

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



STATE OF MAINE

covers
2007

OFFICE
OF THE
SECRETARY OF STATE

MATTHEW DUNLAP
SECRETARY OF STATE

January 30, 2008

Honorable John E. Baldacci
Governor of Maine
1 State House Station
Augusta, Maine 04333

Dear Governor Baldacci:

Pursuant to 5 M.R.S.A. §8056-A, the Secretary of State is hereby submitting its report on the progress of the Maine Administrative Procedure Act.

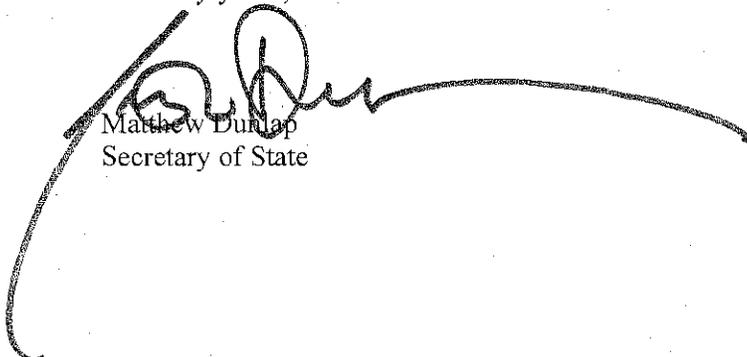
During the year 2007, there were 343 proposed rule filings and 544 adopted rule filings. This represents a decrease of 10 proposed rules and an increase of 8 adopted rules from 2006. There are fewer proposals than adoptions because of emergency adoption filings, most of which are Marine Resources closed areas. There were 26 major substantive filings submitted to the Legislature during 2007. This is an increase of 4 filings over 2006. Additionally, during 2007, the cost of publishing the rule-making notices was \$511,083. This was an increase of \$59,827 from 2006. This amount was spread among the rule-making agencies *pro rata*. At the end of 2007 there were 1,964 current rule chapters on file with the Secretary of State. This is an increase of 40 from the rule chapters in effect at the end of 2006.

The Secretary of State solicited comments on the progress of the Maine Administrative Procedure Act by publishing a notice in five daily Maine newspapers and on the Internet. We received e-mail comments from Robert J. Tardy. Copies of these comments are attached.

Direct access to the full texts of Maine's rule chapters and regulatory agendas may be found on the Department's website at: www.maine.gov/sos/cec/rules.

If you have any questions regarding the Administrative Procedure Act, please contact this office at 626-8400 or Julie Flynn, Deputy Secretary of State at 624-7650.

Sincerely yours,



Matthew Dunlap
Secretary of State

From: Robert Tardy [mailto:tardy@roadrunner.com]
Sent: Wednesday, January 02, 2008 8:18 PM
To: Wismer, Don
Subject: Fw: Comments Relative Maine Administrative Procedures Act

Mr. Wismer,

I am forwarding the following e-mails relative to recent rule making by the Pesticides Control Board so that you will understand the point that I want to make. Title 5 section 8052 sub 3 addresses coments within "10 days of the close of the public hearing or within such longer time as the agency may direct". In this case the agency accepted and published numerous comments regarding the issue at hand even though the agency had not formally initiated rule making and later denied the board access to comments that were also filed before they announced a formal comment period. I don't think the legislature intended to deny boards and commissions access to public comments when addressed to the entire board. I see nothing in the statute relative to when comments can start to be submitted only when they cease to be accepted for consideration. I think this should be clarified.

I would also note that Title 5 vests the Secretary of State and not the Attorney General's office with guidance for agency rule making. All departments could save a fortune in legal fees if they followed the statute and relied on the Secretary of State's staff instead of many times faulty legal council from the Office of Attorney General. Are not the procedures for rule making clear and concise and user friendly. If not they should be.

Thanks for your consideration
Robert J. tardy

----- Original Message -----

From: "Robert Tardy" <tardy@roadrunner.com>
To: "Jennings, Henry" <Henry.Jennings@maine.gov>
Sent: Monday, October 29, 2007 4:06 PM
Subject: Re: Comments Relative to Bt Corn Rules

> Henry
>
> That's all very good, but I would still appreciate an answer to my
> questions from the e-mail of October 4th. From Bartlett's comments at
> the last meeting I take it that the question of when a comment period
> starts is still vague, however, the question of the genesis and basis
> for your proposed rules still remains??. There was nothing said at
> any PCB meeting that I attended to indicate such a draconian proposal
> would be forthcoming for example Dr. Jemison's comments re: gps
> coordinates was the most specific. The technical committee report had
> no indication or justification for this type of proposal. I think the
> credibility of the PCB and staff with those farmers that actually farm
> for profit has been severely damaged. Apparantly we are going to make
> Bt in any form a restricted use pesticide or am I reading this
> wrong??? Again what is the genesis and basis for the propsed rules
> and are you following state statute to the letter? That's a question
> for you and not an assistant ag.??
>
> Bob Tardy
>

> ----- Original Message -----

> From: "Jennings, Henry" <Henry.Jennings@maine.gov>

> To: "Robert Tardy" <tardy@roadrunner.com>

> Sent: Monday, October 29, 2007 4:38 PM

> Subject: RE: Comments Relative to Bt Corn Rules

>

>

> Hello Bob:

>

> On October 24, the Secretary of State published Notice of Agency
> Rulemaking Proposal in Maine's daily newspapers, thus beginning the
> official comment period for proposed rule amendments contained in
> Chapter 10, 26, 29 and 41. A public hearing is scheduled for November
> 16, 2007 at the Hampton Inn. The deadline for written comments is
> 4:00 p.m. on November 30. Accordingly, the Board is interested in
> receiving comment relative these proposals.

>

> Sincerely,

>

> Henry Jennings

> Director

> Maine Board of Pesticides Control

>

> -----Original Message-----

> From: Robert Tardy [<mailto:tardy@roadrunner.com>]

> Sent: Thursday, October 04, 2007 7:38 PM

> To: Jennings, Henry

> Cc: Porter, Ned R; 'Hobbs, Tim'; lauchlin titus

> Subject: Re: Comments Relative to Bt Corn Rules

>

>

> Henry,

>

> What gives? There are 20 pages of anti-gmo materials posted on your
> website with the minutes received
> between 9-17 and 9/24. Russell Libby's letter was posted last month or
> was
> that just a rough draft of your proposed rules. I am beginning to
> question
> the objectivity of the Board and it's staff. What I heard publicly
> discussed by your board members at the meeting where Bt corn was approved
> was that there should be a training component and that organic or identity
> preserved crops should be registered with gps coordinates and any
> potential
> problems be dealt with on a case by case basis---from Jemison. What was
> the
> genesis of the proposed rules---private conversations with board members,
> or
> advice from an assistant ag, or has your staff so little to do that they
> have time to surf the web for ideas?????

>

> Apparently there are board members who feel that growing organically
> is a religious decision and not a business decision otherwise why
> didn't they immediately defer to the National Organic program and rule
> out buffer zones.

>

> Title 5 section 8052 paragraph 3 sets out the 10 day comment or longer

> if needed period after a public hearing paragraph 4 further directs
> that all relevant information be considered---no where does it say
> that one cannot communicate openly and publicly with the entire Board.
> Maybe you could sight the relevant statute or rule that makes my
> comments less timely than Mr. Libby's.

>
> If I need a private applicators license to plant ge corn does that
> mean that Bt is now a restricted use pesticide and that we all need to
> be licensed to
> use it on our organic crops???? Let's get some common sense into this
> process.

>
> Robert J. Tardy

>
>
> ----- Original Message -----

> From: "Jennings, Henry" <Henry.Jennings@maine.gov>
> To: <tardy@adelphia.net>
> Sent: Wednesday, October 03, 2007 3:28 PM
> Subject: Comments Relative to Bt Corn Rules

>
>
> Hello Bob:

>
> Thank you for your October 1, 2007, letter and comments concerning
> potential Bt Corn rules discussed at the September 7 Pesticide Board
> Meeting. However, because the Board has not yet formally initiated
> rulemaking pursuant to the Maine Administrative Procedures Act, it is
> not yet allowed to receive public comment on Bt Corn rules. I
> anticipate that a Notice of Proposed Rulemaking will likely be
> published on October 24, 2007, thereby officially opening the
> rulemaking comment period. Please resend your comments at that time
> so the Board may consider them as part of the rulemaking process.
> Feel free to call me at 287-7543 if have any questions

>
> Sincerely,

>
> Henry Jennings
> Director
> Maine Board of Pesticides Control