



JOHN ELIAS BALDACCI  
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**

**October 17, 2008**

John E. Dority Safety & Performance Training Center (Conference Room, Lower Level)  
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield  
(Exit 133 from I-95)

**MINUTES**

**9:30 AM**

Present: Eckert, Simonds, Jemison, Stevenson, Ravis, Qualey

1. Introductions of Board and Staff

The Board, staff and Assistant Attorney General Randlett introduced themselves

2. Minutes of the September 12, 2008, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

Jemison/Ravis: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Draft Policy for Submission and Review of 24(c) Registration Requests

At the September 12, 2008, meeting, the Board and staff discussed the process for Special Local Need [24(c)] registration requests and how to ensure that adequate time is allowed for review, research, and possible requests for additional information before the application is submitted to the Board. The Board instructed the staff to draft a policy and bring it back to the next meeting. The policy will now be reviewed and considered for adoption.

Presentation By: Henry Jennings  
Director

Action Needed: Decide whether to adopt the policy

- ☑ Jennings reminded Board members that this topic was first presented at the September meeting. Staff revised the memo incorporating Board comments and adding legal considerations offered by Assistant Attorney General Randlett. Board members suggested minor changes to the last sentence of the policy. There was considerable discussion about adding language indicating a projected time frame for placing 24(c) applications on the agenda, but ultimately the Board decided against it. There was also a discussion of Board policies in general. Members decided it would be useful to put Board policies on the website.

Jemison/Qualey: Moved to approve the FIFRA Section 24(c) policy as amended.

In Favor: Unanimous

4. Consideration of Staff Negotiated Consent Agreement with P.R. Webster Professional Groundskeeping Inc.

On June 3, 1998, the Board amended its Enforcement Protocol to authorize the 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 the application of turf pesticides at a commercial site without a license. Further investigation also determined that the correct type of label-required personal protective equipment was not worn and the records kept were not complete, as required.

Presentation By: Raymond Connors  
Manager of Compliance

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

- ☑ Connors briefed the Board on the details of this case that involved a company applying herbicides with an expired license. There were also minor protective clothing and record keeping issues. One of the applicators was Spanish speaking. Simonds inquired about what resources the staff has available for interacting with Spanish workers. Connors stated there are private translation services available.

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

In Favor: Unanimous

5. Consideration of Staff Negotiated Consent Agreement with Snowmans Oil and Soil Inc.

This case is similar to the preceding agenda topic 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 commercial application of an herbicide without a license.

Presentation By: Raymond Connors  
Manager of Compliance

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

- ☑ Connors explained that the company involved is in the property maintenance business. They applied a small amount of glyphosate to areas difficult to mow. There was no evidence to suggest wide-scale use of pesticides by the company.

Qualey/Stevenson: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

6. **Review of Draft Rules on Aerial Spraying and Drift [Note: No public input may be received for this agenda item]**

The Board held a Public Information Gathering Meeting on aerial spraying and spray drift at its December 2007 meeting, and has discussed issues and ideas at each of its meetings since then, including site planning, sensitive areas, standards of practice, buffers, and notification. At its September 12, 2008, meeting the Board reviewed and discussed a staff memo summarizing everything to date. Following lengthy discussion between Board, staff, and audience participants, the Board instructed the staff to prepare draft rules for Chapters 10, 22, and 28, and bring them back to the next meeting for review and approval, in preparation for rulemaking. The Board will now review these draft rules on aerial spraying and drift and decide whether to proceed with rulemaking.

Presentation By: Henry Jennings  
Director

Action Needed: Review the draft rules and decide whether to proceed with rulemaking

- ☑ Eckert reminded the audience that they could not comment during this portion of the meeting. Jennings referred to a staff memo detailing the logic behind the draft rule changes. Chapter 10 changes involve subdividing the current list of Sensitive Areas into two subsets: Sensitive Areas and Sensitive Areas Likely to Be Occupied (SALOs), although in the rule they are referred to in the singular.

Next, the Board discussed the concept of livestock areas around homes. Stevenson expressed the view that livestock should be covered under SALO describing commercial and institutional buildings. Ravis argued that not all livestock is kept for commercial purposes. Consensus was reached to maintain the current language for now.

Finally, Board members offered a handful of suggestions to shorten and tighten up the language for Sensitive Areas.

Jennings then began reviewing proposed changes to Chapter 22 by pointing out that a few sections that were considered advisory in nature were being deleted in an effort to shorten and simplify the rule. Simonds offered additional suggestions for shortening the rule. A short discussion of the proposed change about equipment calibration resulted in refinement of that language also.

Board members then discussed proposed changes to site planning/mapping requirements spread out over two sections of the rule. Members agreed there was no reason for ground applicators to make a map if no Sensitive Areas are located within 500 feet. They directed the staff to revise the language such that maps are only required for ground applicators when there are Sensitive Areas present. Jemison inquired about requiring the use of a GPS system for aerial applications, but the consensus was to leave the proposal as currently written. Eckert wondered whether there was reason to have two separate wind speed standards: a general standard and a more restrictive one for aerial spraying next to SALOs. Simonds argued there are types of applications that can be done in the broader range (0–15 mph).

The new section specific to aerial application was reviewed next. Board members offered a wide range of editorial revisions to clarify and tighten up the language, but the general concepts remained intact. A discussion about buffer zones resulted in no change to the current proposal.

Board members moved on to the residue standard section of the rule. They supported Connors' suggestion that a condition be added to the first paragraph on off-target direct discharge requiring that applications be consistent with the label. Overall, Board members supported the current proposal for replacing the existing residue standards with a newer Standard of Harm model. A number of editorial revisions were incorporated into the proposal. Finally, Board members reviewed the proposed agricultural emergency section. After a brief discussion, members decided to broaden the exemption to include public health and other pest emergencies.

Proposed revisions to Chapter 28 were discussed last. Simonds pointed out there was a fair amount of redundancy between the three new sections and discussed the merit of combining some or all of the sections. Jemison said he felt it was fairly clear the way it was written. Schlein suggested the redundancy was by design. Consensus was reached to leave the proposal in current format with three subsections. Board members offered a series of editorial revisions to the proposed language.

Simonds/Jemison: Moved and seconded motion directing the staff to initiate rulemaking on the draft rules as amended.

In Favor: Unanimous

## 7. Other Old or New Business

- a. E-mail from Thomas Woodruff of Falmouth, Maine, regarding pesticide use and sign posting for lawn applications—G. Fish
- Eckert suggested it would be appropriate to respond to Mr. Woodruff. Fish pointed out he had already sent an e-mail.
- b. E-mail from Marsha Mongell of Rockport, Maine, regarding pesticide use and regulations—H. Jennings

- Eckert observed that Mongell’s concerns appeared more focused on fertilizers. She suggested that the staff provide contact information for a local watershed organization. Fish pointed out she is already participating in an environmental organization at the municipal level.
- c. Review of the current Board policy for accepting public comments during non-rulemaking periods—P. Schlein
- Board members felt the current comment policy was working adequately to allow time for the Board members to review materials. They also discussed Peter Aldridge’s point about acknowledging comments. Board members could not see a practical way to publicly review all comments received. They discussed a brief reply to each comment, but eventually reached consensus that no reply was necessary since all comments are acknowledged by being posted on the Board’s website.
- d. Update on Bt Sweet Corn Registration Requests—H. Jennings
- Jennings reported that the Bt Corn Technical Committee is scheduled to meet on October 27. He stated that a decision on whether to convene the Medical Advisory Committee would be contingent on whether the Technical Committee supported registration of the products.
- e. Other?

8. Schedule and Location of Future Meetings

November 14 and December 12 are the tentative dates for the next Board meetings. Board members have discussed moving these dates back one week to allow for a public rulemaking hearing. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Board members agreed to reschedule the November 14 date to November 21 to allow for a public hearing in Bangor. They also rescheduled the December meeting from December 12 to December 19 and added January 23, 2009, as a tentative meeting date.

9. Adjourn

- Simonds/Ravis: Moved and seconded that the meeting adjourn at 3:00 PM

In Favor: Unanimous