

MASSACHUSETTS PESTICIDE BOARD MEETING

Minutes of the Board Meeting held at the Minihan Hall; 6th FL, Hurley Building, 19 Staniford ST, Boston, MA, on Monday, October 6, 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	Present
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 Cash	Present
Ken Gooch, DCR, Designee for Commissioner Lambert	Present
Richard Berman	Present
John Looney	Present
Brian Magee	Absent
Richard Bonanno	Absent
Laurell Farinon	Absent

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

OTHER INDIVIDUALS PRESENT:

Bill Siegel, NEPMA; Bob Leon, NEPMA; Galvin C. Murphy, NEPMA; Ted Burgess III, NEPMA; Ted Burgess Jr., NEPMA; Bob Mann, MALCP; Jessica Burgess, Esq., MDAR; Taryn Lascola, MDAR; Hotze Wijnja, Ph.D., MDAR; and Steven Antunes-Kenyon, MDAR

DOCUMENT(S) PRESENTED

- Minutes from the Friday, May 9, 2014 Board Meeting
- Hearing Officer's Report from Public Hearings on Proposed Regulations – "Under the Direct Supervision of a Certified Applicator"

A. Hearing Officer's Report and Consideration of Draft Regulations 333 CMR 10.07

Lee Corte-Real provided an overview of the Hearing Officer's Report as was written for the proposed regulations and based on public comments received both in writing and recorded from testimony at the hearings.

Lee explained that these regulations are more of a clarification than a major change in how the Department handles the issue of “direct supervision”. The draft regulations also attempt to address the concerns with written guidance provided to supervised applicators.

Lee summarized the comments for the Board and indicated the following:

- That after review of all the comments received, the MDAR believes the proposed regulations are appropriate and that verifiable and detailed proof of written guidance is needed.
- That the Pesticide Board Subcommittee addressed some of the concerns previously voiced through the reclassification of subsurface termiticides from restricted to non-classified or general use.
- That records maintained in electronic format are indeed acceptable from of record management.
- That the MDAR found comments regarding the cost estimates provided by the New England Pest Management Association (NEPMA) overestimated the financial impacts of the proposed regulations.
- That the MDAR has the authority and is seeking the approval of the proposed changes in Pesticide Regulations 333 CMR 10.07.

Richard Berman requested an opportunity to read and review the written testimony provided by members of the State Legislature and others. He indicated that he needed more time to collect comments on the Hearing Officer’s report from his constituents and made the following comments:

- That the cost estimates reported by NEPMA were based on numbers used in the pest control industry;
- That the Department did meet with industry representatives and based on those meetings did make some changes to the proposed regulations—but they not go far enough;
- That much of the industry testimony collected during the public hearing process was based on concerns for impacts relative to the use of liquid subsurface termiticides; which, were previously classified as State Restricted Use Products and were later reclassified as for general use by the Pesticide Board Subcommittee in August of 2014; and
- That he respectfully disagrees with the “clarification” characterization of the proposed regulations but rather described them as an expansion of MDAR requirements.

Jack Looney indicated that he believed the proposed regulations did not go far enough. He stated that the regulations should provide more guidance on “Direct Supervision”. He also stated that they should not allow one person to supervise up to 20 applicators. In addition he shared two accounts from his personal and professional life where the need for such guidance was not present resulting in serious legal cases of alleged negligence.

Jack Looney indicated that in a healthcare setting, nurses may only supervise 6-individuals and in special cases up to 9. Likewise, he believes that Commercial Certified applicators should NOT be allowed to supervise up to 20 individuals; however, it may be acceptable to supervise as many as 12. He explained how such “direct supervision” guidance can provide legal protections to supervisors in addition to helping those being supervised.

Lee reiterated that the current draft regulations are a result of compromise from ongoing discussions with industry and other parties.

Jessica Burgess reinforced the Board's need to discuss the Hearing Officer's Report and decide how to move forward. She also helped to clarify the State's regulatory process for promulgation of regulations and how this process might work in conjunction with any motions made by the Board to approve the regulations.

Jack Looney asked if the Board might consider moving forward by accepting the draft regulations as written and open the floor for comment. He then made the following motion.

Motion (to be voted on later): That the Board accept the regulations as outlined in the Hearing Officer's report and open the floor for comment.

Moved: Jack Looney
Second: Kathy Romero

With the floor open for comment Richard Berman reiterated his desire to read the written comments received during the open comment period. Richard stated that he believes it would be helpful to the Board to see the written testimony.

Jack Looney also reiterated his concern for the large number (20) of people a Commercial Certified Applicator is permitted to supervise under the draft regulations. He also commented that "direct supervision" should require the supervisor to be on-site. He believes this number should be reduced to no more than 12 people.

Marc Nascarella and Jack Buckley, both expressed concerns for a proper deliberation on this matter. Jack also asked how other states handled the matter of "supervision of non-certified applicators. The Board then engaged in a discussion of certain other states in the northeast; which, all have varying laws and regulations with respect to handling this matter.

After Michael Moore inquired as to relative number of regulated companies having 20 or more employees, Lee Corte-Real and Taryn Lascola, both responded that the majority of regulated companies have far less than 20 employees.

Richard Berman indicated that he would not be opposed to such a change in the number of people one person may supervise from 20 to 12.

Modifying Motion / Voted: To amend the number of people, from 20 to 12, a Commercial Certified Applicator is permitted to supervise in the proposed regulations 333 CMR 10.07(2); such that, a supervising certified applicator shall supervise no more than twelve (12) non-certified applicators.

Moved: Jack Looney
Second: Ken Gooch

Opposed: Jack Buckley and Kathy Romero

Abstentions: Lee Corte-Real, Michael Moore and Marc Nascarella

Approved: 3 – 2 – 3

Lee asked the Board if there were any other comments to be heard on the proposed regulations and if there was a motion to table the discussion.

Richard Berman went through the draft regulations, making a number of points with follow-up by Jessica Burgess, Lee Corte-Real, and Taryn Lascola as provided below:

- That subsection 10.07 (1) – already exists in the current regulations.
 - Lee and Jessica confirmed that this language did already exist and then explained their reasoning for placing the same language it in these draft regulations.
- That subsection 10.07 (3) – already exists in the product labeling.
 - Taryn Lascola explained the Department’s reasoning for requiring Product Application Guidance Sheets for each State Limited Use and Restricted Use Pesticide used by the company.
- That subsection 10.07 (4) contained the phrase “state limited use”, but that he could NOT find its’ definition in the statute or regulations.
 - Lee and Jessica explained that such a classification did exist and that it refers to products that require a Department issued permit for use.
- That subsection 10.07 (6) was appropriate.
- That subsection 10.07 (7) includes the phrase “vehicle identification number”, which needs to be clarified.
 - Lee explained that it was indeed the actual Vehicle Identification Number (VIN) as is a standard requirement of all over-the-road vehicles.
- That it was unclear as to the purpose of the daily inventory log.
 - Taryn Lascola explained that since company vehicles are often driven by different employees within the company, such a log helps to establish and maintain as list of what Restricted Use and State Limited Use Pesticides are indeed on the truck at the beginning of each work shift.
- That subsection 10.07 (8) creates a burden on companies and that most companies are meeting the intent of this regulation already.
 - Taryn Lascola explained that since company vehicles are often driven by different employees within the company, such a log helps to establish what Restricted UP are indeed on the truck
- That subsection 10.07 (9) creates an additional record keeping burden resulting in increases costs/expense to running businesses.
 - Taryn and Lee explained that the draft regulations did NOT creating a whole other layer of record keeping, but for the most part clarify the current requirements in-light of the issue at hand. They acknowledged that the required signature and license number of the supervising certified applicator and review of records were new additions.

- That the actual risks to the public and potential for adverse environmental impacts as mentioned in the “Basis for the Proposed Regulation” were unclear. He also asked if “in-house / company” label reviews might meet the Department’s concerns.
 - Lee explained that the Department is looking for the specific detailed guidance that the supervising certified applicator is providing to the applicators he/she is supervising. The Department already has the authority to review applicator records and seek proof of such verifiable detailed guidance. These new requirements help to better establish the needed verifiable detailed guidance.
 - Taryn explained that such “in-house / company” label reviews would not necessarily meet the Department’s objectives and that the draft regulations help to make clear what specifically the Department is seeking.

To close further debate and bring the main motion as amended to a vote, Jack Buckley called the question.

Voted: To accept the proposed regulations 333 CMR 10.07 as amended.

Moved: Jack Looney
Second: Kathy Romero

Approved: 6 – 1 – 1
Opposed: Richard Berman
Abstention: Lee Corte-Real

B. New Business

None.

C. Next Meeting Date / Location and Adjournment

The Board confirmed the next meeting date of Wednesday, December 3, 2014. Jack Buckley invited the Board to meet at the newly opened MDFW Headquarters in Westboro which is the State’s largest zero energy building.

Voted: To adjourn the Pesticide Board Meeting.

Moved: Jack Buckley
Second: Jack Looney

Approved: 8 - 0

The Meeting was adjourned at approximately 11:57 A.M.