



PAUL R. LEPAGE
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

October 18, 2013

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

AGENDA

8:30 AM

1. Introductions of Board and Staff

2. Minutes of the September 6, 2013, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

3. Review of Ideas about Streamlining the Applicator Licensing Process

At the September 6, 2013, Planning Session, the Board discussed streamlining of the commercial applicator licensing process, identified as the highest priority topic, and debated several ideas to improve the system. Companies are trying to get new and seasonal employees licensed quickly in the spring and summer. The staff has reviewed some of the ideas from the Planning Session and is prepared to discuss them further with the Board.

Presentation By: Gary Fish
Manager of Pesticides Programs

Action Needed: Provide Guidance to the Staff about Potential Changes

4. Review of Ideas for Improving How the Board Addresses Variance Requests

At the September 6, 2013, Planning Session, the Board discussed improving how it addresses variance requests, which had been identified as its second highest priority topic. Concerns have been voiced about turnaround time, consistency, whether applicators are applying the most up-to-date best management practices, sustainability and whether variances are the most efficient regulatory approach. The staff has reviewed some of the ideas from the Planning Session and is prepared to discuss them further with the Board.

Presentation by: Henry Jennings
Director

Action Needed: Provide Guidance to the Staff about Potential Changes

5. Review of Ideas for Increasing the Availability of Online Continuing Education Options

At the September 6, 2013, Planning Session, the Board discussed increasing online continuing education options, which had been identified as its third highest priority topic. Current options and ideas for additional options were discussed. The staff has reviewed some of the ideas from the Planning Session and is prepared to discuss them further with the Board.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance to the Staff about Potential Changes

6. Review of the Board's Enforcement Protocol

At its September 6, 2013, meeting, concerns arose about the proposed fine imposed by a pending consent agreement. During the course of the discussion, there were questions about (1) whether the matter may have been more appropriately presented to the Board prior to negotiating a draft agreement, (2) the process by which the Board might alter an agreement, and (3) how the staff arrives at proposed penalties. Some of the questions relate to the Board's existing Enforcement Protocol. Consequently, the staff determined a review of the existing protocol may be a useful starting point.

Presentation By: Henry Jennings
Director

Action Needed: None—Informational Only

7. Consideration of a Consent Agreement with Lucas Tree Experts 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 and 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 participant did not receive advance notice.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

8. Other Old or New Business

9. Schedule of Future Meetings

December 13, 2013; January 7, 8 or 9, February 21, and March 28, 2014, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

10. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at 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 Bills, at the Board's office or anne.bills@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.



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September 6, 2013

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

MINUTES

Present: Bohlen, Eckert, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board and staff introduced themselves.
- Staff present: Jennings, Connors, Hicks, Fish, Tomlinson, Bills

2. Minutes of the July 26, 2013, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- **Granger/Eckert: Moved and seconded to accept minutes as written**
- **In Favor: Unanimous**

3. Request for Renewal of DuPont Special Local Need [24(c)] Registration for Express[®] Herbicide with TotalSol for Control of Bunchberry in Lowbush Blueberries

In September of 2008, the Board approved a Special Local Need (SLN) registration for DuPont Express[®] Herbicide with TotalSol (EPA Reg. No. 352-632). The SLN expired in 2010 and subsequently was renewed through July of 2013. Consequently, the University of Maine Cooperative Extension and DuPont are now requesting to renew the SLN registration to make this product available to growers again to allow for selective postemergence control/suppression of certain broadleaf weeds, primarily bunchberry in lowbush blueberries. 2011 water quality testing did not reveal any tribenuron in 55 samples collected.

Presentation By: Mary Tomlinson
Pesticides Registrar

Action Needed: Approve/disapprove 24(c) registration request

- Tomlinson explained that the Board had approved the use of the product on blueberries in September 2008. Due to concerns about water quality, it was good for one year; in 2010 it was renewed for two years, and it expired this past July. Dave Yarborough requested that it be continued. 2011 blueberry groundwater monitoring samples were returned as non-detects. Yarborough works closely with blueberry growers and does lots of education. Express is used primarily for spot treatments. Much of the training advocates for a lot of precautions for the protection of groundwater.
- Jemison noted that it would be applied in October after the harvest, so there would be a growth year and then a harvest year, almost two years between application and harvest. Initially it looked like it could be mobile, but nothing has shown up, it seems like a solid use. Tomlinson said that there has to be 365 days between application and harvest.
- Eckert remarked that this is a soluble granular, so it is dissolved and spot-sprayed; she asked if the only human issues are with rash and irritation for the applicators. Hicks said yes.
- Bohlen said that the potential risk for transport into water systems is critically dependent on how it's applied. While it is currently used as spot treatments, it is not explicit on label; should there be concern about that? Is there any reason someone will use it any other way? Hicks replied that it is labeled for one ounce of active ingredient per acre. Jemison noted that it is used for bunchberry, which tends to be bunched. Dave Bell commented that in the interest of IPM and cost, it wouldn't be used over a large area. Jennings said that there is no reason it can't be used over a large area, but it's unlikely due to costs and weed habitat. The low application rate will still reduce the probability of detectable residues in ground water.
 - **Granger/Morrill: Moved and seconded to approve the registration**
 - **In favor: Unanimous**
- Bohlen commented that it makes sense to end the registration in December and not in the middle of the growing season.

4. Review of Draft Policy on Exclusion Areas for Potential Aerial, Public-Health-Related, Mosquito-Control Programs

At the May 24, 2013, meeting, the Board provisionally adopted amendments to Chapters 20, 22, and 51. The amendments were intended to allow for potential public-health-related, mosquito-control programs conducted by governmental entities. During the development of the Chapter 20 amendments, the Board determined it was preferable to define "exclusion areas," in the context of potential aerial applications, via policy, instead of codifying them in rule. Such a strategy allows the Board greater flexibility should new concerns arise. The Board reviewed the first draft of the exclusion area policy at its July 26, 2013, meeting and offered a few suggestions for improving the language. The staff has revised the draft policy which the Board will now consider.

Presentation by: Henry Jennings
Director

Action Needed: Revise/amend draft policy and adopt, if appropriate

- Jennings explained the changes that had been made based on the last discussion: when maps need to be submitted; changed endangered species to match what EPA does around endangered species. Staff was directed to come up with a minimum size for farms. At the hearings people were talking about some very small farms, e.g., a quarter-acre garlic farm. Should it be a monetary minimum or an acreage minimum? The purpose of the application is to save human lives; if a government entity conducts a spray program for mosquito control, there will be no reason to spray agricultural areas. Jennings wasn't sure it's the Board's role to decide if it's more important to ensure there are no residues that could affect the marketing of farm produce or human lives. He is uncomfortable

valuing the interests of a small agricultural enterprise over public health in an area where controlling mosquito vectors is very important. Jennings was also uncomfortable overriding the public health scientists on this issue. So it was written to exclude any mapped farm area unless a government entity decides it's more important to spray.

- Bohlen said he thinks it needs to be more explicit; the way it's written, the government entity can do whatever it wants. The current language doesn't provide sufficient protection for the groups the Board is worried about. The determination of whether to exclude farmland should be based on defensible criteria.
- Hicks noted that the label has wording about keeping out of water unless that's where the mosquitoes are growing and need to be controlled. She suggested using similar language.
- Bohlen said that it seems strange to be writing about reserving rights for government entities; it seems like odd wording. There is nothing about efficacy of program or environmental risks. The Board can delegate authority to government entities, but it needs to be based on something, some written rationale, some balancing, so a responsible official is being asked to make the call.
- Jennings pointed out that the federal CDC has spent a lot of time and effort studying this, and when disease pressure is high, they feel comfortable with the risk-benefit analysis.
- Bohlen asked what type of government entity would likely be doing the spraying. Jennings said that whoever does it will talk to the Maine CDC. In Vermont they sprayed a rural area, not to protect the few people who live in that area, but they were trying to break the amplification cycle in the bird and mosquito populations; if it can be nipped in the bud in a small area, there won't be a need to spray a much larger area.
- Stevenson noted that this is difficult because we don't know what the threshold is. Pest managers usually look at the economic threshold; in this case, because it involves human life, we don't know what the threshold is.
- Eckert asked if we are essentially saying that the CDC or Department of Agriculture will give advice and the town or county would make the decision. Jennings said that we would give advice on what and where to spray, once CDC makes the decision that spraying should occur. Eckert suggested that if the advice is joint, perhaps it should reference something like the CDC Arboviral (Mosquito-borne) Illness Surveillance, Prevention and Response Plan .
- Bohlen said that he is concerned that a town would be acting out of fear, not doing a balanced reasoning. Anxiety may prevail over science. He suggested changing the wording so they can ignore the exclusion zones if there's a serious risk, but not just to make spraying easier. Also change the wording "reserves right." Put in a standard that goes back to the Arboviral Plan.
- Dave Colson, MOFGA, suggested adding some wording about participation of landowners in control efforts. The State could work with farmers on what they can do to reduce mosquito populations voluntarily, and if they can prove they've done that, their property can be safely excluded.
- Hicks said that she is concerned about homeowners making decisions to use control products, because they use different products, higher rates, lower efficacy.
- Dave Colson noted that he was talking about farmers, not homeowners. His concern is about taking away exclusion areas.
- Hicks said that this was being considered only in the case of people dying. She is not arguing against all exclusion areas. If the State has maps handy, and if it's not going to affect efficacy, then excluding farmland should not be an issue.
- Colson said that if farmers can show they're doing everything they can to control mosquitoes, it will give the CDC confidence to exclude them.
- Bohlen said he liked communicating with landowners if it will help. He doesn't like using aerial spraying to break the disease cycle, but studies show that it reduces disease pressure. He asked how far the adult mosquitoes can fly. Fish replied that the Arboviral Plan is based on the species of mosquito and their ability to move and how far they move; that's all part of the planning. Bohlen suggested adding something about the government entity consulting with the CDC and the DACF to do the calculations to determine if the exclusions will reduce efficacy to an unacceptable level in a

particular hotspot. Is it mosquito habitat or is it a place that this particular species of mosquito is going to be at night during spraying?

- Jennings pointed out that every point that is excluded results in a 23-acre area not covered by aerial spraying, so it's not really just about farmland. Exclusions in high-risk areas have the potential to dramatically reduce efficacy.
- Hicks commented that the Vector-borne Work Group was formed in 1986; the plan has been developed and adjusted over the years. In a perfect world there would be adequate monitoring, but we do not have adequate monitoring.
- Morrill noted that if there are a lot of small plots of land excluded, other landowners are getting excluded, and not getting the benefits of the application. The result would be increased risk for many people because one person chose to exclude their property.
- Jennings said that this is unlikely to be a big issue; agricultural areas are not important areas to spray. But there is a potential for the Board to write a policy that prevents effective control.
- Jemison asked how much personal protection has been promoted. Jennings said that the CDC aggressively promotes it, and has since 1999. They recommend clothing that covers skin, use of repellents, and trying to get people to not be out at dusk.
- Kathy Murray said that the CDC might suggest ground spraying in certain circumstances of limited scope. It's easy to exclude properties via ground spraying, but the efficacy is lower.
- Dave Colson remarked that he appreciates the proactive approach. If the Board or CDC could work with farmers it could be a really good public relations campaign; farmers could talk in their communities about what they are doing. Eckert noted that most people that want to opt out are organic farmers and blueberry growers; she asked if there are things that organic farmers can be encouraged to do. For high-value crops, could they be grown in a greenhouse or under wraps? Colson said that he is seeing more and more farms, around the Portland area, doing small acreage; not what we think of as conventional farms, they are small plots. The Board should keep this in mind when talking about exclusion areas.
- Hicks noted that using IPM will make the probability of having to act on this plan less likely. This is for an emergency, not for routine circumstances. If all the practical IPM steps are implemented in an entire town, and you still have someone die, then it may be important to spray. Spraying is part of a continuum. Towns may do all they can, but if you get to a crisis, things change.
- Bohlen replied that he is not entirely comfortable with that logic, because of the repeated spraying in Massachusetts; it's a crisis, but when it's a crisis year after year, then there needs to be a change in planning. IPM on farms, dumping flower pots, won't help with EEE because it's amplified by forest mosquitoes.
- Dave Bell noted that the lack of adequate monitoring had been mentioned several times; is the report to the Legislature the place to advocate for enough resources for monitoring? Jennings replied that if the Board develops consensus that monitoring is necessary, a letter could be sent to the ACF Committee. It would also be included in the plan and report.
- Jennings reworked the wording on the policy to include suggested changes and distributed it to the Board.
 - **Eckert/Stevenson: Moved and seconded to adopt policy as amended**
 - **In favor: Unanimous**

5. Review of the 2012 Complaints/Inquiries Summary

In 2007, the Stakeholders Committee on Drift recommended that the Board produce and review an annual summary of complaints received by the Board's office. Summaries from 2008 and 2009 led to Board recommendations for improving the report. The Board will now review the 2012 summary.

Presentation By: Raymond Connors
 Manager of Compliance

Action Needed: None—informational only

- Connors explained that this is a summary of the types and natures of complaints; it doesn't reflect all the queries received by the staff, only those coming through the complaints office. It is a fairly accurate reflection of complaints; lawn and turf holding steady over five years; agricultural complaints down significantly, average 21 per year over five years, last year was a total of five. There were a couple of mold cases, which seems to be a category that is up and coming. Landlord/tenant cases were significant because it reflects the bedbugs issue; there is an economic incentive for landowners to do applications themselves or have employees do them.
- Morrill asked why there are three cases from 2012 still pending. Connors said that low gravity allegations fall to the bottom. Eckert asked if they were pending because the consent agreement hadn't been agreed to or they hadn't been sent yet; Connors said they haven't been sent yet.
- Bohlen commented that a lot of them are essentially licensing issues; a lot of violations because most people don't know the rules. He asked how a general complaint is classified. Connors said he tries to classify based on what the caller's primary concern was.
- Eckert noted that the licensing issue has always been with us. She asked if there are ways to get the word out, especially to landlords, so they understand the rules. There seem to be more complaints about notification/registry; despite a small registry, there are more complaints, so maybe more people are aware.
- Hicks noted that if people call for technical information, it's not included in this table.

6. Consideration of a Consent Agreement with Northeast Patients Group of Augusta

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 in 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 and resolve the matter. This case involved use of pesticides on medical marijuana inconsistent with the label.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

Present: Dan Walker, Preti Flaherty, and Patricia Rossi, Northeast Patients Group

- Connors gave an overview of the consent agreement. He explained that the company grows medical marijuana, and at the time of the inspection had four dispensaries and two cultivation sites. The BPC received a call and did a joint inspection with the Maine Department of Health and Human Services (DHHS) on March 14, 2013, at the Auburn cultivation site. The DHHS licenses medical marijuana production. At that inspection, it was confirmed that pesticides were being used; seven pesticides were found in inventory and five were confirmed as having been used. An inspection was done at the Thomaston site, where a similar set of pesticides were being used, as well as two additional pesticides. There are no federally registered pesticides that list marijuana as an allowable site, so the use was inconsistent with the label. Additionally, two of the products are not registered in Maine. The company submitted a plan of corrective actions taken; a copy was included in the Board meeting packet. They are no longer using pesticides. The consent agreement is for \$18,000, payable in three installments; two payments have been received.
- Jemison asked whether the employee hired to do the applications should have had a commercial license. Connors replied that a license would not be required in this setting unless they were using restricted products.

- Eckert asked if the products used were 25(b) products; Hicks said that they were, but that the DHHS law says that no pesticides may be used, period.
- Granger asked how the figure of \$18,000 was reached, and commented that it seemed excessive for somebody using a pesticide when nothing is registered and available for them to use. Wouldn't starting with a warning rather than a high fine be appropriate? Connors said things taken into consideration included the fact that the DHHS allows no pesticide use; some of the products were unregistered and none of the products are labeled for use on marijuana. The primary issue was the potential harm, as the product is used for medical purposes, and the patients may already be vulnerable to adverse effects. Granger said it seems that if the DHHS policy is violated, they should assess a fine, not BPC. Connors said the citation was based on Board regulations about the potential health effects, but the DHHS regulations were part of the discussions.
- Jennings noted that the statute lists a series of things to look at in arriving at a fine. In this case it involved a medicine for people who are sick. Also, the penalty needs to be high enough to deter future violations. He felt it was important to send a message because it is a fairly large industry with lots of customers across the state. Inhaling combustion byproducts from pesticides is different than eating something with pesticides on it. We don't know what combustion does to these compounds, but incomplete combustion often yields polycyclic compounds.
- Connors remarked that they also took into account the frequency and duration of use; it wasn't a one-time event. Granger said that there wasn't a protocol for people to follow to control pests on marijuana. Connors replied that one thing that came out of this was an effort to try to find products that could be used to control pests on marijuana.
- Eckert asked if the DHHS has a separate complaint. Jennings replied that they did have a consent agreement, but they have no statutory authority to apply a penalty.
- Hicks noted that there are a number of products labeled for use on tobacco which is smoked; she said there are discussions going on at the national level. Morrill asked if the products being used were labeled for use on tobacco; Hicks said most of them were, but noted that there are no tolerances like there are on food. Morrill asked whether the company knew what they were doing was not legal. Jennings replied that is clear in the DHHS law; it might have been unclear to them that these 25(b) products are pesticides.
- Morrill said that the wording of the enforcement policy indicates that a case like this may have more appropriately been presented to the Board first. He suggested that some outreach be done to other companies
- Eckert asked what the status of the related legislation is. Dan Walker, Preti Flaherty, replied that it had passed. He said his firm worked closely with Tom Saviello and Henry Jennings and the ACF Committee, were able to get an almost unanimous vote, and it was signed by the Governor. The law goes into effect the beginning of October 2013 and allows for certain 25(b) products to be legally used. Tomlinson said a flowchart was created for dispensaries to use to determine if a product would not be prohibited. Fish pointed out that they will also be required to have a licensed applicator and to train employees in the Worker Protection Standard.
- Jemison asked if there was an effort to develop IPM strategies. Patricia Rossi answered that they have instituted a lot of improvements; bio-controls, sanitation; all employees wearing scrubs, protective gear. They have been working with MOFGA and Backyard Farms. They are currently not using any pesticides.

○ **Eckert/Morrill: Moved and seconded to accept consent agreement as written**

- Stevenson said that he is confident in the logic used in coming up with a fine, but that it seems a bit high in this case. There were no resources available, it wasn't intentional unlike a lawn care company deliberately defrauding people. A lesser fine in this case would have been a catalyst for the same changes. Granger said he would like to lower the amount of the fine. Stevenson said he would be comfortable with reducing the fine. Eckert said that she would argue to leave the fine as is; a

reduction from \$18,000 to \$12,000 is probably not a big deal for this company; the publicity they already received was worse for them than the fine. Morrill said that he would agree with the proposed penalty; the consent agreement on the table is fair, given the violations that occurred and the threat to public health. With these egregious violations, the Board should hear them before they get to this point. Given the wording of the enforcement protocol, the Board should have heard it before. Bohlen noted that the staff effectively had no guidance because we've never seen anything like this before; it was a tough spot for everybody.

- **In favor: Eckert, Jemison, Bohlen, Morrill**
- **Opposed: Granger, Stevenson**

7. Annual Planning Session

Periodically, the Board holds informal planning sessions with the entire staff to discuss concerns, trends, issues and priorities. The Board has developed a list of topics it wishes to discuss and it will review them as time allows.

- Planning Session notes available separately

8. Other Old or New Business

- a. Variances for RLC Services, LLC—H. Jennings
- b. Variance for MDOT for Wetland Mitigation—H. Jennings
- c. Variance for Aroostook Arboriculture, Inc.—H. Jennings
- d. Letter from Susan Moyer and Karen D'Antonio—H. Jennings
 - Eckert asked if Plum Creek was spraying their own land, so the only issue would be if there was drift; Jennings said they were doing a conifer release on their own land, and there is little likelihood for drift given the large droplet size used, but anytime there is aerial spraying, people get concerned.
- f. Other?

9. Schedule of Future Meetings

October 18 and December 13, 2013; January 15 or 17, February 21, and March 28, 2014, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- The Board discussed the timing of the Agricultural Trades Show, but did not add or change any meeting dates.

10. Adjourn

- **Eckert/Stevenson: Moved and seconded to adjourn at 10:35 AM**
- **In favor: Unanimous**



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HENRY JENNINGS
DIRECTOR

October 10, 2013

To: Board Members
From: Gary Fish, Manager of Pesticide Programs
Subject: Planning Session Topic: Streamlining of the Licensing Process

As we discussed this issue at the planning session it became apparent that the major Board member concerns revolve around the time it takes to issue a license after exams are passed and developing a more convenient system for paying license fees. Additional concerns include the distance applicants must travel to take exams and the need for a live or virtual training to help supplement the self-study manuals.

Some ideas that the Board discussed include:

- develop a combination exam/license application that can be used to apply for both the exams and license with one check, but the application would specifically state that all fees are NOT refundable, even if the examinee flunks the exams
- develop a receipt that doubles as a temporary license for companies that send someone with the application and fee directly to our office
- develop computer based testing that gives immediate feedback on correct and incorrect answers
- partner with the Maine Bureau of Motor Vehicles or a private company like H & R Block to provide multiple exam centers
- develop an on-line application and payment system so companies do not have to travel back and forth to accelerate the licensing process
- record an initial training session and make it available on-line or as a DVD and/or start doing more initial training sessions

The staff has discussed these ideas and submits the following analysis:

There are some things that we could begin to implement with a little extra time and no additional funding and there are others that will require additional resources i.e., new software, a better functioning database and possibly more personnel.

1. The combination exam/license application would not be especially hard to design and implement and it probably would be a relative wash in terms of adding some work in one area and reducing it in another, but you must consider how many companies will be willing to pay extra money up front and then lose it when their exam candidate fails an exam. From a workload perspective, it is important to make the additional, up-front fee for the license non-refundable, because refunds involve considerable staff time and cost the state significant resources to process.
2. Issuing a temporary license and license number is another item that is feasible. It will require creating a new document and training a few staff members so they can do the 4 or 5 steps in the licensing system to generate a new license number. It will increase the work load for our office staff and it could become burdensome, depending on how many people/companies take advantage of the service.

3. Computer based testing (CBT) is not an item that can be done very quickly or easily and it will require purchasing new software or contracting with an outside vendor to convert all the exams to a computer based system. CBT does give immediate feedback and automatically corrects the exams, but it will be quite expensive. Most of the states that have implemented CBT license 30,000–50,000 applicators and bring in much more revenue than we ever will. Even if the Ag Basic license brings in an additional 2,000–3,000 licensees, we will only be up to around 6,000 applicators.
4. Adding testing centers by partnering with the Bureau of Motor Vehicles or a private company like H & R Block is also very attractive. We might be able to contract it out for a percentage of the exam fees, but I am fairly certain the fees would have to be raised significantly in order to generate enough revenue to make it attractive to those entities. Indiana has partnered with H & R Block and their exam fee schedule is shown below.

Office of the Indiana State Chemist Exam Candidate	
Scheduling fee	\$29 (per session)
Examination fee(s) First exam	\$44
Additional 1 hour exam	\$22
Additional 90 minute exam	\$32
Additional 2 hour exam	\$44

Virginia Department of Agriculture (VDA) offers their exams at DMV sites; their exam fee is \$70.00 and the VDA also pays \$5.00 per exam to the DMV. Florida offers both commercial and private applicator exams at all their Cooperative Extension offices; exams are free but their private applicator license is \$100.00 and their commercial applicator license is \$250. We already offer private applicator exams at Cooperative Extension offices for free; our commercial applicator exam fees are \$10.00 per core or category exam and \$50.00 for the master level exams.

5. We have been seeking an on-line licensing application and payment system for over 10 years. Other state licensing entities like the Forestry board have implemented that type of system, but we have not been able to develop or purchase an application to date. I have approached InforME (the state sole source vendor for on-line payment systems) a number of times and asked them to develop something for us, but they have been reluctant to do so since the only way they can get paid is through transaction fees and we do not have enough applicators taking exams to make it cost effective for InforME to commit the needed resources into our project. We are currently working with the state Office of Information Technology to pursue a new course with a new sole source vendor for database development, including on-line transaction systems. We are hopeful that this new avenue may be more fruitful, but the bottom line is this direction is also quite expensive and we will have to have a number of Divisions or even Bureaus involved to help make it affordable.
6. I have had several conversations with Jim Dill about recording an initial training session and making it available on-line or through DVD's. The biggest decision to be made for this effort is whether to make it more than just a talking heads recording of a live session. The talking head form of training video is not very effective (very boring). Moving in the direction of doing a professional video training program could be quite expensive, most estimates come in around \$1,000–2,000 per minute of finished video. Our typical initial core training is 3 hours long. If we could find a graduate student in videography we might be able to get it done much cheaper, but it is a lot of work. We did a few production videos in the 90's and I remember it was very expensive even through the University production facility.

I have attempted to lay out the options discussed at the planning session and to provide information to help you make some decisions. I hope this will help facilitate discussion at the Board meeting. It is all up to you folks now.



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WALTER E. WHITCOMB
COMMISSIONER

HENRY JENNINGS
DIRECTOR

October 10, 2013

To: Board Members
From: Gary Fish, Manager of Pesticide Programs
Subject: Planning Session Topic: Variances and Setbacks

Variance requests for relief from Chapters 22 and 29 are a regular feature on the Board’s meeting agenda. The table below shows the number of Board or Staff approvals for this type of request. Over that period, variance requests appeared on 13 of 21 meeting agendas (62%).

Year	Rule Chapter	Board Approvals	Staff Approvals
2011	Chapter 22	0	3
2011	Chapter 29	3	7
2012	Chapter 22	2	2
2012	Chapter 29	5	2
2013	Chapter 22	0	4
2013	Chapter 29	3	7
Total		13	25

Applicants and staff have been concerned about the timeliness of variance approvals since the Board only meets about every five weeks. In 2013, there was a nine week gap between the May and July meetings. Sometimes, waiting that long compromises the applicators ability to implement an IPM program.

Addressing Chapter 22 first, the Board routinely approves variances to Chapter 22 when the applicant promises to follow the Department of Transportation buffer scheme and provides notice in a local newspaper. If this is a standard Board position, the Board may want to consider amending Chapter 22 or – for the short term – adopting a policy to exempt right-of-way applications which follow MDOT guidelines and provide public notification.

The issues with Chapter 29 are not as straight forward; variances cover a wider variety of situations and there may be many unlicensed land managers who do not know the rules and would never request a variance. At the planning session there appeared to be some consensus regarding development of BMPs for control of invasive plants which would minimize impacts to water bodies. Those BMPs would most likely include a long-term re-vegetation plan as well. Including plants that cause dermal toxicity in those BMPs may also be advisable.

Other types of applications for which the Board commonly issues variances include: treatment of golf course greens and tees and treatment of dams or dikes.

At the planning session, many suggestions to improve the Chapter 29 variance process were voiced. The list included:

- Amend the current rules or adopt a new policy which exempts some of these situations, which have been routinely approved for many years.
- Develop BMPs and provide training. Include in BMPs strategies for those who don't want to use pesticides.
- Give staff more authority to issue variances for other than large projects or very sensitive sites which would still go to the Board. Develop standards by which applications are graded.
- Add a long term plan requirement to the variance application.
- Approve multi-year variances with a long term plan. Multi-year variances could require a report at the end of each year, including a picture and documentation of efficacy.
- Create criteria by which staff can approve variances: list of conditions, criteria, guidelines.
- Create a different variance process for organisms that are listed or confirmed as true invasive organisms.

This list contains a broad spectrum of approaches, some of which require rulemaking or policy development and others that could be done less formally at Board meetings.

The Board may wish to consider how expensive and time consuming the current processes are for both the Board and the applicants and may elect to seek solutions which reduce the burdens, ensure consistent policy administration, and promote the use of the best available science (BMPs).



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
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WALTER E. WHITCOMB
COMMISSIONER

HENRY JENNINGS
DIRECTOR

October 10, 2013

To: Board Members
From: Gary Fish, Manager of Pesticide Programs
Subject: Planning Session Topic: On-line Credit Options

As more growers and applicators become accustomed to on-line training and “webinars”, the demand for on-line options to complete their recertification credit requirement continues to grow.

I have approved all of the following sources of on-line training programs:

- University of Maine Cooperative Extension
- PMP Distance Learning Center at Cornell University
- Principles of Turfgrass Management, University of Georgia
- CTN Educational Services
- Continuing Education University
- All Star Training, Inc. On-Line Courses
- Pestweb.com On-Line Courses
- Pestnetwork.com On-Line Courses
- Penton Online Continuing Education Portal
- InterNACHI Wood-Destroying Organism Inspection Course

These providers offer courses in everything from potato late blight disease management to bed bugs. Of course there are Maine specific topics that are not covered by the courses, especially some specialty crops like lowbush blueberries or balsam fir Christmas trees.

At the planning session we heard suggestions for outreach to crop specialists to see if they might offer some courses like those offered by Steve Johnson at the Cooperative Extension Potato Program in Presque Isle. Steve provides courses in potato plant pathology, potato seed treatment, potato late blight and potato white mold as well as three general courses: groundwater protection; sprayer calibration; and reading labels & choosing PPE. Should the Board suggest that other crop specialists work with Steve to offer courses specific to their specialty, such as Dave Yarborough and blueberries? What about other crops?

There was also the suggestion to record some of the live trainings that are done across the state and turn those videos into on-line recertification courses.

Currently, we do not have the equipment or the software to develop these courses. If this is an avenue the Board would like to pursue, we will need to pull together the local crop specialists and the University Visual Media department to help us produce quality videos.

Is this an area you see as a high priority?

Maine Board of Pesticides Control Enforcement Protocol

The BPC has adopted a policy that it uses in routine enforcement actions.

1. Persons wishing to report potential violations should refer such matters, as soon and in as much detail as possible, to the Board's staff. Where such reports are submitted by telephone, the Board requests that confirmation be made in writing. As a general rule, where requested by the individual making the report, the Board shall keep the identity of that person confidential, except as the Attorney General may advise in a particular case that such information is subject to public disclosure under the Maine Freedom of Access Law.
2. As soon as practicable after receipt of a report of a potential violation, the Board's staff shall investigate. The precise method and extent of investigation shall be at the discretion of the staff, considering the potential severity of the violation and its consequences, the potential the violation may have for damage to the environment or human health, and other matters which may place demands upon staff resources at the time.
3. Following staff investigation, if the staff determines that a violation has occurred of sufficient consequence to warrant further action, the Board's staff may proceed as follows:
 - a. In matters not involving substantial threats to the environment or public health , the Board's staff may discuss terms of resolution with the Attorney General's office and then with the violator without first reporting the matter to the Board. This procedure may only be used in cases which there is no dispute of material facts or law, and the violator freely admits the violation(s) of law and acknowledges a willingness to pay a fine and resolve the matter. The terms of any negotiated proposed resolution shall be subject to the Board's subsequent review and approval, as provided in section 6b.
 - b. In matters involving substantial threats to the environment or the public health or in which there is dispute over the material facts or law, the Board's staff shall bring the matter to the attention of the Board. The staff shall prepare a written report summarizing the details of the matter. Copies of the report shall be mailed to the alleged violator and any complainants so they may make comments. The report and any comments will then be distributed to the Board prior to their next available meeting. The staff will also notify the alleged violator and other involved parties about the date and location of the meeting at which the alleged violation will be considered by the Board.
4. At the Board meeting, the Board shall hear from its staff and, if requested, from the alleged violator(s) and/or their attorneys, as well as from other interested members of the public, to the extent reasonable under the circumstances and in a manner which the Board's chairman shall direct. Ordinarily, such a meeting will not be conducted as a formal adjudicatory hearing. Before making a decision regarding any action(s) which it may wish to take in response to an alleged violation, the Board may choose to go into executive session to discuss with its counsel the various enforcement options available to it and other related matters which are not subject to public disclosure under the Freedom of Access Law. However, all Board decisions shall be made on the public record and not in executive session.
5. Following receipt of the staff report and other information presented to it and completion of whatever further inquiry or deliberations the Board may wish to undertake, the Board shall make a decision regarding which course(s) of action, as described in Section 6, it deems appropriate in

response to the alleged violation. Any such decision will ordinarily be based upon the Board's judgment as to whether a violation of its statutes or regulations appears to have occurred which is of sufficient consequence to warrant an enforcement action, but shall not require that the Board be satisfied to a legal certainty that the alleged violator is guilty of a particularly defined violation. In disputed matters, the ultimate decision as to whether a violation is factually and legally proven rests with the courts.

6. If the Board makes the determination that a violation appears to have occurred which warrants an enforcement action, the Board may choose among one or more of the following courses of action:
 - a. In matters involving substantial violations of law and/or matters resulting in substantial environmental degradation, the Board may refer the matter directly to the Attorney General for the initiation of enforcement proceedings deemed appropriate by the Attorney General. Also, with regard to more routine violations with respect to which the Board finds sufficient legal and/or factual dispute so that it is unlikely that an amicable administrative resolution can be reached, the Board may choose to refer the matter directly to the Attorney General.
 - b. On matters warranting enforcement action of a relatively routine nature, the Board may authorize and direct its staff to enter into negotiations with the alleged violator(s) with a view to arriving at an administrative consent agreement containing terms (including admissions, fines and/or other remedial actions) which are satisfactory to the Board, to the Attorney General and to the alleged violator(s). The Board will not ordinarily determine in the first instance the precise terms which should be required for settlement but may indicate to the staff its perception of the relative severity of the violation. In formulating a settlement proposal, the staff shall take into consideration all of the surrounding circumstances, including the relative severity of the violation, the violations record and other relevant history of the alleged violator(s), corrective actions volunteered by the alleged violator(s) and the potential impact upon the environment of the violation. The staff shall consult with the Attorney General's office before proposing terms of settlement to the alleged violator(s). Following successful negotiation of an administrative consent agreement with the alleged violator(s), the staff shall report back to the Board the terms of such agreement for the Board's review and, if it concurs, ratification. All administrative consent agreements shall become final only with the Board's and the Attorney General's approval.
 - c. In the event that an administrative consent agreement cannot be arrived at as provided in paragraph b., the staff shall report the matter back to the Board for further action by it. Such action may include referral to the Attorney General for appropriate action.
 - d. In addition, in appropriate cases, the Board may act to suspend the license of a certified applicator as provided in its statute, may act to refuse to renew the license of a certified applicator and/or may request that the Attorney General initiate proceedings in the Administrative Court to revoke or suspend the license of any such applicator. Where provided for by its statute, the Board shall give the licensee involved the opportunity for a hearing before the Board in connection with decisions by it to refuse to renew a license or to suspend such license.
7. Whereas the Board is establishing this protocol in order to clarify and facilitate its proceedings for the handling by it and its staff of enforcement matters, the Board recognizes that the Attorney General, as chief law enforcement officer of the State, may independently initiate or pursue enforcement matters as he deems in the best interests of the State and appropriate under the circumstances.

Proposed Administrative Consent Agreement Background Summary

Subject: Lucas Tree Experts Company
PO Box 958
Portland, Maine 04104-0958

Date of Incident(s): June 3, 2013

Background Narrative: On June 3, 2013, the Board received a complaint from a Scarborough resident who is a registry member on the 2013 Maine Pesticide Notification Registry (non-agricultural). The registry member stated she received no notification about a pesticide application that was made to a property listed as an abutter to her property on the 2013 pesticide notification registry. A follow-up inspection confirmed that a pesticide application was made without the required notification.

Summary of Violation(s): CMR 01-026 Chapter 28, Section 2 (D). Notification must be received between 6 hours and 14 days prior to the pesticide application.

Rationale for Settlement: The company entered into two previous consent agreements involving violations of the notification requirements for registry members. On July 23, 2010, a pesticide application was made and insufficient notification was given. On August 8, 2011, a pesticide application was made and no notification was provided. Consequently, this violation is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(B) and these facts were taken into account when setting the penalty amount.

Attachments: Proposed Consent Agreement

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

In the Matter of:)	ADMINISTRATIVE CONSENT
Lucas Tree Experts Company)	AGREEMENT
PO Box 958)	AND
Portland, Maine 04104-0958)	FINDINGS OF FACT

This Agreement, by and between Lucas Tree Experts Company (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board"), is entered into pursuant to 22 M.R.S.A. §1471 M (2)(D) and in accordance with the Enforcement Protocol amended by the Board on June 3, 1998..

The parties to this Agreement agree as follows:

1. That the Company provides lawn care services and has the firm license number SCF 15035 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
2. That on June 3, 2013, Brian Shorey, a Company employee and a licensed commercial applicator (COA 46969), applied Merit 0.2 Plus Turf Fertilizer to the lawn of customer Brian Young's residential property at 4 Cutlass Lane in Scarborough.
3. That the outdoor treated area at 4 Cutlass Lane is located within 250 feet from a property which is the residence of Laura Hannan at 17 Powderhorn Drive in Scarborough.
4. That Laura Hannan is listed on Maine's 2013 Pesticide Notification Registry, as described in CMR 01-026 Chapter 28, Section 2. Brian Young's residential property at 4 Cutlass Lane in Scarborough address is also listed on the Registry as a property within 250 feet of Laura Hannan's residence. The Registry is distributed to commercial applicators annually.
5. That commercial applicators are required by CMR 01-026 Chapter 28, Section 2 (D) to notify individuals listed on the Maine Pesticide Notification Registry at least six hours in advance of any pesticide application made within 250 feet of a registrant's listed property.
6. That the Company failed to comply with the notification requirements of CMR 01-026 Chapter 28, Section 2 (D). No notification was provided to Hannan prior to making the application described in paragraph two.
7. That the actions described in paragraphs two through six constitute a violation of CMR 01-026 Chapter 28, Section 2 (D).
8. That the Company entered into an Administrative Consent Agreement with the Board for insufficient notification to a person on the Maine Pesticide Notification Registry when a pesticide application was made on July 23, 2010. The Company entered into another Administrative Consent Agreement with the Board for not providing notification to a person on the Maine Pesticide Notification Registry when a pesticide application was made on August 8, 2011. Consequently, the violation described in paragraph seven is a subsequent violation pursuant to 7 M.R.S.A. § 616-A (2)(B).
9. That the Board has regulatory authority over the activities described herein.

- 10. That the Company expressly waives:
 - A. Notice of or opportunity for hearing;
 - B. Any and all further procedural steps before the Board; and
 - C. The making of any further findings of fact before the Board.
- 11. That this Agreement shall not become effective unless and until the Board accepts it.
- 12. That in consideration for the release by the Board of the cause of action which the Board has against the Company resulting from the violation referred to in paragraph seven, the Company agrees to pay a penalty to the State of Maine in the sum of \$1,000. (Please make checks payable to Treasurer, State of Maine). In addition, the Company will include a copy of their written policy with the signed consent agreement that outlines procedures in place to notify those individuals on the Maine Pesticide Notification Registry.

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

LUCAS TREE EXPERTS COMPANY

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General



September 16, 2013

Lucas Tree Experts
Residential Services

Registry Entry Policy

The Residential Services Registry Entry Policy was designed to ensure that all new contracts are checked against the current Board of Pesticides Control (BPC) registry to verify compliance. This policy is in effect from the date heading this document. All aspects of the policy are to be followed by administrative personnel when services relating to Lawn Care, Plant Health Care, or Mosquito/Tick Control contracts are first entered into the accounts system.

When a new contract for service is placed in the administrative in-box, the process for registry checking begins. The administrator will check the address of the new contract against the current BPC registry. If a match to the registry is identified, the administrator will add the registry contact and warning information to all accounts identified. This information will be entered into the application notes section of the account data for easy access and quick reference. No new Lawn Care, Plant Health Care, or Mosquito/Tick Control contracts are to be entered into the accounts system until this process is followed.

The department manager will provide the administrator(s) with the current BPC registry yearly. Only the current registry is to be used for the year.

Ryder E Wyatt
Residential Services Manager
Lucas Tree Experts
PO Box 958
Portland ME 04104
207-797-2800 x2143
RWyatt@LucasTree.com



PAUL R. LEPAGE
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WALTER E. WHITCOMB
COMMISSIONER

HENRY JENNINGS
DIRECTOR

October 10, 2013

To: Board Members
From: Gary Fish, Manager of Pesticide Programs
Subject: Planning Session Summary

The chart below summarizes the discussion of topics at the September 6, 2013, Board Planning Session.

Topic	Suggestions/discussion
Streamlining of the licensing process	<ul style="list-style-type: none"> • Maybe develop a combination Exam/License application that can be used, but specifically states that all fees are NOT refundable. • Maybe develop a system that includes a receipt that doubles as a temporary license for when Modern or Atlantic send someone with the application and fee. • Correct tests right away so they can pay while there if they pass. • Make a video and/or PowerPoint of Gary's initial training so more people pass on the first attempt. • Offer computerized on-line testing that provides immediate exam results and feedback. Set up on-line application system.
25' setback exemption	<ul style="list-style-type: none"> • Develop BMPs. • Fill in the gaps with simple training. • Make sure they have a long-term plan when trying to control invasive organisms. • Give staff more authority to issue variances for other than large projects or very sensitive sites which would still go to the Board. • Add a long-term plan requirement to the variance application. • Approve multiyear variances with a long-term plan. • Create criteria by which staff can approve: list of conditions, criteria, guidelines. • Include in BMPs strategies for those who don't want to use pesticides. • Multiyear variance could require a report at the end of each year—a picture and a percent controlled. • Maybe create a different variance process for invasive organisms.
Staff Issuance of variances	<ul style="list-style-type: none"> • Develop a new policy on variances (<i>see above</i>).

Better online credit options	<ul style="list-style-type: none"> • Reach out to David Yarborough to see if he could do some online modules. • Maybe record a few of our live trainings as well. Specific to categories/commodities. • Talk to each crop specialist at Cooperative Extension to see if they want to do some videos.
Collaboration with IPM Council	<ul style="list-style-type: none"> • IPM section on our exams? • Update <i>Got Pests?</i> website. • Try to get a grant for a school IPM conference? Maybe through Maine Community Foundation or Outdoor Heritage Fund? Work with EPMA. • IPM certification for schools through Tom Green is too expensive; Board could work with schools to offset cost? • Should the Board provide grants so schools can get IPM certified? • Help small farms comply with food safety, <i>et al.</i>, certifications? • IPM session at Trades Show. • Separate license category for IPM (Rich stresses this must be voluntary); separate IPM CE credits. • Collaborate on a listening session at Trades Show, help small farmers understand “maze” of licensing and certification requirements for food safety, e.g., GAP. • Need info for commercial applicators that shows benefits of IPM and the impact on short- and long-term pest management costs. • IPM Council will develop list of priorities for funding and bring to Board.
Educational Outreach	<ul style="list-style-type: none"> • Get a Master's candidate to do a PSA on the need for licenses, mosquito control, proper use of pesticides, etc. Put on YouTube. • Maybe a community college project to do some sort of videos. Could cover landlord responsibilities for bed bug management and the need for licensing if they will use pesticides, etc. • Try to get more people on board to help with the training. • Need to reach out to homeowners. • PSA suggestions: how to prevent spread of bedbugs; landlord responsibilities; need to be licensed; how to control mosquitoes in backyard; how to protect yourselves from mosquito bites; proper use of pesticides—geared toward trying to change behavior; title properly so can be found on YouTube.
Certification for those who make pesticide recommendations	(not covered)
Policy on responding to complaints	<ul style="list-style-type: none"> • Come up with a process to make sure complainants and the subject of a complaint are kept up to date on lab results or lack thereof, etc. Especially if the case is dismissed, etc. The Board wished to cover this topic along with consent agreement fine structures (<i>see below</i>).
More exam training for growers	<ul style="list-style-type: none"> • Make a video and/or PowerPoint of Gary’s initial training so more people pass the Core exam on the first attempt.
Enforcement case turnaround	(not covered)

Reducing reliance on pesticides	<ul style="list-style-type: none"> • Board still supports these efforts. • YardScaping all the way. • Master Gardener training to your heart's content. • Find more trainers. • Do more train-the-trainer programs and consider videotaping programs.
Enforceability of pesticide laws	(not covered)
Rulemaking/Licensing chapters	(not covered)
Awareness and operation of Chapter 28	(not covered)
Meeting @ Ag Trades Show	<ul style="list-style-type: none"> • Listening session in conjunction with the IPM Council? Board still wanted to make this happen.
Consent agreement fine structure	<ul style="list-style-type: none"> • Go over enforcement protocol at next meeting. • Bigger issues should come before Board before a consent agreement is offered: e.g., health issues, major environmental issues, repeat violations, etc.
Policy on posting personal information	(not covered)
Update on GMOs	(not covered)