

**ADVISORY COMMISSION ON PESTICIDES  
VETERANS' MEMORIAL AUDITORIUM  
5825 FLORIDA BLVD.  
BATON ROUGE, LOUISIANA  
October 28, 2015 9:30 AM**

**MINUTES**

**CALL TO ORDER**

The meeting was called to order by Chairman Dr. Grady Coburn at 9:30 am.

**ROLL CALL**

Members present: George Bragg, LA Mosquito Control Association, Keith Majure, Salesperson at Large, Roby Shields, LA Vegetation Management Association, Martin Floyd, LA Wildlife Federation, Dwayne O'Brien, LA Agricultural Aviation Association, Dr. Grady Coburn, LA Agricultural Consultant Association, Dr. Gary Ross, LA Audubon Society.

Members absent: Wayne Ducote, Billy Guthrie, Dr. Marcia Hardy and Johnny Landry

Others present: Todd Parker, LDAF, Kevin Wofford, LDAF, Harry Schexnayder, LDAF, Lindsey Hunter, LDAF General Counsel, Tina Perkins, LDAF and Fran McVea, LDAF, Michael Vallen, Hearing Officer, Jonathan Siebert, PhD, Dow AgroSciences and Elisha Kemp, Dow AgroSciences.

**PUBLIC COMMENTS**

Chairman Coburn opened the floor for public comments. There were none.

**APPROVAL OF MINUTES**

**Motion:** Mr. Floyd made a motion to approve the proceedings from the July 22, 2015 ACP meeting. The motion was seconded by Mr. Shields and passed unanimously.

**AMENDMENTS TO AGENDA**

Chairman Coburn asked Mr. Schexnayder if there were any recommendations for amendments to the agenda. Mr. Schexnayder requested that the Adjudicatory Hearing be moved ahead of Old Business and after Department Reports.

**Motion:** Mr. Floyd made a motion to approve the recommendation; the motion was seconded by Mr. O'Brien and passed unanimously.

**DEPARTMENT REPORTS**

Mr. Wofford welcomed new employee Tina Perkins. He also acknowledged Scotty May, who was recently promoted from Inspector to Pesticide Registration Coordinator. Mr. Wofford reported that the department had recently filled nine (9) vacant Inspector positions putting the total number at about forty nine (49) or fifty (50) Inspectors across the state. He stated that the department has worked about one hundred forty three (143) investigations and has issued twenty one (21) warning letters since the last meeting.

Mr. Wofford reported that the department is currently working on a Section 18, putting a package together for AV-1011 (for rice) an Arkion product. Arkion has been trying for a couple of years to get a Section 3 label but they are still in the registration process. EPA has assigned a different review person for the use of AV-1011 on rice and we are hopeful we will more than likely get another Section 18 label for next year. Arkion is also working on a Section 3 label for corn products which will hopefully follow with a rice label.

Also, Mr. Wofford stated that the department is working on a response to the EPA about the agency's proposed changes for certification and training. He stated that the department is already meeting or exceeding some of the proposed requirements. The concern is in the area of the CEU requirements proposed since the department does not currently use them. Mr. Wofford stated that the proposed EPA certification and training changes may affect private applicators more than commercial applicators in the amount of education/training required. He stated that implementation of the proposed changes may be two (2) to three (3) years away.

Mr. Wofford also reported that despite budget issues and short staffing, the department had registered more products this year than in the history of the department.

### **ADJUDICATORY HEARING**

Hearing Officer Michael Vallan conducted the hearing. LDAF General Counsel Lindsey Hunter presented the following cases:

James Morris, Case No. 1938 – Dismissed  
**Motion:** No action required by the Commission.

Charles F. Paris, Case No. 1939- Mr. Paris stipulated to one (1) violation and a fine of \$1,000.00.  
**Motion:** Mr. O'Brien made a motion to accept the stipulation as presented. The motion was seconded by Mr. Coburn and passed unanimously.

David E. McGee, Case No. 1940 - Mr. McGee stipulated to one (1) violation and a fine of \$2,000.00.  
**Motion:** Mr. O'Brien made a motion to accept the stipulation as presented. The motion was seconded by Mr. Floyd and passed unanimously.

Kenneth W. Cook, Case No. 1941 - Mr. Cook stipulated to one (1) violation and a fine of \$1,000.00.  
**Motion:** Mr. Bragg made a motion to accept the stipulation as presented. The motion was seconded by Mr. Floyd and passed unanimously.

Ronnie C. Dison, Case No. 1942 – Continuance requested by Respondent was granted by the Hearing Officer  
**Motion:** No action required by the Commission.

Jacob Perry, Case No. 1943 - Mr. Perry stipulated to one (1) violation and a fine of \$1,000.00.  
**Motion:** Mr. Floyd made a motion to accept the stipulation as presented. The motion was seconded by Mr. Bragg and passed unanimously.

Jeffery Simmons, Case No. 1944 – Mr. Simmons stipulated to two (2) violations and a fine of \$2,500.00.

**Motion:** Mr. O'Brien made a motion to accept the stipulation as presented. The motion was seconded by Mr. Bragg and passed unanimously.

Seth Olivier, Case No. 1945 - Mr. Olivier stipulated to four (4) violations and a fine of \$5,000.00.

**Motion:** Mr. Floyd made a motion to accept the stipulation as presented. The motion was seconded by Mr. Coburn and passed unanimously.

Bobby R. Mayo, Enforcement File No. 1199 - Mr. Mayo stipulated to accept a warning letter as the enforcement action relative to one violation

**Motion:** Mr. Shields made a motion to accept the stipulation as presented. The motion was seconded by Mr. Floyd and passed unanimously.

Mr. Majure expressed concern that the majority of the stipulations considered today were from areas in Northeast Louisiana. Mr. Wofford stated that department staff had also noticed the trend and could only conclude that it was mostly due to a higher concentration of aerial applicators in that particular region. Mr. Schexnayder reminded the Commission that the enforcement actions stemmed from complaints having been received by the department. Mr. Wofford added that some of the aerial applicators had branched off into new and unfamiliar territory. He suggested that may have contributed to the problem because the department received calls from aerial applicators warning about new applicators in the area in advance of the complaints being received.

Mr. Schexnayder suggested the Commission break for five minutes before considering old business.

Chairman Coburn called the meeting back to order at 10:20 am.

### **OLD BUSINESS**

LDAF General Counsel Lindsey Hunter presented a draft of proposed rule changes to Title 7, Part XXIII, Chapter 3, §307 and §309 to the Commission for approval. She explained that the Administrative Procedure Act requires that a procedure be in place for someone to request a rule change or a declaratory judgment.

Chairman Coburn asked for confirmation that the §307 proposed rule changes deal strictly with how to proceed with a request to adopt, amend or repeal a rule or regulation.

Ms. Hunter confirmed Chairman Coburn's summation and clarified that the §309 proposed rule change simply set a procedure for requesting a declaratory judgment.

**Motion:** Mr. Shields made a motion to accept the proposed rule changes as presented. The motion was seconded by Mr. O'Brien and passed unanimously.

Mr. Schexnayder reintroduced proposed rule changes to Title 7, Part XXIII, Chapter 1 §103; Chapter 7 Subchapter C §727; and Chapter 11 §1101 and §1103.

### **Title 7, Part XXIII, Chapter 1 §103**

There was some discussion as to whether or not to include “unintentional” as the second word in the definition of *Drift* under §103 of Chapter 1. Ms. Hunter stated that the department had decided to strike “unintentional.”

Chairman Coburn recognized Dr. Siebert for public comment on the definition of drift. Dr. Siebert questioned the inclusion of off target movement through water. He stated that when thinking of drift, you usually think of vapor or movement through the air. Dr. Siebert explained that he would call movement through water “off target.”

Mr. Shields asked Mr. Schexnayder how the department refers to movement through water in its charge letters.

Mr. Schexnayder responded that most were described as application inconsistent with labeling when the movement was through water. He also stated that other states define drift as physical movement.

Dr. Siebert recommended that the word “airborne” be replaced with the word “physical” in the definition of drift. He stated that “physical” was a better fit with the rest of the definition which reads “pesticides either in particulate, liquid or vapor form.”

**Motion:** Mr. O’Brien made a motion to amend the proposed rule change to §103 by replacing the word “airborne” with “physical” in the definition of drift. The motion was seconded by Mr. Floyd. Mr. Majure and Mr. Shields were opposed. The motion passed.

### **Chapter 7 Subchapter C §727**

Mr. Schexnayder reminded the Commission that the proposal to strike §727 had been previously discussed by the group. He stated that the provision was placed into the rules at a time when the department was having a large amount of problems with improper methyl parathion sales. The rule has now been found to be unnecessary and duplicative.

Mr. Bragg expressed a concern about the use of cash to buy pesticides and the inability to track those sales. Mr. Wofford stated that the problems mostly stemmed from the pesticide dealers’ failure to check for proper certification. He also stated that the same provision contained in §727 is in the dealer provisions of the rules.

Chairman Coburn asked for public comments regarding the proposed rule change to §727. There were none.

Chairman Coburn asked Ms. Hunter if it would be appropriate to handle the remaining proposed rule changes in globo. Ms. Hunter stated that it would be fine to go through them one by one and then at the end, approve them as amended.

### **Chapter 11 §1101 and §1103**

Chairman Coburn asked if there were any comments on the proposed change to §1101.

Mr. Shields asked for clarification since the proposed change was probably also stated elsewhere in the regulations.

Ms. Hunter explained that the change will create the violation for the drift definition.

Chairman Coburn asked if there were any comments on the proposed change to §1103.

Ms. Hunter stated that choline salt, under number six (6.) in the chart should not be there and needed to be struck.

Mr. Schexnayder explained that the department uses 2,4-D as an umbrella term to include all forms in the same way it uses Dicamba as an umbrella term to include all forms.

Dr. Siebert suggested the Commission strike number six (6.) and add “all salts, all formulations” in parentheses after numbers five (5.) and eight (8.) for the sake of clarity. He reasoned that since there is an acid form of 2,4-D on the market today and someone could surmise that the department is restricting the acid form but not the ester, amine and choline.

Mr. Schexnayder asked Dr. Siebert to reiterate the verbiage he suggests for the amendment to the §1103 proposed rule change.

Dr. Siebert suggested that he would add “all formulations, all salts” in parentheses after the current verbiage on numbers five (5.) and eight (8.) because those are the two that have multiple formulations and multiple salts that are sold on the market today and strike number six (6.) completely because it would then be included in number five (5.).

Chairman Coburn asked the Commission for any comments or suggestions relative to the list of parishes contained in §1103.

Dr. Siebert asked if there would be a mechanism by which commercial applicators could request a waiver in the parishes listed under §1103.

Mr. Schexnayder confirmed that §1107 under the regulations in Chapter 11 provide for the requirements for commercial applicators to request a waiver of restrictions contained in §1103.C. Both Mr. Schexnayder and Ms. Hunter agreed that a reference to §1107 might be helpful in §1103.C.

Chairman Coburn asked for comments on §1103.D and §1103.E. There were none.

Chairman Coburn asked for comments on §1103.F. Mr. Schexnayder informed the Commission that Dr. Griffin suggested adding “and other salts:” at the end of number three (3.).

After some discussion, Chairman Coburn suggested that the word “Ignite” on the end of new number four (4.) be struck. Mr. Schexnayder was in agreement.

Chairman Coburn questioned the meaning of H. – N. ... Ms. Hunter explained that it meant there were no proposed changes to §1103.H through N.

Chairman Coburn pointed out that the letter G. under §1103 had been skipped in this version of the proposed rule changes. Mr. Schexnayder checked the most recent approved rules and

there was no letter G. under §1103. Ms. Hunter stated that it would be placed under reserve for future rules or staff could go back in and renumber or reletter the rules.

Chairman Coburn observed that it appears everything else, beginning with O., was recommended to be deleted. Mr. Schexnayder explained that those rules were outdated since they dealt with 2,4-D aerial applications and were meant to specifically address drift on cotton issues that existed about fifteen years ago.

Mr. Wofford discussed the difference between the department's permitting and waiver system. He stated that the permit application required tighter disclosure of the application/geographic area and the permit had to be approved by the main office in Baton Rouge. Mr. Wofford explained that the department is moving toward a waiver system, whereby waiver applications are handled at the district office level.

Mr. Schexnayder also pointed out that the title of §1103.O was erroneous since it suggested that it only governed aerial applications but in fact, language included in the body of the rule included ground application.

Chairman Coburn asked for any further comments. There were none.

**Motion:** Mr. Floyd made a motion to accept the proposed rule changes as amended. The motion was seconded by Mr. O'Brien and passed unanimously.

Ms. Hunter asked the Commission to consider a motion to allow the Commissioner to sign an act of adoption of the proposed rule changes if there are no substantive changes.

**Motion:** Mr. O'Brien made a motion to allow the Commissioner to sign an act of adoption of the rule changes as approved. The motion was seconded by Mr. Floyd and passed unanimously.

Chairman Coburn asked for any final comments. There were none.

### **NEW BUSINESS**

Mr. Schexnayder stated that everything that might have been discussed at this time was covered during the time the proposed rule changes were considered and debated.

### **FUTURE MEETING**

The next scheduled meeting will be on February 17, 2016 at 9:30 am.

### **PUBLIC COMMENT**

None

### **ADJOURN**

**Motion:** Mr. Bragg made a motion to adjourn. This motion was seconded by Mr. Floyd and passed unanimously. The meeting adjourned at 10:40 am.