with the forest industry to make sure they're working for them. Change the language to capture what we want to do, something like, "These best management practices were developed as guidelines only and are not intended to serve as standards for all applications."
  - **Consensus reached to have the staff work on revisions and bring to the next meeting.**

7. Consideration of a Board Policy Regarding Application of Pesticides to Unoccupied Hotel Rooms and Apartments

At the December 5, 2014 meeting, the Board had a discussion regarding pesticide use in hotel rooms and unoccupied apartments. State statutes define pesticide applications made to property open to use by the public as "custom applications" which may only be conducted by a licensed commercial applicator. Section 2(P)(2) of Chapter 10 provides the exemption, "where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application." The Board expressed concerns about the higher risk of exposure from indoor applications and came to a consensus that the term "property" means the entire building when it involves residential apartments and lodging places. The staff has drafted a policy attempting to capture the Board's intent. The Board will review the draft and determine whether it needs to be amended.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Review/Approve Draft Policy

- Fish explained that in December the Board had a discussion around applications in hotels, whether it was okay to treat one unoccupied room if other rooms were occupied. There was a great deal of discussion, and the staff drafted a policy based on Board input. Fish added the words "lodging places" because it is defined in the Department of Health and Human Services rules.
  - **Stevenson/Jemison: Moved and seconded to adopt the policy as drafted.**
  - **In Favor: Unanimous**
- Ralph Blumenthal asked when the policy would be effective; Randlett replied that it would go into effect immediately.

8. Interpretation of CMR 01-026, Chapter 10, Section 2(P)(2), Definition of Property Open to Use by the Public as Regards Outdoor Applications

At the December 5, 2014, meeting, the Board had a discussion about the definition of "property open to use by the public," which state statutes defines as commercial applications requiring a licensed applicator. Section 2(P)(2) of Chapter 10 provides the exemption, "where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application." During that discussion it was noted that this exemption has been used most commonly by land trusts to treat for invasive plants where they post and indicate the area (but not the entire "property") is temporarily closed to the public. The Board tabled the issue until Curtis Bohlen was present as he has experience working with land trusts. The staff seeks guidance from the Board on whether this is the appropriate interpretation of the rule.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide Guidance on Interpretation of the Chapter 10 Definition

- Fish explained that this is about private lands open to use by the public. Often it is land trusts trying to control invasive plants and/or poison ivy. Up until now the Board has said that if they close off just the treated area and keep people away with signs, then it's not considered "property open to use by the public" and no license is required. Does the Board want the entire property to be closed, or the trail, or just the treated area?
- Bohlen noted that in some cases these are properties of hundreds of acres; does it make sense to spray poison ivy in one small area and close the entire property? On the other hand, no one sticks to the trails and there is no real way to keep people off the area that was treated. It might be better to think about what effective notification might look like in these situations. When doing significant control projects, they're working with licensed applicators anyway. A number of land trusts have licensed staff. There are over 100 land trusts in the state. How to deal with invasives and how to do it legally are part of the conversations they are having. Word on the street is that they should be using licensed applicators.
- Jennings asked whether the unlicensed applicators are doing a good job; are they misusing products?
- Flewelling asked about ATV trails on private lands. Randlett says that the definition says that if it allows use by the public then it is open to the public.
- Tim Hobbs noted that a lot of land in Aroostook County is not posted and is therefore open to use by the public.
- Bohlen said that in Pownal there are a lot of informal trails; not on land trust property but used by the public. We may trip over that definition. These trails are not treated anyway, so it's a moot point.
- Flewelling said that he's not talking about informal use, he's talking about signed trails. What is the difference between trail maintenance on land trust land versus signed ATV trails? Fish said that if it's not routinely open to the public then it doesn't apply.
- Bohlen noted that a lot of land trusts aren't aware of any of these rules. Fish said that it does come up; he would guess about a third of them want to shut down the treated areas and have volunteers do the work.
- Jennings noted that Section (2)(P)(2)(d)(1) of Chapter 10 exempts land devoted primarily to agricultural and forest production. It's the Board's job to interpret the rule; there's enough latitude to go either way on the ATV trails. Randlett agreed that it's vague.
- Morrill said that he is comfortable with option 1 presented on the memo. Bohlen said that he's just stuck on the scale; is it reasonable to close an entire property when it's hundreds of acres?
- Katy Green asked why there would be resistance to hiring a licensed applicator. Flewelling said that everybody else has to hire licensed applicators; why should these be different?
- Morrill noted that in order to have licensed staff, they would have to get one person licensed at the master level. Bohlen said that some trusts share a master. Fish remarked that each would have to have a license, or they would have to be employed by each; otherwise they are "for hire" and would have to be insured.
- Bohlen noted that land trusts vary widely. Some have a few volunteers with no paid staff. In the southern part of the state they are often well supported and typically have paid staff. He is concerned about the range of capacities and budgets. Some trusts with low capacity have huge land holdings. Bohlen is no more comfortable with a land trust closing off one corner of a large parcel than with the homeowner down the road using the exact same product.
  - **Consensus reached to table the matter until the next meeting so the staff can talk to some land trusts and get some perspective.**

9. Consideration of a Consent Agreement with Dan Brown of Blue Hill

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 the purchase of a Restricted Use Pesticide (Gramoxone) by an unlicensed applicator.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors summarized the case, reminding the Board that Brown had attended the October meeting where the case was discussed. The proposed fine was originally \$100. The sides were not able to come to an agreement so the Board directed the staff to re-negotiate. The penalty was reduced to \$50; Brown agreed and has paid. The facts have not changed. During the process the staff discovered that Brown had had a license from 1996-2000 in structural pest control (commercial license). Hicks noted that in that case he should have known what a restricted pesticide was. Connors added that Brown would keep the paraquat until the obsolete pesticide collection next fall.
  - **Flewelling/Granger: Moved and seconded to approve consent agreement as written.**
  - **In Favor: Unanimous**

10. Consideration of a Consent Agreement with Lucas Tree Experts Company of Portland

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 involved an application of lawn care pesticides within 250 feet of a property listed on the Maine Pesticide Notification Registry. The registry member did not receive advance notice.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Morrill recused himself during this agenda item.
- Connors summarized the case. There was an application made in June of last year of three pesticides to a customer's lawn. A registry member lived on the adjacent property and did not receive notification. The consent agreement is for \$2,000 based in part on violation history. The company has had four violations involving the notification registry, in 2010, 2011, 2013 and this one. The first was \$500. The second was also \$500 because it was a result of rescheduling: there was original notification but it was missed on the reschedule. The third incident was \$1,000. The company didn't disagree; they signed and have paid.
- Flewelling asked how far away the abutter was. Connors said the rule covered homeowners within 250 feet. Flewelling said that 250 is a long way and asked whether there was another house in between. Connors said he did not know, although it was not on the same street so possibly was back-to-back, but was within the 250 feet. Connors also noted that homeowners can self-initiate notification within 500 feet.

- Jemison asked whether there had been discussions with the company about how to avoid this issue in the future. Connors replied that the staff has been through this with the company. They do have a policy in effect. Part of the problem seems to involve the fact that there are different divisions within the company doing things differently. In this case an employee did not follow the policy.
- Rider Wyatt from Lucas said that on previous instances there was an issue with the software and the technicians were aware of the need to notify registry participants. So they changed software. In this case, it was on the paperwork. It was a failure of the master applicators to follow the policy, both the applicator and the supervisor.
  - **Granger/Flewelling: Moved and seconded to approve consent agreement as written.**
  - **In Favor: Unanimous**

11. Consideration of a Consent Agreement with Theriault Lawn Care Inc. of Caribou

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 involved a company making commercial pesticide applications with expired licenses over multiple years. In addition, the company's applications records were incomplete and a pesticide was applied to a site not listed on the label.

Presentation By:        Raymond Connors  
                                  Manager of Compliance

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

- Connors explained that this company had licenses which expired at the end of 2011. They operated all of 2012 and half of 2013 without a master or firm license; they did have some licensed applicators, but those licenses were suspended because there was no master applicator. They licensed in July, 2013, paying for 2012 and 2013, so they were licensed until the end of 2013. In 2014 they did not renew again. The consent agreement has been signed and the \$500 paid.
  - **Flewelling/Jemison: Moved and seconded to approve consent agreement as written.**
  - **In Favor: Unanimous**

12. Other Old or New Business

a. Legislation

- LD 708, An Act To Limit the Use of Pesticides on School Grounds
  - Jennings stated the bill was voted out of committee as ought-not-to-pass
- LD 817, An Act Regarding Aerial Pesticide Spray Projects
  - LD 817 was voted out of committee as ought-to-pass
- LD 1098, An Act To Protect Children from Exposure to Pesticides
  - Voted out as ought-not-to-pass—letter coming to Board asking it to research the issue
- LD 1099, An Act To Establish a Fund for the Operations and Outreach Activities of the University of Maine Cooperative Extension Animal and Plant Disease and Insect Control Laboratory
  - Still pending in committee
- LD 1105, An Act To Protect Populations of Bees and Other Pollinators
  - Voted out ought-not-to-pass

- LD 1106, An Act To Compensate Beekeepers for Hive Losses
  - Voted out ought-not-to-pass
- b. NPDES update (link for *General Permit for the Discharge of Pesticides* on BPC home page)
- c. 2015 ERAC Report to the Legislature
- d. CMP Drift Management Plan
- e. Variance Permit to The Woodlands Club
- f. Variance Permit to Vegetation Control Service, Inc. for control of invasive plants in Biddeford Pool
- g. Variance Permit to Vegetation Control Service, Inc. for the transmission line at the Kibby Wind Power Project
- h. Letter to Health Care Facilities
- i. Discussion of Federal Environmental Protection Agency Labeling Limiting Crop Planting Options After Certain Herbicide Applications
  - Jemison explained that there are a lot of farmers who plant cover crops their corn fields during the growing season, which is a good practice for enhancing the soils. If they wait until the corn is off the field, it's too late; they won't get good growth. If they use a certain mix, the USDA will provide funding to assist. The trouble is that if they use an herbicide in producing the crop that has a plant back restriction, they are breaking the law by not following the label even though the point is only to protect and enhance the soil, not to harvest the crop for use. Is there anything the Board can do to send a message to EPA? Draft a letter asking that they look into this at the federal level? Other states are ignoring it.
  - Hicks said that she is on the Environmental Quality Issues Committee, which is the state's official mechanism for bringing up issues like this. She can forward details to the Committee Chair and ask to have it put on the September agenda.
  - Jennings asked if USDA is recommending something that is illegal in some circumstances. Flewelling asked if USDA is aware of the herbicides being used. Jemison said that with some herbicides there aren't any plant back restrictions, but you don't want to use the same products all the time. Fish suggested going to the manufacturers to change labels for cover crops that will not be harvested as well as going to EPA.
  - Jemison said that we don't want growers getting in trouble for doing something that another part of government helped them do. Fish noted that NRCS should be talking to EPA also.
  - Katy Green, MOFGA, asked whether it would be easier to just change the species used. Jemison said that it doesn't have to be those specific five species, but it does have to be five. These particular ones were chosen because when using a helicopter for planting, growers want the lightest weight seeds so you can cover the largest area.
    - **Jemison will send Hicks a list of species and herbicides involved. The Board will send a letter to EPA.**
- j. Election of Officers
  - **Bohlen/Stevenson: Moved and seconded to retain Morrill as Chair for the coming year.**
  - **In Favor: Unanimous**
  - **Morrill/Flewelling: Moved and seconded to retain Jemison as Vice-Chair for the coming year.**
  - **In Favor: Unanimous**

### 13. Schedule of Future Meetings

June 5, 2015 is a tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Tentative plan for field trip/Board meeting August 27-28 (Thanks to Nancy McBrady for her hard work on this)
  - Leave Augusta Thursday morning, August 27, arrive in Jonesboro around noon. Have lunch and tour the Blueberry Hill Farm Experimental Station.
  - Proceed to Wyman's of Maine, Deblois for a tour of the processing facility and fields.
  - Proceed to Machias for dinner/overnight. Listening session in the evening?
  - Board Meeting Friday, August 28 at University of Maine Machias. Listening session before meeting?
  - Eat lunch.
  - Return to Augusta.
  
- Adjustments and/or Additional Dates?

14. Adjourn

- **Morrill/Jemison: Moved and seconded to adjourn at 11:39 am**
- **In Favor: Unanimous**

## NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org).
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
  - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Anne Chamberlain, at the Board's office or [anne.chamberlain@maine.gov](mailto:anne.chamberlain@maine.gov). In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.