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

August 28, 2015

Science Building, Room 102, University of Maine at Machias, Machias, Maine

MINUTES

9:00 AM

Present: Bohlen, Eckert, Flewelling, Granger, Morrill

1. Introductions of Board and Staff

- The Board and Staff introduced themselves
- Staff Present: Chamberlain, Fish, Jennings, Nelson, Patterson, Tomlinson

2. Minutes of the July 10, 2015, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

Bohlen suggested that the 6th bullet on page 5 should be “They are talking about it.” And that in the first bullet on page 9 bisulfate should be bisulfate.

- **Granger/Bohlen: Moved and seconded to adopt as amended.**
- **In Favor: Unanimous**

3. Review of the Hearing Record and Potential Adoption of Amendments to Chapters 31, 34, and 35

(Note: No additional public comments may be accepted at this time.)

On June 17, 2015, a Notice of Agency Rulemaking Proposal was published in Maine’s daily newspapers, opening the comment period on the proposed amendments to Chapters 31, 34, and 35. A public hearing was held on July 10, 2015, at the Deering Building. Three comments were received regarding the amendments. The Board will now review the comments and the responses drafted by the staff; the changes to the proposed amendments; the basis statements; and the statements of impact on small businesses; and determine whether it is prepared to adopt the proposed amendments or whether further refining is warranted.

Presentation by: Henry Jennings
Director

Action Needed: Review the hearing record and provide direction to the staff on further refinements or adopt the amendments

- **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 31 as written.**
- **In Favor: Unanimous**

- **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 34 as written.**
- **In Favor: Unanimous**

- **Eckert/Flewelling: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 35 as written.**
- **In Favor: Unanimous**

4. Letter from the Legislative Committee on Agriculture, Conservation and Forestry

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 will now consider that request and identify an appropriate response.

Presentation By: Henry Jennings
Director

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

- Jennings explained that LD 1098, which was introduced during the last legislative session, attempted to apply the school rule to public parks and playgrounds. It did not pass, but the ACF sent a letter requesting more information (attached). The bill included daycares also, but for some reason that was not included in the letter. From a practical standpoint there’s no way to be consistent. At a school, by and large, you know the population that will be present; there is no way to know at a park. At a school, if there were a high-risk application while school was in session, then notice goes out individually to parents and staff; there’s no way to do that at a park. For low risk applications, signs are required anyway, which are consistent with the signs being used on school grounds. Signs have to be posted ahead of applications and stay up 48 hours after. As far as standards for application, it is a difficult fit. In a school, someone is there all the time that can pay attention, use IPM, maintain a log and apply pesticides when circumstances dictate. With parks and playgrounds, nobody occupies those sites on a daily basis that could log in pest information. It would be difficult to implement a parallel system with parks and playgrounds because there is no parallel institutional infrastructure in place. State law already requires that pesticide applications be conducted by a commercial applicator with the correct category. Does the Board see any part of Chapter 27 that can be applied to parks and playgrounds? The Board could require some of the language designed to make sure applicators are using IPM and lowest effective rate strategies. But such sites generally are not staffed on a regular basis so there is no one there to conduct pest monitoring and keep records.

Some pieces could be assigned to the applicator; many would argue that they're doing these things already. The notification piece does not fit well. Again, the Board could borrow a couple of paragraphs from Section 5 of Chapter 27 about minimizing risk, but who would be responsible for them? There is no downside in emphasizing to applicators that minimizing risk to humans is important. The Board could also address the concern through education (rather than rulemaking). We simply need to respond to the ACF Committee by February 1.

- Flewelling asked whether “public parks” includes state parks. Jennings said that was not defined in the letter, so it would be up to the Board to decide that.
- Eckert noted that some town owned lands, if used regularly by schools, are covered by Chapter 27. Lots of other parks are town owned, state owned or privately owned.
- Bohlen said that the Legislature doesn't understand what's in the school rule. They think something magical is happening, but the IPM requirement is the only thing that can be moved over. Chapter 27 requires an institutional framework. Who would take on the role of an IPM Coordinator for these other properties? A significant outcome of Chapter 27 is that pesticide applications are intentionally timed for when students aren't around. There is no practical way to achieve this with parks and playgrounds. Notification to families can't be done. Posting requirements for these sites are already covered by Chapter 28. The school rule notification requirement pushes schools to do applications when kids aren't around. Bohlen suggested going back to Legislature and explaining that Chapter 27 is built around an institutional infrastructure with a well-documented population. What would the institutional framework be for parks and playgrounds? It would require a completely different approach to regulate pesticide use on parks and playgrounds: it's not a trivial matter.
- Morrill said that we're really not talking about Chapter 27, really talking about Chapter 28, which covers notification provisions. Shows a lack of understanding by the Legislature on where these things fit. Rules were crafted to capture all kinds of applications. There is a notification provision. There is a requirement that applications be done by commercial applicators. Daycares were brought up, not included here. Eckert opined that daycares may have been left off because they are so varied in size and organization; homes and larger institutions. Which ones would have to be covered, probably thousands. Jennings noted that much of the intent of Chapter 27 is already covered in Chapter 26 and the licensing and notification requirements. The only thing not covered is pushing IPM a little harder outdoors.
- Granger noted that Representative Chipman is copied, so presumably he was the one with the issue. Does anyone know what his issue is? Jennings responded that he has spoken to Chipman a number of times. Chipman had a constituent who had children that went into a park and didn't see the sign until they were leaving. He made a pledge to bring the issue forward. He believed that there was a seven-day re-entry interval required by Chapter 27, so he thought it should also apply to parks and playgrounds.
- Bohlen said that it might be possible to create some kind of equivalent to an IPM Coordinator but it wouldn't be trivial. He wasn't sure how to construct language like that without creating a new rule. He suggested responding to the Legislature by indicating that most of Chapter 27 wouldn't apply well because it revolves around an institutional infrastructure. There may be a few things that could be done, but the Board would benefit from a clearer declaration of intent from the Legislature.
- Eckert suggested including what is already covered in other rules. They are not organized in one document. She can understand how you could require IPM as part of the job at a large parks and recreation department, but she's not sure how it would work in a small town.
- Morrill commented that people focus on turf, but if you look back on the hemlock woolly adelgid, the state did spraying in towns. Look ahead 10 years, what's going to happen with the Emerald Ash Borer or the Asian Long-horned Beetle? The idea of IPM is great, but you're going to attack those kinds of pests with the best thing you've got immediately. He's not sure there is a point person similar to an IPM coordinator. Morrill looks at these types of letters as

an opportunity to do some education to and for the Legislature on what's already in place. We don't want to suggest something that's going to be very difficult to implement. Morrill suggests a focus on education. We just addressed an issue with sidewalks, and gave applicators options.

- Bohlen said that he likes the idea of an educational opportunity. Think about Deering Oaks Park, which is a classic example of what we're talking about. It might be worth conducting a case study; here are the things that might be applied at this park and here's what could happen. Posting doesn't always happen correctly, but be clear on what this looks like. The goal is clearly protecting kids. Bohlen is not suggesting there aren't ways to do that. The question is how best to achieve the goal; borrowing from the school rule doesn't appear to be a useful way to advance the goal.
- Katie Green asked if there is a way for the notification registry to include public places; instead of limited to 250 feet from home, include all areas open to the public in the town.
- Granger thought that this might open a Pandora's Box—there will be people who want to be notified of other applications in other areas. It would set a precedent.
- Eckert thought that Bohlen's idea of a case study is a good one. You can't post every access point. Morrill said that they're not doing any spraying in Deering Oaks Park.
- Eckert suggested education for Parks and Recreation employees. Jennings noted that they already have to be licensed commercial applicators. Most municipalities aren't big enough to have a person in charge of this. They already have to use a commercial applicator. The Board could expand the IPM expectations for parks and playgrounds.
- Granger agreed that the education component belongs with applicators, not someone who is asked to become educated because they are given an oversight role.
- Morrill suggested that the response to the Legislature include what is already covered in rule. Beyond that, look back to what the Board did for sidewalks, ROWs; if it doesn't seem like posting is going to cover it, extend the notice to a town list serve or something else.
- Bohlen said we should be cautious about making any suggestions about what a solution to this dilemma would look like. Ideas will be generated anyway. It's probably prudent to simply lay out what already exists. We're not going to come up with something as a Board without a methodical hearing and public input process that we can point to. The Board should be careful conveying too much. Just explain what exists now and the differences between schools and parks.
- Morrill said that the response should be based on what is asked in the letter. What are they asking? Here's the answer and why.
 - **Consensus reached that staff draft a letter based on the discussion, explaining why using Chapter 27 as a guide won't work very well. Include what aspects already apply because of other rules.**
- Tim Hobbs commented that he was present at the hearing and there was a lot of discussion about the feeling that children aren't being protected in parks. Tell them what applies; tell them what rules are in place. Don't leave them with a problem to solve.
- Bohlen replied that there is a problem that needs solving. Clearly there are people who feel that what's in effect isn't sufficient.

5. Other Old or New Business

- a. Variance Permit for control of phragmites on Chebeague Island
- b. Variance Permit for control of poison ivy in Windham
- c. Variance Permit for control of phragmites in roadside ditches along forest roads

- d. Variance Permit for control of phragmites in York
- e. Other

- Flewelling asked how schools are doing. Heidi Nelson, pesticide inspector for Eastern Maine, replied that she has visited all the schools in her district and met with the IPM Coordinators. They all have IPM Coordinators. They are conscientious and trying to do a good job. They don't have money so they aren't doing much in the way of applications anyway.
- Jennings noted that there is a bit of diversity. Nelson has her corner of the state nailed down. In southern Maine, where most of the people live, and where there are a lot of schools, it's more of a challenge to keep up. Field personnel got the message that we need to press schools to be in compliance. The rule has been effective in getting the message out that schools can't be out there spraying. Work is being done by licensed applicators, they get the emails, go to the seminars; they know what's required, and by and large they are doing a good job of complying with the standards. Maybe the most effective part of Chapter 27 is that the notification system has served to discourage high risk applications; it did a good job of that. It's a good rule; the turnover issue makes it fail sometimes; a lot of times people don't even know it is their job. It's unclear what can be done to fix that.
- Fish stated that the biggest challenge is getting them all trained. The staff has done a lot of training and tried to move around the state because some school employees can't travel. Most of the commercial applicators are doing a good job. Patterson said that the Board's threat to take compliance action against schools has helped, especially with private schools.
- Bohlen commented that identifying non-native phragmites, as noted in the variances, is not trivial. He noted that it is probably not worth including in the variance. It should be in the plan however. He also noted that a relationship with DEP is important because if only the phragmites adjacent to wetlands are treated, the population won't be controlled; land managers also need to control what's in the water.
- Flewelling asked why phragmites is a nuisance. Bohlen responded that it is really good mosquito habitat—it creates pools that hold water which mosquitoes breed in—and it chokes out native species. Ann Gibbs added that this creates a monoculture.
- Tim Hobbs brought to the Board's attention that Bruce and Jerry Flewelling were named as McCain's Foods Champion Grower of the Year for 2015. McCain's is the largest buyer of potatoes, buying approximately half the potato crop, accounting for 25,000 acres of potatoes. Their grower ratings are based on a number of criteria including yield and quality.
- Ann Gibbs raised a question about controlling invasives in ROWs but on private land. She noted that in a discussion with Bob Moosmann from MDOT, he indicated that under his license he can control invasives within a ROW, but not on adjacent town-owned land.
- Morrill noted that his company had several giant hogweed instances in the last month, one employee came into contact with it. It's much more widespread than it was thought to be.
- Gibbs noted that we need to find ways to manage all invasive plants.
- Eckert said that if the Board was going to sponsor another conference, this would be a good topic.
- Gibbs noted that Fish has been working with a DACF group to provide training.
- Morrill said that the ROW issue sounded like more of a legal issue. Gibbs said it's about how licenses apply. There is no use in controlling invasive plants in a ROW if they can't be controlled in adjacent areas.

- Fish said it's a permission thing—It's unlawful to apply pesticides to private property without the consent of the property owner. But in Moosmann's case, they can't do it because they aren't a for-hire firm. He is not sure the rule is clear around that and will talk to Assistant Attorney General Randlett. Jennings noted that it might be a liability issue.

6. Schedule of Future Meetings

October 9, November 13, and December 18, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- **The Board added Wednesday, January 13 (during the Agricultural Trades Show) as a Board Meeting date.**

7. Adjourn

- **Bohlen/Eckert: Moved and seconded to adjourn at 10:15 am**
- **In Favor: Unanimous**