



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**

**August 28, 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, Bohlen, Jemison, Simonds, Stevenson, Ravis and Qualey

1. Introductions of Board and Staff

The Board and staff introduced themselves.

2. Minutes of the July 1, 2009, Emergency Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

Connors pointed out that a word was missing on the second page.

Jemison/Stevenson: Moved and seconded approval of the July 1, 2009, minutes as amended

In Favor: Unanimous

3. Minutes of the July 10, 2009, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

Jemison/Eckert: Moved and seconded approval of the July 10, 2009, minutes

In Favor: Unanimous

4. Review of Draft Rule Amendment to Chapter 28 to Implement the Provisions of LD 1293

On June 21, 2009, Governor Baldacci signed Public Law 2009, Chapter 378, LD 1293, An Act To Require Notification of Pesticide Applications Using Aerial Spray or Air-carrier Application Equipment. The Board discussed the provisions of this bill at their June 12, 2009, meeting and initially decided to focus staff efforts on implementing the registry provisions of the bill. At the July 10 meeting, the Board reviewed a staff memo detailing concerns that have arisen about the language of the bill, and it directed the staff to draft a letter to the Committee on Agriculture, Conservation and Forestry (ACF), alerting the Committee to the concerns. Subsequent discussions with the bill's sponsor and ACF Committee members have encouraged the Board to move forward with a comprehensive rule amendment to implement the intent of the bill, even if some of the details conflict with LD 1293. The Board will review a draft rule amendment prepared by the staff and determine whether to direct the staff to initiate rulemaking proceedings.

Presentation by: Henry Jennings  
Director

Action Needed: Determine whether to initiate rulemaking

- Jennings alerted the audience that no public comment was allowed during discussion of the agenda since the Board is reviewing draft rule language. Comments can only be received after the rulemaking notice has been published.

The staff's thinking on rulemaking for Chapter 28 had evolved since the last meeting. Feedback from some state legislators has encouraged the Board to develop a rule that addresses any oversights in LD 1293, even if some of the details conflict with the provisions of LD 1293 in the short term. Since the Legislature must review provisionally adopted rules anyway, they will have the opportunity to address any elements they do not support.

Jennings explained that the draft rule being considered retained the "informal request for notification" provision which has been separated into two sections to align with the types of informational requests that are typically made. Board members directed the staff to add disclosure about the registry to the list of information that should be provided to people requesting information.

Next the Board discussed draft section 1(C), which addresses mandatory disclosure for aerial or air-carrier spraying. The staff's proposal requires mandatory notice to residents and managers of buildings that are both on abutting properties and within 1,320 feet of the pesticide application site. Bohlen questioned the wording of the applicable section, pointing out it could be interpreted in different ways. Jennings stated the same language had been the topic of several discussions and agreed to check with Randlett on the most appropriate wording.

Jennings informed the Board that section 1(C) also contained an option for pesticide applications that can not reasonably be foreseen 90 days in advance. Under this option, land managers would

be required to provide notice of spraying at least 48 hours in advance to residents and managers of buildings that are both on abutting property and within 1,320 feet of the pesticide application area.

Board members discussed the differences between the two approaches and the circumstances under which they might be used. They decided the mandatory 90-day written notice should be considered the normal procedure and that it should be very general in nature. The written disclosure should list only the types of pesticides. Members also instructed the staff to substitute Sensitive Areas Likely to Be Occupied (except recreational areas) for the commercial, residential and institutional buildings described in Section 1(C)(1). In addition, they asked that the language covering the acceptable means of notification be standardized throughout the proposal.

The discussion then turned to Section 1(C)(3) of the staff draft. Jennings explained the section was intended to address commercial tree and mosquito work which would be difficult to perform under LD 1293. Conceptually, it is similar to the provisions contained in Chapter 51. Simonds questioned whether there may be other burdensome situations that the Board and staff haven't thought of yet. Consensus was reached to delete this section in favor of a new provision that would allow land managers to propose alternative methods of informing building occupants.

Board members reviewed Section 1(D) covering operation of the registry. The section is largely consistent with the concepts the Board had already discussed at the previous two meetings. Consensus was reached to make a minor change in the information that registry participants must provide, substituting "preferred" for "Maine" when describing the mailing address.

A short discussion followed about the proposed rulemaking schedule with a public hearing slated for October 2, 2009, and the goal of provisional adoption at the December meeting.

Simonds/Ravis: Moved and seconded to direct the staff to initiate rulemaking of the proposal as amended.

In Favor: Unanimous

5. Update on Bt Corn Reviews and Pending Registration Requests

The Board's Medical Advisory Committee (MAC) met on July 15 and concluded its review of the dietary safety of Bt corn. The Plant Incorporated Protectant Technical Committee is scheduled to meet on September 18 to review Bt corn with reduced refuge requirements. The staff will discuss the status of the MAC review and update the Board on pending Bt corn registration requests.

Presentation By: Lebelle Hicks

Action Needed: None—informational only

- Hicks reported that some members of the MAC were not pleased that the Board approved Bt sweet corn before the Committee finished its report. The MAC concluded that there was insufficient basic toxicity data to perform a risk assessment. The Committee did not agree with EPA's decision not to require a chronic toxicity testing for Plant Incorporated Protectants. The

PIP Technical Committee will meet on September 18 to review pending Bt corn requests with reduced refuge requirements. The staff plans to provide the final MAC report and a Technical Committee report at the October 2 meeting where the Board will consider any pending Bt corn registration requests.

6. Consideration of Staff Negotiated Consent Agreement with C & D Corporation of Deblois

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 Velpar by a company employee that extended beyond the property boundary for the target field.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors explained that the incident arose when a C & D Corporation applicator errantly applied Velpar beyond the boundary of the property intended for treatment. Instructions provided to the applicator were not sufficient to accurately determine the boundary between two adjacent blueberry fields. The involved parties disputed the extent to which the unauthorized application continued, but there was no dispute that the application took place beyond the property line. Since the complainant had also applied Velpar to his property, Board members inquired about the possibility of plant injury and crop tolerance concerns. Connors responded by noting that combined application rates did not exceed the one-time maximum rate allowed on the Velpar label.

Simonds/Jemison: moved and seconded approval of the consent agreement

In Favor: Unanimous

7. Adoption of Board Policy on Chapter 27 with Respect to School Farms and Greenhouses

At the July 10, 2009, meeting, the Board reviewed a staff memo detailing concerns that the notification requirements contained in Chapter 27 create an unreasonable burden for educators managing school gardens and greenhouses, especially given that these facilities are only visited by a relatively small percentage of faculty and students. The Board agreed that the current rule was overly restrictive in these instances and directed the staff to draft an interim enforcement policy to allow greater flexibility in these circumstances.

Presentation by: Gary Fish  
Manager of Pesticide Programs

Action Needed: Determine whether to adopt the draft interim enforcement policy

- Jennings reminded Board members that the draft policy had been discussed at the last meeting and updated with suggested changes. Bohlen inquired if the intent of the policy was for all students who visit the agricultural sites to have WPS training, even if it was part of a tour. Consensus was reached to reword the policy so that only students who routinely visit the sites would need training.

Jemison/Bohlen: Moved and seconded adoption of the policy as amended

In Favor: Unanimous

8. Adoption of Board Policy on the Distribution of Pesticides from Landlord to Tenant

At the July 10, 2009, meeting, the Board reviewed a staff memo detailing concerns about property management companies supplying pesticides to tenants and concerns about the potential risks and harm that might result from the improper application of pesticides by untrained applicators. The Board provided additional input to the staff and directed it to redraft the policy for consideration at the next meeting. The Board will now consider adoption of the draft policy.

Presentation By: Henry Jennings  
Director

Action Needed: Decide whether to adopt the formal policy

- Jennings stated the policy on landlord distribution of pesticides had been discussed at previous Board meetings. Hicks suggested it may be prudent to use a different term other than “reduced-risk” pesticides, since EPA uses the term to define a specific set of active ingredients. Consensus was reached to use the term “low-risk” pesticides.

Jemison/Stevenson: Moved and seconded adoption of the policy as amended

In Favor: Unanimous

9. Other Old or New Business

a. Variance permit for Aroostook Agriculture, Presque Isle, Maine, for the 2009 Roadside Brush Control Program in the towns of Mapleton, Castle Hill, and Chapman, and brush control under power lines for Maine Public Service Company—H. Jennings

- Board members acknowledged receipt of the variance permit.

b. Recent correspondence received regarding glyphosate and Roundup<sup>®</sup>—L. Hicks.

- Hicks stated that the Roundup study cited had not even been published or peer reviewed yet, so it is premature to evaluate the validity. The DEET study is an *in vitro* study that is

difficult to translate to live animals. Whole animal studies would be necessary before any conclusion can be drawn.

Hicks informed the Board that two horses had tested positive for EEE in Maine and three more were being tested. Mosquito pools to date have not tested positive. Since it is somewhat early in the year for EEE to surface, a public health response may be necessary as the issue evolves. Simonds inquired about how a spray program would be administered. Maine currently has neither the infrastructure nor the funding to support a public spray program.

c. Other?

10. Schedule and Location of Future Meetings

October 2, November 6 and December 11, 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?

- The Board changed the date of the December meeting from the eleventh to the eighteenth and added a January 22 date to the list.

11. Adjourn

- Jemison/Ravis: Moved and seconded that the meeting adjourn at 1:20 PM.

In Favor: Unanimous