



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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

BOARD OF PESTICIDES CONTROL

February 23, 2018

Marquardt
Augusta, Maine

MINUTES
9:00 AM

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

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Mark Randlett introduced themselves.
- Staff Present: Bryer, Connors, Couture, Lay, Patterson
- Lay introduced new staff Toxicologist Pamela Bryer, and new Board member Dr. Jack Waterman.

2. Minutes of the January 10, 2018, Board Meeting

Presentation By: Cam Lay
Director

Action Needed: Amend and/or Approve

- **Granger/Flewelling: Moved and seconded approval of minutes**
- **In Favor: Unanimous**

3. Overview of Board Member Responsibilities

It is beneficial to periodically review the legal framework under which the Board operates, particularly with respect to communications between Board members outside of the public Board meetings.

Presentation by: Mark Randlett, Assistant Attorney General.

Action Needed: Information only.

CAM LAY, DIRECTOR
90 BLOSSOM LANE, DEERING BUILDING



PHONE: (207) 287-2731
WWW.THINKFIRSTSPRAYLAST.ORG

- Randlett stated that he used to give an annual talk to the Board and this was an appropriate time to revisit it so that Board members fully understand their legal responsibilities and how to operate in the public context. Randlett told Board members they had each been chosen based on their background and experience to bring differing views to the Board. He added that it is important to understand they are ultimately here to represent the public, and although personal views can be brought out in discussion, their duty is to the public.
- Randlett said the Board sometimes must make difficult decisions and there is often controversy involved. He added that their decisions should be guided by their responsibility to the members of public who use and are affected by the use of pesticides. It is inappropriate for the Board to make a decision without considering all of the information fully and fairly. Randlett explained that each decision must be made by a process that is public and open so members of the public can participate, listen to, and understand the Board's process and the reasoning behind their decisions.
- Randlett discussed the Board's legal responsibilities. He explained that the Freedom of Information Act applies to all state boards, and stipulates that all Board meetings and decisions be done in public and all records must be made available to the public. This includes: draft rules, minutes, applications, recordings, etc. Randlett pointed out that there are executive sessions, in which Board members can speak privately amongst themselves, but even under those circumstances the final decisions need to be made in public. He reiterated that there is a strict requirement which prohibits secret or clandestine meetings where decisions are made or deals are struck that do not involve the public. Randlett stated this is extremely important and there are consequences to the department and the Board if they do not comply.
- Randlett explained that any person who disagrees with a decision of the Board can file an appeal with the court. If a decision is challenged and they find the Board took an action that was not legal, it can nullify that Board decision. If the illegal action was found by a court to have been done in bad faith, intentionally, or knowingly to skirt public meeting laws, the court can order the Board to pay attorney fees and other incurred costs for the individual who filed the appeal. He added that there are also provisions in the law for the court to impose a fine. This does not include the impact it would have on the public trust, or the Board's reputation and credibility.
- Randlett told Board members that they will be approached outside Board meetings by the public to discuss pesticides and it is fine to have discussions about issues that concern them. He added that members do need to be careful and avoid discussing specific matters that are pending before the Board. Randlett suggested that Board members advise individuals to attend the Board meeting so their concerns can be heard by all members of the Board and become part of the record. He added that there is no legal consequence for speaking with the public about a pending Board matter, but it is a disservice.
- Randlett lastly covered conflicts of interest, including issues that members have personal interests in. He explained that it is acceptable to bring personal views and experiences to the decision process but there are times when members should recuse themselves from voting. Randlett said that anytime a Board member has a direct or indirect financial interest in a decision then they should recuse themselves from participating in that process. An indirect example would be if a family member had an interest in a company. Randlett also gave the example of Jemison recusing himself from all decisions that involve financial support to the university. He added that even an appearance of a conflict of interest, though not technically or legally inappropriate, can still affect the public's view of the Board's decision-making process. Randlett concluded by informing board members they could contact him if they think they may have a conflict of interest.

4. Other Old or New Business

a. CMP 2018 Foliar Herbicide Plan

b. Planning for Future Rulemaking related to emerging topics including new Federal Certification and Training Requirements, associated State Plan changes, and Unmanned Aerial Systems (UAS)

- Morrill stated the Board has discussed UAS in the past and had an FAA employee attend a previous Board meeting to explain the federal regulations. He added that if they are going to enter into rulemaking, it would be better to do a few at a time.
- Lay told the Board that he has been researching UAS, and there are some states that are beginning to move forward with a category for them, including North Carolina and Washington. He added that he would like to do further research on what some of the other states are doing. He has received a couple inquiries from individuals who want to start businesses using UAS to make pesticide applications, especially for brown tail moth applications.
- Bohlen stated that there have been a number of conversations in the past about the drones, and asked if there is enough interest that the Board needs to put some rules in place for this summer. Bohlen added that the Board decided to use the current aerial exam for the time being. If any policies need to be changed they need to be done next time the Board meets.
- Granger asked if drone pilots could legally make pesticide applications under the current rules if they passed the aerial exam. Randlett responded that there is nothing in rule that prohibits it.
- Morrill asked if this topic could be brought back at the next Board meeting as an agenda item, and that the Board would like to look at Chapter 51. He told staff he would like a flow chart about the rule that shows if you want to apply to a specific site what are the rules that govern that.
- Patterson reminded the Board they had previously discussed creating standards that would encompass both aerial and ground drones. There was further discussion about creating one standard encompassing both ground and air drones, and how to create rules around this emerging technology.
- Dave Struble, Maine Forest Service, said the Board needs to get this on the fast track because browntail moth is moving into new areas and people will be looking for solutions, legal or otherwise.
- Morrill agreed that the Board needs to have a discussion and get this in place. Bohlen stated there is not time to do rulemaking and have it be in place for this browntail moth season.
- Morrill added that informational fact finding still needs to be done, including what there is in the current rule, what other states are including in their rule, and exactly how the applications are conducted.
- Patterson explained to the Board that EPA is requiring all states to redraft their state plan. Patterson has begun work on this and once it is completed it will go to the Board, then to the governor, and finally to EPA. What is included in that state plan will determine rulemaking that will need to be done around it.
- Patterson explained to the Board that nationwide a mandatory minimum age of 18 for all applicators will be implemented, and there will also be an identification requirement for taking examinations. There are also new requirements for categories, such as structural and agricultural fumigation categories for private applicators. Patterson added that a training requirement for all unlicensed applicators must also be instituted. In agriculture, training under the Worker

Protection Standard is already mandatory, but this is the first training requirement for unlicensed commercial applicators.

- Patterson told the Board that these changes will require rulemaking in multiple chapters, including chapters 10, 31, and 32, among others.
- Morrill asked what the Board can do to help. Patterson responded that fortunately the original state plan was very specific so these changes can be incorporated into it.
- Morrill asked Randlett what the process would be for the Board when the State Plan comes before them. Randlett answered that the only formal process would occur if it had to become part of rule.
- Morrill asked about a time frame for when the Board will receive a draft of the revised plan. Patterson responded that the state has two years to submit the new plan to EPA. Morrill suggested an October deadline and Patterson agreed.
- Bohlen added that there's not that much time left here and requested staff do the back calculation of the rulemaking steps to see exactly how long the process will take.
- Morrill stated he would like to keep the rulemaking to Chapters 27 and 36 for now.
 - **Morrill/Flewelling: Moved and seconded to move forward with rulemaking for Chapter 27 and Chapter 36**
 - **In Favor: Unanimous**

c. Recent staff activities memo.

- Lay informed the Board of the inspector vacancy in Aroostook county and stated he is in the process of obtaining permission to fill it.
- Jemison asked about the *Bt* corn requirement which states growers must attend one training every three years. Jemison wants to ensure this is being done and tracked, or if not, discuss the relative merits of it. Patterson responded that staff have been handling it by approving Jemison's training at the Agricultural Trade Show, and a few others through the summer as suitable for fulfilling the *Bt* training requirement. Betts keeps track of all individuals with a *Bt* corn certificate and she verifies whether or not they need that training and informs them when they must do it by.
- Flewelling stated he passed his *Bt* corn certification test and asked how often he needs to attend training. Jemison explained that once every three years he will need to attend Jemison's *Bt* training or another training approved for the *Bt* credit. He added that seed sellers are also supposed to request to see that certificate.
- Morrill asked if it was in rule and how it was being tracked. Patterson answered that it is, and that we have a database with the information in it.
- Jemison stated he would like to discuss the 'refuge in the bag' component in Chapter 41 when the Board gets to that point. If an organic grower was concerned about the pollen from *Bt* varieties then the grower could ask the *Bt* corn grower to plant the refuge in between field. However, with the refuge in a bag there is no longer that structural refuge barrier.
- Adams stated that it would be difficult for the Board to make an informed decision without first getting feedback from more of the people this effects. He added that he asked a few individuals and has not heard that it has been an issue.
- Jemison asked Heather Spaulding, MOFGA, to ask some of the organic farmers. She stated she would follow up with some individuals and get back to the Board.

5. Schedule of Future Meetings

April 6, 2018, May 18, 2018 and July 13, 2018 are the next proposed Board meeting dates (at the Marquardt Building) are the next proposed Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Morrill stated he would like to do a travel meeting in August, possibly to Green Thumb Farms in Fryeburg. Bohlen suggested going to a site where the Board could learn about forest pest management. Morrill responded the Green Thumb Farms also abuts Weston's, which grows christmas trees. Jemison suggested August 24th as a tentative date and the Board agreed.

8. Adjourn

- **Bohlen/Granger: Moved and seconded to adjourn at 10:16am**
- **In Favor: Unanimous**