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STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
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**BOARD OF PESTICIDES CONTROL**

**March 30, 2012**

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

**MINUTES**

**9:00 AM**

Present: Eckert, Flewelling, Granger, Jemison, and Ravis

1. Introductions of Board and Staff

- The Board, staff, and Assistant Attorney General introduced themselves.

2. Consideration of Enforcement Action against Hemmingway Orchard of Hebron

In matters involving substantial threats to the environment or the public health, or in which there is dispute over material facts or law, the Board's enforcement protocol specifies that the matter be brought to the attention of the Board. This case involves an ongoing dispute over pesticide drift between an orchardist and two residential abutters. The staff and Assistant Attorney General Randlett agree that the available evidence indicates that violations of the Board's drift rule, Chapter 22, have occurred, but they have been unable to resolve the incidents through a negotiated consent agreement. Consequently, in keeping with the enforcement protocol, the staff is recommending that the matter be referred to the Office of the Attorney General.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Determine appropriate enforcement response

- On one occasion, following two complaints of drift, tests detected off-target pesticide residues on properties owned by Bradley Cadman and Kim Pelletier. On a second occasion, following another complaint, tests detected off-target pesticide residues again on Cadman's property. Their properties border Hemmingway Orchard in Hebron, owned by Dennis Barker. Barker uses an airblast sprayer to apply pesticides to apple trees in the orchard.
- Board staff recommended referral to the Attorney General after agreement could not be reached with the applicator, Barker, following multiple attempts to resolve the matter through a negotiated consent agreement.
- The Cadman garage is approximately 15 feet from the property line. The Pelletier house is approximately 300 feet from the property line.

- Cadman wants a reasonable setback when pesticides are sprayed, advance notice of spraying, and responsible use of the sprayer.
- Barker said he wanted resolution on the day of the Board meeting. He said he didn't sign the consent agreement because he didn't want to pay or not pay anything if the problem would keep coming back. He asked for Board guidance on how to prevent recurrence.
- Fish pointed out that a surfactant was being used that might actually cause pesticide drift. Barker said that he was using what Glenn Koehler of the Cooperative Extension recommended.
- In response to a question about what action the Board could take at this meeting, Assistant Attorney General Randlett said the fundamental question before the Board was to determine an appropriate enforcement response; mediation is not the Board's role in such matters. If desired the Board could return to the issue at a future date. He added that it would be acceptable for the Board to resolve the case at this meeting if it was done in an appropriate fashion. He further noted that referral to his office does not mean a lawsuit will be filed; efforts would be made to resolve the case first, but he also made it clear that this was an enforcement, not a mediation, case.
- Jennings suggested that Barker could work with Cooperative Extension on Best Management Practices (BMPs), a drift management plan, barriers, etc., and then the Board could review the situation.
- Barker said he hadn't received sufficient feedback from the Board and that he had already taken corrective action by increasing the setback by 50 feet and lowering the sprayer pressure.
- Jemison said the Board had provided ample feedback and called for a vote.
  - Eckert/Ravis: Moved and seconded that the matter be referred to the Attorney General's office for enforcement with possible consideration of a corrective action plan
  - In Favor: Unanimous

3. Final Adoption of Major Substantive Rule Amendments to Chapter 41

At its December 16, 2011, meeting, the Board provisionally adopted the major substantive amendments to Chapter 41. On January 31, 2012, the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) held a public hearing on LD 1734, the resolve authorizing final adoption of the amendments, and a work session was held on February 7, 2012. Subsequently, the ACF reported the resolve out as ought-to-pass. The Legislature enacted the resolve and the Governor signed it into law on March 5, 2012. The Board will now decide whether to finally adopt the amendments.

Presentation By: Henry Jennings  
Director

Action Needed Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapter 41

- Eckert/Flewelling: Moved and seconded adoption of all documents relating to the amendments to Chapter 41
- In Favor: Unanimous

4. Other Old or New Business

a. Letters to Representatives Dill & Timberlake—H. Jennings

- It was acknowledged that, as per the Board's request, letters signed by the chair were sent to Representatives Dill and Timberlake, responding to their request for assistance in developing a new pesticide notification registry.

## 5. Planning Session for the Board and Staff

Periodically, the Board and staff hold planning sessions to discuss priorities. A list of potential topics has been developed and topics will be discussed as time permits.

- **BOARD OPERATIONS**

- *Guidance on receiving public input and communication between Board members*

As he has done in the past, especially for the benefit of new Board members, Assistant Attorney General Randlett provided a briefing on how input from the public should be received and how members should communicate amongst themselves.

- The Board should encourage the public to come to meetings or send a letter/e-mail so that the entire Board can hear their concerns. Board members are encouraged and expected to have private discussions with members of the public on general policy issues, but not about specific matters that are pending or likely to be pending in the near future. Information received through private discussions should be shared with the entire Board at a Board meeting. If a Board member is approached about an issue the staff is working on, the person raising the issue should be directed to contact the staff to have their input heard. The goal is to never undermine public trust.
- Board members may have discussions amongst themselves only about general issues, not about anything currently before the Board or likely to come before the Board. It is very important that decisions not be made outside of meetings. This includes input/approval of agendas, because the decision to include or exclude an item from an agenda is a decision which should be made in a public meeting.
- It is okay for Board members to discuss specific topics with the staff because staff are not the decision makers.
- Randlett went on to talk about conflicts of interest and situations that would require Board members to disclose their interest and abstain from the discussion: (1) a direct or indirect financial or personal stake, and (2) no direct or indirect stake, but which might appear that way to the Board or the public.
- Granger stated that he doesn't feel he is getting enough background on subjects and doesn't have enough information to make informed decisions at meetings. Randlett replied that it is okay for Board members to get information from staff about what they do and a general understanding of how things work.

- *Staff participation at Board meetings*

- Animal and Plant Health Division Director David Lavway stated that only key staff should be attending meetings, but that it was up to the Board director to decide.
- Jemison said that he feels that everybody benefits from hearing the discussion; everybody has a different perspective.
- Bohlen sent an e-mail with his thoughts, knowing that he couldn't attend the meeting. His comments regarding staff participation were similar to Jemison's. Granger said that he agreed with Bohlen's e-mail.
- Granger felt it was not clear who was running the meeting and that only the chair should recognize someone from the audience.
- Lavway explained that having meetings in the Deering building makes the issue of staff participation less significant because staff can be available when necessary. Which staff members should attend should be up to Jennings and Lavway with input from Jemison.

- *Lunch or no lunch at Board meetings*
  - After wide-ranging discussion, the decision was made to start meetings at 8:30 AM and finish by 12:15 PM. If the meeting ran longer, lunch for Board members might be ordered from a local sandwich shop.
- *Enhancing public participation*
  - Broadcasting meetings via webcasts was discussed and members asked the staff to do more research on this and report back. There was also some discussion about broadcasting just audio, which will also be explored by the staff.
  - It was once again decided that at least one meeting a year should be in a different geographic area of the state. It was agreed that the July 2012 meeting will be held in Presque Isle.
  - Granger mentioned that is important to stick to the schedule/agenda as published.
- *News articles and the Board meeting packet*
  - A brief discussion took place about this subject, and members said they were satisfied with the current approach to how news articles were being handled. Articles are e-mailed to members with the rest of the Board meeting packet and posted on the website, but no paper copies will be made.
- *Pesticide recertification credits for members of BPC*
  - The subject of Board members earning pesticide recertification credits for attending Board meetings was discussed and expanded to include audience participants.
    - Granger/Flewelling: Moved and seconded that one credit per certification period be allowed for attending an entire Board meeting for all certification types
    - In Favor: Unanimous
- **STAFF OVERSIGHT**
  - *Board oversight of the staff*
    - Jemison thought Board members overseeing the staff would be very time consuming. He noted that they could waste a lot of time trying to oversee daily activities of staff and lose track of the goal, which is policy and policy development.
    - Lavway stated the Department of Agriculture oversees the Board staff, and it does not want the Board to take on this task. The staff needs to know who to go to, and Board members can take any issue to the Department.
    - Eckert said the job of the staff is to provide information to the Board for policy-making.
    - Flewelling said he does not want to “micromanage” anyone.
  - *Website updates—do you want to be notified?*
    - Following discussion, the general consensus on the part of Board members was that they should only be notified about major updates on the Board’s website.
  - *Minutes of staff meetings recorded and provided to Board*
    - With respect to how the Board and staff operate, Granger said he was looking for ways to find out what happens and how it happens, to help him be better prepared to “make decisions that impact people.”
    - Jennings said a good part of his time is already spent on regular Board meeting minutes and that staff meeting minutes are not currently taken. Jennings also questioned what would constitute a “staff meeting,” as the staff spends a lot of time in formal and informal discussions about specific topics, in addition to the weekly meeting.
  - *Timely forwarding to Board members of correspondence received by staff*
    - Granger asked if important correspondence could be sent to members earlier, in addition to including it in the Board packet sent out the week before the Board meeting.
    - It was agreed that correspondence and articles that are deemed important enough, and relate to subjects that might become an issue for the Board, should be e-mailed to members as they come up, and still be included in the Board meeting packet members receive the week before the

meeting. It was also agreed that correspondence/information about enforcement issues would not be included until a consent agreement is reached because they are constantly changing. Eckert mentioned that it would be helpful if it were indicated in the subject line whether a response was needed.

- *Review and prior approval by Board of all press releases*
  - Lavway pointed out that the current approval loop for press releases is already very time-consuming, and any further requirements would likely cause an indefinite delay in getting releases out to the media. Granger mentioned that it would be nice to have a heads up, and it was agreed that Board members would be sent press releases at the same time as the media.
  - Randlett stated that it is okay for Board members to talk to reporters as long as it is clear that they are not speaking for the entire Board. Schlein suggested that anyone worried about misspeaking could request that reporters e-mail questions to them so they can respond in writing.
- *Draft meeting agenda sent to Board members for input before it becomes final*
  - Granger stated that Board members should have the opportunity to put things on the agenda and that it should be the Board, not staff that creates the agenda.
  - Jennings said that Board members can place a topic on the agenda whenever they like. To ensure inclusion in an upcoming meeting, he requested that they get items to the staff by the Tuesday of the week the Board packet is sent out (the week before the meeting).
- PUBLIC POLICY
  - *Feedback from Representatives Dill and Timberlake regarding agenda item 4(a).*
    - Jemison said he had been approached by Representatives Dill and Timberlake regarding the letter they received from the Board responding to their request for assistance in developing a new pesticide notification registry. They expressed surprise at the Board's decision not to offer its help, and to instead focus on raising awareness of the Board's existing notification rule. They hoped the Board, through rulemaking, could develop a compromise plan that would satisfy all parties concerned, and head off a new, and once again controversial, bill being submitted to the Legislature. Discussion between members, staff, and the audience ensued. Jemison suggested extending an invitation to Dill and Timberlake to have them come to a Board meeting and explain what they would like to have happen. Lavway pointed out that a clear invitation had already been extended to them in the letter and all they had to do was ask to be put on the agenda.
    - Tim Hobbs from the Maine Potato Board observed that it was somewhat unusual for two legislators to be requesting public policy changes from the Board.
    - Eric Seaman expressed the view that it is the Board's job to address complex and detail-oriented pesticide public policy issues like a pesticide notification registry.
    - Eckert noted that if the Legislature chooses to pass a new law directing the Board to do something, then they will. Schlein commented that the reason the last attempt failed was because the Board wasn't involved and the Legislature passed something that had to be fixed; he pointed out that this is a chance to provide expertise at the ground level.
    - David Bell from the Wild Blueberry Commission of Maine said there are three ways to change pesticide public policy in Maine: (1) statutorily; (2) promulgate rules within the confines of existing statutory authority; and (3) a petition to initiate rulemaking.
  - *Potential changes to School IPM rule*
    - Chapter 27 needs to be brought back for rulemaking to consider the recommendations made on page 10 of the Report to the Joint Standing Committee on Agriculture, Conservation and Forestry In Response to Resolve 2011 Chapter 59, To Enhance the Use of Integrated Pest Management on School Grounds. The rulemaking would be routine technical.
    - Jennings noted that there is a lot of support from stakeholders to beef up the role of IPM Coordinator. He went over some of the recommendations that were included in the report. It was agreed there should be public information gathering followed by rulemaking.

- *Exam waiting period*
  - A question about the two-week waiting period for retaking a failed exam was raised at a previous Board meeting and it was agreed to discuss it at the planning session. Jennings pointed out that there is a lot of work involved in scheduling and testing, and the staff is extremely busy right now. The new Agricultural Basic applicator license is adding to the workload. It was pointed out that the waiting period is to allow sufficient time for studying. Peggy Lamb said that during the peak period, the reality for commercial applicators is a six-week wait. Discussion ensued about raising the fees for commercial applicators, and it was agreed that the Board would look at rulemaking for Chapter 31 to increase fees. Jennings noted that changes to fees constitute major substantive rulemaking. Because private applicators primarily take their exams at Cooperative Extension offices where there is no backlog of exam applicants, it was agreed to consider rulemaking to Chapter 32 to change the waiting period for private applicators to one week.
- *Water quality priorities and survey methods*
  - Pesticide Registrar/Water Quality Specialist, Mary Tomlinson, asked the Board for feedback on how to proceed with water sampling.
  - Lack of funding and available testing labs have halted water quality sampling in 2012.
  - More than \$15,000 has been spent for sample testing in the last few years.
  - With the move to transgenic crops, Jemison said it would be useful to test for glyphosate in surface waters downstream. He would also like to be able to include testing for products with FIFRA Section 18 or 24(c) labels to determine if there are any ramifications, and do water quality testing for newly approved products early on, to discover potential problems early in the process.
  - Jennings pointed out that surface water testing is difficult to do and must be done at the optimum time, and that sediment sampling is easier.
  - Hicks pointed out that testing is based on the environmental fate of the pesticides, which is why we haven't tested for glyphosate.
  - Based on the discussion, consensus was reached to focus resources on ground-water and sediment sampling in the near future
- *FIFRA Section 25(b) exempt product registration policy*
  - Hicks and Tomlinson expressed their concerns about 25(b) products to Board members. They detailed their recommendations, including getting the confidential statement of formula for products from the manufacturer, and requiring specific Maine labeling requirements, such as the signal word and not allowing public health claims to be made. Consensus was reached for the staff to continue developing a draft for review at a future Board meeting.
- *FIFRA Section 24(c) expiration dates*
  - At the February meeting, the Board approved a five-year expiration date for one specific product, based on the recommendation by the EPA for Section 24(c) Special Local Need product registrations. Board members decided to extend this to all 24(c) registrations, to prevent outdated state labels.
- **INFORMATIONAL**
  - *Transition to electronic transactions*
    - Fish stated that the move to electronic transactions for pesticide licensing is a multistep process, involving the Department and InforMe. There are 3,000 names in the current licensing database. He suggested discussing this issue at the next few Board meetings.
  - *What's in the pipeline for GMO products?*
    - GMO potatoes are in the pipeline
    - Lauchlin Titus provided an informational brochure from one of the seed companies.

6. Schedule of Future Meetings

May 11, June 15, July 27, and September 7, 2012, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- October 26 and December 7, 2012, were added to the list of tentative Board meeting dates.

7. Adjourn

- The meeting adjourned at 3:25 PM.