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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

July 26, 2013

**Maine Organic Farmers and Gardeners Association,
294 Crosby Brook Road, Unity, Maine, Main Building**

MINUTES

8:30 AM

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

1. Introductions of Board and Staff

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

2. Minutes of the May 24, 2013, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- **Flewelling/Eckert: Moved and seconded to approve as written**
- **In favor: Unanimous**

3. Public Forum (limited to one hour)

At this time, the Board invites anyone interested to address its members with questions or concerns about any pesticide-related issues.

Presentation By: Henry Jennings
Director

Action Needed: None required

- Heather Spalding of the Maine Organic Farmers and Gardiners Association (MOFGA) welcomed the Board and staff. She said MOFGA has been concentrating their policy work on GMO labeling and that by working with a lot of diverse groups they were able to come up with a solution that they could agree on. She pointed out that this is a good model of how to work collaboratively that can be applied to pesticide issues and that they can promote a really respectful discussion. They will be

working again on notification in the near future. There was some discussion about the GMO law as passed, and Spalding answered some questions about specifics.

4. Final Adoption of Major Substantive Rule Amendments to Chapter 27, Standards for Pesticide Application and Public Notification in Schools

The Board held a public hearing on proposed amendments to Chapter 27 on September 7, 2012, and provisionally adopted the amendments on December 7, 2012. The Joint Standing Committee on Agricultural, Conservation and Forestry held a public hearing on the proposed amendments on February 7, 2013, and held work sessions on April 9 and May 22, 2013, before reporting the resolve out as ought-to-pass. Resolve 2013, Chapter 63 was enacted by the Legislature and became law on June 22. The Board will now decide whether to finally adopt the amendments.

Presentation By: Henry Jennings
Director

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapter 27

- Jennings explained that the Legislature hadn't changed anything; the resolve allows the Board to finally adopt the rule as already provisionally adopted. The resolve also, however, instructs the BPC to work with the Commissioner of Education to develop standards or guidelines about construction of school grounds to minimize pest problems during planning/construction, and requires a report by March 15, 2014. He pointed out that the BPC has a strong relationship with the Department of Education (DOE), and the DOE is a strong advocate of school IPM. Pat Hinckley, involved with DOE facilities management, has attended many meetings, and her understanding of how schools function has helped significantly with drafting amendments. Jennings said the staff has already started work on the process.
 - **Eckert/Bohlen: Moved and seconded to adopt the rule as amended, the basis statement, the impact on small business, the summary of comments and responses for Chapter 27 as written**
 - **In favor: Unanimous**

5. Consideration of the Canyon Group's Special Local Need (FIFRA Section 24[c]) Registration Request for GWN 1715 (EPA #81880-4) to Control Mites and Whiteflies on Greenhouse Tomatoes

In 2008, the Board approved a Special Local Need (SLN) registration for the use of Nexter to control mites and whiteflies on greenhouse tomatoes. The 2008 registration expires this year. The Canyon Group is now requesting an SLN registration to allow use of GWN 1715, which has the same formulation as Nexter. Backyard Farms supports the use of this formulation. EPA has established a tolerance for the active ingredient pyridaben.

Presentation By: Mary Tomlinson
Registrar and Water Quality Specialist

Action Needed: Approve/disapprove 24(c) registration request

- Tomlinson said that in 2008 the Board approved an SLN for Nexter which is expiring. She explained that the Board needs to approve the parent product, because EPA will only approve SLNs on the parent product now. Nexter is a distributor version of GWN 1715, which means it has the same formulation, but the parent company licenses the distribution under their own label, in effect sub-

licensing. The primary product has a two-part registration number, whereas a distributor product has a three-part registration number. She said that disinfectants are good examples of this: a company produces the base product, but other companies use that and distribute under other names; often distributor products only utilize a portion of the allowable sites from the parent product label so they can have multiple distributor products that each have different sites. All the sites are on the parent product label, but each distributor label may have specific sites for marketing purposes.

- Eckert asked whether Backyard Farms was the only company using this product and Tomlinson said that currently they are, but that other greenhouses could use it. Eckert questioned if the reason this is an SLN is because tomatoes aren't listed on the label and Tomlinson said yes.
 - Bohlen questioned whether the Board would also have to approve the distributor product and Randlett replied that they would not because it is the same formulation.
- **Granger/Flewelling: Moved and seconded to approve the registration**
 - **In favor: Unanimous**

6. Review of Draft Policy on Exclusion Areas for Potential Aerial, Public-Health-Related Mosquito-Control Programs

At the May 24, 2013, meeting, the Board provisionally adopted amendments to Chapters 20, 22, and 51. The amendments were intended to allow for potential public-health-related mosquito-control programs conducted by governmental entities. During the development of the Chapter 20 amendments, the Board determined it was preferable to define "exclusion areas," in the context of potential aerial applications, via policy, instead of codifying them in rule. Such a strategy allows the Board greater flexibility should new concerns arise. When the Board adopted the rule amendments, it directed the staff to bring a draft policy on exclusion areas to the next meeting in order to address concerns voiced by concerned parties. The staff has drafted a policy which the Board will now consider.

Presentation by: Henry Jennings
Director

Action Needed: Revise/amend draft policy and adopt, if appropriate

- Jennings said that the staff had looked at several states regarding exclusions. Some states do not exclude anything; Massachusetts seems to be on the conservative end, so we used that as a starting point. The staff also looked at the comments received during rulemaking. There might be agricultural producers, in addition to organic, that want to be excluded because of marketing issues in international markets. Some people were concerned about bees; there are approximately 1,000-1,200 beehives in the state. A 500-foot buffer, which is typical for aerial mosquito spraying, would require approximately a 23-acre exclusion zone for each point (hive), which seems impractical. Massachusetts' bee expert went around after spraying last year and did not find any abnormal mortality. Spraying is done at night, which helps protect bees. The proposed exclusion zones are based on Massachusetts as a starting point. The staff also presumed the state would want to exclude "great ponds," because they are defined as greater than 10 acres, which allows them to be reasonably observed, mapped and excluded. In addition, the state will want to buffer marine waters. For all farmland, whether organic or not, the staff believes it's only practical for growers to provide digital maps. One thing of concern is that if people want to be obstructionists they could start putting very small farms in the center of a city like Portland, which could end up causing the entire city to be excluded. Spraying for WNV would likely occur near population centers. The Board should consider minimum standards for exclusion areas, whether they are based on area or economic impact. Jennings stated that the Farm Bureau had cited a ¼-acre garlic grower during the hearing on LD 292; if there were a lot of small plots in population centers we could end up with a pattern that doesn't cover much.

- Bohlen said we need to think about the determination of what constitutes economic risk; should there be some evidence? Is there a standard to apply that there is economic risk involved? It would be difficult to write.
- Jennings pointed out that the University is planning to do some residue research this year on synthetic pyrethroids likely to be used. The reason these products are used is that they are extremely short-lived.
- Granger asked whether Massachusetts experts have an opinion on whether the exclusion zones affect efficacy. Jennings replied that they don't seem to exclude much. In talking to the aerial applicator and the manufacturer of the pesticides used, efficacy is based on percent of target area reached; the more exclusions you do, the lower the efficacy. Agricultural areas are not the areas that need to be sprayed; the concern is if there are a lot of agricultural exclusions in densely populated areas.
- Bohlen remarked that he doesn't feel there is enough information. Where is spraying going to be valuable in terms of reducing disease risk and how does that overlap these areas (exclusion zones)? Talking about urban areas, we've heard about spraying around schools for events. Spraying downtown Portland is different from the outskirts of Gorham, Windham; suburban fringe. Efficacy is different in areas with trees, canopies. Hicks replied that it depends on which type of mosquito you're going after—those that transmit WNV or EEE. She noted that EPA gave blanket tolerance for all agricultural products.
- Stevenson said that he liked the idea of some sort of economic proof. He asked if there is any other way (than excluding) to protect small organic gardens, such as covers. Katy Green said she really didn't see how covers would be practical.
- Bohlen pointed out that getting the mapping information to the Board in the required format might be an economic constraint; big farms probably won't have any trouble, but small farmers might.
- Eli Berry from MOFGA pointed out that MOFGA members are mostly gardeners, not farmers. They are a large organization of small gardens, and their membership will want to see alternatives researched.
- Fish pointed out that in most situations the aerial application is going to provide less risk than ground-based spraying because the potential for residues is much greater for a ground-based application.
- Heather Spalding noted that a lot of people who sell produce as organic are below the \$5,000 threshold and therefore are not certified. Even though they are not certified, they would still not be able to sell produce as organic under the national guidelines.
- Hicks noted that spraying is not going to happen unless people are sick and dying. It won't be standard operating procedure. Struble added that if something happens it won't be a huge event; most likely a couple of municipalities spraying.
- Bohlen noted the wording "endangered species habitat" might cause an issue with Atlantic salmon because many small streams are considered habitat; depending on the product, there may a large part of the state that won't be able to be sprayed. Hicks said the products are highly toxic to fish, but the labels say do not get into water *except* in a public health emergency. The use rates are 18 to 100 times less than a lawn care application.
- Jennings said there is no mention of fish mortality because the rates are so low; there should be more concern about arthropods or insects.
- Heather Spalding asked about other products that could be used, such as the Essentria rosemary oil and geraniol product. Hicks answered that 25(b) products cannot be used for a public-health situation; those products can say they repel mosquitoes and ticks, but they cannot say they repel WNV-carrying mosquitoes or Lyme-carrying ticks, because no toxicology tests or efficacy tests are done on them.
- Bohlen said the exclusion zones seemed pretty good; reword number two a bit to get at what was discussed today. Jennings noted that we might want to put in something about timing of submissions; can't have someone requested to be excluded 10 minutes before spraying is due to

start. He said he would work with MOFGA on some language about those in the process of getting certified, and work with Randlett on incorporating what was said today.

- Heather Spalding asked, if there is no opposition and spraying occurs, is it really going to be effective? Jennings said that there are some peer-reviewed papers showing efficacy. It's complicated research to do, because you need to prove that spraying is effective against disease-carrying mosquitoes, and that it reduces incidence of disease. Bohlen said he is most concerned about efficacy over forested areas; it won't be done because it's effective, but because people are scared and doing something is better than doing nothing. Struble pointed out that it's difficult to prove a null. Eckert noted that the numbers are going to be so small; if the numbers go down, is it because of spraying or because of other factors? We may be able to tell whether it knocks down the number of mosquitoes, but not whether it reduces disease.
- Stevenson said that the Massachusetts data shows strong evidence that spraying reduces both mosquitoes and diseases. He pointed out that if there are too many steps to be taken it won't work in an emergency situation; the state needs to be prepared to work overnight. Bohlen suggested some things that could be done ahead of time including making sure products are registered for use in Maine and that applicators are licensed.

7. Consideration of a Chapter 29 Variance Request from Boyle Associates to Treat *Phragmites* in Jordan Park Marsh in Old Orchard Beach

Chapter 29 allows the Board to grant variances from the 25-foot setback required from surface water under Section 6 of Chapter 29. Boyle Associates of Gorham, Maine, has contracted to control two invasive *Phragmites* stands which are part of a wetland area at Jordan Marsh Park in Old Orchard Beach. The control plan calls for a late summer/early fall application of glyphosate and imazapyr, coupled with repeated mowing. Applications will take place when there is no standing water present. The Board will now consider the request

Presentation By: Anne Bills
Pesticides Safety Educator

Action Needed: Approve/disapprove variance request

- Jennings noted that he had not asked David Brennerman to attend the meeting, because it was a long drive. The application appears solid; obviously a lot of thought went into it. They plan to use multiple control strategies, including mowing and carefully timed herbicide applications. This application does not raise as many concerns as some that the Board has approved in which the applications were right on the edge of open water. The target area doesn't really look like a wetland. They are going to use two products labeled for aquatic use, and wait until late August and when there is no standing water. The applications will be made using non-powered backpacks or wick applicators. It sounds like a multi-year process to achieve control, integrating mowing with herbicides.
- Eckert asked what would fill in to replace the weeds. Bohlen said that, without looking at the site, sites dominated by *Phragmites* tend to have nothing else initially; the first year there will be resprouting, and it will be harder to spray in the next year because other wetland plants will be trying to emerge. It will take three years to achieve control. Bohlen pointed out that this is great mosquito habitat. Large stands of *Phragmites* are very robust, shade out everything else; poor bird habitat. Fish noted that it also prevents flushing of the area. If the wetland were functioning better it would get rid of the mosquito habitat.
- Stevenson asked what "weed wiping" is. Jemison replied that they are like hockey sticks with a wick on the bottom; wipe the weed, instead of spraying. Sometimes used on corn coming back in soybean fields. Bohlen said they are used a lot in wetland situations, trying to keep the pesticide out of the water.

- Heather Spalding asked if covering these areas with plastic to kill the weeds would be possible. Bohlen replied that the fluctuating water levels would make it difficult. He said they had financed a group trying to control *Phragmites* with hand cutting several times a year, trying to starve the plants to death. If you can control the water levels, you can mow, then raise the water level and drown them. Fish pointed out that these plants will grow through plastic, so it would have to be very heavy.
- Jemison commented that this plan seems to follow exactly the IPM prescription written for *Phragmites* by a colleague of his.
 - **Eckert/Flewelling: Moved and seconded to approve the variance request**
 - **In favor: Unanimous**

8. Consideration of a Consent Agreement with Sea Urchin Cottage of York

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 application of pesticides to a rented cottage by an unlicensed applicator.

Presentation By: Raymond Connors
 Manager of Compliance

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

- Connors explained that the complainants originally called the Department of Health and Human Services (DHHS) and were referred to the Board. They had rented a cottage, arriving on Saturday; by Tuesday they were aware there were bedbugs; they talked to the owner who purchased and applied a ready-to-use product which was sprayed on the beds, floors, walls, etc., and a total-release aerosol product. The staff examined two issues: first, were the owners of this facility required to be licensed pesticide applicators; second, were the pesticide label directions followed. The inspector attempted to document the label based on the owner's description of the product.
- Jemison asked if the cottage were empty for a week would they need to be licensed. Connors said no, if there was a seven-day lapse following application before the public is allowed in. He noted that this was not an isolated case; when the DHHS inspector visited, the owner was in the process of making another application.
- Eckert asked if the label was followed. Connors said the label was somewhat contradictory; it says do not apply as a spray indoors, but describes areas indoors that could be sprayed. The staff was unsure about exactly what product was used, so it is reluctant to cite label-specific label violations.
- Stevenson pointed out that his company does eight bedbug jobs per day, all heat treatment; they are scheduling two weeks out. He said heat treatment is more expensive up front, but better in the long run. They also apply pesticides because re-infestation can occur overnight.
- Fish said that the staff gets a lot of calls; landlords don't want to have to do anything. Eckert asked whether we should be doing anything about getting licensing information to the lodging industry.
- Jennings said that the real problem is low-income rentals; really easy to introduce bedbugs on used furniture, etc. Fish said that he and Kathy Murray have been working with health officers across the state, part of the healthy home program.
 - **Flewelling/Stevenson: Moved and seconded to accept the consent agreement**
 - **In favor: Unanimous**

9. Consideration of a Consent Agreement with the Northeast Agricultural Sales, Inc., of Detroit

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 operation of a major pesticide storage facility in Connor Township that did not conform to the Board's Chapter 24 rules and sales of restricted-use pesticides to unlicensed applicators.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors gave an overview of the case. The pesticide distributor was operating a major pesticide storage facility, as defined in regulation. There are siting, operating and structural requirements which were not met. They were using a section of a potato storage warehouse; there was also a business that was distributing potato bags in the building. The pesticide storage was petitioned off with plywood, which is a violation of the regulation. The rationale for the penalty is that the parent company, which is based in Vermont, operates a major storage facility in Detroit, Maine, which is compliant, so they clearly understand the rules. In 2004, the company moved into a facility in Wales, Maine, and was operating as a major storage facility with many of the same violations as in this situation, which led to a consent agreement. In that case they reduced the fine to \$2,000 because the company took corrective action. They clearly have knowledge of the regulations.
- Jemison asked whether the violations were a result of a random inspection. Connors replied that it would be difficult to stumble on this by accident; over the past years there have been rumors that this company was operating as a dealer in The County. The location of the facility was given to the inspector by an anonymous informant. We also were given letterhead which listed the address.
- Eckert asked what could be done to make sure this doesn't happen again, other than a bigger fine. Connors said that if it was within a four-year period the penalty could be increased substantially. He asked Randlett if it was possible to put language in the consent agreement that their license would be suspended if there were further violations. Randlett said the company is aware that if there is another violation the penalty will be higher and there is not much else to be done.
- Tim Hobbs noted that it is an embarrassment for the industry to have this kind of activity taking place. There are three distributors in The County who spent a lot more than \$15,000 to build compliant facilities. They support this fine or even something harsher. Connors agreed that it would take more than \$15,000 to make the facility compliant; they chose to move rather than do so.
- Eckert said that the Board spent a lot of time on these regulations, the idea being to prevent fires or spills where people get hurt. Connors said that the company's new facility in Fort Fairfield had been inspected by an engineer and deemed to meet requirements.
- It was suggested that the period of time to consider repeat offenses be lengthened from four years; Randlett said that would require a change in statute.
- Randlett noted that the inspectors did a fantastic job collecting evidence on this case. Connors said that there were two inspectors who worked on the case. They watched materials coming into the facility, documented the sale of a mini bulk container to a farmer and confirmed it with invoices. They looked at inventory and sales records to establish that it was a major storage facility. They talked to the salesman at the site who acknowledged that it was.
- Fish remarked that if they did it again it would be a knowing violation and they could get criminal charges; Randlett agreed. If there is a knowing violation, charges can be brought against whoever makes the decisions—with a maximum penalty of \$7,500 per violation, plus 30 days jail time.

- Connors noted that also included in the consent agreement were sales of restricted-use pesticides to unlicensed persons.
 - **Eckert/Stevenson: Moved and seconded to accept the consent agreement**
 - **In favor: Unanimous**

10. Other Old or New Business

- a. Legislative Update—H. Jennings
 - Jennings gave an overview of LD 903, which was passed by the Legislature, and signed by the Governor. As originally written, it was of concern, because it raised the question of whose fund it is, the Department's or the University's. If there's not enough money, who goes short? Our program, plus five other positions in the Department are paid for through this fund. The amendments made it clear that the first priority is the Department's needs and then—to the extent money is available—it will fund the grant to the University, and then, if there are funds available, could fund other IPM programs, including mosquito-monitoring programs. The best part is that it gives the Board the responsibility for monitoring the fund and reporting to the Legislature on the fund's solvency, which provides a mechanism for asking the Legislature to adjust the fund, if necessary. It provides for an annual review of the health of the fund, which is a great thing to have.
- b. Legislative Hearing on Rule Amendments to Chapters 20, 22 and 51—H. Jennings
 - Jennings explained that the ACF Committee had met to consider the amendments; they ended up carrying them over, which left the emergency amendments in place for now.
- c. Staff Submission of Loveland Products Request for a 24(c) Registration Request for Malathion 8 Aquamul for Use on Lowbush Blueberries—M. Tomlinson
 - Tomlinson explained that this was an SNL on an identical product that the Board had already approved, so the staff went ahead and submitted the registration.
- d. Variance Permit for Green Thumb Lawn Service—H. Jennings
 - Jennings noted that this was identical to what had been approved in previous years, so the staff issued the variance. However, Mike Legasse had asked that he not be required to publish in the newspapers, as he doesn't feel it's necessary. Jennings suggested putting this on the agenda for the Board planning session.
- e. Other?
 - Hicks said the Board had received a request from Syngenta to register three *Bt*-corn products. The products contain parts from two other products that are already registered, therefore it was determined that they met the criteria to register under policy without going to the Board.
 - Fish mentioned that the staff has been working on training for IPM Coordinators as required under the amended Chapter 27. The intent is to make the initial training on-line and asked the Board how far it wanted to go to document that training. Jemison suggested limiting the initial training to three ideas that you really want them to remember. Fish noted that the more comprehensive training is still going to be available in person, so it can be a lot more in-depth. The Board agreed that just having the IPM Coordinators send something in saying they'd taken the initial training would be fine.

11. Schedule of Future Meetings

September 6, October 18 and December 6, 2013, are tentative Board meeting dates. The September 6 meeting is tentatively slated to include a planning session. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- A planning session was scheduled for September 6; the IPM Council will be invited. Jennings will e-mail a list of possible topics for consideration. Suggestions should be e-mailed to him.
- The December meeting date was changed from the 6th to the 13th. The was discussion of having the January meeting during the Agricultural Trades Show (January 8–10); February 21 and March 28 were added as meeting dates.

12. Adjourn

- **Granger/Flewelling: moved and second to adjourn at 11:35 AM**
- **In favor: Unanimous**