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GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**July 23, 2010**

**MINUTES**

**9:30 AM**

- Present: Eckert, Simonds, Jemison, Stevenson and Qualey
- As an introduction, Simonds provided some background information about the history and statutory structure of the Board

1. Introductions of Board and Staff

- The Board, staff and Assistant Attorney General Randlett all introduced themselves

2. Minutes of the June 25, 2010, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

- Jennings noted that two different participants from the June 24 and 25 Public Information Gathering Meetings had contacted the staff to offer amendments to their comments. Jennings stated he has no reservations about making changes so that the minutes and/or summary of comments reflect what participants want them to. Board members agreed that changes should be made as requested.

Jemison/Eckert: Moved and seconded approval of the minutes as amended

In favor: Unanimous

3. Public Information Gathering Session About Development of a Comprehensive Pesticide Notification Registry

On April 1, 2010, Governor Baldacci signed Public Law 2009, Chapter 584, LD 1547, An Act To Revise Notification Requirements for Pesticide Applications Using Aircraft or Air-carrier Equipment. Among other things, the new law directs the Maine Board of Pesticides Control to establish a comprehensive pesticide notification registry which encompasses both existing registries and is expanded to include other types of pesticide application equipment. The new law further directs the Board to report its progress to the Legislature by next February. Thoughtful comments are welcome from the public about any aspect of the registry development. Written comments may be sent to the

Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to [henry.jennings@maine.gov](mailto:henry.jennings@maine.gov).

- ☑ Simonds began by asking Jennings to provide some background and history about pesticide notification. Jennings described a long process that began as Board discussions dating back to 2005, which were designed to mitigate the land-use conflict between aerial spraying and residential uses. The hole in the notification system, at the time, was thought to be the public's lack of awareness about its right to request advance notification. Consequently the Board put forth a proposal that would have required land managers to inform adjacent residents about their right to be notified. This proposal was rejected due to the amount of work it would potentially impose on growers who manage a large number of properties. The Board then proposed a simple notification registry covering only aerial applications, but a competing bill before the Legislature was favored instead. This bill created some unintentional consequences and was amended during the following legislative session to create the current bill calling for the Board to develop a comprehensive registry. Simonds commented on the working position paper created by staff, and encouraged everyone to read it.

Public comments began with Clark Granger (who asked that his e-mail be entered into the record). He described himself as a farmer, crop consultant, forester, plant pathologist and licensed pesticide applicator, noting that his comments came from a variety of perspectives. He believes that the registry should be comprehensive, including all powered outdoor applications; adamant that homeowners should be included, noting that there is a lot of powered equipment designed for homeowner use. Granger feels that distances are arbitrary; there is no workable science to support them. Too much attention is paid to trying to define drift distance based on equipment and type; what really influences drift is wind direction, intervening vegetation and ability of applicator. Notification should be limited to abutters.

Elisa Boxer Cook lives 800 feet from a golf course and has a seven-year-old son. She began by describing how the superintendent of the golf course put on a respirator, covered every inch of skin and then sprayed a chemical for mosquitoes that has been tied to many health problems (upon questioning stated that it was malathion applied with a tractor mist blower). She said she has a great working relationship with the superintendent; he calls at the beginning of every season, and the day before application, even though he is not currently required to. She believes 500 feet is not enough, one-quarter mile is reasonable, though conservative. Cook believes no one should be exempted and that businesses should consider notification part of the cost of doing business.

Cynthia Simon is a resident of Gorham, has a master's degree in environmental education and is an adjunct faculty member of a local university. Her husband is an entomologist and their yard is a mosquito trapping site for a study being conducted by Maine Medical Center. Their 1½-acre yard is organic and 90-percent edible. She points out that pesticides sprayed near her yard could impact these projects, and that this is true for homes across Maine. She is a member of the Friends of Rails to Trails and was told by MDOT that the Board is doing active studies on pesticide use near the trails. She would like all spraying along the trails to stop, claims chemicals persist in soils longer than we know and are mobile in water; she claims that MDOT sprays in rainy conditions even though they're not supposed to. Groups are forming to try to stop spraying along trails, concerned about families and children. She said she liked the original registry, she signed up for it because of some forestry work being done near her home, but she was never notified, so she assumes no pesticides were used. She

said that she trusts the registry. She is okay with one-quarter mile, although her preference would be notification of all pesticide applications in the state.

Dennis Morton is Gorham resident, retired engineer, Vietnam veteran exposed to agent orange and a cancer survivor. He claims that there are 7,800 new cases of cancer each year in Maine, and that 10 people die every day in Maine from cancer, and these are the highest rates in the United States. He believes the notification program needs to be enhanced and improved. He spoke specifically about the Rails to Trails, upset that MDOT stated signs notifying Rails to Trails users are a courtesy. He was also upset that signs stated that spraying would not occur in the event of rain, but it rained, and spraying happened, and users assumed it had not been sprayed, and were using trail very soon after. He said signs should list when spraying will be done and when spraying has been done. Cost of notification is a cost of doing business and should be borne by the landowner. He believes that citizens need to know in order to protect themselves from exposure to chemicals; we don't know what we'll find out about the dangers of these chemicals in the future.

Chris Scott lives on the Mountain Division Trail and uses it daily. Because he does not access the trail via road, he does not see signs, and has no other way of finding out about spraying. He strongly supports notification.

Joe Cerney lives on a property abutting the Mountain Division Trail. He does not support spraying, believes there is no need for it.

Kristin Uhlig, lives in Gorham on property abutting the Mountain Division Trail, and she is a member of the Friends of Rails to Trails. The Mountain Division Trail runs alongside rail lines, which have not been used in 24 years, but are still sprayed. She would like to stop all spraying along the trail because families and children use the trail. There are two signs notifying of intent to spray, but many people access the trail at places other than at roads, and children don't read signs. Also said that signs stated spraying wouldn't occur in the event of rain, but it did, and people were using the trail soon after, assuming spraying hadn't occurred. Uhlig came to the meeting because MDOT told her group that the Board was doing testing along the trails.

Carol Jenkins is a resident of Portland, has nine grandchildren and is president of her condominium association. She is trying to get them to stop all pesticide spraying because it is bad for the children who visit, and pets and wildlife that live there. She believes that it is imperative that people be notified, the registry should be easy to use and inexpensive. She thinks there should be some way to use the Internet to show all spraying in Maine.

Meredith Small works for the non-profit Toxics Action Center. For eight years she has been working with people in Washington and Hancock counties who live next to blueberry fields. She said that the Board has demonstrated that drift can occur up to one mile. She believes the notification system should not be limited to aerial or agricultural spraying but should include urban and suburban spraying. She is currently working with three communities which are concerned about lawn care spraying. People want the system to be user-friendly, geared toward the general public, available to anyone who owns land in Maine, free and readily accessible, and people should not have to re-register. Wind and other factors make distance determination difficult, hopes Board will err on side of protecting as many people as possible; one-quarter mile should be for all air-carrier and aerial

sprayers. Responding to a question she indicated that private owners applying themselves, as well as hiring work done on private lawns, should be included.

Carey Rasco lives in Cape Elizabeth and says a lot of her neighbors are retirees who spend a lot of time working on their lawns. She said there are a lot of lawn care signs in her neighborhood and she is concerned about chemicals, and we should err on the side of caution. The registry should be easy to use, and homeowners should be included. Responding to a question about regulating homeowners she said she would be satisfied with powered applications. She would like the registry to be as comprehensive as possible. We should use Google so that people can choose—some might like a mile and a half, for others abutters might be enough.

Deven Morrill, a resident of Gorham and Consulting Arborist for Lucas Tree Experts, read a written statement. They think the Chapter 28 registry is reasonable; trying to fit all types of applications into one registry will be problematic. They like that people have to make an effort to be on the registry, and the new method could result in a lot of names of people who aren't really interested. They believe the registry should only apply to motorized outdoor equipment. They believe 250 feet is sufficient, means of notification should be up to the applicator, not the recipient. Registry needs to be distributed by March 1 so they have time to prepare; they shouldn't have to continually check to see if the registry has been updated. They should be able to notify up to seven days in advance because of weather. Posting signs is a good method for them. Responding to questions, he said that they spray 800–1,000 properties for mosquitoes in the greater Portland area; 250 get sprayed once, in coastal areas they get sprayed four times per season, all of which is air carrier (air blast); they have 1,000–1500 lawn care clients, each gets 7–8 applications per year. He estimates their market share at about 25 percent; he says there are four large companies in lawn care and four large companies for insect and disease control. He said they could handle a much larger number on the registry if the format stayed the way it is (Chapter 28).

Heather Spalding is the Associate Director of MOFGA, which she said represents 7,000 homes and businesses. She believes the working paper is a good start and agrees with most of it; however distances should be based on technology, rather than sectors (see handouts for suggestions). The registry should not be limited to agricultural applications, and it should be free and readily accessible. Names should remain on the registry until the registrant indicates they would like to be removed or until their e-mail is defunct. She would like to see signage included in the notification process.

This led to a discussion about signage and possible legal ramifications that had been broached at the Presque Isle meeting. Some growers claim they will post no-trespassing signs if posting is required.

Spalding said that the pre-season notification was abandoned due to concerns of administrative and financial hassles; she said a single sign would be neither a hassle nor financially difficult. Responding to a question about distances being determined by equipment she, said that the chart given by Katy Green at the Machias meeting was a starting point for determining reasonable distances based on technology and potential for drift: 1,320 feet for aerial and air carrier, 500 feet for motorized and backpack, 250 feet for non-powered.

Nick Bennett, staff scientist for NRCM, supports the distances suggested by MOFGA. He feels strongly that the registry needs to be accessible and easy to use and that the current urban registry has

few people on it because it is not easy to use and not accessible. Volatilization is a big factor, so it's not unreasonable to think pesticides might travel one-quarter mile.

Dave Bell, Wild Blueberry Commission of Maine, has strongly supported notification for over 20 years; it is good for neighbors, good for farmers and applicators, good government policy. Using IPM complicates things, because a farmer might not spray for six years, and when they do have to spray, it comes as a surprise to neighbors. Any notification system which helps prevent surprise is good for farmers and neighbors. He said the legal issue brought up in Presque Isle about signage is real. Upon legal advice, many blueberry growers have started adding "no trespassing" to their signs. He supports one simple system, which is easy to administer. The goal should be to foster communication, support right-to-know and support the bottom line of farmers. He encouraged the Board to work out as many details as possible before reporting back to the Legislature in February; it's taken five years to get this far, let's get a system in place that will work for 10–12 years.

Craig Lapine is a MOFGA volunteer, who works for Cultivating Community. Lapine lives in Portland and has two young children. He is on a registry, but is now concerned that he is not on the right one. He would like a single, integrated registry that is easy to use and persistent. People should not have to re-register each year. He is not concerned about who is spraying, or why, but only what and when. He endorsed MOFGA's position that aerial spraying should have a greater notification distance because of greater drift potential. His group, Cultivating Community, has several farms on lots without structures or residences, and he wonders if there is a way for them to be notified. He approves of posting signs. He would like to remind people of why we are here. Why are pesticide applications regulated? Because we agree that they are potentially harmful substances to human health and the environment. If there are challenges in notification then they should be borne by those manufacturing and using them; if there is an administrative burden then that should be considered part of the cost of doing business.

Joe Staples, resident of Gorham, supports notice at the greatest possible distance; one-quarter mile is okay. He states that we don't know the long-term effects of pesticides, so it is important for people to know, especially those with children. He believes chemicals are persistent for longer than advertised; they look only at the chemicals, not the breakdown products. Staples says Maine's laws protect people who put up signs without them having to include "no trespassing." We need to recognize that what we do will impact others. He understands that we may need some things, such as mosquito control, but worried about honeybees. Homeowners should be subject to standards and if they violate them it's the same as breaking any other law. He's not opposed to pesticides, just wants to make sure they are applied correctly and people are notified.

Christine Jenkins works for an environmental health agency, but is speaking here as a mother. She said these chemicals have been linked to serious diseases and conditions such as leukemia, ADHD, Parkinsons, and cancer. Jenkins believes strongly in peoples' right to know. She works with people who want to know what's been used near their homes and says it is a big burden for them to try to sort out what has been used. She believes in the Precautionary Principle. She stated that the current registration process (for the non-agricultural registry) discourages people from signing up: it is difficult to use; the \$20 annual fee is too high. She has not been successful in getting on the registry. She thinks one-quarter mile is reasonable, although she would like the distance to be even longer. She would like the registry to be user-friendly and free. Responding to questions, she said the different

registries are confusing and there are several obstacles in the process that discourage the average citizen; for instance, you have to submit your name in order to receive an application, and if you miss the December 31 deadline you have to wait a full year. It should be open for the entire year. Another problem she had was that she lives in a densely populated area with condos, multi-family homes and renters, and it was difficult to identify all the abutters. While it is reasonable to expect some effort, many people won't make the effort and they still have kids, so it should be as easy as possible.

Gene Meserve, Board pesticide inspector for southern Maine said you need to have people register every year so the list stays current; otherwise it will be full of deadwood and unworkable. He stated that many people who sign up don't want to be notified, they want to stop spraying, so they make themselves unavailable so they can't be notified.

Ellen McAdam, McDougal Orchards, Springvale, said that her orchard is practically in downtown Sanford and that many people pass by, jogging etc. She said notification distances wouldn't matter, whether it was one-quarter mile or two miles, because people going by are not going to get notified. Signs would be easier and more effective.

Tim Hobbs, Maine Potato Board, stated that we must be working on a comprehensive registry, regardless of the difficulties; that is what the Legislature mandated. The discussion should be centered on health—human, animal and environment. He is concerned about going back to the Legislature in February with something less than a comprehensive proposal. It may be nearly impossible and very expensive, but that's what the Legislature asked for; let them worry about how to pay for it.

Ben Campo, on the MOFGA board, attorney in Portland, resident of North Yarmouth, father of two young children. He supports zones delineated by MOFGA. He said notification is just that, not prohibition. It is not a courtesy, it is a necessity. Communities notify neighbors and residents all the time, this is consistent with that policy.

#### 4. Board Discussion About Development of the Comprehensive Notification Registry

Public Law 2009, Chapter 584, LD 1547, directs the Board to work to develop a comprehensive notification registry. Initial Board discussions have identified appropriate notification distances and the difficulty of applying the new registry format to residential and urban settings as the most challenging components of a comprehensive notification registry. The Board will discuss these and other issues and the basis for making its determinations.

Presentation by: Henry Jennings  
Director

Action Needed: Provide Input to the Staff on the Registry Development

- Jennings stated that development of the registry has been a huge staff drain over the last year. It's been practically a full-time job for Paul Schlein over the last few months. Consequently, a low-maintenance electronic system will be key to creating a workable approach. Stevenson observed that business faces the same data entry burden. Simonds commented about the potential scope of the

registry, suggesting that attempting to regulate homeowners would not be well received by the Legislature. Jennings echoed his comments observing the Board hasn't been very effective in attempting to regulate homeowner activity in the past. Eckert mentioned the "inverse registry" concept, whereby the Board posts information about pesticide spraying on its website for interested parties to review. Jennings pointed out that applicators have been cool to this idea in the past: they have concerns about public disclosure of their pesticide application information for various reasons.

Board members, staff and audience engaged in lengthy discussion about who should have responsibility for identifying properties that—when treated—would require notification of registry participants. Is that responsibility more appropriate for the applicator or the registry participant? Both models are represented in the Board's two currently operating registries. A Board-supported GIS-based support tool would ease the burden under either model. Randlett advised the Board to bear in mind that while the State can provide tools to assist the regulated community, it can not take responsibility for ensuring that the notification obligations have been met. Board members acknowledged there are valid arguments supporting both models: it comes down to a policy decision. Simonds suggested that the staff frame this as a key policy question to present to the Legislature when the report is due next January.

Simonds then initiated a discussion of notification distances. He pointed out that the Legislature had recently established the appropriate distances for aerial and air-carrier equipment. Jennings stated there is legal precedent in Maine for three different notification distances: 1,320 feet for aerial and air-carrier, 500 feet for the informal request option and 250 feet for the urban registry. The staff has not seen evidence suggesting these distances are insufficient. A smaller number of distances will help keep the regulatory system simple. A discussion ensued about whether distances should be based on landscapes (urban versus rural) or equipment. There are arguments supporting both approaches, but there are more people in the urban environment, and this fact does not support the smaller notification distance currently in rule. David Bell observed that the historical distance of 500 feet was meant to cover all types of applications, including aerial, so a tailored approach would suggest a smaller distance may be appropriate for ground spraying. Deven Morrill commented that the Legislature is expecting the Board to recommend the appropriate distances, including those for aerial and air-carrier applications. Heather Spalding urged the Board to reinstate the original one-quarter mile for aerial and air-carrier equipment. Board members finally reached a preliminary consensus to base distances on equipment rather than landscapes. In addition, there was a tentative consensus to move forward with three distances for now: 1,320 feet for aerial spraying; 500 feet for most powered, ground-based equipment; and 250 feet for non-powered equipment. Some low-risk powered equipment might also fall into the 250-foot category.

There was a brief discussion about how to keep the registry current. Members of the applicator community have argued for an annual renewal process. Jennings pointed out that Public Law 2009, Chapter 584 already dictates that registry participants remain on the list until they ask to be removed or their contact information is determined to be invalid. He agreed that the registry needs to be kept current, and suggested that the staff could e-mail participants annually to confirm their desire to continue. Simonds believed that such administrative matters are best left out of public law, allowing the staff more flexibility to find the most efficient approach. He asked the staff to revise the position paper to reflect that meeting's Board discussions and shorten it to one page. It should include a

description of the two models for determining which properties—when treated—result in a duty to notify registry participants.

5. Consideration of the Staff Negotiated Consent Agreement with J.L. Hayes & Company Inc. Agway of Auburn

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General to 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 a store that distributes pesticides that failed to obtain the required distributors license during 2008, 2009 and part of 2010.

Presentation By: Raymond Connors  
Manager of Compliance

- Connors explained the retailer had failed to obtain a general use pesticide distributors license for 2008, 2009 and 2010. He explained that the staff's previous approach was to impose a penalty of twice the amount of obtaining the required license. In lieu of recent Board feedback, that model was revised with a base penalty of \$100 for distributing pesticides without a license, plus the cost of the licenses they failed to obtain. This policy is more costly for those with just one or two years of non-compliance, leading to some resistance on the part of the retailers who operate without a license.

Qualey/Jemison: Moved and seconded approval of the consent agreement

In Favor: Unanimous

6. Discussion of Concerns About Unlicensed Commercial Agricultural Producers

At the recent Board Planning Session, concerns were raised about the evolution of state and federal pesticide laws which now allow many commercial growers to apply pesticides to their crops and/or livestock without a pesticide applicator's license or any formal training. The basic standard for requiring a private pesticide applicator's license—triggered by the use of a restricted pesticide—was established in the early 1970s, and has never been updated by the federal EPA. Since that standard was established, a number of legal requirements have been imposed and a series of public health and environmental risks have been identified that were not well documented in the 1970s. Some members of the agricultural community have questioned whether the existing standard is still appropriate. Board members discussed this issue at their June 25, 2010, meeting, and will continue those discussions now.

Presentation by: Henry Jennings  
Director

Action Needed: None—Discussion Only

- Jemison/Stevenson: Moved and seconded to table agenda items 6, 7, 8, 9 and 10

In Favor: Unanimous

7. Board Review and Discussion of Its Statutory Purpose and Policy Statements

During the course of the Board's deliberations on the development of a comprehensive notification registry, questions were raised about whether the Board is familiar with and adhering to its statutory purpose and policy statements. The Board will now review and discuss its policy statements and how they affect its process of public policy development.

Presentation by: Mark Randlett  
Assistant Attorney General

Action Needed: None – Informational Only

Item tabled—see motion from item 6

8. Update on the Clean Water Act/National Pollution Discharge Elimination System Impact on Pesticide Applications

In 2009, the Sixth Circuit Court of Appeals vacated EPA's interpretative rule which asserted that pesticide applications made in compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are not subject to the Clean Water Act (CWA) and its National Pollution Discharge Elimination System's (NPDES) permitting requirements. Consequently, beginning in 2011, the court ruling will require NPDES permits for pesticide applications made in or around surface water when excess pesticide or residue is deposited in jurisdictional waters. EPA has been developing a "general permit" that pesticide applicators can work under in some states. States like Maine, which have been delegated authority to administer the NPDES program, will need to issue their own permits. The staff will review some of the basic concepts and parameters of NPDES program in Maine.

Presentation by: Henry Jennings  
Director

Action Needed: None—Informational Only

Item tabled – see motion from item 6.

9. Other Old or New Business

Item tabled—see motion from item 6.

10. Schedule and Location of Future Meetings

The Board has tentative dates set for August 27, October 1, and November 5.

Adjustments and/or Additional Dates?

Item tabled – see motion from item 6.

11. Adjourn

Qualey/Eckert: Moved and seconded that the meeting adjourn at 1:45 PM.

In Favor: Unanimous