



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

June 12, 2009

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, Stevenson, Bohlen, Ravis, Qualey and Jemison

1. Introductions of Board and Staff

The Board, staff and Assistant Attorney General Randlett introduced themselves

2. Minutes of the May 8, 2009, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Randlett observed an extra word under item four on page three.

Ravis/Stevenson: Moved and seconded approval of the minutes as amended.

In Favor: Unanimous

3. Final Adoption of Major Substantive Rule Amendments to Chapter 10

At its January 23, 2009, meeting, the Board provisionally adopted major substantive amendments to Chapter 10. On March 11, 2009, the Joint Standing Committee on Agriculture, Conservation and Forestry held a public hearing on LD 495, the Resolve authorizing final adoption of the amendments, and a workshop was held on April 1, 2009. Subsequently, contingent on two changes to the definition of Sensitive Area Likely to Be Occupied, the Committee reported the Resolve out as ought-to-pass. The Legislature enacted the Resolve and the Governor signed it into law on May 14, 2009. 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 10

- Jennings informed the Board that two minor changes were made to the provisionally adopted amendments to Chapter 10: the words “but not limited to” were deleted from the introductory language describing Sensitive Area Likely to Be Occupied, and the word “structure” was substituted for “buildings” in the definition of commercial and institutional entities that constitute a Sensitive Area Likely to Be Occupied.

Jemison/Ravis: Moved and seconded final adoption of the amended rule, the amended basis statement, the response to comments and the statement of impact on small businesses

In Favor: Unanimous

4. Final Adoption of Major Substantive Rule Amendments to Chapter 22 [Pending Legislative Enactment]

At its January 23, 2009, meeting, the Board provisionally adopted major substantive amendments to Chapter 22. On March 11, 2009, the Joint Standing Committee on Agriculture, Conservation and Forestry held a public hearing on LD 494, the Resolve authorizing final adoption of those amendments, and workshops were held on April 1 and May 12, 2009. The committee reported out a divided report on the Resolve. If the Legislature votes to authorize final adoption and the Governor signs the bill prior to the meeting, the Board will 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 22

- Jennings reviewed the changes to Chapter 22 that were made in response to the legislative resolve. He pointed out that the word “intended” was not included in the prima facie evidence standard upon the advice of Assistant Attorney General Randlett. He added that language from the old rule relative to residue percentages had been re-inserted into Chapter 22 as a result of the legislative directive to change the detectable residue standard to a 1% standard.

Board members discussed the language the legislature required for the “documented human illness” standard of harm. Randlett advised against adding the words “and/or toxicological” to the description of required documentation. Board members questioned the meaning and intent of the phrase “epidemiological documentation of human sensitivity”. Consensus was reached to leave the language as directed by the legislature, and interpret the meaning at a later date through policy.

Jemison/Stevenson: Moved and seconded final adoption of Chapter 22 as amended, the amended basis statement, the response to comments, and statement of impact on small businesses

In Favor: Unanimous

5. Final Adoption of Major Substantive Rule Amendments to Chapter 41 [*Pending Legislative Enactment*]

At its March 27, 2009, meeting, the Board provisionally adopted major substantive amendments to Chapter 41. On April 23, 2009, the Joint Standing Committee on Agriculture, Conservation and Forestry held a public hearing on LD 1460, a Resolve authorizing final adoption of the amendments, and a workshop was held on May 12, 2009. Subsequently, the Committee reported the Resolve out as ought-to-pass. If the Legislature votes to authorize the amendments and the Governor signs the bill into law, the Board will 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

- Jennings stated that the resolve authorizing final adoption of the rule require no changes. However, Jemison identified a minor change he thought would help further clarify the language. Randlett reviewed the suggestion and advised against making any changes at this point in the rulemaking process. Fish suggested that Jemison's concerns could be addressed through off-season educational programs.

Jemison/Bohlen: Moved and seconded final adoption of the amended rule, the amended basis statement, the response to comments and the statement of impact on small businesses

In Favor: Unanimous

6. Board Discussion of Notification Requirements for Outdoor Pesticide Application

On February 20, 2009, the Board provisionally adopted amendments to Chapter 28 of the Board's rule. On April 23, 2009, the Joint Standing Committee on Agriculture, Conservation and Forestry held a public hearing on LD 972, a Resolve authorizing final adoption of the amendments, and workshops were held on May 12 and May 14. Subsequently, the Committee reported out a Resolve that did not authorize final adoption of the proposed amendments. Instead, the Committee favored an amended version of LD 1293, An Act To Require Citizen Notification of Pesticide Applications Using Aerial Spray or Air-carrier Application Equipment. The Board will need to amend Chapter 28 to implement the provisions of LD 1293. Consequently, discussions will begin on how best to implement the legislative intent.

Presentation by: Henry Jennings
Director

Action Needed: Discuss ideas for amending Chapter 28 to implement the legislative intent of LD 1293

- Jennings informed the Board that the legislature did not authorize final adoption of Chapter 28, and instead enacted an amended version of LD 1293. Jennings suggested that some rulemaking would be necessary to implement the provisions of LD 1293 and that there is a very short time frame for getting the rulemaking done. Heather Spalding stated that the Governor will sign the bill on June 22. She said the 1320-foot provision was retained for the purposes of the registry but the initial notification would be limited to abutters. Spalding added that LD 1293 was designed to be easily incorporated into Chapter 28. Jennings added that the scope of LD 1293 covers both aerial spraying and air-carrier equipment. He believed that - in the long term - the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) is favoring development of a single registry to cover all of agriculture and possibly all outdoor pesticide application – with different distances for different types of applications.

Board members discussed the provisions of LD 1293 and how best to implement the bill. Randlett and Jennings conferred and agreed that rulemaking was not mandatory at this time: LD 1293 can stand on its own as enforceable law and the previous version of Chapter 28 is still in effect. Eckert felt it was not wise to initiate rulemaking this summer. Instead, she suggested that the staff focus on getting the registry up and running, and then assess the necessity of rulemaking. Consensus was reached to only work on implementing the registry at this time. Jennings stated he would inform the ACF committee of the Board's plans.

Jemison asked if the staff could develop a brief summary of what is currently in effect for notification provisions. The staff agreed to draft something. Spalding added a summary would be useful for both the public and applicators. Randlett noted that LD 1293 will become effective in September and may pose compliance issues for some growers. Spalding said the legislative intent is that the provisions go into effect next year.

7. Board Discussion of Disinfection of Artificial Turf Fields

Presentation by: Gary Fish
Manager of Pesticide Programs

Many artificial turf fields at universities, colleges, high schools, and indoor sports arenas are regularly disinfected due to a concern about possible staph infections. The use of powered equipment precludes them from using the exemption from licensing for the application of general-use antimicrobial products when they are applied by hand or non-powered equipment during routine cleaning. With the increased number of organizations using artificial turf over the past five years, the staff would like the Board to consider whether these entities should be an enforcement priority and which category of licensing to place them under.

Action Needed: Decide on enforcement discretion and licensing category

- Fish introduced the topic and noted that power washing of houses with bleach is a similar issue that has recently come up. Jemison asked whether other types of products were used on artificial

turf. Fish indicated that the quaternary ammonium products were the most common. Bohlen stated that concern for pathogens is common for many areas of athletics, especially with the advent of resistant bacteria. Fish asked if Board members wanted to exempt these types of applications, since the rule as currently written would require a license for them. Consensus was reached that it is not appropriate to exempt these types of applications, given the risks. Eckert believed it should not present an unreasonable burden.

8. Board Discussion of Chapter 27 with Respect to School Farms and Greenhouses

A recent visit to a greenhouse at a school in Portland revealed an insect infestation that the school felt it could not treat due to a concern that it would not be in compliance with Chapter 27. The staff would like the Board to consider whether to allow some flexibility for school farms and greenhouses with respect to Chapter 27.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Decide whether to allow some flexibility with respect to Chapter 27 for school farms and greenhouses

- Fish stated that the notification requirements in Chapter 27 have made it difficult for schools to operate school farm plots and greenhouses, even if these facilities are remote from the school and/or they are generally not visited by students, parents or staff. Fish inquired whether Board members believed additional flexibility on the notice requirements in these circumstances is appropriate. There was consensus that a more limited form of notice would be adequate for such circumstances.

Randlett stated that such a policy change would require rulemaking, but upon further review decided a policy would be adequate until a rule change could be implemented.

9. Other Old or New Business

a. Legislative Update—H. Jennings

- Jennings alerted Board members that the Department bill containing a series of minor amendments had been enacted. This included the repeal of the vertebrate control section of Title 22.

b. Letter to the EPA regarding the withdrawal of the 24(c) registration request for Backyard Farms, Madison, Maine—H. Jennings

- The special local needs permit for the use of Ethrel on greenhouse tomatoes was withdrawn upon consultation with EPA officials who stated that similar SLNs would be revoked in other states because the supporting data had never been reviewed and accepted by EPA.

- c. Letter to Urban Tree Service of Rochester, New Hampshire, indicating Board's approval of a Chapter 29 variance permit—H. Jennings
 - The permit was issued as directed by the Board at its previous meeting.
- d. Letter from Bangor Hydro Electric Company notifying the Board of its plans to hydraulically spray 38 electric substations in their service territory—H. Jennings
 - Jennings stated the letter was provided as a courtesy to keep the Board informed.
- e. Comments received from Deborah Aldridge of Jonesboro on aerial spraying and 24(c) request—H. Jennings
 - Aldridge's comments were received after the Board deadline for the previous meeting.
- f. E-mail from Catherine Culley, Redfern Properties, regarding use of the Back Cove YardScaping Demonstration Project as a landscape model in a recent Portland construction project—Gary Fish
 - Fish directed Board members to the email as evidence that the Yardscaping Demonstration Project is having an impact.
- g. E-mail received from Emily Serway, Westbrook, Maine, regarding lawn care pesticides—G. Fish
 - This email was included for the Board's information.

10. Schedule and Location of Future Meetings

July 10, August 28, and October 2, 2009, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Jennings stated that Ravis and Bohlen will not be able to attend the Board meeting in Presque Isle on July 10. Board members decided to add tentative meeting dates of November 6 and December 11.

11. Adjourn

- Jemison/Stevenson: Moved and seconded that the meeting adjourn at 12:37 p.m.

In Favor: Unanimous