



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND

ENVIRONMENTAL AFFAIRS

Department of Agricultural Resources

State Reclamation and Mosquito Control Board

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STATE RECLAMATION AND MOSQUITO CONTROL BOARD (SRMCB)

Subject: Summary Meeting Minutes

Date: Wednesday, October 15, 2008

Place: 240 Beaver Street, UMASS Eastern Extension Center/
Waltham Field Station
Waltham, MA

Attendees: Mark Buffone, Department of Agricultural Resources /SRMCB, Chairman
Gary Gonyea, Department of Environmental Protection / SRMCB Member
Anne Monnelly, Department of Conservation and Recreation / SRMCB Member
Alisha Bouchard, SRMCB, Projects Administrator

Mosquito Control Project Commissioners:

Lenny Izzo, Commissioner, East Middlesex Mosquito Control Project
Kimberly King, Plymouth County MCP, Commissioner
J. Gregory Milne, Cape Cod MCP, Commissioner
Richard Pollack, Mosquito Advisory Group / Norfolk County MCP, Commissioner

**Mosquito Control Project Directors/
Superintendents /Assistants:**

Ellen Bidlack, Plymouth County Mosquito Control Project
Dan Daly, Plymouth County Mosquito Control Project
Tim Deschamps, Central MA Mosquito Control Project
David Henley, East Middlesex Mosquito Control Project
Jake Jurgenson, Berkshire County Mosquito Control Project
Dave Lawson, Norfolk County Mosquito Control Project
Priscilla Matton, Bristol County Mosquito Control Project
Timothy McGlinchy, Central MA Mosquito Control Project
Walt Montgomery, Northeast MA Mosquito Control & Wetlands
Management District
Gabrielle Sakolsky, Cape Cod Mosquito Control Project
John Smith, Norfolk County Mosquito Control Project
Anthony "Tony" Texeira, Plymouth County Mosquito Control Project

- 1.0: Call to Order and Attendance.** Chairman, Mark Buffone officially called the meeting of the State Reclamation and Mosquito Control Board to order at 10:02 AM on Friday, October 15, 2008 at the UMASS Eastern Extension Center or Waltham Field Station.

He stated that today's meeting was posted at both the Secretary of States office and Executive Office of Administration and Finance pursuant to the Open meeting Law. Also, he remarked that today's meeting was posted on the Board's website.

He introduced himself as Chairman and the fact that he was representing the Department of Agricultural Resources (DAR). He also recognized Gary Gonyea who represents the Department of Environmental Protection (DEP) along with Anne Monnelly representing the Department of Conservation and Recreation (DCR) Also, for the record, he acknowledged Alisha Bouchard, Projects Administrator and welcomed all Commissioners, superintendents, assistants, and all others.

Lastly, the Chairman stated that the Board did have a quorum for voting purposes.

- 1.2: Opening Remarks: None**

- 2.0: **Vote to approve minutes:** The Board had outstanding minutes that needed to be approved. Chairman Buffone asked for a motion to approve the minutes as written.
- 2.1: **Questions and Discussions:** There was no discussion.
- 2.2: **Action Taken:** Motion was made by Anne Monnelly to approve the minutes of September 24, 2008. The motion was seconded by Gary Gonyea. Vote to approve was unanimous.

Before taking up the next agenda item, Chairman Buffone remarked that the next two agenda items both 3 (*Vote to approve Freshwater Mosquito BMP revisions*) and 4 (*MEPA Mosquito Control Special Review Procedure Filings*) would be combined into the next discussions and action taken since they were related to one another.

3.0: Vote to approve revisions to the BMP for Work in Inland Freshwater Wetland

- 3.1. **Background:** Chairman Buffone took the time to outline and update the current status of this issue. He commented that the Board sent e-mails informing MCPs of several revisions to the Inland Freshwater Mosquito BMP. He mentioned and acknowledged the individuals who worked hard on this document during 2007 including but not limited to Emily Sullivan, Caroline Havilland, Gary Gonyea, Priscilla Matton, Amanda Hope, and Mike Stroman. As a result, the Board voted unanimously at the October 2007 meeting to approve the BMP and submit it to MEPA for subsequent public review via the Environmental Monitor. After public review, the Board drafted responses to the public comments and will submit the BMP revisions and its responses to MEPA as another update.

He remarked that the Board was obligated to submit annual updates to identify new ideas and approaches to mosquito control and to insure some kind of programmatic review of mosquito control by the public since the original GEIR certificate was approved some 10 years ago circa 1998. These annual updates were not filed since the Board had no official protocol to follow over the last 10 years, and after committing to the annual updates, the Board membership recognized, and were on record to MEPA, that it was not feasible or practical to file annual notices since new ideas and approaches to mosquito control do not change significantly from year to year. However, in the last few years especially after the 2006 aerial emergency public health applications, concerns were expressed by various individuals and groups to the Secretary of EEA that programmatic review of mosquito control is long overdue. Therefore, the Secretary of EEA established a Special Review Procedure (SRP) through MEPA to replace the GEIR format by which the Board shall continue its efforts to document and

submit for MEPA review of its policies and management practices for mosquito control throughout the Commonwealth.

The Chairman explained that the SRP was established on February 15, 2008 shortly after the Board submitted its first update previously mentioned above; that being the Inland Freshwater BMP at the end of 2007. The Board was directed to file its first EIR Update within 6 months of the February 15, 2008 but could not meet the deadline due to very active mosquito-borne disease potential during 2008 and the lack of adequate resources to prepare the filing.

Once the mosquito season ended, the Board made an effort to submit the revised BMP and responses to public review to MEPA. This filing outlined the Board's intent to meet the Secretary's instructions made in the current certificate. In addition, the Board stated for the record it will submit many completed documents such as the aerial application summaries, DPH workgroup products, along with a plan for future filing which would include a reference to an RFR that the Board has recently posted on the procurement website Comm-Pass. Finally, the Board will include a request for a reasonable extension.

3.2 Questions and Discussion: During discussion of these agenda items, the revisions to the BMP were highlighted as follows:

1) Natural Heritage and Endangered Species (the Board and MCPs used an incorrect interpretation in the original document - the correct interpretation provided by NHESP in their comments were added). Note: Any proposed work in Rare and Endangered Species habitat - mechanical or hand - requires filing with NHESP; the Board is confident that MCPs can work with NHESP when working in these areas. It is safe to say that MCPs have not been prohibited in significant ways with the recently enhanced relationship with NHESP. Even with spraying, NHESP has been working with you as it pertains to mosquito control activities in priority habitat. It is more of a communication issue than anything else at least at this point in time.

2) Clarification that the MCPs are not responsible for the Operation and Maintenance of stormwater BMPs but as expressed by MCPs that they can work with municipalities on these issues such as these structures can be included in the MCPs larvicide treatment plans. Also, MCPs should alert local municipalities when MCPs encounter poorly maintained structures as these situations could impact prevalence of arbovirus such as West Nile virus.

3) Post- project monitoring. The Board agrees that the suggested post - project monitoring procedure needs to be carefully developed. The Board would ask that all of us work together on developing a protocol that could be appended to the BMP as an update for the foreseeable future. It was noted that the package submitted to MEPA will state that the Board will develop the protocol with assistance from the mosquito control projects before the next mosquito season.

The Chairman mentioned concerns expressed by the mosquito control projects about Chapter 91 referenced in the BMP. MCP's representatives stated that the MCPs and the Board were exempt from Chapter 91 and as a result need not be included in the BMP. The Chairman stated that this law is only cited in a section in the BMP that list all laws and regulations that may or may not affect wetland activities. Walter Montgomery debated this vigorously exclaiming that mosquito control is categorically exempt noting Chapter 131 of the MGL, section 40, subsection 15. Gary Gonyea responded commenting that there is a potential that the mosquito control activities may need to comply. Much discussion ensued on this matter.

The Chairman reminded those present that the BMP provides a listing of laws and the listing of specific laws include ones that MCP's are exempt. Walter Montgomery said that if this was the case, he had no objection. However, he emphasized that if the intent of the listing of laws is to make MCP's comply including ones that he contends categorically exempts MCPs, he suggested the best way to obtain compliance is to file legislation to have the exemption removed from the law.

Gary Gonyea pointed out that in the last 20 years; DEP has not issued a Chapter 91 permit or license for mosquito control work freshwater or saltwater. He said however, that in rare instances, there may be a need for it.

The Chairman commented that the BMP highlights the words (if applicable) and that the BMP is a guidance document.

Walter Montgomery wanted his objection noted and that it was his position that mosquito control is categorically exempt from Chapter 91.

Gary reiterated that the Board was under the gun to file updates to MEPA and that the BMP document is in good shape. The only thing really missing is the pre- and post monitoring revisions.

Anne Monnelly remarked that MEPA sat with the Board, provided good guidance, and wanted to continue to move forward in that regard.

The Board members discussed adding some language to the BMP to balance the concerns expressed in the discussion. Gary Gonyea remarked that Chapter 91 is potentially applicable; it does not prohibit or restrict mosquito control activities.

Gary Gonyea asked for volunteers to spearhead an effort to beef up or develop a pre-post monitoring standard. It was suggested and agreed that the original group of water specialists who worked on the BMP document do it before the next season's mosquito season. The Chairman asked if the Board could receive a draft by the end of February.

3.3: Action Taken: The issue of Chapter 91 concluded with no final resolutions but the minutes would reflect the strong position of Director Walter Montgomery. Also, the Board decided it would consider language to better clarify the issue such as the following "although exempt pursuant to Chapter 130 section 105 there may be in rare instances the need for review for the need for a Chapter 91 license/permit determine during the 401 Water Quality Cert Permit process.

The Chairman entertained a motion to accept the changes made to the freshwater inland BMP with the language for Chapter 91 to be reviewed for applicability with e-mail notification to all.

Gary Gonyea made a motion to accept the final draft version of the MA BMP guidance document for freshwater mosquito control with the changes that were made in the October 7, 2008 version and with one additional change to be discussed with Glenn Haas and others at DEP; that being the following language " although exempt pursuant to Chapter 130 section 105 there may be in rare instances the need for review for the need for a Chapter 91 license/permit determine during the 401 Water Quality Cert Permit process."

Mark Buffone seconded the motion and the motion was voted unanimously.

Addendum: After consultation with Glenn Haas and other DEP staff, Gary Gonyea recommended against adding the above language and making further changes to the BMP manual besides the three revisions agreed to above.

4.0 MEPA Mosquito Control Special Review Procedure Filings

4.1 Background and Discussion: Tim Deschamps asked about the Board's comments to public responses. Chairman Buffone stated that the Board's responses would be filed with MEPA along with the last agenda item revisions to the BMP. Gary Gonyea noted that the responses would also be posted on the Board's website. The overall discussion that ensued discussed that public review of mosquito control is important to highlight that mosquito control practices are effective and environmentally responsible. The Chairman believed the public review will ultimately help to educate the public about mosquito control activities. He noted that there may be a number of practices that the public would like to see implemented in addition to current mosquito control service response but that this could be beyond the scope of the Board's/MCP's expertise and require additional resources and funding.

Ellen Bidlack made note of a change that should be made to one of the comments to the public responses. Chairman Buffone noted the changes and requested that any additional changes should be sent to him.

4.2: Action Taken: Gary Gonyea made a motion to approve the "Response to Comments" with minor wording changes to be submitted by Friday afternoon of October 17th and seconded by Anne Monnelly and voted unanimously.

After the vote, Chairman Buffone explained that the Board's filing would spell out the Board's intentions, as well as progress to date. He announced that there were several documents that the Board would submit to MEPA including but not limited to the following:

The original 1998 certificate,
The New February 2008 certificate
A request for an extension
A proposed RFR to hire a consultant to help the Board update the GEIR
Summary Documents such as report on Sumithrin residues and cranberry, summary of the 2006 Aerial Spray, DPH workgroup documents, the Board's operational plan and the DPH response and surveillance plan.

A point was raised by Walter Montgomery that this issue was not revealed by the Board and that the Board did not provide an opportunity for MCP's to input. Chairman Buffone stated that mosquito control districts were informed about this matter via postings on the list serve and the Board's website. He further remarked that this was a certificate issued by the Secretary of Environmental Affairs. Chairman Buffone distributed both the original and new certificate to all in attendance.

Anne Monnelly stated that this was MEPA's official way of responding to the BMP which was submitted at the end of 2007. She said, the Secretary issues the certificates and directs the Board to comply. She further states that the certificate requests that the Board compile existing documents.

Gary Gonyea stated that the next item after the BMP we need to submit is the 10-year OMWM review which should be an evaluation and analysis of the work performed on the salt marshes in Essex County. Chairman Buffone read the specific certificate language from the original certificate.

Discussion ensued about the RFR, who it was sent to, and the details. The Board invited those in attendance to provide additional names if there was anyone else that the RFR be sent. There was concern expressed that the Board did not communicate fully about the Special Review Procedure. The Chairman offered that perhaps there was some kind of disconnect along the way pertaining to this issue but was convinced that this information was communicated to all Districts as stated above.

Gary Gonyea interjected that the Board is required to up date the following documents including but not limited to:

- Re-File the revised the Inland BMP
- File the 10 year OMWM review and evaluation
- Compile documents of the Board and MCPs over the last 10 year since the last GEIR
- Put forward a schedule and timeline for completion of the GEIR update

During the lengthy discussion, John Smith commented that the old GEIR recommendations by Dr John Edman from UMASS highlighted that the mosquito control projects were vastly under funded and that the current assessment mechanism in many cases is not conducive to long term planning and monitoring. He pointed out that those parties requesting more and more environmental review do not really understand the resources necessary to accomplish it.

5.0: **Vote to approve next meeting dates-2009 Schedule:** Chairman Buffone stated that in the past the Board has voted to hold its meeting on the 3RD OR 4th Wednesday in the months of January, March, May, and October. He proposed the following dates be approved for our meetings in 2009. The Chairman also stated that the Board occasionally needs to meet at other times on an "as needed basis" and on these additional occasions the Board will post a notice on the Board's website.

January 28, 2009

March 25, 2009

May 27, 2009

October 21, 2009

5.2: **Questions and Discussions:** None.

5.3: **Action Taken:** Motion was made by Gary Gonyea to approve the minutes of September 24, 2008. The motion was seconded by Anne Monnelly. Vote to approve was unanimous.

6.0: **FY 10 Budgets**

6.1: **Background:** For the record, Chairman Buffone stated that the Board has concerns about FY10 budget preparations. He did mention that there has been budget debates especially concerning FY 09. In fact he recalled that one budget was in deficit spending therefore the Board wanted to make the MCPs aware of our concerns about budget preparations for the next Fiscal Year. The Board certifies the budgets usually at its May meeting and sends these final amounts to the DOR. The Board has been encouraging MCPs and Commissions to exercise fiscal discipline and to be as transparent as possible about budget requests. In light of the current economic climate now and into the foreseeable future, the Board encouraged the MCPs and their Commissions to minimize their FY 10 budget requests in anticipation that member communities could be working with fewer funds via local aid. Even if local aid is not significant reduced, the climate is such that it is prudent that core services be maintained and avoid proposing expansion.

The Board encourages MCPs and Commissions to work with Alisha and others to insure that requests will be appropriate. For the record, the Board asked the MCPs and Commissions to rely more on seasonal and to start that process as soon as possible early in the spring.

6.2: **Questions and Discussions:** Gary mentioned that it is forecasted that there could be sizable cuts, lay offs, and potential cuts to local aid and recommended that MCPs look carefully at the budget for next year and this year to see if there are any areas MCP's can make cuts.

J. Greg Milne raised a point about funding being moved around with their knowledge. He said they can't tighten up if they are not aware ahead of time funds being changed in line items. Other specifics were raised about the Cape's budget such as fringe benefits and how they were caught unaware of these changes. Additionally, there appears to be a discrepancy between final numbers (exact figures) and the numbers provided by the MCP's.

The Chairman offered to talk to DAR fiscal and projects administrator to help understand the Cape's frustration in budget matters. He noted, however, that changes to the fringe rate were distributed to all Districts.

Gabi Sakolsky also brought up title changes and promotions in their staffing in addition to merit increases and approved by their Commission.

David Henley stated that the Comptroller sends out a memo that indicates fringe benefits are subject to change and that no one knows the exact figure.

Walter Montgomery stated that they needed a report called a warehouse report that better reflects the numbers and what accounts are the funds being taking.

J. Greg Milne brought up section 14D about the fact the mosquito control projects/districts have sole authority in all personnel decisions which he said was the law. He feels that the ambiguity has been clarified by the legislation. He feels that the budget mishaps are breaking the law in his opinion.

Walter Montgomery expressed that bills were not getting paid and MCPs representatives remarked that the bills are sitting for 2 months. Plymouth County representatives stated that 5 vendors that shut there accounts off and expressed frustration about probation periods.

Chairman Buffone stated he was aware of bills not being paid and not being paid for 2 months. The Chairman stated that he would need to look into the matter and noted that it is important that the Districts provide Alisha with all the documentation she has requested when they submit invoices for payment to avoid unnecessary delays.

Anne Monnelly asked if these issues were related to the moratorium. The moratorium took place due to the issue of reclassification. Questions were brought up to revisit the moratorium issue and review the decision.

The Chairman remarked that this issue was being reviewed and requested that this issue be deferred to another time.

He commented that there are many unanswered questions and uncertain as it relates to the consistency of changes in the law but at the present time the moratorium stands. Further, he said that this issue could be discussed and explored at a future time. The focus of the Board should be to complete the GEIR.

6.3: Action Taken: The Chairman exercised parliamentary privilege and requested that the meeting be officially adjourned tabling any other agenda items.

7.0: 2008 Mosquito Season Annual Reports.

7.1: Background: This agenda item was tabled.

7.2: Questions and Discussions: None.

7.3: Action Taken: None

8.0: Adjournment.

8.1: Background: The Chairman entertained a motion to officially adjourn the meeting.

8.2: Questions and Discussions: None.

8.3: Action Taken: Gary Gonyea made a motion to adjourn the meeting at 12:38 PM. The motion was seconded by Anne Monnelly and voted unanimously.

Respectfully submitted,

Mark S. Buffone
Chairman