

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the McCormick BLDG, 1 Ashburton Place, on Monday, March 10, 2014

The meeting was called to order at approximately 10:05 A.M.

BOARD MEMBERS IN ATTENDANCE

Lee Corte-Real, MDAR Designee for Commissioner Watson,	Present
Michael Moore, DPH, Food Protection Program	Absent
Marc Nascarella, DPH, Designee for Commissioner Bartlett	Present
William Clark (Conservation/Environmental Protection Member)	Absent
Jack Buckley, DFG, Designee for Commissioner Griffin	Present
Kathy Romero, DEP, Designee for Commissioner Kimmell	Present
Ken Gooch, DCR, Designee for Commissioner Lambert	Present
Richard Berman	Present
John Looney	Absent
Brian Magee	Absent
Richard Bonanno	Present
Laurell Farinon	Present

The Board did meet or exceed the minimum number (7) of members present to form a quorum and conduct business.

OTHER INDIVIDUALS PRESENT:

Ted Burgess, Burgess Pest Management; Bob Leon, General Environmental Services, Inc.; Kathy Bell with Consultants Shanley, Fleming, Gokganski & Cahill; and Steven Antunes-Kenyon, MDAR

DOCUMENTS PRESENTED

- Minutes from the Wednesday, December 11, 2013 Meeting;

A. Minutes

Discussion

The minutes from the Wednesday, December 11, 2013 Meeting were presented for consideration. The Board engaged in a brief discussion to clarify two sections of the minutes.

The Board also briefly discussed that although the Pesticide Board Subcommittee was a separate entity from the Board, it did NOT have the authority to change regulations or adopt new regulations without going through standard legal procedures. Furthermore, it was thrown into question whether the Pesticide Board Subcommittee could even adopt policies. Although a clear

interpretation of this latter point was not available, it was suggested that such Subcommittee policies might better be characterized as normal practices.

Voted: To accept the minutes of the Wednesday, December 11, 2013 Meeting.

Moved: Laurell Farinon

Second: Jack Buckley

Approved: 7 – 0 – 1

Abstentions: Richard Berman (Not present at 12/11/2013 Meeting)

B. Updates on Pesticide Advisory Councils as defined in 333 CMR 2.03 Basic Information and further outlined in 333 CMR 4.00 Pesticide Advisory Councils.

Lee Corte-Real provided an overview of the Advisory Councils and indicated that they had not been active in some twenty-five years. He commented that there was a structural Advisory Council that dealt with chlordane in the 1980's; however, he could not remember a time since that there was an active council.

The Administration asked whether these regulations were still necessary and the Department indicated that they were not given their inactivity and since the Department's processes have included ample opportunities to hear from industry or other parties.

Richard Berman read the regulatory language and noted that the Department has been reticent to use these Advisory Councils as outlined. He maintains that the Advisory Councils should not be removed from the regulations, but used by the Department as outlined. He further suggested that the Department should reinvigorate the Advisory Councils and assess the industry response.

Lee Corte-Real described how all the Advisory Councils members need to be certified in the particular category associated with their councils and he outlined all of the different Advisory Councils as provided by the regulations.

Jack Buckley indicated that it was important for all of the Advisory Councils to be reinvigorated and not just a select few. Having all of them active could open up a dialog with a broader array of people. Such increased dialog may be helpful; especially, in a manner that seeks the input of groups or individuals whom have been less vocal than some industry groups.

A public members did comment that he had never heard of the Advisory Councils before this Meeting, but felt that such organizations might be helpful; especially, from the point of view of pesticide applicators.

Richard Bonanno acknowledged the openness of the Department with respect to receiving input; however, he also note that the Advisory Councils did provide some form where groups could act more formerly and provide input when important matters; such as, regulations are being considered.

Kathy Romero stated that such advisory councils may place a significant burden on the Department's resources. The Department will need to consider its resource constraints if it does move forward with reinvigorating the Advisory Councils.

A public member asked for clarification on the language in 333 CMR 4.00 Pesticide Advisory Councils; which, states that the Department shall have advisory Councils. He asked if this requires the Department to establish such Advisory Councils.

Richard Bonanno led a brief discussion clarifying that the Department does not have the authority to unilaterally remove the regulations 333 CMR 4.00 Pesticide Advisory Councils them, but must present such an initiative to the Board.

C. Appeal of Pesticide Enforcement Penalty

Lee Corte-Real noted that the individual named in the Department's Administrative Penalty was not present at the Meeting.

Lee described how Pesticide Enforcement found an unlicensed applicator of pesticides upon a records inspection. The individual admitted to Pesticide Enforcement that he had indeed applied pesticides in violation of state law.

The Department applied its standard written administrative order in this case; whereby, a certified letter was sent informing him of the following:

- That he shall cease and desist from making pesticide applications; and
- That he shall either obtain a pesticide license within 90-days of receipt of the order or within 90-days send a notarized letter to the Department stating that he is not going to apply pesticides in the future.

Ninety (90) days did pass by and the Department did NOT receive a response from unlicensed individual; consequently, the Department issued an administrative penalty with a \$250 fine.

In the matter before the Board, the written administrative order, sent by certified mail, was never signed for by the unlicensed individual. In such cases, the Department then uses standard U.S. Mail and as long as the Enforcement's letter does not come back "undelivered", it is considered served.

The unlicensed individual now claims that he did send a notarized letter to the Department stating that he was not going to apply pesticides and requests that the Department withdraw its \$250 Administrative Fine. The Department has not record of ever receiving such letter.

The unlicensed individual was sent notification that his appeal was going to be presented to the Pesticide Board at today's Meeting.

Voted: To deny the appeal of the Department's administrative penalty with a \$250 fine by the unlicensed applicator for failure to appear before the Board.

Moved: Jack Buckley

Second: Richard Bonanno

Approved: 8 – 0

D. Brief Pesticide Program updates on the following:

RE: Status of Proposed Regulations—“Under the Direct Supervision of a Certified Applicator.”

Public hearings are scheduled as outlined below.

- April 1, 2014 -- 100 Cambridge ST, Boston
- April 3, 2014 – DEP Lakeville SERO
- April 4, 2014 – Springfield City Hall

RE: Appeal of NSTAR Right of Way (ROW) Yearly Operational Plan (YOP) for Calendar Year 2013

- MDAR Legal Counsel sent the Appeal of the NSTAR ROW YOP to the DALA
- MDAR Legal Counsel now looking to request that DALA return the appeal to the Department for action.

F. Meeting Adjournment

Voted: To adjourn the Pesticide Board Meeting.

Moved: Jack Buckley

Second: Richard Berman

Approved: 8 - 0

The Meeting was adjourned at approximately 10:48 A.M.