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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
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WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
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BOARD OF PESTICIDES CONTROL

October 7, 2011

Colby/Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville
(Waterville/Oakland Exit 127 from I-95)

MINUTES

9:30 AM

Present: Jemison, Granger, Bohlen, Eckert, Ravis and Stevenson

1. Introductions of Board and Staff

- The Board, staff and Assistant Attorney General Randlett all introduced themselves.
- Jemison introduced Agriculture Commissioner Walter Whitcomb, who asked to briefly address the Board. Whitcomb alerted Board members to a Department op-ed about the role of IPM in agriculture, written by Kathy Murray, the Department's IPM entomologist. Whitcomb stated he viewed the passage of recent legislation increasing the number of farmers requiring pesticide licensure as somewhat remarkable, both for its widespread support and because it occurred in the current economic and political climate. Whitcomb presented the idea of a "Master Certification" for farmers, intended to boost consumer confidence. He hopes to partner with the Board on developing this certification which will include training on farm management, including things such as pesticides, nutrient management and Good Agricultural Practices. Board members voiced support for the idea and applauded the Commissioner for his forward-thinking approach.

Jemison publicly welcomed new Board member Clark Granger and thanked departing Board members Dan Simonds and Tom Qualey.

2. Public Hearing on the Proposed New Rule Chapter 33, and Amendments to Chapters 28, 41, and 60

The Board will hear testimony on the following new rule chapter and amendments to three existing rules:

- *Chapter 33—Certification and Licensing Provisions/Private Applicators of General Use Pesticides:* The proposed new rule would establish the procedures for taking exams, applying for a license, and documenting continuing education requirements for farmers who use only general use pesticides and annually sell more than \$1,000 of plant or plant products intended for human consumption. The new license requirement arose from a new public law (PL 2011, Chapter 169), enacted by the Maine Legislature in the spring of 2011.

- *Chapter 28—Notification Provisions for Outdoor Pesticide Applications:* The proposed amendment to Chapter 28 would implement a change mandated by a new law enacted by the Maine Legislature in the spring of the 2011. Public Law 2011, Chapter 332, specifies that the current 500-foot notification distance contained in Chapter 28 of the Board’s rules be modified to allow for notification up to 1,000 feet for aerial applications.
- *Chapter 41—Special Restrictions on Pesticide Use:* The proposed amendment to Chapter 41 would eliminate the requirement for training prior to purchasing or using genetically modified corn containing *Bacillus thuringiensis (Bt)* genes.
- *Chapter 60—Designation of Critical Pesticide Control Areas:* The proposed amendment to Chapter 60 would remove the designation of critical pesticide control area surrounding the Deblois Fish Hatchery.

Additional details of the proposed amendments were described in the public hearing notice published in major newspapers on September 14, 2011. Copies of the notice, the new proposed rule, and the proposed rule amendments are available upon request, or may be viewed at the Board’s website, www.thinkfirstspraylast.org/laws/rulemaking.htm.

Sign-up sheets for each chapter will be available at the door for persons wishing to testify. Written comments may be e-mailed to henry.jennings@maine.gov, or mailed to the Board’s address above, until 5:00 PM on October 21, 2011.

- Jemison welcomed the audience and opened the public hearing. Jennings provided a brief overview of the proposed changes and covered ground rules for the hearing. One person testified on Chapter 28, three on Chapter 41 and one on Chapter 60. See the summary of comments for names and details of the comments.

3. Minutes of the July 15, 2011, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- Eckert/Bohlen: Moved and seconded approval of minutes

In Favor: Bohlen, Jemison, Eckert, Stevenson and Ravis

Abstaining: Granger (new member)

4. State Government Evaluation Act Report to the Legislature

Under the Maine Revised Statutes, Title 3, Chapter 35, the State Government Evaluation Act (GEA), provides for periodic review of state government agencies in order to evaluate their efficacy and performance. Pursuant to the GEA, the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF) has asked the Board to prepare a GEA report, including financial and programmatic details, by November 1, 2011. The ACF will begin its review of the Board no later than February 1, 2012, and submit its findings and recommendations to the Legislature by March 15, 2012. The Board will now review a draft of the report prepared by the staff.

Presentation By: Henry Jennings
Director

Action Needed: Review the draft GEA report and provide input to staff

- Jennings explained that the staff had completely overhauled the report from the previous version that was released in 2005, in an attempt to more closely align it with current operations. He stated that they planned to add an executive summary and provide more explanation of the financial graphs. Bohlen agreed that the financial section needed additional explanation. Stevenson suggested a footnote for the revenue graph. Bohlen felt there needed to be a discussion about concerns relating to the future of the federal account and the programs and positions that have traditionally been funded from that account. He observed there was significant overlap between the different program areas, especially in the area of education, which is a component of most of the Board's activities. He suggested that the annual summary of complaints be listed in the program section, since he found it very informative. Bohlen offered a correction about the use of the word arachnid in the vector-borne diseases paragraph and Eckert clarified that cases of West Nile Virus may have occurred in Maine, but none have actually been identified.

Jennings reminded Board members that because the GEA report is due to the Legislature no later than November 1, 2011 there would not be time to review the report at the next monthly meeting. He suggested that the staff circulate a revised draft via e-mail for any final comments. He asked Randlett whether that would be appropriate. Randlett was comfortable with the approach, since no Board decisions would be made via e-mail. Jennings stated the final report would be included in the next Board packet and posted on the BPC website.

5. Consideration of Staff Negotiated Consent Agreement with William Gurrisi, Winchester, Massachusetts

On June 3, 1998, the Board amended its Enforcement Protocol to authorize 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 an herbicide to a lake without the required approval from the Maine Department of Environmental Protection.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the Board's office received an anonymous call from a concerned citizen who was relaying an observation made by a friend. The observer stated he had observed Gurrisi in a boat flinging something into the water on Lake Sherburne. The observer asked what was being dispensed, and Gurrisi allegedly replied that it was a weed killer and would sink to the bottom.

During the staff investigation, Gurrisi denied applying a pesticide to the lake. However, a state water sample showed the presence of 2,4-D at 21 parts per billion. Ultimately Gurrisi agreed to enter into a consent agreement in order to resolve the matter, but he did not admit to applying a pesticide. Jemison asked a question about the penalty amount. Randlett indicated that the penalty amount reflected the state's comfort level with the evidence. Eckert asked if the application would have been legal with a permit. Connors responded in the affirmative. She then asked about how the Board can get the word out

about the legal requirements. Jennings suggested the Congress of Lake Associations newsletter. Lauchlin Titus, AgMatters, LLC suggested working with the Soil and Water Conservation Districts, since they often interact with the lake associations.

Ravis/Eckert: Moved and seconded approval of the consent agreement

In Favor: Unanimous

6. Other Old or New Business

- Jennings introduced and praised new Division of Animal and Plant Health Director David Lavway, who took the place of Robert Batteese when he retired.
- a. LD 837 update—H. Jennings
- Jennings stated that the staff is working on multiple fronts in response to the LD 837 mandate. Staff members have been working with Kathy Murray on developing draft Best Management Practices, and they are also doing additional surveys to determine how pest management decisions are made on school grounds.
- b. Letter from Deven Morrill, Lucas Tree Experts, regarding streamlining of the applicator licensing process—H. Jennings
- Jennings observed that Deven Morrill had taken the time to respond to his invitation from the last meeting to provide input on how the BPC might streamline the licensing process going forward. He stated that there is sentiment that the BPC should be moving toward electronic transactions. The staff's research indicates this transition will be neither quick nor inexpensive. Granger asked if there might be an option to contract for outside assistance. Jennings conveyed that the state has invested heavily in third-party licensing software which has already been customized to interact with the state's financial system and state websites.

Eckert asked if it might be possible to issue a temporary license as an interim step until the official license was issued. Morrill stated that applicators feel they need a license number to include with their application records. Eckert also inquired about online exams and recertification training. Jennings stated there are already numerous online training options, but that exams present additional challenges for verifying who is taking the exam and whether they are using references in the process.

c. Other?

- Jennings introduced state Representatives Jeffrey Timberlake and James Dill, who had waited patiently for an opportunity to address the Board. Dill informed the Board that both he and Timberlake are interested in pursuing a workable notification system with checks and balances, which is simple for everyone. Dill envisions an electronic system that will facilitate contact between neighbors.

Timberlake is an apple grower affiliated with Ricker Hill Orchards. He stated the recently repealed registry lacked verification of the participants and placed all of the burden with the pesticide applicator. Timberlake believes the system needs to have a shared burden. He supports a system similar to the registry in Chapter 28 which requires a \$20 annual fee. People who don't

want to pay can use the “by request” option in Chapter 28. Timberlake stated there isn’t sufficient support from the applicator community for a comprehensive registry without a fee.

Board members engaged the two representatives in a brief discussion about the merits and challenges inherent in various notification approaches. Jennings asked if there was consensus from the Board to work in this subject area. Board members agreed to move forward.

- Jennings observed that there is no current Board chair since Simonds had departed. Eckert nominated Jemison for the chair. Ravis nominated Bohlen for vice-chair.

Ravis/Eckert: Moved and seconded that Jemison serve as chair and that Bohlen serve as vice-chair.

In Favor: Unanimous

7. Schedule and Location of Future Meetings

November 18 and December 16, 2011, are the tentative dates for future Board meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Jennings pointed out that because it is crucial to have a Board vote on rulemaking in December in order to meet the deadline, it might be a good idea to set a snow date for December. It was agreed that December 23 would be set as the snow date. Board members agreed to add January 20 and February 24, 2012, as tentative future Board meeting dates. Jemison stated the Board should try to hold at least one meeting per year in a different geographical area of the state. Board inspector Arthur Shaw asked whether there would be a planning session in 2012. Eckert suggested they discuss it at the next meeting. Jennings thought March might be the best time for a planning session.

8. Adjourn

- Granger/Bohlen: Moved and seconded that the meeting adjourn at 12:07 PM.

In Favor: Unanimous