

# *State of Maine*

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## *Memorandum*

**To:** Henry Jennings, Director  
Maine Board of Pesticides Control

**From:** Mark Randlett, Assistant Attorney General

**Date:** February 26, 2013

**Subject:** Supervision of Board of Pesticides Control Staff

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You have asked for a legal opinion concerning whether the board members of the Board of Pesticides Control (BPC) have a role with respect to day to day supervision of the BPC staff activities. I am happy to provide my perspective on this issue as the BPC's assigned Assistant Attorney General. However, my comments are my own and should not be construed as the opinion of the Office of the Attorney General.

The BPC is established pursuant to Title 5 MRS §12004-D for the purpose of regulating the sale and application of chemical insecticides, fungicides, herbicides and other chemical pesticides. Boards established pursuant to this statute are primarily responsible for environmental regulation and protection of the State's natural resources and environment. The primary powers of these boards include regulation of activities that affect the environment and natural resources of the State, issuance of licenses and permits, setting of standards and procedures, assessment of fees and penalties, holding of hearings and the adoption of rules. I am not aware of any board established pursuant to this statute where the board members have a supervisory function with respect to that board's staff.

In addition to the primary powers listed in §12004-D, the BPC's powers are more specifically spelled out in Title 22 MRS §1471-M. These include the ability to establish standards and categories for the certification of applicators and the adoption of rules to implement the state's pesticide control laws. Consistent with §12004-D, the powers delineated in section 1471-M are

regulatory in nature. Nothing in §12004-D or §1471-M suggests, however, that the BPC board members would have any role in staff supervision.

There are only two statutory provisions that in any way touch upon the BPC board members' authority concerning staff:

1. Title 22 M.R.S § 1471-B(4) empowers the commissioner of the Department of Agriculture, Conservation and Forestry (ACF) to appoint a director, "with the approval of the board." The director is the principal administrative, operational and executive employee of the board and, "with the approval of the commissioner and the board," may hire such staff as he deems necessary; and
2. Title 22 M.R.S. § 1471-B(5) provides for the BPC to establish standards for the delegation of its authority to the director and staff. The authority referred to in this section relates to the regulatory powers described in sections 12004-D and 1471-M. The BPC board members have established such standards by way of rules and policies.

Again, neither of these statutes contemplates supervision of BPC staff by the board members.

Notably, as provided in 22 M.R.S. § 1471-B(1), the BPC is established within the Department of Agriculture, Conservation and Forestry. Presumably because of this hierarchy, 22 M.R.S. § 1471-B(5) obliges the commissioner of ACF to "provide the board with administrative services of the department." It is reasonable to conclude that these services include responsibility for the supervision of the director and the BPC staff.

In conclusion, I found nothing in the statutes to suggest a legislative intent that the board members of the BPC would have any role in the day to day supervision of the BPC director or its staff. In fact, such supervision by the BPC board members would be both impractical and ineffective, as it would require the members to meet and take action by vote on even the most routine supervisory matters. Moreover, it could lead to inconsistencies in supervisory actions as BPC board members change over time. Finally, it would be an inefficient use of the BPC board members' time, which should be focused on its duty to regulate pesticides in the public interest. Accordingly, it is my opinion that the BPC board members have no legal or practical role in the daily supervision of staff.

Hopefully this answers your question. If you need further guidance on this issue please let me know.