



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND 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

May 11, 2012

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

MINUTES

8:30 AM

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

1. Introductions of Board and Staff

- The Board, staff, and Assistant Attorney General Randlett introduced themselves.
- Staff present: Jennings, Fish, Hicks, Connors, Schlein, Tomlinson, Bills

2. Minutes of the February 24, March 12, and March 30, 2012, Board Meetings

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Eckert/Granger: Moved and seconded approval of all three sets of minutes.

In Favor: Unanimous

- Jennings stated that the staff is seeking a more efficient method for developing the minutes and asked whether the bulleted format used in the March minutes was OK with the Board and do they prefer to have discussion captured or just outcomes.
- Ravis: Likes bullets. Gives Board members more detail, less stress for the staff. Like to know who says what.
- Eckert: Like having discussion captured to help remember who/what was said.
- Bohlen: Capturing who said what is time consuming. Attributions of who said what not as important.
- Jemison: Key are points, overall decision. Less who said what.
- Stevenson: Likes the bullets. Keep it simple.

3. Discussion of Potential Amendments to BPC Rules

Public Law 2011, Chapter 510, repealed the statutory mandate for the deposit system for restricted use pesticide containers. In order to implement the intent of the legislation, the Board will need to repeal Chapter 21 of its rules. In addition, after reviewing the Board's report pursuant to Resolve 2011, Chapter 59, covering the use of Integrated Pest Management at schools, the Joint Standing Committee on Agriculture, Conservation and Forestry encouraged the Board to pursue rule amendments recommended in the report. Finally, there are a variety of other minor rulemaking topics that the Board has discussed in recent years. The staff will briefly discuss repeal of Chapter 21, recommendations for updating Chapter 27, and other potential rulemaking changes. The Board will discuss its preferences and determine whether and when to hold Public Information Gathering Workshops.

Presentation By: Henry Jennings

Action Needed: Determine what rule changes the Board wishes to pursue this year

- Jennings gave an overview of rulemaking. He said that consensus had already been reached to repeal Chapter 21. He noted that we would have to schedule the rulemaking carefully for this year so that the repeal goes into effect by January 1, 2013. The Board had also already decided that it would like to make changes to Chapter 27, the school IPM rule, and noted that the Legislature did support recommendations for changes to Chapter 27 that were included in the report to the Legislature. He said that the Board generally tries to lump other rulemaking, such as general housekeeping of rules, because it is cost effective. Advertising, for example, can be \$1,000 for each ad. There are additional cost savings for public hearings. On the other hand, the paperwork for rulemaking is extensive. He suggested the Board find a middle ground where they deal with perhaps two primary efforts and a couple of minor changes. He pointed out that the list in the Board packet includes potential rulemaking that the Board and/or staff have identified in recent years. Jennings suggested that they don't want to work on all of them because that would become unmanageable for the staff. The public hearing would be confusing and the paperwork would become excessive. It's better to pick some priorities.
- Jemison: Seems like such small changes. Five things in Chapter 10; four in Chapter 27.
- Bohlen: Who is going to want to be at the meetings? If we're doing 21 and 27, tie in rules that they will be interested in. This would lead to hearings that are manageable, but get input from people who are interested.
- Jennings: 26 is a simple change, but it is major substantive and will have to be sent back to the Legislature.
- Hicks: Can we put the change in Chapter 10 instead?
- Jennings: Randlett stated the topic is major substantive, not the rule chapter.

- Eckert: There are a couple things that we'll get public input on, but most are just of interest to us and the regulated community. The repeal of returnable containers should be a slam dunk. Can't imagine anyone complaining.
- Jennings: The public hearing will need to be in September. The staff recommends conducting a public information gathering at the June and July meetings. Chapters 26 and 41 are major substantive.
- Eckert: We will get the most input on the school rule. Pick several other things, but things we won't get huge controversy on to get through.
- Jennings: Changing a fee [in Chapter 32] is major substantive. I have concerns about whether that would get approval right now.
- Jemison: Chapter 31 is mentioned four times, but don't know if it makes sense.
- Jennings: I don't think we'll get permission. Deleting outdated categories is not a high priority.
- Bohlen: It's not affecting anyone on the ground.
- Jennings: You'll need to amend Chapter 50 if you're repealing Chapter 21; it makes sense.
- Consensus was reached to work on chapters 10, 21, 27, and 50.
- Katy Green (MOFGA): How long is an interim policy good for? For example, the one about Chapter 41.
- Jennings: Expressed reluctance to do Chapter 41 now because there is more coming in regard to 41 that will require more changes. Interim can be forever, but a policy is not enforceable.
- Bohlen: Not sure if the policy is going to be adequate.
- Eckert: We should revisit after each growing season.
- Bohlen: We can't get a rule in place this year anyway.
- Fish: That part of the regulation has only been put in play once.
- Jennings: But there may be others that we don't hear about.
- Jemison: If there are problems, let us know [to audience].
- Jennings: We'll be revisiting Chapter 41 at some point anyway.

4. Discussion about Improving the Awareness and Operation of the Notification Provisions Contained in Chapter 28

At its February 24 and March 30, 2012, meetings, the Board decided not to pursue development of an expanded version of the pesticide notification registry. Instead, the Board favored attempting to improve the awareness and operation of the existing notification provisions contained in Chapter 28. The staff is now seeking Board input on how it would like to proceed.

Presentation By: Paul Schlein
Public Education Specialist

Action Needed: Provide Guidance to the Staff

- Paul Schlein pointed out that at two previous meetings it was decided that we should pursue raising public awareness of Chapter 28. He said that the staff needs input and feedback on how the Board thinks we should approach this. In promoting the registry a couple of years ago, the staff did an effective job advertising, but spent \$25,000. However, in his opinion some of the things that didn't cost much, such as sending e-mails to municipalities, seemed to really work, led to posting on town websites. According to a poll, 18% of the population of Maine was aware of registry, which is actually successful according to experts.
- Jemison: Craft something that is eye-catching that can be on town websites. Click and get more info.
- Eckert: Something printable for town offices.
- Granger: I think the message has to be central to how it is distributed. Elements of message should be on posting. Should also be reflected in whatever method is used. Points to include: people have right to be notified; what the distances are; statement about why pesticides are necessary; statement that applicators have a right to use them; statement that pesticides are used by both conventional and organic growers; statement about how notification process works and opportunities for negotiations between growers and those around them. People need to know there's a reason they're being notified and a reason why pesticides are being used. Growers need opportunity to apply without notifying a bunch of people. Balanced and understandable basis. Don't measure success by how many people are on registry.
- Hicks: Should also include home use. If your neighbor is using something you have right to know also.
- Bohlen: Geography is important. Most people who are concerned are not near agricultural users. Don't know how we talk about that.
- Hicks: Active ingredients and use rates are the same for landscape as for agricultural.
- Jemison: From now through summer is the time to get the word out. Expediency is important. Get the message out. Don't want to miss season trying to get something that's palatable to everybody. Get something while we're here today that's reasonable.
- Jennings: This is the type of policy issue that we can e-mail to you for comment and make sure we've addressed everyone's concerns adequately.
- Eckert: Trying to summarize: the outreach should describe what the public's rights are and what their obligations are. You have the right to know, but you have to ask. Your neighbor has the right to apply pesticides, but they must use legal products and they must notify when requested. Each side has a right, but also has some responsibilities. That may be all we can get on one poster.
- Jemison: Three or four bullets.
- Eckert: A few messages and a nice picture. For more info call or go to website.
- Jemison: More info on website. Agree with that approach: rights and responsibilities
- Ravis: Agree, keep it simple.
- Schlein: Community TV
- Bohlen: Create some awareness that this is coming. News coverage because of controversy. Need to think about how to package the product. How do you get it so

- people actually post it? How do we create awareness? Serious marketing effort, how to get free publicity through news outlets. What is available to BPC?
- Schlein: Cable TV network. Opportunity to come on show. Could look for avenues like that.
 - Bohlen: In terms of balance, who are the groups that have an interest/stakeholders and are willing to help get message out? If you do a good job balancing, then more of the stakeholder groups will be willing to share message. Get attention around people who care.
 - Stevenson: We don't want controversy, that's not a balanced message.
 - Schlein: Do we want advertising that costs money?
 - Jemison: I don't think you hit people with television. Hit the big newspapers. If you did something for a newspaper, they could put it on the website, too.
 - Schlein: Banners on newspaper websites was effective. The few TV hits we did get were very effective.
 - Jennings: Is there an allotment that allows us to spend money on this?
 - Schlein: What about a press release?
 - Jemison: Jennifer O'Leary at extension might be able to help. We could get it on the Extension websites, reach a lot of people.
 - Granger: In crafting a message, would it be possible to send to all stakeholders for comment, as well as Board?
 - Eckert: Too much input, the less likely we are to reach consensus.
 - Randlett: Public comment and back and forth really should be done at a public meeting.
 - Granger: I think it's important that we have a public meeting for input.
 - Lauchlin Titus (AgMatters, LLC/Maine Vegetable and Small Fruit Growers): Maine Vegetable and Small Fruit Growers Association would put out your message. If we don't like your message, we'll tweak it. In regards to towns, Maine Municipal Association puts out monthly newsletter. They would welcome content. An article immediately preceding whatever you send out.
 - Schlein: Do they have ads?
 - Titus: Yes
 - Jemison: Sounds good.
 - Dave Bell (Wild Blueberry Commission of Maine): The Board needs to think about short term and long term. For this season, need to move quickly, consistent messages, use all forms of media to get message out. Even with short time frame, you have to get message right first. If you don't get it right, it doesn't matter what you do. If you get it right you can use it for many years. Blueberry Commission would partner with the Board to help get message out. More effective if we get a message that all can agree to. Notion of notification. Should be fairly easy to get a shared message. Maybe get professional help to craft message.
 - Jemison: Not sure there is one message. It may evolve or change over time. Right now, we need to get a message out there. Propose that the staff get something out to Board in a couple of weeks, and distribute within a month.
 - Titus: Keep in mind the regulated community wants to make this form of notification work. For this crop season, we're into it already. If we can make it work, and prove

that it works, and make non-regulated community happy with it, maybe we can forestall more legislation around this issue.

- Eckert: Many ways of hitting this are good. I like radio interviews. Take advantage of them. MPR, other farm shows on other radio stations. Other forums that you can present.
- Jemison: Do you ever do video clips?
- Fish: Could we get Extension to help with that?
- Jemison: I will look into that. I know there is a backlog of things that need to be done.
- Jennings: To your point, we can absolutely move this up the priority list.
- Stevenson: Getting input from regulated community will be more likely to get their buy in.
- Randlett: My only concern is that you are setting policy. Some groups might not have a chance to have input. If you're going to have discussions with interested parties, it should be at a meeting. A draft sent to the Board members is acceptable, but sending it to a broader group would violate the APA.
- Jennings: We can get something together in the short term and get Board members to agree on it. We can bring the topic back to the next meeting and have more discussion. Get something relatively concise that Board members can buy into and then discuss more at next meeting.
- Ravis: Isn't there a short-term message because there have been a lot of changes lately—where do things stand now? There should be a long-term message about notification, but a short term message to clarify where we're at right now.
- Granger: It's not like we're going to have a product before the season starts, it has already started. If we can't send e-mails, get a message and put on the next agenda. Public will be aware because it will be on agenda. I think we should take input at next meeting.
- Jemison: I think we need to get something out before that. We can tweak it at the next meeting. but we need to get something out now. Our decision at last meeting was based on getting something out as soon as possible.
- Hicks: Why don't we draft something, send to Board, what everyone agrees on we send out, then discuss at next meeting.
- Jemison: Some of the fundamentals we agree on.
- Bohlen: Most people are already spraying, most people don't know that. There's a window. "Hey, did you know people are spraying now? It's not too late to get notified." Brief window.
- Ravis: I'm not sure this is about the message of justifying pesticides or trying to encourage people to get notified. Simply about letting people know they have the right to know. Clarify what the status of notification is now—tell them where to go for more information.
- Stevenson: Bulleted, just the facts.
- Randlett: What you need to do today is provide staff with guidance. If you need to, take a vote on what to do.
- Granger: We haven't reached a consensus on whether this is about right to use pesticides or right to be notified.

- Bohlen: Trying to reach a consensus on what balanced means, we don't have consensus on the Board. Can we be unanimous on just what the law is?
- Granger: I cannot support something that is not a balanced approach.
- Eckert: You have the right to know, but you have the obligation to ask. You have the right to apply pesticides, but you have the obligation to use them correctly and notify those who ask.
- Heather Spaulding (MOFGA): I like what Carol said, but I think you have to let people know that the Legislature abolished the registry.
- Jemison: We did send message to those on the registry.
- Eckert: Message needs to be simple for certain types of outreach, but there should always be a way to get more information.
- Stevenson: If you get into talking about abolishing the rule, it may confuse the issue. If we do short term, Board can have input. Bullets. Leave off peripherals. Discuss at next meeting.
- Bell: We suggested to growers that they should reach out to anyone on the registry and ask if they still wanted notification. Some growers are notifying anyone who was on the registry, just as a matter of course.
- Randlett: You could develop a short-term message that gets approved by e-mail and a longer message to discuss at next meeting. The Board staff could be directed to develop a short news piece that informs the public about their right to be notified and their obligation to ask—to be approved by the Board.

Eckert/Ravis: Moved and seconded that the Board direct the staff to come up with a balanced message about rights and obligations and once approved via e-mail send out as a poster.

- Stevenson: How does that fit in with TV/radio?
- Bohlen: I don't think we'll be doing that yet.
- Jemison: Key, for more information, go to Board website.

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

Opposed: Granger

- Granger: Asked the staff to bring something to the next meeting with a broader message.

5. Consideration of a Consent Agreement with Prospect Hill Golf Course of Auburn

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 multiple instances of pesticide applications without having a licensed commercial applicator on staff.

Presentation By: Raymond Connors
Manager of Compliance

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

- Ray Connors summarized the case. There was no master applicator on staff; there were no licensed applicators on staff; records were not kept properly.
- Jemison: They now have a master applicator and are keeping records?
- Connors: There is a licensed applicator, but no inspection has been done, so we don't know about records.

Eckert/Stevenson: Moved and seconded approval of the consent agreement.

- Ravis: It would be a good idea to kind of put these people on the radar to check up on it. He made a recommendation that they get inspected this year.

In Favor: Unanimous

6. Consideration of a Consent Agreement with Atlantic Turf Care of Falmouth

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 a pesticide application on property without the permission of the landowner, and while wind speeds were in excess of acceptable limits.

Presentation By: Raymond Connors
Manager of Compliance

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

- Ray Connors summarized the case. It involved the application of two herbicides to a property in Cumberland, which was in fact not the property of the homeowner who had hired the company. When questioned the applicator also admitted that the wind speed at the time of application was 20 mph.

Ravis/Stevenson: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

7. Consideration of a Consent Agreement with Tripp Middle School, MSAD 52, of Turner

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 misuse of a pesticide in a school kitchen.

Presentation By: Raymond Connors
Manager of Compliance

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

- Ray Connors summarized the case which involved the use of several cans of aerosol insecticide in the school kitchen by an unlicensed school employee.
- Jemison: Is the penalty so low because it's a school?
- Jennings: That and because they took remedial steps.
- Connors: There is no profit motive here.
- Jemison: Good educational tool to use in the future
- Hicks: They also met with DHHS about checking food services. My guess is that it was the propellants that caused the symptoms rather than the active ingredients.
- Connors: We got different stories from different people; hard to get the truth.
- Jemison: I wasn't in favor at first because I felt the amount was too low, but they did have lots of other costs, including hiring a professional cleaning company.
- Connors: Someone lost their job over this, which is pretty significant. The amount started at \$500; it's not a for-profit company.
- Randlett: It was negotiated down based on measures school/superintendent were taking.
- Granger: It would be paid by taxpayers anyway, and they're not guilty.
- Jemison: As long as the school gets it.
- Fish: It will be incorporated into training.
- Bohlen: We see this in a lot of consent agreements. Critical steps not being taken in many cases, for example, not reading labels, not aware of rules. It raises the question about whether enforcement is effective. Are there mechanisms we should be taking to get word out to people who don't know there are regulations that affect them?
- Fish: I think it's becoming more of an issue with budgets getting lowered. People aren't going to training. We do trainings, but don't get big attendance. They have so much to do, they don't go. Training is not required.
- Eckert: But this person did get the training and still didn't follow the rules.
- Jennings: She knew there was an exception for stinging insects, thought she was OK, could save the school a bunch of money.

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

In Favor: Unanimous

8. Consideration of a Consent Agreement with Purely Organic Lawn Care, Inc., of York Harbor

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 fraudulent application of pesticides.

Presentation By: Raymond Connors
Manager of Compliance

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

- Ray Connors summarized the case. He noted that the company does not agree with the findings in the consent agreement (CA), but has agreed to pay the fine.
- Jennings: The staff invested a lot of hours in the case over the course of two years. The premise to the company sales pitch was that weeds would be controlled by a proprietary product manufactured by company. The staff viewed the ingredients as not being effective in controlling perennials, and you can't affect the broadleaf weeds without burning grass. The staff asked for proof that it works, but never got any. Northeast turf experts were consulted. The staff never found anybody who believed it was plausible. Paragraph 85 lays out the fundamental premise of how the company sold its service. Many people are looking for the perfect lawn without any environmental baggage. In paragraph 86, the staff states its conclusion that there never was a proprietary, organic product that selectively controlled broadleaf weeds without adversely affecting the grasses. The staff position is that the whole program was sold as something it wasn't. In statute there is a prohibition against fraudulent application of pesticides. The staff believes the company told its customers they used one thing, but applied something else.
- Ravis: Settling for lower amount as an inducement to settle, what's the alternative?
- Randlett: It took a lot of effort to get them to sign CA. The only alternative would have to be litigation. Fraud is a difficult allegation to prove—knowingly misrepresenting the facts. With so many variations in facts, lots of witnesses. Hard to prove.
- Ravis: I'm not comfortable with this. No evidence that they got the message and that they're changing their practice.
- Jennings: We refused to renew the company license last year. In order to renew, they had to agree to a series of conditions, and they put a new person in charge of the service sector. I have a degree of comfort in terms of that person that they've changed what they're doing as far as what they're putting down and what they're selling. We made it a priority to get out and check what they're doing. Trying to look over their shoulder.

- Ravis: When did the handout come out? [referring to Purely Organic letter to customers]
- Randlett: I guess it was put out by Reinertson.
- Jennings: It was put out by someone in the company, and someone else forwarded it to us.
- Stevenson: Does anyone else have a contract with them who would testify?
- Jennings: We never found a signed contract with any of their clients, just a three-ring binder of literature.
- Ravis: Do other customers know about this?
- Fish: The Town of Scarborough was negotiating a contract with them. They asked if it was true.
- Ravis: There are people out there who have contracted with these people and will continue to do so and I'm not comfortable that they won't know.
- Eckert: How do we do that? We don't regulate business practices. Can we report the case to the Better Business Bureau or someone else?
- Randlett: In the past, when a CA was accepted, a press release would be sent out. You could do that, as long as the agreement is accepted. Not if there was litigation outstanding.
- Connors: Item 4 in the conditional issuance of their company license, the company must provide written documentation to all customers of what will be applied. Another condition of the company license is to fill out records before starting job, not at end of day. Violations of conditional license means the suspended portion of CA will be enforced.
- Randlett: New violations alleged in future will mean the rest of the penalty can be collected as well as enforcement action against new allegations. If you want to refer the matter to the Office of the Attorney General (AG) office for enforcement action, you can do that. This CA is with Purely Organic, and not with any individuals, so if we can identify who is primarily responsible, we can go after them.
- Jennings: With respect to the press release—all through the process of trying to reach an agreement, there was a question about what level of publicity this would get and the staff told them it was not its practice to actively publicize enforcement cases, but every document is available to the public if someone from the media wants to pursue it. The staff would be going back on its word if it knowingly publicized the case.
- Schlein: There are a lot of media people on our list and we often get calls about specific subjects. We haven't gotten any queries yet about this.
- Jemison: This company's name is Purely Organic and they are doing regular applications? I have a problem with that.
- Jennings: We don't have any law defining organic or non-organic. All we have in law is that you have to tell people what you're using.
- Tomlinson: One product they have the label on file doesn't match the information they are giving out about what's in the product.
- Connors: They are required to send us a list of pesticides they're planning to use in 2012, along with labels. They listed three pesticides and sent three labels. One is for Essential One PHE. One page he sent was an advertisement, not a Purely Organic product; he has now sent label.

- Jennings: It is a FIFRA Section 25(b) product.
- Tomlinson: Plant Health Enhancement; gave ingredients; the flyer listed things that would require EPA registration.
- Jemison: At least the guy who did the most egregious things does not have a license. Can we make it so he can never get one?
- Randlett: The director can refuse to give him a license and then he can challenge and come before the Board for a hearing.
- Eckert: Please give us options—accept CA knowing if they screw up it will cost more or can refer to AG to take some other action.
- Randlett: Not today. You can refuse to accept CA, in which case it you can attempt to renegotiate it, or it could be placed on agenda for him to come before the Board. You would have to return payments already made. Options are to approve or reject. If rejected it would be placed on agenda.
- Ravis: I have no confidence. This guy was putting together this snake oil and having other people apply/sell. He can still do that.
- Fish: He has never been a licensed distributor and has been warned over the phone multiple times that he needs to change his advertising, and stop making pesticidal claims.
- Randlett: Once it's referred to AG, we have full enforcement discretion. Could do same as CA, could dismiss, could bring actions against individuals in the company, could bring allegations under fair trades practice. Once you refer to us, it's out of your hands.
- Fish: Can't the Board suspend the license?
- Randlett: You already issued a conditional license based on same conduct.
- Jennings: Most of your concerns seem to center around the person who signed the CA. My understanding is that he's no longer involved in service sector. Somebody else is running the service operation and we do have their attention. We are trying to exert a certain level of oversight to ensure conditions are followed.
- Deven Morrill (Lucas Tree Experts Company): You used percent on some and ppm on some. In most investigations, try to use the same.
- Eckert: Is that because one was a tank mix and one was a wipe sample?
- Connors: Yes.
- Morrill: In the letter to Purely Organic customers, the company calls this a "witch hunt." Was what was found actually within label amounts or could they be residue as they contend?
- Jennings: No, they could not be residue.
- Morrill: Letter sent is alarming to industry; full of misstatements.
- Connors: He acknowledged that pesticide was used at Colby.
- Morrill: Many members of lawn care industry not here today because they didn't want their names listed in the minutes. This letter is a slap in the face to all the hard work you do for the industry. What they did is way beyond treating the wrong property. You should reject CA. Very large contracts, many acres of turf. \$18K fine, is that proportional to the size of contracts?
- Jemison: We could put an ethics clause in the master applicator license. Clearly what was done is egregiously unethical. The worst thing we've ever seen.

- Eckert: Accept and know we have a way to ride herd or reject and make them come before Board.
- Jennings: You can table the CA.
- Ralph Blumenthal (Atlantic Pest Solutions): Worst case, CA is approved today, how are you going to ride herd over this company? There has to be some mechanism to do spot inspections to keep these people honest.
- Connors: Logistics are difficult; how do we know where they are without warning them we're coming? One of the conditional requirements is that they give customers a list of what they're going to use. We can test after.
- Jennings: We do have a list of customers, but asking them is difficult.
- Bohlen: Egregious effort intent to deceive over and over, but CA they signed doesn't admit to most of what they're charged with. If the allegations are true, then the only solution is to prevent them from ever applying pesticides again, but we don't have the proof.
- Stevenson: It probably should be referred to AG. At the same time, given what we know and believe to be true, also suspend license. He's profiting from his misdeeds and will continue to do so. It is still his business. This business has an ethical issue right from the top, he should be summoned. Gives a black eye to the industry. Most follow the rules. The Board needs to tell them they can't operate any more in the state. So many wrong things about it we should take all the actions we can.
- Ravis: What is a conditional license?
- Randlett: If they fail to follow conditions then the license can be revoked.
- Lauchlin: There is a parallel case re: fertilizer in California. Selling liquid fertilizer as organic. Not organic. Convicted, fine.
- Randlett: If you could identify a specific individual responsible, then you can bring a criminal complaint against him. But not against a company. Criminal laws not available for a company. You have to identify an individual. Civil violations available by law in your statutes. All considered second violations because they entered into CA in 2008—\$4000 per allegation. Counted 22 listed in this CA, number of others such as unlicensed, recordkeeping, don't have specific dates. May be several hundred violations that could be brought.
- Jemison: We want to prevent Reinertson from ever applying again.
- Eckert: At the least accept CA, with addition that this guy doesn't get a license again. Or don't accept and let AG run with it.
- Stevenson. Don't accept, send to AG, when it comes due again, don't renew.
- Jennings: The company license must be renewed in 2013.
- Jemison: Also dog them, do tests when possible. Get some evidence. Then you'd have grounds that they're not following rules. They'd be crazy to use synthetic pesticides.
- Connors: They can use them as long as they tell their clients what they're using.
- Ravis: If we accept the CA, does that prevent AG from doing something?
- Randlett: Yes, against the company for the violations alleged in the CA. But we could still bring criminal charges against an individual. Could bring other charges against company such as unfair trade practices act. You don't refer that to us, we could pursue that ourselves anyway.

- Jemison: Is it more likely that those things would happen if we referred to you?
- Randlett: Yes.
- Fish: There is no technical definition of organic in terms of lawn care.
- Green: The NOP doesn't have standards for organic lawn care, but it strikes me in this letter that they are referring to themselves as organic agriculture so NOP would apply.
- Connors: What about the idea of requiring a written contract between parties?
- Randlett: It's your choice what you do today. If there's any level of discomfort, table it. Before next meeting [will be September, due to scheduling conflicts], I can research available enforcement options and what criminal and civil penalties might be available. We can invite people from Purely Organic to come address the Board.

Ravis/Eckert: Moved and seconded to table the consent agreement and hear more from Randlett.

In Favor: Unanimous

9. Other Old or New Business

- a. Letter from Bangor Hydro regarding plan to hydraulically spray 50 electric substations—H. Jennings
- b. Variance Permit for Chapter 29 to The Woodlands Club—H. Jennings
- c. Variance Permits for Chapters 22 and 29 to RWC, Inc.—H. Jennings
- d. Variance Permit for Chapter 29 to RCL Services, LLC, for Giant Hogweed—H. Jennings
- e. Variance Permits for Chapter 22 and 29 to the Maine Department of Transportation—H. Jennings
- f. Variance Permit for Chapter 29 to Dubois Contracting—H. Jennings
 - Jennings stated that all of the variances that were issued were repeats, with the exception of the variance for RCL Services which was issued consistent with Board policy for delegating authority to issue a variance to control plants that present a dermal toxicity hazard.
- g. Update on Avipel—M. Tomlinson
 - Tomlinson alerted the Board that the EPA decided not to request that states withdraw their FIFRA Section 24(c) requests.
- h. Update on Revus—M. Tomlinson
 - Tomlinson stated that Steve Johnson, from Cooperative Extension, asked that the FIFRA Section 18 request be withdrawn due to residue concerns and exports.
- i. Update on webcasting/audio-casting Board meetings—P. Schlein
 - Schlein reminded the Board that it discussed the idea of providing access to Board meetings via the internet, and he asked whether that was something the Board

wanted him to research. In the interest of time, Jemison suggested the idea be tabled for this meeting and considered again later.

j. Update on Chapter 41—H. Jennings

- Jennings stated that the changes to Chapter 41 became effective on May 3, 2012 and the staff planned to alert distributors of the changes.

k. Other?

10. Schedule of Future Meetings

June 15, July 27, September 7, October 26, and December 7, 2012, are tentative Board meeting dates. The Board will decide whether to change and/or add dates. Board members have discussed holding the July 27 meeting in Presque Isle and the January 2013 meeting at the Maine Agricultural Trades Show. The dates for the upcoming show are January 8, 9, and 10. Does the Board want the staff to pursue this?

Adjustments and/or Additional Dates?

- Jennings stated that—due to the Board’s rulemaking plans—the June 15 Board meeting should include a Public Information Gathering Workshop on potential rulemaking topics. Since Room 319 is not available for June 15, the meeting is slated for Room 233, which is a smaller room.
- Jennings also discussed the July 27 meeting which is slated for Presque Isle. He inquired whether the Board has an interest in a short field trip on July 26, since they would need to drive up the day before anyway. He also inquired about whether it made sense to host an open forum on the evening of the July 26. Members supported both ideas.

11. Adjourn

Ravis/Eckert: Moved and seconded to adjourn.

In Favor: Unanimous