



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**July 15, 2011**

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, Bohlen, Jemison, and Qualey

1. Introductions of Board and Staff

The Board, staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the June 3, 2011, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

Eckert/Qualey: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Request from Lauchlin Titus to Amend Chapter 41 to Repeal the Training Requirement for Purchasers of *Bt* Corn

Section 5(E)(I)(a) of Chapter 41 specifies that purchasers of *Bt* corn must possess a valid training certificate from the BPC. Certificates are valid for two years. Lauchlin Titus of AgMatters, LLC, contends that the “vast majority of farmers interested in using PIP trait technologies have been through two of the training and certification cycles.” Titus reasons that there are a number of ways that new information is being provided to farmers using *Bt* corn, and therefore biennial training is no longer warranted. Consequently, he is requesting that the Board consider amending Section 5 of Chapter 41 to repeal that training requirement for farmers.

Presentations By: Henry Jennings  
Director

Action Needed: Determine if Chapter 41 should be amended

- ☑ Jennings stated that the rules requiring grower training for plant-incorporated protectants (PIPs) have been in effect for four years, so that many growers have been through two training cycles. He expressed concern that there wasn't a lot of new information to provide during the second training cycle. Lauchlin Titus stated he agreed the training served a useful purpose initially, since Maine growers were ten years behind the rest of the country. Titus argued that, basically, all the growers have been through the training and now have experience with the technology. The technical information is provided to growers through multiple avenues.

Qualey asked how new growers would receive the training. Titus responded that all the necessary information is contained on the product label, and there are a variety of resources available to them, including other experienced growers. Eckert inquired about the nature of the requested change. Titus explained he favors that there be no training requirement at all.

Jemison explained how he had managed to modify the training every year so far to keep it new. Qualey questioned whether LD 975 would result in all of the growers using this technology needing an applicator's license anyway. Jennings stated that the scope of LD 975 does not include dairy farmers, who are some of the primary users of this technology. Jemison observed that there will likely be additional changes in the technology in the near future and resistance issues are already showing up for some traits in other parts of the country. Clark Granger inquired whether there was any merit to just regulating PIPs as a category of private licensing.

Board members discussed the need to keep growers up to date on developments and how to accomplish that in the least intrusive manner. Members observed that the educational needs related to PIPs are not unlike other pesticides. Simonds pointed out that PIPs appear to have a different level of sensitivity associated with them. Consensus was reached to include a rulemaking proposal to change the training requirement for PIPs with the other rulemaking the Board needs to initiate this fall. Bohlen requested that the staff develop some alternative training options as part of the proposal.

4. Consideration of a Chapter 29 Variance Permit Request from Green Thumb Lawn Service to Treat a Large Area of Poison Ivy Adjacent to Pushaw Lake

The Board can grant variances for the 25-foot setback required from surface water under Section 6 of Chapter 29. Green Thumb Lawn Service is seeking approval to treat a large contiguous area of poison ivy adjacent to Pushaw Lake. The applicator will direct sprays away from the water to avoid pesticide drift.

Presentation By: Henry Jennings  
Director

Action Needed: Approve/disapprove the variance request

- ☑ Jennings stated that the variance request had arrived just after the previous Board meeting, resulting in a long wait for the applicant and the homeowner. Michael Legasse said he felt the staff should have been able to approve the variance request without bringing the matter before the Board. Jennings reiterated that current Board policy states the staff may approve repeat variance requests as long as no problems were encountered the previous year.

Legasse described the proposed application site and how the poison ivy interferes with the use of the waterfront. A lengthy discussion followed about the difficulties and hazards associated with removing

poison ivy, and about how the problem is likely to get worse in coming years. There was general agreement that issuing individual permits to address the problem is a cumbersome and slow approach, and that a policy that does not delay treatment and stresses Best Management Practices (BMPs) makes more sense.

Qualey/Eckert: Moved and seconded approval of the variance with the provision that the applicator be allowed to choose the most appropriate product

In Favor: Unanimous

Eckert suggested that BMPs for control of poison ivy may be a good topic to include on the Board's website.

#### 5. Review of 2011 Legislative Mandates and Staff Efforts to Date to Address Them

Three recently enacted laws require action on the part of the BPC prior to 2012. In addition, the Government Evaluation Act (GEA) Report is due in November of 2011. The staff will describe its efforts to date for each of the four mandates and seek Board input for moving forward.

a. LD 228—Requires that the Board amend Chapter 28 to allow for “by request” notification for up to 1,000 feet for aerial spraying. The staff has not begun rulemaking to amend Chapter 28 since the required change looks very straightforward. However, based on feedback from the June 3 meeting, the staff has drafted a memo to send to the participants of the air-carrier/aerial notification registry that was repealed by the Legislature. In addition, the Department of Agriculture, Food and Rural Resources is exploring whether a workgroup should be formed to evaluate future improvements to the notification system.

Jennings stated he has received indications that there is some interest in continuing to work on a notification registry that utilizes the internet mapping tool which the Maine Office of GIS developed in cooperation with the Board's staff. Given how contentious an issue it's been, and the fact that the Legislature just established state policy in this area, Jennings expressed reservations about initiating any work on notification without first receiving a directive to do so. Board members were similarly reluctant to initiate a new effort around notification. At previous meetings, the Board briefly discussed the idea of operating the registry on a voluntary basis, but the staff is concerned that a voluntary system would create false expectations.

Board members commented on the staff's draft letter to the aerial notification registry participants. There was agreement that it was too complicated and would benefit from being simplified. The staff agreed to redraft it.

b. LD 837—Requires the Board to develop BMPs for the use of pesticides on school grounds and to assess compliance with Chapter 27 (school IPM) of the Board's rules. The staff worked with Kathy Murray, the Department's IPM entomologist, to send a preliminary announcement to schools alerting them about the bill and some simple points to keep in mind when managing pests on school grounds. In addition, the staff has compiled two years' worth of school inspection data and is holding discussions on additional means of assessing pesticide use at schools and on school grounds. Finally, the staff has been signing up volunteers to work on developing BMPs for the school grounds and searching for similar efforts from other states.

- Jennings stated the staff has begun to uncover some weaknesses in how the school IPM requirements are being administered. The IPM coordinator in many cases has evolved into nothing more than a record keeper, not the coordinator that was originally envisioned. Legasse agreed with the assessment. He said the applicator is really the one in charge.

Simonds wondered if Chapter 27 wasn't working or whether there might be a lack of enforcement. Should there be changes to Chapter 27? Jennings replied that it appeared to be more a matter of implementation and training. The BPC has historically focused more on indoor applications in the school setting.

Jennings stated the staff was researching BMPs for athletic fields and trying to set up a committee to review the staff's proposal. They were having trouble getting representatives from environmental groups to participate. Simonds inquired if the staff engaged the bill sponsor. Heather Spalding from the Maine Organic Farmers and Gardeners Association wondered why her organization had not been asked to participate. Jennings stated they had discussed inviting the bill sponsor to participate. He wasn't sure about how the environmental groups had been chosen, but would look into it.

- c. LD 975—Requires the Board to amend its rules to provide for the licensing of farmers who use general-use pesticides to produce plants for direct human consumption. Based on Board feedback from the June 3 meeting, the staff met to brainstorm ideas for streamlining the certification process. The staff also discussed the structure of a rule amendment, as required by the bill.
- The staff met to discuss some options for streamlining the current certification system in anticipation of a new wave of licensees. The best idea for reducing the workload on the certification process—having licensees keep copies of their credits and then sending them in at renewal time—would create impediments to implementing other important, long-term changes to the certification process, such as online renewals and electronic payments. Board members agreed that implementing changes that ignore long-term trends would be ill-advised. Deven Morrill from Lucas Tree Experts reinforced the importance of an electronic payment option.
- d. GEA Report—The staff has been revising/updating the electronic version of the 2005 report with an eye toward presenting a preliminary draft at the August meeting.
- Jennings stated that the staff had not made much progress on the GEA report, but hoped to have a draft for the next meeting.

Presentation By: Henry Jennings  
Director

Action Needed: Provide feedback to the staff

## 6. Other Old or New Business

- a. Chapter 22 variance permit issued to Green Thumb Lawn Service—H. Jennings
- Jennings stated the renewed variance was provided for informational purposes only.

- b. Follow-up to Chapter 29 variance permit granted to DuBois Contracting at the June 3, 2011, Board meeting—H. Jennings
  - Jennings alerted Board members that—as a follow up to a question that arose at the June 3, 2011, meeting—Fish had tracked down a document from the Army Corps of Engineers that specified vegetation management guidelines for floodwalls, levees, and embankment dams.
- c. Other?
  - Jennings introduced Sherry Howard to the Board. Sherry was recently hired to fill a vacancy in the field staff centered in Penobscot County.

Eckert alerted Schlein to a news article about the state's Mountain Division railroad line and the controversy about the use of herbicides adjacent to the rail trail.

7. Schedule and Location of Future Meetings

July 15, August 26, October 7, 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 reported that the tentative December 16 meeting date would allow for the rule amendments to be adopted in time to become effective before the January 1 deadline. No other dates were added.

8. Adjourn

- Jemison/Eckert: Moved and seconded that the meeting adjourn at 11:59 AM.

In Favor: Unanimous