



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

WALTER E. WHITCOMB
COMMISSIONER

HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

March 1, 2013

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

MINUTES

Present: Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson and Bohlen

1. Introductions of Board and Staff
 - The Board, Assistant Attorney General Randlett and staff introduced themselves.
 - Staff present: Jennings, Connors, Hicks, Schlein, Tomlinson, Bills
2. Public Hearing on the Proposed Amendments to Chapters 20, 22, and 51

The Board will hear testimony on the following proposed amendments to three rules:

- **Chapter 20—Special Provisions:** The amendments to Chapter 20 would relax the requirement for government entities to obtain the permission of each individual landowner prior to conducting public-health, vector-control programs. The amendments would require public notice before any program is conducted. Landowners or occupants would be able opt out of ground-based control programs and certain sensitive sites would be excluded from aerial programs.
- **Chapter 22—Standards for Outdoor Application of Pesticides by Powered Equipment in Order to Minimize Off-Target Deposition:** The proposed amendment would exempt government-sponsored, public-health, vector-control programs from this chapter when the Maine Center for Disease Control and Prevention (Maine CDC) recommends control of disease vectors, since many of the requirements of this chapter would be impractical.
- **Chapter 51—Notice of Aerial Pesticide Applications:** The proposed amendment would exempt government-sponsored, public-health, vector-control programs from this chapter when the Maine CDC recommends control of disease vectors, since public notice requirements under this circumstance would be dictated under Chapter 20.

Katy Green (MOFGA) (also submitted written testimony)

- Questions the efficacy of spraying mosquitoes to prevent disease
- Would like the Board to do more outreach on how people can protect themselves
- Any person should be able to opt out for any reason

- Government-sponsored spray programs should not be exempted from entire chapter e.g., in Chapter 22: monitoring of wind speeds, positive identification of sites
- Hope protection of organic farms will be included in rule; prefer anyone be able to opt out, but if not, then at least organic farms
- MOFGA has been working on mapping organic farms; it's unclear how the mapping will be managed and who will maintain the maps
- Would like Board policy to be available for review and comment soon
- Concerned that Maine does not have enough data about mosquitoes and virus presence and we are putting the spraying ahead of monitoring

Jody Spear (also submitted written testimony)

- Spray programs are ineffective
- Pesticides are dangerous for the environment, especially for pollinators
- Organic farmers should be able to opt out of aerial spraying
- Maine should not “come into line” with other states, but should lead the way by having a policy that is less damaging to the environment
- Granger asked if there is any way to conduct a spray program and protect the pollinators and Spear replied that there is not

Dave Bell, Maine Blueberry Commission (also submitted written testimony)

- Concerned about potential residue on fruit, making it unacceptable to overseas customers
 - Would like organic farms to be named as sensitive sites to be avoided
 - Looked at cranberry study done in Massachusetts, but because the samples were taken 3–5 days after spraying, can't be sure there would be no detect the day after spraying. Would like research on the materials most likely to be used.
 - Concerned that the way the rule is currently written it would require only a “reasonable effort” for ground-based spraying. Needs a stronger requirement to avoid application to commercial fruits, especially near suburban interfaces.
 - For aerial spraying the “extent feasible” is not adequate to provide protection. Section should be strengthened.
 - Wild blueberries are only sensitive near harvest. Would like to see research on the timing. If the materials biodegrade in 24 hours then they could postpone harvest for one or two days, but if it takes longer, couldn't postpone for five days, would lose harvest.
 - Shouldn't be exempt from standards in Chapter 22: equipment, weather, identification and recording of sensitive sites; some sections would have to be modified, but most should not be exempted.
 - Also shouldn't be exempt from standards that protect sensitive sites.
- Jemison remarked that with the products made for this purpose, and with the small amount being used, that it seems unlikely there would be any residue. He suggested the companies must have already done studies on the breakdown. Hicks said that there are studies on residues and on breakdown, but that the residue standards are different for the U.S. than for other customers. Bell said that the international clients prescribe what can be used and what can't be used. If a material is on the product it will be rejected.
 - Eckert asked if there are any biological products available. Hicks replied that there are for larvacides, but not for adulticides. Larvacides are specific to species of mosquito.

- Bohlen pointed out that any adulticide spraying will be done in late summer/early fall, which is key harvest time for many things. Hicks said that there are tolerances for most commodities for most of the products likely to be used and that the rates used for mosquito control are much lower than those used in agriculture. Bell said the issue for international customers is not a tolerance, but any detect.
- Granger asked if there is any confidence that the buffers set for agriculture aerial spraying are enough to protect crops. If the idea is to use small droplets, is there a chance they will come down off target? Bell said rather than going the traditional buffer route they'd rather know how long it takes for the products to biodegrade; if growers could be assured that there wouldn't be any detectible residue, it wouldn't be ideal, but it would be manageable. Doug Bowers of Maine Helicopters said that there is a lot of research on residues, for instance on Washington cherries. There are a lot of mosquito-control programs which include aerial spray programs over large areas. The intention is for the product to not reach the ground; if it does then it's not doing its job. He suggested the Board look into some of the studies that have been done.

May Linda Rapelye (also submitted written testimony)

- Would like organic to be able to opt out
- Wonders what happens to the pesticide when it kills mosquitoes in the air; do the mosquitoes, along with the pesticide, drop into the water?
- Thinks treating larvae with Bti is more effective and would like to see it made possible
- Hicks said that there is a longstanding discussion with DEP about this. There is a general permit for municipalities but individuals can't get a permit unless they can prove their wetland doesn't empty into Waters of the State.
- Eckert suggested that a group of organic farmers might make a presentation to the Maine Vector-borne Disease Working Group.
- A Board discussion ensued about the evolution of the emergency clauses in Chapters 22 and 51. The Board recognized that when those clauses were adopted, the primary concerns were about severe pest damage, as opposed to vector-borne diseases. Similarly, when Section 6 of Chapter 20 was written, the Board did not contemplate the prospect of wide-area public health spraying, and how state laws generally affect such projects. Dave Bell pointed out that the Clean Water Act conflict is still looming as a significant impediment to wide-area spray programs, especially aerial programs. A bill is pending before the Legislature that will allow DEP to write a General Pesticide Permit.

3. Minutes of the January 18, 2013, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- **Eckert/Granger: Moved and seconded approval of the minutes as amended to include Jemison's revisions to comments made during the discussion of Bt corn.**
- **In favor: Unanimous**

4. Presentation about the Maine Integrated Pest Management Council and Discussion about Possible Collaboration

Public Law 2001, Chapter 497, established Maine's Integrated Pest Management (IPM) Council which, by statute, must contain 11 members representing a diverse range of pest management and public interests. The Council has two coordinators, one from the Department of Agriculture, Conservation and Forestry, and one from the University of Maine Cooperative Extension. The Council is charged with facilitating, promoting, expanding, and enhancing IPM adoption in all sectors of pesticide use and pest management. Ronald Lemin, the Council Chair, will provide an overview of the Council's activities and discuss areas in which the Board and Council might work together to promote IPM.

Presentation by: Ronald Lemin
Chair, Maine IPM Council

Action Needed: Determine whether there are opportunities for collaboration

- Ron Lemin gave an overview of the Integrated Pest Management Council (see March Board meeting packet). There followed a discussion about IPM certification for applicators. Jemison asked about a separate category for IPM. Lemin pointed out that the Maine BPC does not allocate credits to categories. He said that Massachusetts has an IPM exam in addition to the core exam and one has to pass both in order to be licensed.
- Bohlen asked how the Council managed with no budget for support. Lemin said it was all done by volunteers; when they get a grant, such as the one from the BPC, they use it for things like the website (Got Pests?). They man booths at shows and hand out brochures.
- Flewelling asked if they were affiliated with Cooperative Extension and Lemin explained that it was established in statute as an independent body with the mission of promoting IPM. Kathy Murray from the DACF and Jim Dill, from UMCE are the co-chairs and the other members have to be jointly appointed by DACF and UMCE.
- Bohlen said that there needs to be more discussion and suggested it be scheduled as a topic at a Board retreat.

5. Section 18 Emergency Registration Renewal Request for HopGuard to Control *Varroa* Mites in Managed Honey and Commercial Bee Colonies

The Division of Animal and Plant Health in the Maine Department of Agriculture, Conservation and Forestry is requesting that the Board petition EPA for a FIFRA Section 18 specific exemption for use of HopGuard (potassium salt of hop beta acids) to control *Varroa* mites in managed bee colonies. State Apiarist Tony Jadcak is seeking approval for use of this product, which provided consistent control against *Varroa* mites during the last season, and is an important alternative in resistance management and organic honey production. He points out that a healthy bee keeping industry is needed to support Maine agriculture and that this product is essential to honey production and commercial bee operators. The request is supported by the registrant, BetaTec Hop Products, a wholly owned subsidiary of John I. Haas, Inc. Executive President Lloyd Schantz stated the company is in the process of pursuing a full FIFRA Section 3 registration with EPA.

Presentation By: Mary Tomlinson
Pesticides Registrar

Action Needed: Approve/deny request to petition EPA for a Section 18 Specific Exemption registration for HopGuard for use with bees.

- Tomlinson explained that this is a renewal of the registration that was approved last year. The staff had to include an amendment to show what has changed: the number of colonies to be treated and amount to be used.
- Tony Jadczyk, State Apiarist, said that the only difference is that they will start earlier this year, so they will do six applications instead of three like last year. He said that he did see some adverse effects on the bees and that has been brought to the attention of the manufacturer; they said no one else had reported anything. Jadczyk said he thought the issue was that when the bees are clustered really close together because of cold they may get a toxic dose. The strips have a bad smell, which is good because it makes beekeepers aware; when things have a smell, people respect it a little more. Jadczyk evaluated close to 1,600 hives and found good efficacy. They are reformulating the strip; the old one works two to three days, so required repeat applications; new formulation will hopefully last 10 to 14 days. The strip is cardboard, so if the beekeeper doesn't remove the strip the bees do it for him. He said it works really well, and is a really good price.
- Eckert asked if the company was moving toward full registration. Jadczyk said they are working on it, but the scientist at Rutgers is overworked, so it is not moving as fast as the company would like.
- Morrill questioned why the label states that exposure may cause eye irritation, but the only PPE requirement is for gloves. Jadczyk replied that the beekeepers are wearing veils anyway. In hot weather there will be volatilization, so he mentions in lectures that applicators need to be careful of that.
 - **Granger/Eckert: moved and seconded to approve the registration**
 - **In favor: Unanimous**

6. Section 18 Emergency Registration Request for Apivar (Amitraz) to Control *Varroa* Mites in Managed Honey and Commercial Bee Colonies

The Division of Animal and Plant Health in the Maine Department of Agriculture, Conservation and Forestry is requesting that the Board petition EPA for a FIFRA Section 18 specific exemption for use of Apivar (Amitraz) to control *Varroa* mites in managed bee colonies. State Apiarist Tony Jadczyk is seeking approval for use of this product with its different mode of action to aid growers in controlling this pest. The request is supported by the registrant, Arysta LifeScience America, Inc.

Presentation By: Mary Tomlinson
Pesticides Registrar

Action Needed: Approve/deny request to petition EPA for a Section 18 Specific Exemption registration for Apivar for use with bees.

- Tomlinson gave an overview of the request which is a new Section 18 for registration.

- Tony Jadcak, State Apiarist, explained that this product is a synthetic and has a different mode of action than HopGuard (see item 5). It was registered from 1987 to 1992 in a 10-percent formulation and has been used globally for decades. The two synthetics currently being used don't work anymore, and this material doesn't seem to develop the same resistance. It works at a 3- percent formulation, and hopefully registering this will reduce the use of unregistered products. Because it was pulled off the market in 1992, there is no tolerance, but one needs to be established because the U.S. is importing honey from around the world where it is in use.
- Hicks said she thought a tolerance is forthcoming from EPA. Jadcak said it is not allowed to be used during honey production. It is being phased out on some animals, still being used on dogs. Primary use was tick control on hogs and cattle.
- Bohlen asked why the label contained a precautionary statement about surface water but there was no mention of that concern on the MSDS. Hicks said that was standard language on all new products, but she will look at aquatic data. Jadcak said it breaks down very quickly.
- Jadcak explained that it was pulled from the market because there was a class-action lawsuit; it had nothing to do with adverse effects, but rather because it was the early days of *Varroa* mites and once a hive reached a certain point it was going to crash no matter what you did. Lots of keepers treated their hives and the hives still crashed, so they initiated a class-action suit; the company pulled rather than fight.
- Bohlen asked about resistance management. Jadcak said it has been used in Japan since the early 1980s and there are some reports of resistance, but so far none in France or South America.
 - **Eckert/Flewelling: Moved and seconded to approve registration**
 - **In favor: Unanimous**

7. Consideration of a Chapter 29 Variance Permit Request from Southern Maine Forestry Services, Inc., to Control Invasive Plants in Scarborough, above the High-Water Mark Adjacent to the Ocean

Chapter 29 allows the Board to grant variances from the 25-foot setback required from surface water under Section 6 of Chapter 29. This request is to control areas of honeysuckle and Asiatic bittersweet above the high-water mark next to the ocean in Scarborough. The target areas are larger than Board policy allows for spot treatment. The applicator proposes to use a motorized backpack mist blower and a hand-powered backpack which allows foliar treatments that minimize herbicide drip. The Board will now consider this request.

Presentation By: Anne Bills
Pesticide Safety Educator

Action Needed: Approve/disapprove the variance request

- Bills gave an overview of the request and explained the Board needed to review it because this is the first request for a variance for this purpose.
- Morrill asked if there was also a request for a variance from Chapter 22 (drift). Jennings said that that would only come into play if they haven't mapped the sensitive areas, and in this case they have mapped them.
- Eckert asked for some clarification on the map: how long is zone one?

- Eric Grove, the applicator who requested the variance, replied that the area is 700–800 feet long, but only about 200 feet needs intensive treatment. Back away from the ocean there is a substantial volume of invasive plants to be controlled. Eckert asked how much is marshland. Grove said that there's a small section, but that there are no invasives there. In the back part of the property there is some wetland and they might treat at some point, but not part of the current contract.
- Jemison asked about the choice of Garlon 3A; it seems like a formulation designed for wetlands, but it might be more mobile; it has aquatic uses. Hicks said that it is one of the herbicides reviewed for control of invasive plants in lakes for DEP and that it is a product for which they would give a general permit. Ron Lemin said the other option would be Garlon 4, which has oils and other ingredients that should be kept out of the water. Garlon 3 pretty much stays, not much leaching. Jennings said he had the same question, seems that if Garlon 4 gets in the water it will head right to the sediment. Grove said the other reason for choosing Garlon 3 over Garlon 4 is that the homeowner wants to avoid killing native plants. There is a very early season application window for making a single treatment when honeysuckle is the only plant leafed out. This approach can result in very selective control. Then there would be a follow-up application in late May/early June when bittersweet is leafed out, but in a smaller area. They want to be able to use a motorized mist blower so can they cover the area in a short time frame when the weather is appropriate.
- Morrill said he is very familiar with this property and there is nothing there but honeysuckle and bittersweet; he asked what the homeowners' goals are. Grove said once you get away from the shore it is predominantly native winter berry and juniper. He said he has not met the homeowners but that the stated goal is to make it more natural, improve for native fauna.
- Morrill said he was concerned about the vast amount of vegetation being removed; it is rocky, then a cliff, then barberry, at 25 feet back it's all honeysuckle. Bohlen said that 30 to 40 percent of the shoreland in Casco Bay is like that. They're getting a lot of inquiries about how to control invasives on islands; there is so much that trees have been killed; there is a huge volume of plant material to be removed. What does IPM look like on something like this?
- Grove said the homeowner had thought about cutting and chipping, but there's a good chance the volume per acre of material would exceed label rates doing cut-stump treatments.
- Morrill said that he applauds Grove for submitting a variance request and the amount of thought that went into it. He asked about erosion, given the amount of material to be removed. Grove said they decided to leave the dead material there to prevent erosion. He said there is only a small area where it is just invasives and everything needs to be killed, and one is the mowed meadow. Most of the area has some amount of native plants that will grow in.
- Stevenson asked whether Grove thought he would be back in a year or two to request another variance because the invasives had grown back. Grove said there are two small places where he would expect that, and he believes it will be necessary to do more broadcast treatments down the line. He would inspect every year and treat when plants are big enough, but have not gone to seed. The problem, he explained, is that there is a huge amount of seed sitting in the soil.
- Granger said he would like to see some experimentation be a condition of approval. If this is a widespread problem and we're going to see a lot of requests for variances, maybe we could find some ways to attack the problems on a more widespread basis. Grove said that the landowner would very much like to use this site for research and documentation, and if the Board or anyone else would like to do some outreach or credit workshops, they are interested in that.
- Bohlen said that a lot of land trusts are concerned about this issue; many people have tried physical control, but it doesn't work completely; seed pools are the problem. He would like to figure out how to get some knowledge on how to do this.

- Morrill expressed concern about using a mist blower after the first application, close to the ocean. Grove asked if he would be okay in the mowed meadow that goes right down to the ocean; bittersweet is the primary issue there. Morrill said that using the backpack sprayer in the spring is a great idea because the window of opportunity is so short and the area large. After that he would prefer that a hand pump be used; he noted that there are apt to be inversions near the ocean.
- Bohlen remarked that the worst thing that could happen is for there to be a major spray event and then have it not be effective because there wasn't follow-up. He thanked Grove for presenting a thorough package.
 - **Morrill/Bohlen: Moved and seconded to grant the variance with the condition that the mist blower be used only for the first application in the spring.**
 - **In favor: Unanimous**

8. Consideration of a Consent Agreement with Essex Power Services, Inc., of Boston, 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 the spillway planks at the outlet dam on Messalonskee Lake, which resulted in a direct discharge to Messalonskee Stream.

Presentation By: Raymond Connors
 Manager of Compliance

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

- Connors gave an overview of the case. He explained that the person didn't finish the job because a citizen noticed right as he was beginning. The applicator told the Board inspector he was treating poison ivy.
- Flewelling asked if he would have been able to spray the dam if he had the proper permits. Connor said it was unlikely because, with the method of application being employed, it was likely that some material went into the water.
- Flewelling asked if there are herbicides for water. Connors said that a permit from DEP is required, and it is unlikely they would give it for this purpose. He explained that this was not a terrestrial application, but on the dam structure.
- Morrill said that he did not think a dam had been defined as not being a terrestrial application. Jennings said that it was actually the spillway boards with water going through them.
- Connors said that the property was gated with no public access, so a license wasn't needed. He couldn't be sure that it was poison ivy because it had all been pulled before the inspector arrived. Hicks pointed out that the product being used was labeled for residential, not industrial, use.
 - **Flewelling/Morrill: Moved and seconded to accept consent agreement**
 - **In favor: Unanimous**

9. Consideration of a Consent Agreement with J & S Oil Company of Manchester

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 an unlicensed application of a “weed and feed” product to the turf areas around the Farmingdale store.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors gave a summary of the case and explained that although this was on their own property, unlike the previous case, it was open to the public, so an applicator’s license was required.
- Flewelling asked if they were following the label and Connors replied that they were following the label and the rate was correct.
- Granger asked how it is determined whether an area is open to the public. Connors said that has come up many times. One example is GE in Bangor: they asked if they could use Roundup along a fence line without a license; we said yes because customers did not go there for any reason. Another example is landlords: they can treat a vacant apartment, but they must be licensed to treat common areas, inside and outside.
- Granger asked whether posting the grass with a “Keep Off” sign would make the area considered inaccessible. Jennings said that it could get sticky; he cited an example where a car dealership sprayed a ditch near the road—is the public invited into the ditch? In general, if a property is open to the public and the public is not prevented from going into the area in question, then it is considered open to the public. The Board has invested a fair amount of time answering this question; Chapter 10 has a lot of verbiage trying to answer that question.
- Morrill asked if the area was posted. Connors said that it was not; generally someone who isn’t licensed as an applicator is unlikely to post, but that was not the major part of the violation.
- Eckert remarked that the Board has attempted to do outreach to let people know that a license is required and asked whether another effort should be made.
 - **Morrill/Granger: Moved and seconded to accept consent agreement**
 - **In favor: Unanimous**

10. Discussion About Offering Commercial Certification Exams in Spanish

At the January 18, 2013, meeting, the staff alerted the Board that it received a request to assist Spanish-speaking individuals with the commercial certification exams by offering the exams in Spanish. After some discussion, the Board directed the staff to research the feasibility of translating commercial Maine pesticide exams into Spanish. The staff surveyed other states about whether they offer exams in Spanish and evaluated some of the practical considerations. The staff will present its findings and discuss what the most appropriate next steps might be.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to staff

- Jennings explained that the issue is how to best help individuals for whom English is not their first language. Many states have larger Spanish-speaking populations than Maine; Fish sent out a questionnaire and received 37 replies. The data is summarized on the chart (see March Board meeting packet). There was a lot of interesting feedback received, other things to consider that we hadn't thought of. The staff discussed the issue in depth, along with Randlett. Some concerns arose, including the fact that Spanish is not one language, but a lot of dialects. The staff would like to try some things first, and if they don't work, then we can revisit the idea of translating exams. We could try to work with the Migrant Health people to do some tutoring. Currently if someone flunks a test three times, they can review the exam in person with a staff member, focusing on the questions missed; 90 percent of the people who do this, pass.
- Morrill thanked Fish for the information; it educates the public as well as the Board. It's important just to be aware that people are having trouble and the Board is offering to help.
- Eckert noted that some Board members have not seen the exams. She noted that people from other countries have told her that the most difficult thing about taking exams in English is the nuances in the multiple choice questions. A translator might be able to help make the questions clearer.
- Morrill said that his intention was not just to focus on Spanish; a lot of Agricultural Basic license folks will be licensed in the next few years and a lot of them may have trouble with testing.
- Jennings said that some legal questions came up that made the staff nervous. For instance, if we do it for one language, do we have to do it for all?
- Eckert said that she was suggesting that someone for whom English is not the first language, but who is still fluent, look at the exams to make sure they are clear. She said that there is a person with the Migrant program who comes to the clinic with migrants who speaks English very well.
- Jennings said we could consider having someone from the Migrant program give the training in Spanish, but it would be a bit of a task teaching them so they could teach about pesticides.
- Bohlen pointed out that legally binding labels are in English; there is a necessity to know enough to understand the technical parts. He asked if there was anything on the exams that tests the ability to understand the label. Jennings replied that the core exam has 10 questions relating to an actual label. Bohlen said that if we concentrated too much on making the exam easy in a different language he would be worried about their ability to understand the label.
- Eckert said that we're probably talking about people who speak some English, but don't read or write it well. Jennings noted that one concern we heard from other states was once the exam was available in Spanish, there was an expectation that they didn't need to be able to speak English.
- Tomlinson pointed out that the EPA does not review the Spanish translation labels; they say they must be accurate, but because there is no review, they are not legally enforceable.
- Eckert asked Randlett if there would be a legal requirement to provide in other languages. Randlett said there is no policy, but there is some general applicability of federal law that you need to make reasonable accommodations. There are legitimate reasons why there could be limitations placed on providing exams; where the Board is federally funded, under federal law Title 6, there is some requirement to make them reasonably available; Henry's suggestion covers that.

- Granger said that Jennings has suggested tutoring; some in the blueberry community were resistant to that at first because they were concerned about how much time it would take, but they have agreed to try it and see if it works. There was a plan to put forward some legislation, but that has been pulled; the opposition to tutoring has vanished.

11. Discussion of Board Policy Relating to Staff Participation in Municipal Meetings

At the January 18, 2013, meeting, the Board discussed staff participation in municipal meetings where local ordinances are discussed. Prior to the meeting, Department management worked with the staff to formulate a position in which the staff would refrain from participating in such meetings. Instead, the staff would offer technical advice in response to specific questions, and provide overview presentations to municipal organizations. This position was based on the reasoning that, (1) the staff should not risk creating the perception that it is meddling in a local rule issue, and (2) there are approximately 492 municipalities in Maine, so if the staff participates in ordinance discussions in one municipality, it should be prepared to participate in all of them. This position then led to a brief discussion about who directs the staff in such matters. The Board will now discuss appropriate roles with respect to staff supervision and whether participation in municipal ordinances is an area in which it should take a position, and if so, what that position should be.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to staff

- Jennings explained that the staff has received requests to go to different towns to participate in discussions about town ordinances; in general, staff and the administration are more comfortable with trying to participate in broader meetings, such as municipal town managers' association meetings, to provide some overview information such as: what is a pesticide; what are the state laws; what does a town need to do in order to pass a municipal ordinance. The staff would prefer to give technical information and stay out of the policy discussions. The staff is prepared to develop a web page specifically about municipal ordinances and the information the Board can provide. It is also willing to meet with town managers and selectman, to answer questions, but the staff is reluctant to get involved in a town meeting where it is difficult to keep separate what is technical vs. what should the town policy be. Historically the Board has told the staff what its priorities are, but hasn't told them specifically how to address the priorities. Our sense is that there's a concern that towns are not getting accurate information; we can try to make sure they have that information, but there are certain forums which are a no-win situation. If Chip Osborne is giving a presentation on organic landcare, there's not much we can say.
- Eckert asked if a town could ask for information about what they can include in an ordinance. Jennings replied that they sometimes have questions about whether things conflict with state law; they tend not to know what the laws are already and they don't want to do something that conflicts with current law. Technical information can be broader.
- Eckert noted that the staff gives technical assistance for other topics; Lebel prepared information for the City of Augusta about herbicides; made them feel that we were interested in their concerns. Jennings said that they asked for information on glyphosate; that's not a policy issue, that's technical.

- Stevenson said that a lot of towns probably don't know the Board exists. He asked if there is some kind of outreach that can be done to ensure that towns know there are rules in place. Jennings replied that, from an efficiency point of view, it's better to work through associations and get a web page up with good information as well as copies of existing ordinances.
- Bohlen suggested keeping track of technical questions that come up consistently that could be highlighted as things that every town should think about regardless of the outcome.
- Dave Struble noted that this has happened before with forestry laws and shore land zoning laws; the question is, what is unique to pesticides? If you're considering an ordinance, these are the things to consider. Then let them fight it out.
- Eric Seamen said that he is on his town's planning board and their resources are the agencies. One of the Board's missions is to educate; the biggest thing you're going to run into in towns is ignorance about pesticides. The staff could develop an FAQ document, give the facts, what a pesticide is, how they are used, etc. Make this information available to municipalities so they can hand it out to residents. Also, certain laws supersede what towns can do; Seaman suggested that the staff create a pamphlet that helps towns.
- Jesse O'Brien said he was at a meeting in Gorham, which was a group from Gorham, but not a town group. The group pushing for an ordinance in Scarborough was not a town group, but they had their point of view. Last month the town manager had a long discussion with Jennings and was worrying about the town's assets; the deck was stacked against them, but the town made a decision without an official from the State present. O'Brien thought there should be a brochure about how pesticides are used, focusing on the IPM process.
- Granger stated that a lot of the discussion is about anticipating what towns will need; this is true to a point; there are frequently asked questions, and we can get that information prepared, but when you get to a town meeting things will come up that are not answered on fact sheets. Some questions can be answered later, some not, because a vote will be made right away. There is a legitimate concern about sticking our nose in towns' business, but we rely on Dr. Hicks and I have faith that we can send her and she would not take a position for or against. As the Board discusses what kind of guidance it wants to give, it shouldn't limit the ability to share the expertise we have.
- Flewelling disagreed with Granger, saying that the Board has enough responsibility without looking for more; there are other resources, such as Cooperative Extension; this should not be the only place that towns look for information.
- Bohlen said that the real political challenge revolves around the reality that these questions aren't about facts, but about perception. It is difficult to step in and say we are the experts and have them listen; it gets political very quickly. What set of facts do they accept? He would be hesitant to give details; the line between science and politics is unclear.
- Hicks agreed with Bohlen, saying that nine times out of ten, when asked questions she has to say that she needs to do more research to come up with something scientifically valid. There are many people out there who don't believe in science. Preparing for a town meeting takes a lot of time and there's no way to prepare for every question that will come up.
- Eckert said that if we can identify questions that come up over and over it would be good to have a web page or have answers prepared that can be given over the phone. There may be some really specific things and we have to decide whether we're going to answer them; some you can't win, such as "Are GMOs safe?" But some specific things we can answer: "Do the pesticides sprayed in blueberry country cause lung cancer?" We did the best we could but didn't satisfy everyone. Hicks stated that you can't win those kinds of arguments; all you can do is say that the data says this and we'll send it to you.

- Bohlen stated that it's not viewpoints, it's a different construction of what the question is: Is this pesticide dangerous vs. is this pesticide present? There are different perspectives on appropriate pesticide policy, but the public generally isn't asking scientific questions.
- Morrill noted that a lot of this focusses around the turf and ornamental industry. Unfortunately, at this stage of the game there aren't resources at Cooperative Extension or anywhere else to provide technical resources. Towns are saying they need information from someone; if it isn't us, who should it be? There has to be some sort of resource available. University of Massachusetts, University of Rhode Island, Cornell, have great turf programs; expertise is available. Nothing in Maine. It's not appropriate for staff to get thrown in the middle of the fight, but maybe trying to meet with town officials is appropriate; they could meet in Augusta and save the staff time.
- Granger agreed that it might be a good idea for town officials to come in and ask questions. We could try that out and see how it works for the Department and the staff. Maybe it depends on how we frame our response. People ask why the Board doesn't respond to requests. We need to change the answer about how the Board does respond.
- Eckert said that there should be a web page that answers a lot of questions; make sure to define pesticides; if you mean herbicide, make sure you say that. Include a way to contact the staff for more information.
- Jennings suggested that staff write up a list of bullets for the next meeting with proposals of what staff should provide.

12. Legislative Update

When the 126th Maine Legislature convened, there were approximately nine bill titles affecting pesticides. The staff will update the Board on the status of the pending bills.

Presentation By: Henry Jennings
Director

Action Needed: Determination if the Board wants to take a position on any bills

- Jennings explained that DEP had submitted a bill which would clear the way for issuing a Pesticide General Permit. He said there is one bill about GMO labeling which is not a pesticide bill. There were potentially nine bills of interest; two are about to be pulled. One bill was about lining up certification requirements for dealers who are also master applications—there were 14 people with this combination; we dealt with it. The other bill was about offering commercial exams orally—which conflicts with federal rules. There is a notification bill; we have no details yet. There is a school bill; the sponsor is trying to steer it to another legislative committee. As soon as these get printed, we will email them to you. There isn't much time between when a bill is printed and when testimony is due. He asked the Board to let him know if they do have a position, and specifically asked about the mosquito bill.
- Morrill and Eckert said they supported the mosquito bill. Jennings explained that the purpose of the bill is to build an infrastructure where we can use IPM and not have to do aerial spraying.
- Morrill said there were questions about vernal pools, tree holes and similar habitat that are difficult to get at with Bt. Jennings explained that that is the EEE mosquito; unless you hire an army of elves to get to the crypts, it would be difficult to use Bt. This is not true of WNV mosquitoes.

- Dave Bell mentioned that the conflict with the Clean Water Act has not been fully addressed in Maine yet. Mosquito spraying may require an NPDES permit. What is the NPDES permit going to look like? Obviously, DEP has jurisdiction. What's done through the Board and done through labeling are the most effective means of addressing water quality concerns. Getting a general permit from DEP is one model. Another model is to have all the federal requirements on the label, etc., and then there could be additional rules and BMPs at the state level. Most of us think that things are pretty well regulated here in Maine. We would prefer not to have two different sets of rules and regulations. Obviously, the Legislature has a say on how this might go, but with your experience is it preferable to have all the regulations of pesticides with this body and get DEP to buy in.
- Randlett said he wasn't sure that would be possible, because DEP has responsibility for water, and the Board can't shift jurisdiction from DEP to any other entity.
- Hicks stated that, historically, DEP was not comfortable with labels or with pesticide rules. When DEP was looking at pesticides for use on aquatic invasive plants they asked for information way above and beyond what EPA required for its risk assessment.
- Bohlen stated there are a lot of other areas where a general permit has been created. Maine will get there eventually, but there are a lot of steps to go through.

13. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Henry Jennings
Director

Action Needed: Nominations and election of officers

- **Eckert/Flewelling: Moved and seconded to keep the current officers**
- **In Favor: Unanimous**

14. Other Old or New Business

- a. Letter to individuals with both a Restricted Use Dealer and Commercial Master Certification regarding certification periods—G. Fish
- b. Other?

15. Schedule of Future Meetings

April 12, May 17, June 21, and July 26, 2013, are tentative Board meeting dates. The Board will decide whether to change and/or add dates. The July 26 meeting is slated to take place in Unity.

Adjustments and/or Additional Dates?

- **Added September 6 as a meeting date; agreed to make it a planning session and include a lunch break. Added October 18 and December 6 as meeting dates.**

16. Adjourn**NOTES**

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Paul Schlein, Public Education Specialist, at the Board's office. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.