



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
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**

**June 27, 2014**

**Cafeteria, Madison Area Memorial High School, 486 Main Street, Madison, Maine**

**AGENDA**

**10:00 AM**

1. Introductions of Board and Staff

2. Minutes of the March 28 and May 16, 2014, Board Meetings

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

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

4. Interpretation of the Term “food production” in the Context of the Agricultural Basic Pesticide Applicator License

Questions have arisen about the term “food production” in the statute that requires certification for a “private applicator of general use pesticides for food production” (Title 22, Sec. 1471-D [2-D]). The staff is asking the Board to interpret the meaning of the term in this context.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Provide guidance to the staff on how to interpret the statute

5. Overview of Board of Pesticides Control Posting/Notification Requirements

At the March 28, 2014, meeting, the subject of Board of Pesticides Control sign requirements came up as the Board reviewed a complaint filed by Donna Herczeg. There was Board sentiment to review the BPC sign requirements at a future meeting and determine whether they are serving the intended purpose. The staff has summarized those requirements and will share the results with the Board.

Presentation By: Henry Jennings  
Director

Action Needed: Determine whether the signs are serving the intended purpose

6. Mosquito-Borne Disease Update

During 2012 and 2013, the Board completed two sets of rulemaking in order to allow governmental entities in Maine to conduct adult mosquito-control programs to prevent mosquito-borne diseases. In addition, there have been two bills in the Maine Legislature affecting public-health-related mosquito control. The Maine Department of Agriculture, Conservation and Forestry also submitted a plan to the Legislature for preventing mosquito-borne diseases. Finally, the Maine Department of Environmental Protection is finalizing a Pesticide General Permit that would allow for wide-area, aerial-spray programs for control of forest and public health pests, and is working with BPC staff on amending the permit for the use of Bt as a larvicide for mosquito control. The staff will update the Board on the status of these activities and mosquito-borne disease trends.

Presentation By: Henry Jennings  
Director

Action Needed: None—informational only

7. Other Old or New Business

- a. Letter from Emera Maine about substation spraying
- b. Variance Permit for Dubois Contracting
- c. Variance Permit for the Maine Department of Transportation
- d. Variance Permit for Bartlett Tree Company
- e. Variance Permit for RCL Services
- f. Ogunquit Ordinance
- g. Other

8. Schedule of Future Meetings

August 8 (public hearing for rulemaking), September 12, October 24 and December 5, 2014 are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

Action Needed: Adjustments and/or Additional Dates?

9. 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](http://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 Anne Bills, at the Board's office or [anne.bills@maine.gov](mailto:anne.bills@maine.gov). 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.



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**BOARD OF PESTICIDES CONTROL**

**March 28, 2014**

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

**MINUTES**

**8:30 AM**

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

1. Introductions of Board and Staff

- The Board, Staff and Assistant Attorney General Mark Randlett introduced themselves
- Staff Present: Jennings, Hicks, Tomlinson, Connors, Fish, Bills, Patterson

2. Minutes of the February 21, 2014, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

The following amendments were requested:

- Introductions: add who was present
- Item 4, second bullet: change “and environmental group” to “an environmental group”
- Item 4, 11<sup>th</sup> bullet: change “won’t be for those people” to “won’t be a fit for those people”
- Item 4, 20<sup>th</sup> bullet: Bohlen misspelled
- Item 4, 21<sup>st</sup> bullet: Unclear, change “there were samples showing pesticides potentially caught in Maine” to “there were samples showing conflicting sample results in lobster caught in Maine”
- Under Other or New Business, add “The Board instructed Jennings to attend the workshop on the LD 1744 An Act To Protect Maine Lakes”
- Item 13, 6<sup>th</sup> bullet: after “Maine might be a good place for growing seed increase” add “(for out-of-state or out-of-country market),”
  - **Eckert/Bohlen: Moved and seconded to accept the minutes as amended**
  - **In favor: Unanimous**

3. Consideration of Complaint Filed by Donna Herczeg of Portland Concerning TruGreen Lawncare and Sterling Insect-Lawn Control

Chapter 90 of the Board’s rules (attached) allows citizens and organizations to submit complaints to the Director for the purpose of having the complaint placed on a Board Meeting agenda. While most complaints are not handled in this manner, Chapter 90 provides an alternate avenue to the public to

present concerns directly to the Board on matters in which the compliance staff is unable to address. The Board will review the complaint and determine if any action is warranted at this time.

Presentation By: Henry Jennings  
Director

Action Needed: Determine Whether any Action Is Warranted

- Jennings explained that Ms. Herczeg has written to the Board with a number of concerns, mainly around a conversation she had with a supervisor at TruGreen. There isn't a public law around what someone says, so there was no good way to address her complaint. Jennings said Ms. Herczeg's mention of weather conditions and applying before heavy rains, reminded him of past activities, which led to the staff creating BMPs. The difficulty with BMPs is that they are advisory, difficult to enforce. There are two companies mentioned in the complaint: the conversation was with TruGreen, and complaint about signs is for Sterling.
- Ms. Herczeg said that she has two years of experience with spraying in her neighborhood. She wrote a letter to the *Portland Press Herald* last year, which is now on the Natural Resources Council of Maine website, which explains more about her concerns. She wrote because of the notification registry, which has only a two-month window to register, and at a time when people aren't thinking about their lawns. She read the letter to the Board, which described a series of concerns about pesticides, how certain species of dogs are especially prone to certain types of cancers, studies that link pesticide exposure to dog cancer, and a summary of the pesticide notification rule.
- Jemison thanked Ms. Herczeg for coming. He explained that there are spray drift rules in effect, but that you only have control over your own property; you can't control what your neighbor does. If she feels there is drift, she can file a complaint and the staff will sample her property. If the sample is more than one percent of the residue found on the target site, then that starts a process where that person can explain what they did and why the drift occurred. If the Board feels that the person didn't prevent drift to the maximum extent possible, they will be fined. The Board does want to have a discussion about signage.
- Ms. Herczeg replied that not every state has notification or signs, and only 13 states have a registry. But more can be done. Lucas will show her where they spray; she doesn't have an issue of drift anymore, but there is no protection for bees or birds that land in that yard. Bees can travel six miles. Spraying in a city causes even greater difficulty; there aren't safe corridors for all these creatures. To protect bees, large areas are needed. She understands boundary rules, but concerns run deeper. The notification registry isn't advertised in newspapers; many people don't know there is a registry. The registry is more for chemical companies and businesses than for us. Their attitude is: well, there are only 20 people on the registry. Herczeg said she was shocked that in Portland there is only one person on the registry. It's very hard for a lot of people to get on the registry; she doesn't understand the purpose of the \$20 fee; neighbors have balked at the fee. Why is the registry public? People on the registry are in a public way opposing pesticides; she is concerned about people being mad at them.
- Eckert noted that it would be impossible to have a complete discussion of all these issues at that meeting. She remarked that Ms. Herczeg is a person with zero tolerance for pesticides, and there are many like her, but others believe they get some benefit from them. The Board has to try to balance the needs of everyone. It can address whether regulations are violated, which are there to protect the public and provide information. The Board can't do more than that, but private citizens can. Some communities have ordinances against pesticide use.
- Fish pointed out the YardScaping Partnership was started by the Board and that it has been looking at the issue for a long time, trying to educate people about sustainable landscaping practices.
- Jemison noted that the Board is sympathetic, but people look at how they manage their property to be their right; it's a property rights issue. He suggested having a discussion about signage at a future meeting.

- Herczeg said that one of her chief concerns is that the companies are using signs for marketing. The signs from Sterling were turned away from the street; she couldn't read dates. She asked if there were guidelines for signs. Jemison replied that the sign contained all the required elements.
- Bohlen commented that the board understands that a lot of people agree with Herczeg's thinking on pesticides. The Board must adhere to its statutory mandates. Signs are consistent with that mandate. Do they do what they are supposed to do—warn people? The notification registry has been a contentious issue for a lot of years; there are deep disagreements. The fact that there are only 20 people on the registry is good evidence that it's not working. The Board is constrained by legislative mandates.
- Ms. Herczeg and her husband noted that when they talked to the person on the phone (not sure which company), he was threatening; they felt that if he was the spokesman for the company, he should be educating the public and they should be able to trust what he says.
- Morrill noted that the Board has spent a lot of years developing regulations around these issues. The company has to honor requests for notification. There are many other rules; if the Board doesn't know they're not being followed, they can't do anything. Fish noted that Maine goes to great lengths in its training, more than most states, to impress that communication, especially risk communication, is very important.
- There was a question about whether the person answering questions was licensed in Maine; Fish answered that the rule requires every company to have a licensed master applicator, but does not require that every employee be licensed. The licensed master is the supervisor of the others; companies may have management people who aren't licensed, but are answering questions. We would prefer they defer to people who had training, but it's not mandated.
  - **Jemison said that the Board would have a discussion on signage and would ensure that Ms. Herczeg was aware of the agenda.**

4. Consideration of a Request from Darin Hammond of Jasper Wyman & Son about Potential Rulemaking to Deregulate Hexazinone

Hexazinone is currently regulated under Chapter 41: Special Restrictions on Pesticide Use. The regulation requires anyone purchasing, using or supervising the use of any pesticide containing hexazinone to have a private or commercial applicator license. It has been suggested by a constituent that because all growers will have to have at least an Agricultural Basic license by April 15, 2015, there is no longer a need for this regulation.

Presentation By: Henry Jennings  
Director

Action Needed: Determine Whether any Action Is Warranted

- Jennings explained that this section was added to Chapter 41 because of water quality concerns; it is a unique product with respect to water solubility. It had been found in both ground and surface water. Technically it's not restricted, because growers objected to the \$5 deposit on containers, so instead of making it restricted, it was put in rule that one has to be licensed to sell and use it. It was also put in rule that it couldn't be applied with an air sprayer. With the new Ag Basic license, anyone who might use it will be licensed, so there may not be a need for the Chapter 41 restrictions any more.
- Darin Hammond explained that the blueberry industry is unique; there is an older population of blueberry farmers. There were a few instances where they couldn't use Velpar L because they don't want someone else to do the application and the rule won't allow them to purchase or apply it themselves. If they have a friend who has a license, they can't purchase Velpar for them and be reimbursed because that would be distribution. Wyman's has an issue with a couple of farms which

are in trusts that have several family members. The family member with the license would have to purchase and apply and they couldn't be reimbursed. Hammond would like the Board to eliminate the restrictions in Chapter 41; everyone who sprays blueberries is going to have to be licensed soon. The point of having it in Chapter 41 was because of water contamination; Hammond advocated for addressing the concerns through continuing education.

- Eckert agreed that the Board wanted people to be aware of the water concerns. Jemison said he remembered giving a lot of talks about water concerns, making applicators aware that it is more leachable and understanding the principles. He noted that there has been a decline in use because there are more options available now.
- Hammond agreed that there are more options; growers use other products to prevent resistance. We have not seen an increase in water contamination. The EPA has done additional studies and found the danger to be low; it doesn't affect salmon.
- Bohlen said the existing use is clear, but in talking about changing the rule, is there a potential for a market to develop? Is there a risk to changing the rule? Jennings replied that it is used in other parts of the country for forestry, but not in Maine. Granger agreed, saying that there are not many plantations in Maine; there is a product containing hexazinone that can be used on Christmas trees, but its use is very limited. Jemison noted that it is expensive compared to other products; blueberry growers use it because the plant injury risk is low.
  - **Consensus was reached to include the proposal in rulemaking discussions.**

5. Consideration of a Request from Ian Yates of Scotts Lawn Service of Gorham about the Board's Policy Relating to Verifiable Authorization of Commercial Pesticide Application Services

The Board's Policy Relating to Verifiable Authorization of Commercial Pesticide Application Services lists several methods allowed for verification and allows the staff to approve other methods to provide a substantially equivalent degree of verification. Scotts Lawn Service of Gorham has submitted a proposed method which the staff would like the Board to review.

Presentation By: Henry Jennings  
Director

Action Needed: Provide Guidance to Staff

- Jennings explained that Board policy allows the staff to approve other methods that provide a substantially equivalent degree of verification. Scotts Lawn Service is struggling to get people to respond to their correspondence. Every method that has been approved included a response from the customer. This method would not require a response from the customer; is it verifiable?
- Eckert noted that there is no requirement that they have to reach somebody; they could leave five messages, but they could be left on the wrong phone. Bohlen noted that there are a lot of reasons why someone might be out of reach.
- Flewelling remarked that there is a lot of frustration in trying to get customers to respond and asked whether multi-year contracts were allowed. Jennings replied that they are, but most customers don't want to sign a multi-year contract. Randlett noted that the contract must have a specific end date. Morrill said that his understanding was that a multi-year contract would be verified each year. It used to be standard operating procedure to have a contract that automatically renewed unless the customer canceled. Jennings noted that the current policy requires a response from the homeowner. Randlett noted that Chapter 20, Section 6, allows for long-term contracts, provided certain conditions are met.
  - **Consensus reached that for a method to "provide a substantially equivalent degree of verification," as required by the policy, there would need to be contact with the customer.**

6. 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 recertify the petition to 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 to continue use of this product, which has provided consistent control against *Varroa* mites during the last two seasons, 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.

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 was a continuation of the use of HopGuard that was approved last year.
- Tony Jadcak, state apiarist, explained that there were no problems with the use of the product in 2013, unlike 2012, when there were problems associated with cold weather; hopefully this concern will be addressed on the new label when it comes out. The company is also working on a new version to add more molasses, more cardboard, more active ingredient. There are six other products for use against *Varroa* mites: four are approved for organic control, and one of the other two can be used while bees are making honey for human consumption. Researchers are looking at older products, which were resistant, but may not be anymore. There are pros and cons to all materials.
  - **Granger/Morrill: Moved and seconded to approve the Section 18 registration**
  - **In favor: Unanimous**

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

The Canyon Group is requesting a Special Local Need (SLN) registration to allow use of the parent product, GWN 1715-O in Maine. In turn, Canyon Group has given permission to Gowan Company to seek a state supplemental SLN registration (as a sub-distributor) to allow the GWN 1715-0 to be sold under the Gowan Company trade name, Sanmite. Backyard Farms supports the use of this product. 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 Requests

- Tomlinson explained that the Board had previously approved Nexter for Backyard Farms. Gowan and Canyon Group have decided to no longer support the registration. This product is the same formulation. The Board needs to approve the primary SLN and then the supplemental SLN. Backyard Farms desperately needs this product to control mites. It is the same active ingredient, just a change of name and SLN, for marketing purposes.
- Bohlen pointed out that the label is unclear; it says do not apply more than eight ounces of product per crop cycle, but doesn't indicate area. Tomlinson replied that it is identical to what was approved before; a crop cycle is a specific number of weeks, then they replant. Jennings pointed out that the

area where Bohlen was looking is the “notes,” and is vague because there are two sets of rate instructions. Bohlen said that we should point out to them that the line in the notes section does not address area treated; labels are usually very clear about the area it applies to.

- Bohlen further noted that he hopes they get this off the SLN someday. Tomlinson replied that there is an issue with whiteflies because some products labeled cannot be used in greenhouses because of resistance concerns; this is the only product available for greenhouses. She pointed out that under general restrictions on the master label, there is a maximum per acre per year; it would probably be useful to have that on the SLN label.
  - **Flewelling/Bohlen: Moved and seconded to approve the SLN registration**
  - **In favor: Unanimous**

8. Review of Revised Board Policy Relative to the Environmental Risk Advisory Committee

In 1999, the Board first created the Environmental Risk Advisory Committee (ERAC) as an analog to the Medical Advisory Committee (MAC), to assist the Board in evaluating and addressing state-specific environmental concerns. At the February 2014 meeting, the Board reviewed the ERAC Policy and decided to revise the policy in recognition that the ERAC is not commissioned frequently enough to justify assigning standing members to the committee. The staff has revised the policy consistent with the Board instructions and the policy is now ready for Board review, revision, if necessary, and approval.

Presentation By:      Henry Jennings                      Lebelle Hicks  
   Director    Staff Toxicologist

Action Needed:      Determine Whether the Revised Policy is Now Acceptable and Should Be Approved

- Jennings said that he wasn’t sure whether there was consensus on the Board on whether to have a policy or not. There is no legal need for a policy. The Board may want the committee to be ad hoc, assembled to address a specific concern, then disbanded when concern has been addressed to the satisfaction of the Board. Should there be a policy, and if so, what should it be? The reason for the policy originally was that the Board wanted to be sure the committee was comprised of scientists without a vested interest.
- Bohlen noted that for this particular ERAC (lobster), the word scientist might be too narrow a word; the Board might need economists or other kinds of expertise; people that aren’t really considered scientists. Jennings suggested the term “technical experts” could be added. Eckert pointed out that, if scientists are people that want to use verifiable, repeatable evidence, then economists can be scientists, too. Bohlen agreed to leave as is.
- Jemison noted that the advantage of a policy is that it gives a framework by which to select people; the Board doesn’t want lobbyists. A policy gives a framework, grounds to stand on.
  - **Eckert/Bohlen: Moved and seconded to adopt as amended**
  - **In favor: Unanimous**

9. Review of Current Rulemaking Ideas

Over the past several months, the Board has discussed a number of policy areas for which some additional refining of rules may be desirable. The staff summarized recent rulemaking ideas for the February 2014 meeting where the Board briefly reviewed the list but elected to table the discussion to next meeting. The staff is seeking guidance on whether and when to initiate any additional rulemaking.

Presentation By:      Henry Jennings  
   Director

Action Needed: Provide Guidance to the Staff

- Jennings explained that two of the rulemaking suggestions were from constituents: removing restrictions on hexazinone and posting signs in lieu of identifying and mapping sensitive areas for mosquito- and tick-control applications. In addition, there are a couple of policies that should be put into rule because policies aren't enforceable.
- Eckert asked if some time could be set aside to talk about signage. What is good signage, what is it good for? There are situations where signs are better; signage requirements are scattered throughout several chapters. Jemison agreed, adding that there is sure to be a diversity of opinion and it is worth spending some time on it. Should the rules be more restrictive so the message doesn't get lost? Put on the agenda a long discussion about signage, particularly turf.
- Fish asked if there was any message he should be giving to turf and ornamental applicators at upcoming meetings. Bohlen said that there should not be advertising on signs, but he was uncomfortable about sending a message that was not supported by the rule. Flewelling said that he is okay with advertising. Granger said the signs should definitely be pointed toward the road. Bohlen noted that they are technically following the rules. Stevenson said there should be some consideration given to the risks and benefits of putting plastics into the environment. Jemison asked whether any research had been done on what effect they have on the public, if any.
- Jennings commented that any rulemaking around signs would be major substantive, and will take some time.
- Jennings explained the suggested amendments to Chapter 31
  - (1) the Board has faced emergency situations with potatoes when it was so wet the tractors couldn't get in. The Board went through emergency rulemaking three times to allow for reciprocal licenses, so it might make sense to put an emergency provision in rule.
  - (2) The waiting period after failing the exam: is it really serving the purpose of ensuring there is an incentive for applicants to study? Other licensing rules have the same issue.
  - Jennings said that over a year ago the Board had discussed creating a new licensing category for those making pesticide recommendations.
- Bohlen suggested the staff come up with ideas based on conversations that have already happened. Jennings pointed out that the Board can discuss concepts, but can't actually review draft amendments until rulemaking is started.
- Bohlen noted that signage would not be easy. Morrill said that changing the requirements for 7E would be easier because the industry is already doing it. Other categories might be more difficult, e.g., 6B: how do you post a sidewalk? Jennings suggested it could be based on projects that are linear.
- Consensus was reached to look at chapters 20, 22, 28, 31, and 41.
- Jennings noted that Nicholas Hahn from CMP was present and was interested in opening up a discussion around Chapter 22. Hahn explained that it has to do with spraying inside substations—mapping the sensitive areas around a substation is a burden; the area can be one-quarter of an acre, up to several acres. It's all bare ground; they do pre- and post-emergent applications annually. Fish noted that access is controlled. Hahn agreed—it is all fenced in; outside the fence is a gravel area treated with a backpack sprayer. Granger remarked that they only have to map 500 feet around the substation, and is that really a big deal? Hahn said that it is updating the maps from year-to-year and keeping records that is the issue. They are doing the mapping, but think it's interesting that turf and ornamental don't have to. What is the reason?
- Granger noted that what they are doing is akin to what farmers do, and they have to update maps annually; no more work than for agricultural users.
- Bohlen noted that most of the exemptions are for specific kinds of applications. Is there something unique about this kind of application? Does it fall under some other box already? A fixed site in an urban setting where you have to pay attention to what's around it.

- Flewelling remarked that the reason the posting was done in place of mapping in urban areas is because everything in an urban area is a sensitive area. If a substation is in an urban area, it should be posted, if it's in the middle of nowhere, they should be mapping sensitive areas. Morrill noted that like with 7E, current practice is to do both because posting makes more sense. Hahn commented that posting is an internal requirement at CMP. Eckert noted that people do use the land for recreational purposes, e.g., atvs, snowmobiles, so posting might be a more useful requirement. Hahn said that he is more concerned with inside the area where they do the high-volume spraying.

10. Consideration of a Consent Agreement with Collins Lawn Insect Control, Inc., of Portland

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 on 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 drift from a mosquito treatment onto an adjoining property.

Presentation By: Raymond Connors  
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors gave the details of the complaint. The death of a dog was attributed to a mosquito-tick application. The inspector followed up, took samples of the target area and the complainant's property; the samples were positive for bifenthrin. No autopsy was done on the dog. Lebel Hicks evaluated what was known including symptoms and, in her opinion, could not attribute cause and effect. In the process of investigating the complaint about the death of the dog, it was determined that drift had occurred; the off-target residues were 16% of those found in the target area. PPE requirements were also not followed.
- Jemison asked how it was known whether PPE was used. Connors replied that the inspector asked the question as part of the investigation and the applicator answered.
- Connors explained that the situation was complicated by the fact that, at the same time as the incident, the uncle and the wife gave three dogs flea and tick baths using an expired 25(b) product.
- Flewelling asked how far off the boundary line the samples were taken; Connors said that the properties were separated by a stockade fence and the samples were taken within a foot on either side of the fence.
- Morrill noted that the addresses were 84 and 85, and asked whether they were on the same side of the road; Connors replied that they were on the same side of the road.
  - **Bohlen/Eckert: Moved and seconded to accept consent agreement as written**
  - **In Favor: Unanimous**

11. Other Old or New Business

- a. Legislative Update—H. Jennings
  - Jennings explained that the only bill to reach passage was the medical marijuana bill. The lakes bill originally had a pesticide setback, but the pesticide piece was taken out altogether.
- b. Letter from the Joint Standing Committee on Agriculture, Conservation and Forestry—H. Jennings
  - Jennings pointed out the letter received regarding the lobster study. He noted that the Board had spent some time crafting the wording of the ERAC charge, but wondered if the word

“industry” should be in there. Bohlen replied that the advantage of saying industry is that it gets away from worrying about the health effects on individual lobsters; the committee can talk about a low risk of affecting the overall population, instead of individual lobsters. Changing from “industry” to “resource” takes away from an economic threshold and into an environmental threshold.

○ **Consensus reached to change “industry” to “resource” in the ERAC description**

c. ERAC update—L. Hicks

- Jennings explained that DMR is concerned about other invertebrates, mainly clams, because clams are sediment dwellers. Bohlen noted that clams are a food source for lobsters, so they are addressed. If the focus were on clams, it would be a different group of pesticides. Focus on those most likely to have an impact on arthropods, not on a broad suite of organisms. The choice of pesticides to test for will be the subject of the first meeting. A discussion ensued about choosing pesticides for the first round of sampling. The first meeting is scheduled for April 18 in Room 319, Deering.

d. Other

- Eckert noted that she had recently read an article about the increase in celiac disease being related to glyphosate. If anyone sees any research on this topic, she'd like to see it. Jemison noted that the allowable levels of glyphosate in food have increased over time. FDA has basically said it is an herbicide and shouldn't affect humans the same way. However, our gut microbes do have the shikimate pathway; glyphosate residues can shift microbial populations in chickens and pigs. Eckert agreed it was plausible, but there is no proof of correlation.
- Granger commented that at the last meeting the Board had instructed Jennings to go to the work session on the lakes bill. Jennings was asked by the Administration not to get involved. Granger and Morrill were at the work session, and could have spoken to clarify things if they had been authorized by the Board, but had not requested authorization because they thought Jennings would be there. Morrill agreed that they were put in an awkward position, because legislators asked them if there would be a representative from the Board, and they thought Jennings would be there to answer questions.
- Jennings explained that such decisions are made at the Governor's office; they assign it to a department, in this case, DEP. He exchanged a couple e-mails with Heather Parent, and sent her copies of BPC rules. Senator Saviello had sent an e-mail requesting that Jennings be at the work session; it was forwarded to Legislative Liaison, who spoke to the Governor's office, and they gave approval, but later they said it wasn't necessary for him to go, that he could answer Saviello's questions via e-mail.
- Granger said that the BPC rules were not clear to the Committee. He suspected Saviello didn't want to answer questions, he wanted someone from the Board to answer them. This is a precedent; if the Board asks staff to do something, it needs to know the Administration isn't going to override. Should the Board bring this up with the Administration?
- Stevenson suggested having Randlett look at it and clarify.
- Eckert noted that there is no mechanism for authorizing Board members to speak on behalf of the Board.
- Tim Hobbs remarked that this was not the first time this had happened; expertise is helpful, we have a concern if expertise is not being made available.
- Jennings said that the answer that the Board got from Randlett before was that the Board is allowed to make policy decisions, not allowed to direct the staff.
- Stevenson asked what are the Board's options for interacting with the Legislature? He thought that Jennings going to the work session was the best way for input; that didn't work.

If the Department was the lead agency, it wouldn't be an issue. Fish said that there is a difference between testifying and a work session. Bohlen stated that this is not about a Board position, but staff with relevant information that the committee needs should be available. If it were testifying, a Board member could go; if we know the Administration doesn't want the staff to take a position, the Board can send a representative to state the consensus opinion. Technical support, which Board members don't have, is being withheld. If the Governor's office says that a staff member can't go, is that okay?

- Jennings noted that the quick pace of the Legislative process is difficult for a public Board that meets monthly—you have to be able to see it coming, and take a vote. Randlett is not going to okay Board members talking to each other via e-mail and taking a position.

12. Schedule of Future Meetings

May 9, June 27, August 8, and September 12, 2014, are tentative Board meeting dates. The Board Chair has inquired whether the May 9 meeting could be rescheduled to May 16. The June 27 meeting is planned to be held in the Madison/Skowhegan area, following a tour of Backyard Farms. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- **Change May 9 to May 16.**

13. Adjourn

- **Granger/Morrill: Moved and seconded to adjourn at 12:29 PM**
- **In favor: Unanimous**



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
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**

**May 16, 2014**

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

**MINUTES**

**8:30 AM**

Present: Granger, Morrill, Jemison, Stevenson, Eckert

1. Introductions of Board and Staff

- The Board and Staff introduced themselves (Assistant Attorney General Mark Randlett was not present)
- Staff Present: Bills, Connors, Fish, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the February 21, 2014 Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

- The minutes were not available for review.

3. Consideration of the Syngenta Crop Protection Company's Special Local Need [FIFRA Section 24(c)] Registration Request for Dual Magnum, EPA Reg. No. 100-816, to Reduce the Pre-plant Interval in Various Field Crops

Syngenta Crop Protection, Inc. is requesting a Special Local Needs Registration for Dual Magnum to reduce the pre-plant interval for various field crops grown in Maine. Certain vegetable crops grown in Maine currently lack efficacious weed management options and the 60 day pre-plant interval is an impediment in this climate. The Maine Cooperative Extension is supporting this request, which has approved for other states.

Presentation By: Mary Tomlinson  
Registrar and Water Quality Specialist

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson explained that this was a request to expand the use of Dual Magnum to several additional crops. She noted there was a letter of support in the packet from Mark Hutton, University of Maine Cooperative Extension, and that a letter from Lauchlin Titus had been added after the packet had been mailed.

- In his letter to the Board, Mark Hutton explained that the main crops for which the request is being made are beets and spinach, for the control of nutsedge and hairy galinsoga. There are currently no other effective chemical controls. New York and Massachusetts have already approved the use for these crops. About half a dozen growers have requested this use, with a total of about 200–500. Eckert asked how this would change how the product is currently used; Hutton replied that it is already being used on other crops, just allowing use on additional crops, particularly beets and spinach, which are difficult crops in which to control weeds. Hicks noted that there are tolerances for all the crops requested.
- Granger noted that the active ingredient is used in the Christmas tree industry, but not a lot. He added that he had received a call from a grower in Cape Elizabeth supporting this request, and that there are no alternatives for nutsedge and hairy galinsoga.
- Jemison remarked that the fact that New York, which is very conservative environmentally, had approved the use gives him some level of comfort. He noted that this chemical is one that has been found in groundwater and would be concerned about use in sandy soils, but, in talking to Mark Hutton, he was comfortable that that would not be an issue for these uses. Hicks noted that the mixture in this request involves a lower rate than what had been used in the past on other crops
  - **Granger/Morrill: Moved and seconded to approve the request**
  - **In favor: Unanimous**

4. Consideration of a Request for Variances from Chapters 22 and 29 from Asplundh Tree Expert Company—Railroad Division, to Treat Railroad Rights-of-way in Maine

Asplundh Tree Expert Company—Railroad Division, is seeking variances from Chapter 22, Section 2(C), Identification of Sensitive Areas, and Chapter 29, Section 6, Buffer Requirements, in order to treat the St. Lawrence and Atlantic Railroad rights-of-way in Maine. Board policy indicates that first-time variance requests must be considered by the Board. Policy further stipulates that railroad variance requests need to be consistent with the Maine Department of Transportation standards.

Presentation By: Henry Jennings  
Director

Action Needed: Approve/Disapprove the Variance Requests

- Jennings explained that this variance request was the first from this company for railroad rights-of-way. He noted that about 10 years ago the Board got conservative about variances for railroads, because of water quality concerns and the fact that many railroad tracks travel near water and the way tracks are constructed and maintained, there is a lack of fine soil particles and organic matter present to bind pesticides. Companies want to use very persistent herbicides; there is a legal requirement for them to maintain vegetation-free zones because of fire hazards. There is a difficult balance between track maintenance and minimizing risk of the transport of pesticides into water. The Board has been using the Maine Department of Transportation (MDOT) model as a guide to approving variances. MDOT owns about half of the track in Maine and they hire contractors. MDOT is under a high level of scrutiny, and because as a state we are very environmentally conservative, MDOT is very cautious about its use of herbicides.
- Jennings discussed this variance with Bob Moosmann, from MDOT, and he voiced some concern with the product Streamline, that Asplundh wants to use. It contains the same active ingredient as Imprellis, which was originally marketed for broad leaf control in turf; after three months on the market it was pulled by EPA because of damage to trees adjacent to treated lawns. It is still labelled for turf, but not in proximity to the root zone of trees. It is fairly persistent, and seems to have some mobility issues. Both Moosmann and Hicks expressed concern about killing

conifers along rights-of-way. They were also concerned about using Streamline within 10 feet of water.

- Jennings explained that the staff realized they had already approved a variance, for RWC, Inc., that allowed for the use of Streamline; the staff isn't sure when this product was added to the RWC variance request, but it was missed on the application. Jennings spoke with Brian Chateauvert from RWC; they use it for broad leaf control, where the persistence provides extended control. In some situations, MDOT requires contractors to change the mix when spraying near water; contractors switch to a glyphosate-only mix. Jerry Blase from Asplundh is willing to discuss using different products near water. Blase stated this is their national program and is what they do everywhere; they have three years' experience with this protocol. If they had off-target damage to trees, they would be paying for it. But water quality concerns are still there.
- Hicks noted that when the staff approves a variance, there has not been a label review. Restrictions on this label are different now than when the RWC variance was first approved. She suggested that when staff reviews a variance, the label should be checked for changes.
- Jemison asked if there was any risk from this product in compost. Hicks replied that the label states that it should not be used for mulch or compost.
- Jennings said that, according to Blase, this product is effective on weeds that are resistant to other products, and that Moosmann agrees with that, but that those weeds aren't a problem in Maine.
- Granger asked what type of equipment was being used on railroad rights-of-way. Jennings said that they use a three-part boom; they can shut off outer sections and just run the center, which is what they do when going by lawns. The equipment puts out big droplets and drift is not an issue. Granger asked about the volumes and Jennings said the variance said 25–30 gallons per acre. Jennings remarked that MDOT is using a pinolene sticker to hold the product in place; Moosmann's concern is that this herbicide has a longer half-life than the sticker. Hicks noted that the label says it is rain-fast in four hours. Jennings stated that one reason the Board has been concerned about products near water is that there is no organic matter to hold them in place.
- Granger pointed out that there was legislation proposed this year that would have restricted pesticide use near water; it was pointed out to the Legislature that pesticides can only be used within 25 feet of the water with a variance from the Board. It will look weak when the bill comes back and it's pointed out that pesticides are being used within 10 feet. Jennings said that railroads are concerned with crossings, if vegetation is allowed within 25 feet of crossings; it creates a need to manually control weeds in that zone. The railroad industry and MDOT worked with the Board and reached a compromise 10–15 years ago. Eckert noted that the Board would have liked greater restrictions near water, but felt pretty good about the MDOT standard. Jennings noted there had been some historical problems when unexpected thunderstorms occur shortly after the tracks are sprayed. It's easy to observe where material gets washed off of the tracks.
- Eckert said the Board could approve the variance with restrictions; table until they get it sorted out, which would be a time problem for this season; or let the staff work out the details. Jennings said that if the Board stated their priorities, and gave parameters, he could negotiate with Asplundh.
- Morrill said it was difficult to disapprove this variance since we've already approved another. Jennings said he would also work with RWC, that they are open to adjusting their program.
- Stevenson asked if Streamline is a new product. Jennings said that it is new for this use; relatively new chemistry. Hicks said the earliest label she could find was 2011; the Imprellis issue was in 2012–2013, and that's when the label changed.
- Granger pointed out that the legislation around lakes was not specific to any product, that it included Roundup and anything else. Fish noted that glyphosate is approved for use in water.
- Stevenson asked if MDOT didn't support the use of Streamline because they don't like it or because it's so new they haven't had the chance to review it. Jennings said they might allow it

down the road, but, being a government agency, they are very careful, and they try to set a positive example. Stevenson asked if the main reason for concern is the persistence. Jennings said that is Moosmann's concern. Hicks noted that it is very water soluble. There is a warning on the label about runoff and groundwater contamination. There is a risk assessment from the US Forest Service, but she has not had a chance to look at their methodology.

- Eckert suggested granting the variance for one year, then look at setting up guidelines, BMPs.
- Jennings suggested convening a group to look at this issue before next season. Work with Moosmann, Ron Lemin, a water quality expert, and representatives from the railroad ROW contractors. Jemison suggested a colleague of his who works at Penn State and has expertise on roadside and railroad ROW vegetation management.
  - **Morrill/Eckert: Moved and seconded to approve the variance, with the condition that Streamline not be used with 25 feet of water**
  - **In favor: Unanimous**
  - **Direct staff to develop criteria/guidelines before next season**

## 5. Review of Potential Rulemaking Concepts by Chapter

At the February and March 2014 meetings, the Board reviewed a series of potential rulemaking topics that had been discussed at various times over the previous year. At the March meeting, Board members narrowed the list of rulemaking chapters to 20, 22, 28, 31, 32, 33 and 41. The staff will present a summary of the rulemaking concepts by chapter in order to ensure that there is alignment over the precise nature of the proposed changes, prior to initiating rulemaking.

Presentation By: Henry Jennings  
Director

Action Needed: Refine the Rulemaking Concepts

- Jennings referred to the memo and the rule excerpts provided.

### Chapter 20

- Stevenson noted that policies are not part of the training for a master license, therefore someone could become a licensed master applicator and not be aware of policies.
- Morrill said he would be interested to hear from other companies about how they are handling authorization, which is already in rule.
  - **Consensus reached to propose adding a section stating that applicators must positively identify application sites in a manner approved by the Board.**

### Chapter 22

- Variances have been issued since 1988 for linear ROW projects including roadsides and railroads. Variance approval always includes a requirement for companies to demonstrate that they are minimizing drift and for them to publish a public notice; it's difficult to post effectively in these situations.
- The Board felt that in some situations posting was more valuable than identifying sensitive areas when everything is a sensitive area (residential areas, etc.).
- Some discussion ensued about which category certain activities fall into, 6A or 6B.
- Discussion followed about walking trails, and whether posting at ingress and egress points was sufficient. Printing in newspapers is likely not effective. Jemison noted that most towns have a website; those interested could look for information there.

- **Consensus was reached to propose exempting ROW applications from the requirement to identify sensitive areas, provided that the applicator implements a drift management plan and publishes public notice in a newspaper of regional circulation.**
- **Consensus was reached to propose exempting category 7E from the requirement to identify sensitive areas.**

#### Chapter 28

- **Consensus was reached to propose adding category 7E to the list of categories that require posting, and to add category 6B to the posting requirement, except when making applications to sidewalks and trails, provided that a public notice of the proposed treatment is published.**

#### Chapter 31

- Three times in recent history the Board conducted emergency rulemaking to accept reciprocal licenses for out-of-state aerial applicators because the fields were too wet to apply fungicides by tractor. This concern might come into effect for mosquito control when the disease threat is high. It probably makes more sense to go over the key rules with aerial applicators than to have them take the regulations exam and struggle through all the rules that don't apply
  - **Consensus was reached to propose waiving the requirement for a written regulation exam for out-of-state aerial applicators and to allow reciprocal licensing when the staff determines there is an urgent need to control pests by aerial application, provided that a staff member reviews key BPC rules with the reciprocal licensing applicant.**

#### Chapters 31, 32, 33

- Granger said the wait times seem excessive.
- Jemison said if someone takes the test four days in a row, and passes on the fourth day, they haven't learned anything, they've just memorized the exam. Fish agreed that if we give tests more often, we would need to have more versions, which would be added work. He noted that growers should be doing their homework, should be prepared. Granger replied that, as a practical matter, it's not that simple for growers. A problem pops up; they may have to train new people. We talk about IPM, which sometimes involves putting things off as long as possible, but when it's necessary to spray, time is short. The idea that it is difficult for staff is not an acceptable reason.
- Jemison said that with the new Ag Basic license, this should become less of an issue for farmers. This is probably more of an issue for lawncare companies. Jennings pointed out that there are at least three chapters that contain the waiting provisions. Testing for commercial applicators is generally offered once a week. Private licenses (including Ag Basic) are mostly taken at Cooperative Extension offices. Commercial applicators pay \$10 for each exam, private applicators pay nothing. The Board has the option of treating the categories differently.
  - **Consensus was reached to change the wait period between exams to six days for all license types.**

#### Chapter 41

- Morrill asked if hexazinone is available off the shelf for homeowners. The prevailing viewpoint is that the smallest container was too expensive for homeowners to use. Morrill is concerned that it may become more available. Eckert suggested adding warnings about hexazinone to training. Granger noted that there is some forestry use, mostly for pine plantations.

- Morrill pointed out that blueberry sod is a growing product in southern Maine. Hicks stated that there are six products with hexazinone registered in Maine.
  - **Consensus was reached to propose amending Section 3 of Chapter 41 to require that anyone applying hexazinone in Maine be certified as an applicator, but to eliminate the requirements relative to pesticide distributors and air-assisted application equipment.**

6. Overview of the Board of Pesticides Control Software Application Development Process Underway to Improve Work Flow Efficiency and Constituent Service

In February, the Department entered into a Memorandum of Understanding with the Office of Information Technology to undertake an information technology (IT) application development process intended to modernize and integrate the Board’s IT systems and create an internet interface. Because all work processes are reviewed and analyzed as part of the development, the staff would like to provide an overview of the process to date and seek the Board’s input.

Presentation By: Gary Fish  
 Manager of Pesticide Programs

Action Needed: Provide Input to the Staff

- Fish gave a brief overview of the project, and showed some of the work that has been completed in the form of “user stories.” He said that he is very optimistic about this process, because it allows more flexibility and customization for our use.
- Jennings stated that the PegaSystems option is attractive because: (1) it’s a business process management application, and not just a customized database front end; (2) development occurs with the customer and developers in the same room; (3) as each piece of functionality is developed, it’s immediately tested by the customer; and (4) there are tools to allow the customer to make minor program adjustments, queries and reports.

7. Consideration of a Consent Agreement with Remedy Compassion of Auburn, Maine

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 on 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 to resolve the matter. This case involved use of pesticides inconsistent with the product labels.

Presentation By: Raymond Connors  
 Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that a marketplace inspection had indicated that this company had bought several pesticides. An inspection was subsequently conducted with Department of Health and Human Services (DHHS), and it was determined that the facility did use a number of the products that had been purchased in the production of medical marijuana. There were also other pesticides that had been purchased elsewhere. One employee interviewed said that he had mixed two gallons of a product, used it on one leaf, and poured the remainder down the drain. There were also issues about not wearing required PPE. None of the products used were registered for that crop. Worker

Protection Standard (WPS) training had not been done. The company acknowledged some of the complaints, but not all; said they had not purchased or used some of the products.

- There were questions about whether the products used would be allowed under current law changes. The answer was that they would not.
- Jemison asked whether most marijuana facilities are likely to be aware of the rules now. Jennings said that the dispensaries are in the loop, but caregivers, who can grow up to six plants, may still be unaware. Jennings stated that he believes that the BPC does not have authority to enter medical marijuana production sites; this must be with DHHS staff.
- There was some discussion about whether a list of caregivers was available so information could be sent. Eckert suggested some information about what's legal to use be sent to all growers, if possible.
  - **Morrill/Eckert: Moved and seconded to accept consent agreement as written**
  - **In Favor: Unanimous**

8. Consideration of a Consent Agreement with Plants Unlimited of Rockport, Maine

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 on 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 to resolve the matter. This case involved use of pesticides at a nursery/greenhouse operation in violation of certain state and federal pesticide laws.

Presentation By:        Raymond Connors  
   Manager of Compliance

Action Needed:        Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that a routine inspection found there were no records for 2012. WPS requirements had not been met, including training and posting. A product had been used for indoor treatment that was labelled for outdoor use only, and was labelled for homeowner use only.
- Katy Green, MOFGA, said she was curious about the fine because she remembered them as having multiple violations in the past, which would normally increase the fine. Connors said that was true if they were within the last four years. He knew one fine was because they had let their general use dealer license lapse. He thought there might have been a warning about WPS, but not a consent agreement.
- Jemison suggested the staff visit again in a year or two to see if they're doing better. Connors noted that the Board does send a compliance verification which summarizes where they are out of compliance; they're supposed to sign and send it back and we track whether they send them back. When the new Pega system comes into use, we will be able to use inspection history as a criteria for determining who to inspect.
  - **Eckert/Stevenson: Moved and seconded to accept consent agreement as written**
  - **In Favor: Unanimous**

9. Review of Board Authority to Direct Staff to Participate in Legislative Hearings and Work Sessions

At the March meeting, Board members expressed the importance of having the staff represent the Board at legislative policy events. At the same time, the Administration exerts supervisory authority over executive branch employees and administers policies covering legislative functions intended to maintain efficient and consistent executive branch participation. The Board has asked Assistant Attorney General Randlett to clarify the Board's authority with respect to staff participation in legislative events.

Presentation By: Mark Randlett, Assistant Attorney General

Action Needed: None, Informational Only

- Jennings said that he had spent some time looking into this. He explained that he had not left the March meeting with an understanding that the Board had directed him to attend the Lakes bill work session. There had been a discussion and he knew that Granger and Morrill had been at the hearing regarding the Lakes bill. Senator Saviello had requested that Jennings attend the work session and that request was sent to the Governor's office via the legislative liaison. Originally Jennings was given approval to attend, but later he got the message that it wasn't necessary for him to be there. After hearing the Board's concerns about his absence, he went to Mari Wells, the DACF legislative liaison, and asked if he had made it clear that the Board had requested he attend the hearing, and that he would be representing the Board, not the Department, whether he would have received a different answer. The answer was yes. The mistake was in the communication with the legislative liaison.
- Granger stated it is important that, in the future, if Jennings gets a "no," that he report back to the Board so someone from the Board can be there to represent. He or Morrill could have done so, but they didn't have the Board authorization. Jennings said that he will make sure to do that in the future. He pointed out that Board members don't need permission to attend legislative meetings, and always have the option to go as Board members, but it is a question of whether they feel comfortable speaking on behalf of the Board. They could design some kind of system to deal with this circumstance, but generally it is a very short timeframe; it's difficult to convene a meeting quickly and the Board can't make policy decisions outside a public meeting. Maybe the Board could look at the list of bills and develop initial positions and a policy about Board members testifying on various bills.
- Granger said that is useful to have Jennings act as spokesperson because he has the historical memory and can field questions. But if he is disallowed to go, then it is important that the Board know.

#### 10. 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

- **Granger/Stevenson: Move and seconded to elect Morrill as Chair and Bohlen as Vice Chair**
  - **In favor: Granger, Stevenson, Morrill**
  - **Opposed: Jemison, Eckert**
- Eckert noted that she and Jemison are up for nomination this year; both expressed an interest in continuing to serve. They agreed they would write personally to the Commissioner expressing their interest.

#### 11. Other Old or New Business

##### a. ERAC update—L. Hicks

- Jennings explained that there was a lot of lively discussion at the meeting. They discussed whether it should be about lobsters or all marine organisms; sampling; literature reviews. The committee agreed that the staff should do sediment sampling this

year; there was consensus around coupling water sampling with sediment sampling sites. There was no consensus on whether there should also be tissue sampling. Hicks said it's a question of whether we're doing a health risk assessment for lobsters or a dietary risk assessment for human consumption; in her opinion it should be the former. Jennings said the staff is drafting a sampling plan; The Department of Marine Resources can cooperate; they sample 1,400 sites for sediments already. Hicks has applied for assistance from Toxicology Excellence for Risk Assessment—a non-profit—to conduct a literature review relative to the pyrethroids and lobsters. The staff definitely plans to look for synthetic pyrethroids and methoprene in sediments. Tomlinson explained that there is a screen for all 14 pyrethroids. In addition, the staff would also like to look for fiprinol, because it's been an issue in sediments in California. Jennings noted that the advantage of working with the Montana lab is that they can screen for lots of things at once, so we don't have to pick and choose based on funds available.

- b. RWC, Inc. variance permits for Chapters 22 and 29 for railroad rights-of-way—H. Jennings
- c. MDOT variance permit for chapter 29 for control of phragmites—H. Jennings
  - Sherman Marsh Phragmites Control Ongoing Treatment Plan

## 12. Schedule of Future Meetings

June 27, August 8, and September 12, 2014, are tentative Board meeting dates. The June 27 meeting is planned to be held at Madison High School following a tour of Backyard Farms. The Board will decide whether to change and/or add dates.

Action Needed:            Adjustments and/or Additional Dates?

- **August 8 will be the public hearing for rulemaking. October 24 and December 5 were added as meeting dates.**

## 13. Adjourn

- **Morrill/Granger: Moved and seconded to adjourn at 12:08 PM**
- **In Favor: Unanimous**



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

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TO: Board Members

FROM: Gary Fish, Manager of Pesticide Programs

Subject: Definition of "Food Production"

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Board members may recall the discussion we had during the open forum at the Agricultural Trades Show regarding what constituted "food production," because it is an important term used in the statute that requires an Agricultural Basic Pesticide Applicator license, 22 MRS 1471-D (2-D) (*see excerpt below*). In order for the staff to be able to consistently inform growers about which practices require an Agricultural Basic license, a clear interpretation of the meaning of "food production" is needed from the Board.

- 2-D. (TEXT EFFECTIVE 4/1/15) Certification required; private applicator of general use pesticides for food production. **A private applicator of general use pesticides may not use or supervise the use of general use pesticides for food production without prior certification from the board**, except that a competent person who is not certified may use such a pesticide under the direct supervision of a certified applicator. Additional certification under this section is not required for a person certified as a commercial applicator or a private applicator under subsection 1 or 2, respectively.

Upon searching the Code of Federal Regulations (CFR) and the Maine Revised Statutes (MRS), I could not find a single definition of "Food Production." All I could find were definitions for "Agricultural Production" and "Commercial Production" (*see below*). Neither of these addresses the issue directly.

- *Agricultural Production* means the cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, fish, or birds, either for fiber, food for human consumption, or livestock feed. (7 CFR Subpart A § 4280.3 Definitions.)
- *Commercial production* means growing, maintaining or otherwise producing agricultural plants for sale or trade, for research or experimental purposes, or for use in their entirety in another location. Commercial production includes producing agricultural plants for use by the agricultural employer or agricultural establishment instead of purchasing the agricultural plants. (40 CFR Part 170, EPA WPS)

Some practices growers have asked for clarification as to whether or not they constitute "food production" include:

- growing vegetable seedlings for sale to home gardeners
- sanitizing containers, benches or other surfaces to prepare for growing the crop
- post-harvest treatments applied directly to the food or applied to food boxes, containers or storage bins

I also asked Jim Dill to explain what he thought the ACF Committee had in mind when the statute was developed and he said, "I saw production as basically once the plant had emerged until the crop was harvested and put into the marketplace. I really hadn't thought about post-harvest treatment. I'm thinking not to include it, but could go either way on it."

Your decision will help us move ahead as we plan to reach out to growers as the April 15, 2015 deadline approaches.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND FOURTEEN

H.P. 1299 - L.D. 1808

**An Act To Protect the Public from Mosquito-borne Diseases**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 7 MRSA c. 6-A is enacted to read:

**CHAPTER 6-A**

**MANAGEMENT OF MOSQUITOES**

**§171. Management of mosquitoes for protection of public health; state policy**

It is the policy of the State to work to find and implement ways to prevent mosquito-borne diseases in a manner that minimizes risks to humans and the environment. The State, led by the department and the Department of Health and Human Services pursuant to this chapter and Title 22, chapter 257-B, respectively, shall monitor mosquito-borne diseases and shall base mosquito management methods, including potential pesticide use, on an evaluation of the most current risk assessments. On a continuing basis, the State shall research and evaluate means of reducing disease-carrying mosquitoes without the use of pesticides. When the Department of Health and Human Services determines that the disease risk is high and public education efforts are insufficient to adequately prevent mosquito-borne diseases in the State, the Department of Health and Human Services may declare a mosquito-borne disease public health threat pursuant to Title 22, chapter 257-B and the State may undertake emergency activities to reduce disease-carrying mosquito populations that threaten the health of residents of this State. The State in undertaking emergency activities shall use a combination of the lowest risk, most effective integrated pest management techniques and science-based technology and shall consult with officials from affected municipalities in determining the most appropriate combination of response strategies.

**§172. Department lead agency; powers of commissioner**

**1. Lead agency.** The department is the lead agency of the State for carrying out mosquito management activities as described in this chapter.

2. Management methods. The commissioner may use appropriate methods for the management of mosquitoes and the prevention of their breeding in a manner consistent with section 171, including, but not limited to, conducting or contracting for mosquito management activities and purchasing equipment necessary for the purposes of carrying out this chapter.

**§173. Duties of commissioner**

1. Study; plan; arrange cooperation. When sufficient money for such purposes is available in the fund, the commissioner, in cooperation with appropriate personnel from the Department of Health and Human Services, shall:

A. Consider and study mosquito management problems, including mosquito surveillance;

B. Identify means of managing disease-carrying mosquitoes in a manner that minimizes pesticide use;

C. Coordinate plans for mosquito management work that may be conducted by private landowners, groups, organizations, municipalities, counties and mosquito management districts formed pursuant to section 175; and

D. Arrange, to the extent practicable, cooperation among state departments and with federal agencies in conducting mosquito management operations within the State.

2. Consultation. The commissioner shall consult with the University of Maine Cooperative Extension and private sector experts and municipalities in developing plans and procedures for implementing this chapter.

3. Assist with disseminating information. When sufficient money for such purposes is available in the fund, the commissioner, in cooperation with appropriate personnel from the Department of Health and Human Services and experts from the University of Maine Cooperative Extension, shall assist private landowners, groups, organizations, municipalities, counties and mosquito management districts formed pursuant to section 175 to disseminate information to the residents of the State about ways to reduce mosquito populations, to eliminate mosquito breeding sites and to protect themselves from mosquito-borne diseases as well as other relevant information.

4. Implement mosquito management response. When a mosquito-borne disease public health threat is declared by the Commissioner of Health and Human Services pursuant to Title 22, section 1447, the Commissioner of Agriculture, Conservation and Forestry shall implement an effective management response consistent with section 171. The management response must include combinations of integrated pest management techniques. The Commissioner of Agriculture, Conservation and Forestry shall consider the availability of funds in the fund in planning the response.

**§174. Maine Mosquito Management Fund**

The Maine Mosquito Management Fund, referred to in this chapter as "the fund," is established to carry out the purposes of this chapter. The fund consists of any money received as contributions, grants or appropriations from private and public sources. The

fund, to be accounted for within the department, must be held separate and apart from all other money, funds and accounts. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. The department may expend the money available in the fund and make grants to private landowners, groups, organizations, agencies, municipalities, counties, the University of Maine Cooperative Extension and mosquito management districts formed pursuant to section 175 to carry out the purposes of this chapter.

**§175. Mosquito management districts**

For the purposes of preserving and promoting the public health and welfare by providing for coordinated and effective management of mosquitoes, municipalities may cooperate with each other through the creation of mosquito management districts.

**§176. Rules**

The commissioner may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this section are major substantive rules as described in Title 5, chapter 375, subchapter 2-A.

**Sec. 2. 22 MRSA c. 257-B** is enacted to read:

**CHAPTER 257-B**

**MOSQUITOES**

**§1447. Lead agency for monitoring mosquito-borne diseases; declaring a public health threat**

The department is the lead agency for monitoring for mosquito-borne diseases in the State and determining the severity of the threat to the public health. The Maine Center for Disease Control and Prevention shall create and maintain an arboviral illness surveillance, prevention and response plan for the purposes of alerting the public and other state, local and federal agencies about the existence of the threat so that appropriate actions may be taken. When available surveillance information indicates a strong likelihood of a human disease outbreak arising from mosquito-borne pathogens, the commissioner may declare a mosquito-borne disease public health threat in accordance with the Maine Center for Disease Control and Prevention arboviral illness surveillance, prevention and response plan. For purposes of this section, the department shall collaborate with the Department of Agriculture, Conservation and Forestry.

**Sec. 3. Appropriations and allocations.** The following appropriations and allocations are made.

**AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF  
Maine Mosquito Management Fund N179**

Initiative: Provides an allocation of \$500 to establish the new Maine Mosquito Management Fund within the Department of Agriculture, Conservation and Forestry to be used in monitoring and preventing mosquito-borne diseases.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$0	\$500
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<u>\$0</u>	<u>\$500</u>

MAY 19 2014



May 14, 2014

Mr. Robert Batteese  
Maine Department of Agriculture  
Board of Pesticides Control  
28 State House Station  
Augusta, Me 04333-0028

Dear Mr. Batteese:

The purpose of this letter is to inform the Board of Pesticides Control that Emera Maine's Southern Operation Region plans to hydraulically spray fifty-three electric substations located in their service territory. (See attached list for substation locations)

The motorized hydraulic spraying will be conducted under a drift management plan that will be on file in Bangor Hydro's place of business. This plan and associated spray operation will work under stringent parameters to minimize the possibility of any off-sight pesticide drift. Our intent is to spray these fifty-three sites hydraulically this year and all our other locations will be sprayed with non-motorized low volume backpack sprayers. New sites may be added next year for potential hydraulic spraying. The board will be notified every year with a new list of sites that will be hydraulically sprayed. As always, Bangor Hydro will treat its transmission R-O-W corridors using non-motorized low volume backpack sprayers. This practice will most likely never change.

If you have any questions please feel free to contact me at (207) 973-2582 or [mark.lamberton@emeramaine.com](mailto:mark.lamberton@emeramaine.com)

Thank you,

A handwritten signature in black ink that reads "Mark Lamberton". The signature is written in a cursive, flowing style.

Mark Lamberton  
Supervisor of Vegetation Management

cc. Tom Kostenbader, Asplundh Tree Ex. Co.  
cc. Neil Lyons, Bangor Hydro-Electric Co.

2014  
 BANGOR HYDRO-ELECTRIC COMPANY (EMERA MAINE SOUTHERN OPERATION REGION)  
 SUBSTATION TO BE HYDRAULICALLY SPRAYED

SUBSTATION	DESCRIPTION	TOWN	MAP #	HYDRAULIC
BIA	Local distribution	Bangor	1	YES
Boggy Brook	Line 60/11 switch	Ellsworth	2	YES
Broadway	Local distribution	Bangor	3	YES
Bucks Harbor	Local distribution	Bucks Harbor	4	YES
Burns Corner	Local distribution	Bar Harbor	5	YES
Cherry Field	Local distribution	Cherry Field	6	YES
Chester 115		Chester	7	YES
Chester 12.5	Local distribution	Chester	8	YES
Chester svc	MEPCO	Chester	9	YES
Costigan	Local distribution	Costigan	10	YES
Cutler	Local distribution	Cutler	11	YES
Deblois	Local distribution	Deblois	12	YES
Derby	Local distribution	Milo	13	YES
East Bangor	Local distribution	Bangor	14	YES
East Millinocket	Local distribution	East Millinocket	15	YES
Eastport	Local distribution	Eastport	16	YES
Ellsworth Falls	Line 68/10&12 switch	Ellsworth	17	YES
Enfield 115		Enfield	18	YES
Gouldsboro	Local distribution	Gouldsboro	19	YES
Graham 115 Switch Yard		Veazie	20	YES
Graham 115 Transformer Yard		Veazie	21	YES
Graham 46	Local distribution	Veazie	22	YES
Hampden	Local distribution	Hampden	23	YES
Harrington	Local distribution	Harrington	25	YES
Hermon	Local distribution	Hermon	26	YES
Hogan Rd.	Local distribution	Bangor	27	YES
Keene Bog	Gardner mill	Chester	28	YES
Keene Rd.	line 62/64 switch	Chester	29	YES
Lincoln	Local distribution	Lincoln	30	YES
Lucerne	Local distribution	Dedham	31	YES
Mattawamkeag	Local distribution	Mattawamkeag	32	YES
Medway Diesel	Diesel site only	Medway	33	YES
Millinocket	Local distribution	Millinocket	34	YES
Mill St.	Local distribution	Ellsworth	35	YES
Nicolin	Local distribution	Ellsworth	36	YES
Olamon	Local distribution	Olamon	38	YES
Orono	Local distribution	Orono	39	YES
Orrington	Locals and MEPCO sub	Orrington	40	YES
Pembroke	Local distribution	Pembroke	41	YES
Powersville	Line 62/GLH switch	TA R7 WELS	42	YES
Pushaw rd.	Line 50/73 switch	Bangor	43	YES
Scotts Hill	Local distribution	E. Machias	44	YES
Stanford	Local distribution	Enfield	45	YES
Surry	Local distribution	Surry	46	YES
Tibbetts St.	Local distribution	Brewer	47	YES
U of M 46	Local distribution	Orono	48	YES
Washington County	Local distribution	Jonesboro	49	YES
Water Works	Local distribution	Bangor	50	YES
Youngs Corner (Upper & Lower)	Locals and diesel	Bar Harbor	51	YES
Trenton	Local distribution	Trenton	52	YES
Keene 345	MEPCO tie	Chester	53	YES
Eppington substation		Columbia	54	YES
Columbia Switch station		Columbia	55	YES

SUBSTATION WHERE NO SPRAYING WILL BE PERFORMED

SUBSTATION	DESCRIPTION	TOWN	MAP #	
Hancock	Local distribution	Hancock	n/a	AQUIFER
Northeast Harbor	Local distribution	Mount Desert	n/a	WELL
Blue Hill	Local distribution	Blue hill	n/a	WELL



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

May 20, 2014

Donald J. Dubois  
Dubois Contracting  
295 St. John Road  
Fort Kent, ME 04743

**RE: Variance Permit for CMR 01-026, Chapters 29 for Vegetation Control on the Fort Kent Levee**

Dear Mr. Dubois:

This letter will serve as your variance permit for 2014 for broadcast application of herbicides along portions of the Ft. Kent levee. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your April 30, 2014 application.

If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings  
Director  
Maine Board of Pesticides Control



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

May 22, 2014

Robert W. Moosmann  
Maine Department of Transportation, Bureau of Maintenance & Operations  
16 State House Station  
Augusta, Maine 04333-0016

**RE: Variance permits for CMR 01-026, Chapters 22 and 29**

Dear Mr. Moosmann:

This letter will serve as your 2014 variance permits covering Section 2 (C) of Chapter 22 and Section 6 of Chapter 29 for weed control along state maintained roads and other transportation facilities, **with the condition that Streamline (aminocyclopyrachlor/metsulfuron methyl) not be applied within 25 feet of water.** Please bear in mind that these variance permits require agency personnel and contractors to adhere to the measures outlined in Section X of your Chapter 22 permit application and Section IX of your Chapter 29 permit application.

I will alert the Board at its June 27, 2014 meeting that the variance permits have been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings  
Director  
Maine Board of Pesticides Control



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 JENNINGS  
DIRECTOR

June 12, 2014

Tim Lindsay  
Bartlett Tree Experts  
PO Box 6828  
Scarborough, Maine 04070

**RE: Variance Permit for CMR 01-026, Chapter 29**

Dear Mr. Lindsay:

The Board adopted a policy in 2013 allowing for the issuance of multi-year variances for the control of invasive species. In determining this policy the Board emphasized the need for a long-term plan for re-vegetation of the site, and demonstration of knowledge of efficacy and appropriate practices—the goal being to ensure that the site is reverted to native species, and not made available for another invasive species.

The Board also emphasized the fact that there is a native species of phragmites (*Phragmites americanus*) and care should be taken to ensure proper identification.

This letter will serve as your Chapter 29 variance permit until December 31, 2016 for the treatment of phragmites (*Phragmites australis* subsp. *australis*) on the site on Great Diamond Island. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Sections V and X of your variance application. If it is determined that a different product needs to be used, you must contact the Board first and get a new variance.

If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings  
Director  
Maine Board of Pesticides Control



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 JENNINGS  
DIRECTOR

June 16, 2014

Ronald Lemin  
RCL Services LLC  
291 Lincoln Street  
Bangor, ME 04401

**RE: Variance Permit for CMR 01-026, Chapter 29**

Dear Mr. Lemin:

On November 18, 2011, the Board authorized the staff to issue permits for broadcast pesticide applications within 25 feet of water for control of plants that pose a dermal toxicity hazard. On December 13, 2013, the Board authorized the staff to issue multi-year permits for broadcast pesticide applications within 25 feet of water for control of invasive plants provided the applicator has demonstrated knowledge of best management practices for control of the plant and has a re-vegetation plan for the site.

By way of this letter, your request for a variance from the 25-foot setback requirement contained in Chapter 29, Section 6 is hereby granted for the treatment of a Giant Hogweed infestation in the vicinity of Ohio Street in Bangor. This variance is valid until December 31, 2016. Please bear in mind that your permit is based upon your company adhering to the precautions listed in Section X of your variance application; also, the Board does require that you notify them if there is a change in products to be used.

We will alert the Board at its June 27, 2014 meeting that the variance permit has been issued. If you have any questions concerning this matter, please feel free to contact me at 287-2731.

Sincerely,

Henry Jennings  
Director  
Maine Board of Pesticides Control

**TITLE II  
OGUNQUIT MUNICIPAL CODE  
HEALTH, SAFETY & WELFARE**

[Additions are underlined, deletions are ~~struck-out~~]

**CHAPTER 11      Pesticide/Herbicide Usages ~~on Town-Owned Lands~~**

**1101    Purpose**

The purpose of this chapter is to safeguard the health and welfare of the residents of the Town of Ogunquit and to conserve and protect the town's ground water, estuarine, marine and other natural resources, while ensuring preservation and ~~enhancement of town-owned~~ of the land.

**1102    Provisions.**

The following provisions shall be applicable to all turf, landscape and outdoor pest management activities ~~on town-owned~~ conducted within the Town of Ogunquit, on both public and private land.

*(a) Permitted:*

- 1102.1**      Use or application of natural, organic land care protocols.
- 1102.2**      All control products and soil amendments, including fertilizer and compost, used under the terms of this article shall be in keeping with, but not limited to, products that can be used on Maine Organic Farmers and Gardeners Association Certified Farms, and/or products permitted by the Organic Materials Review Institute or the USDA National Organic Program.
- 1102.3**      Use or application of sludge or sludge-derived products to the extent permitted by the Maine Hazardous Waste, Septage and Solid Waste Management Act 38 M.R.S.A. §§1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A. § 481-490, and any rules related thereto, as amended from time to time.

*(b) Prohibited:*

- 1102.4**      Use or application of chemical pesticides, other than pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25, and those products permitted by the Organic Materials Review Institute.

**1102.5** Use or application of sludge or sludge-derived products not listed as permitted above.

### **1103 Definitions**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Natural, organic land care:** An extension of the principles and practices of organic agriculture to the care of turf and landscape.

**Pesticide:** Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any nitrogen stabilizer. It does not include multicellular biological controls such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency. Herbicides, fungicides, insecticides and rodenticides are considered pesticides.

**Sludge:** Defined in 38 M.R.S.A. § 1303-C (28-A), as amended from time to time.

~~**Town-Owned Land:** All land owned or leased by the Town of Ogunquit and/or managed by the Town, including outdoor grounds such as parks, playing fields, the Marginal Way, or conservation and open space.~~

**Pest:** Any undesirable insect, plant, fungi, bacteria, virus or micro-organism.

### **1104 Exemptions**

The following processes are exempt: drinking water and wastewater treatment; indoor pesticide use; contained baits or traps for rodent control; use of pesticides classified by the US Environmental Protection Agency as exempt materials under 40 CFR 152.25 or pesticides permitted by the Organic Materials Review Institute; management of town-owned land not used or used infrequently by the public (roadway medians, for example).

A specific exemption is made for poison ivy control on the Marginal Way, using the least toxic product in accordance with the US Environmental Protection Agency under 40 CFR 152.5, the Maine State Regulations Title 7 and Title 22:

“Use of Pesticides”, and the *Best Management Practices for the Application of Turf Pesticides and Fertilizers* of the Maine Board of Pesticide Control.

Restricted pesticides may also be applied for the following purposes:

1. **Noxious Growths** – The control of plants, including and not limited to, poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium*), and poison sumac (*Rhus vernix* or *Toxicodendron vernix*).
2. **Invasive Species** – The control of invasive species that may be detrimental to the environment.
3. **Mandatory Applications**- Use of pesticides mandated by state or federal law.
4. **Health and Safety** – The control of insects that are venomous or disease carrying.

#### **1105 Emergency waiver**

If an emergency situation warrants the use of non-exempt pesticides, the Code Enforcement Officer may, ~~upon written request to the Board of Selectmen,~~ grant a thirty (30) day temporary waiver. The waiver may be extended to a six (6) month total period. Waiver approval shall be subject to the use of the least toxic material available to address the given emergency. The presence of weeds or common fungal diseases in the usual course of turf maintenance shall not constitute an emergency.

(a) *Waiver determination shall be based on the following criteria:*

- 1105.1 The pest situation presents a) an immediate threat to human health or environmental quality, or b) an immediate threat of substantial property damage or loss; and
- 1105.2 Viable alternatives consistent with this article do not exist. The Select Board shall request the Conservation Commission to review any waiver requests made under this section, and to recommend a course of action.

#### **1106. Enforcement and permits**

This article shall be enforced by the Code Enforcement Officer, according to the policies governing enforcement of municipal ordinances of the Town of Ogunquit.

**1107. Conflict and invalidity**

If a conflict or inconsistency is found between this article and other sections of the Zoning Ordinance or Town Charter, the terms of the stricter provisions shall prevail. The invalidity of a provision of this article shall not invalidate any other provision of this article.

**1108. Authority**

Pursuant to 30-A M.R.S.A. § 3001, municipalities may enact ordinances to protect the welfare of their inhabitants. Pursuant to 22 M.R.S.A. § 1471-U, Maine municipalities may enact ordinances that apply to pesticide storage, distribution, or use. Pursuant to 38 M.R.S.A., § 1310-U, municipalities may enact ordinances with respect to solid waste facilities with standards that are not more strict than those contained in the Maine Hazardous Waste, Septage and Solid Waste

Management Act 38 M.R.S.A. §§ 1301-1319-Y, the Protection of Natural Resources Act 38 M.R.S.A. §§ 480-A-480-Z, the Site Location of Development Act 38 M.R.S.A. § 481-490, and the rules adopted under those articles, as amended from time to time.<sup>1</sup>

IN WITNESS WHEREOF, UNDER SEAL OF THE TOWN, this Ordinance as duly approved by the voters acting on Article 11 at an Annual Town Meeting held on June 14, 2011.

Ordinance Change Effective January 1, 2015