

Adopted January 30, 1998

BOARD OF PESTICIDES CONTROL

BOARD GUIDANCE ON RECEIVING PUBLIC COMMENT

I. PURPOSE AND GUIDING PRINCIPLES

The Board's purpose in this document is to provide guidance concerning how to encourage fair and effective opportunities for public comment on the Board's work, including comment by an applicant, other interested parties or the general public. In seeking to provide ways for inviting and receiving public comment on its work, the Board recognizes the following guiding principles:

- *first, the Board encourages reasonable public participation; before making decisions, the Board wants to be informed of concerns and views of affected parties and the general public;*
- *second, the manner by which public comment is received should enable the Board as a body to legally consider that comment in formulating decisions and policies;*
- *third, the Board should conduct its business assembled at open public meetings and hearings and otherwise in a manner that is fair and accords with the public trust.*

Even as the Board attempts to fulfill each of these guiding principles, it is important to recognize that its job often involves making tough decisions among competing and sometimes adversarial interests in controversial matters. This means that ultimately the decision of the Board will sometimes be contrary to the expressed views of some parties or members of the public. Thus, fairness and openness to public comment in the Board's process cannot mean that all concerns will be given the same weight in the Board's decisionmaking, which itself is a deliberative process of balancing and choosing among sometimes competing views.

It is also important to recognize that the Board is a part-time, volunteer board, its members having been chosen by the Governor to bring to the administrative process diverse viewpoints, backgrounds and community perspectives representative of Maine. Inherent in this diversity is the fact that each Board member will and should have an individualized sensitivity and awareness with respect to the issues and viewpoints presented in its work. At the same time, the Board wishes to make decisions that are informed by the views and concerns of interested parties and the public at large, a fact which requires an open process in which interested persons are given a fair and reasonable opportunity to present their views.

II. GUIDELINES

Bearing these principles in mind, the Board adopts the following guidelines to assure that diverse public viewpoints are given a fair opportunity to be heard and considered in the course of the Board's work.

A. General Guidelines on the Public's Engaging the Board

Members of a part-time and volunteer Board do not and should not live in a vacuum apart from their communities and the fair exchange of ideas in many public and private forums. Individual Board members are often approached by associates and members of the public who want to express views on the Board's work. ***When public expressions deal generally with pesticide issues and/or the Board's program in general and do not involve a particular matter pending before the agency, individual discussion between members of the Board and members of the public is healthy.*** Public interactions with Board members on general issues of concern are one of the ways that the Board can be aware of and sensitive to public sentiments about its program.

When a particular matter (such as a pesticide registration, the Board's direct consideration of a license or variance application, or a rulemaking proposal) is or is likely to be pending before the Board, comment from an applicant, interested party or the public about that matter should be channeled in a way that allows the comment to be properly heard and considered by the full Board. In this context, it is important for everyone to understand that Board members cannot consider, no less rely upon in their decisions, public comment unless it is provided to the Board at a Board meeting or hearing, or it is addressed to the Board in writing. When a member of the public, including an applicant or other interested person, approaches an individual Board member with views on a matter pending before the Board, that person should be counseled as to the appropriate way (described below) in which these views can be presented to the Board at large. ***Private discussions by Board members with interested parties or members of the public should avoid the merits of a matter pending before the Board.*** In counseling a member of the public in this way, the Board member is actually helping that person to express his or her views in a manner that can be effectively heard and considered by the Board in its decision-making process.

The points below deal with particular contexts in which public comment may be offered to the Board on its work, and the best approach to take in allowing that input so that it can be effectively heard and considered.

B. Receiving Comment on a Matter Pending Before the Board at a Regular Meeting (which does not involve an adjudicatory hearing)

When a member of the public (including an applicant, an interested party or the general public) wishes to comment to an individual Board member *on a matter pending or soon likely to be pending at a regular Board meeting, that person should be counseled to either come to the Board meeting or to write to the Board, addressing correspondence to the Board's office in Augusta. That person can be assured that any writing timely sent to the Board at its office will be copied and distributed to all Board members before action is taken on the matter.* It is important for everyone to understand that, on matters pending before the Board, having the ear of one Board member outside of a Board meeting will not provide an effective means for the Board, or even that member of the Board, to properly consider the views and information that are offered.

C. Receiving Comment on a Matter Pending Before the Board in Rulemaking

When a matter involves a rulemaking hearing or other rulemaking proposal pending before the Board, members of the public wishing to express views should be counseled to attend the hearing and give oral testimony, or to provide comments in writing to the Board during the comment period. The public can be assured that written comments received in this way will be distributed to all Board members and considered before a decision is made.

When a member of the public has a significant comment on a proposed rule after the rulemaking record (including the written comment period) has closed, that person or any Board member or the BOPC staff may request that the comment period be reopened so that the comment can be properly considered prior to the decision. Reopening the comment period in this fashion is within the discretion of the Board. Reopening the comment period means giving all affected parties and the public notice and an opportunity to participate during the new comment period. Because efficiency requires an effort to achieve closure on matters after a hearing record is closed, the Board ordinarily will reopen the comment period only when the offered comment involves a significant point or issue that was not and could not be adequately addressed during the public hearing process.

D. Receiving Comment on a Matter Pending before the Board Involving an Adjudicatory Hearing

When the Board has decided to hold a formal hearing on a license suspension, revocation or renewal, or any other type of a formal adjudicatory hearing, it is particularly important to make sure that public comment, including by an applicant or intervenor, is provided to the Board in a fashion which does not compromise the proceeding. *Public comment on such a matter should be given to the Board only at the public hearing, during any applicable period for written comments, or otherwise in a fashion which the Board's rules specifically provide.* In these situations, public comment must not be given to individual Board members *ex parte* (without notice and opportunity for other parties to participate).

E. Receiving Comment on Matters Headed to the Board

In connection with matters that are currently being handled by the staff, communications by an interested party or the general public to individual Board members should be referred to the Board's staff. This is so the staff is fully informed of the public comment before the staff makes a decision or recommendation to the Board on the matter. It is important to remember that matters currently being handled by the staff may ultimately be considered by the full Board, so Board members should attempt to channel public communications on these matters in order to avoid jeopardizing the fairness of the process should the matter later be considered by the full Board for adjudication or other decision.

III. SUMMARY

The Board welcomes and relies on public participation in its process, including comments by interested parties as well as suggestions and criticisms from the public at large. When a matter involves a public hearing, it is important that public comment be presented to the Board as a body in a way that properly appears in the hearing record. When the public comment involves a matter pending before the Board without a public hearing, it should be directed to the Board at a public meeting, or put in writing addressed to the Board at its office, so as to be distributed to all Board members before they make a decision.

By these means, public comment to the Board can be effective in the Board's process and fair to all concerned.

Note: This guidance document states the Board's general guidelines on the process of receiving public comment. These guidelines are not rules of the Board, and are not intended to have the force of law. This guidance does not create or affect any legal rights of parties before the Board, all of which are determined under the Board's rules and applicable statutes and laws.