

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
FERTILIZER INSPECTION ADVISORY BOARD (FIAB)
AB 856 Subcommittee Meeting
Sacramento, California
March 2, 2011
MINUTES**

MEMBERS

John Salmonson, Chair
Bill Wolf
Claudia Reid
Doug Graham
John Peterson
Katherine Borchard
Matthew Cotton
Michael Brautovich
Neil Edgar
Robert Horowitz

CDFA

Amadou Ba
Asif Maan
Dale Rice
Luz Roa
Maria Hicks
Mike Gingles
Nick Young
Wei Wu

INTERESTED PARTIES

John Peterson
Lindsay Fernandez-Salvador
Mary Matava
Meghan Buter
Ray Green
Renee Pinel

INTRODUCTIONS AND ANNOUNCEMENTS

The meeting was called to order at 9:10 a.m. by Chairperson, Mr. John Salmonson. Self-introductions were made and a quorum was established. Mr. Matthew Cotton and Mr. Bill Wolf arrived at 9:15 a.m. due to a miscommunication of the meeting start time. Mr. Sandy Simon, Mr. Jake Evans, and Ms. Rachel Oster could not attend the meeting.

Mr. Salmonson stated the AB 856 subcommittee will continue to meet quarterly. Mr. Salmonson informed the subcommittee there will be a public hearing on the AB 856 regulations on March 8, 2011 at CDFA headquarters, as requested by Ms. Claudia Reid, California Certified Organic Farmers (CCOF) and Mary Matava, Agri Service, Incorporated.

MINUTES OF THE LAST AB 856 SUBCOMMITTEE MEETING

Mr. Salmonson requested the subcommittee review the minutes from the November 12, 2010 meeting.

MOTION: Mr. Robert Horowitz moved the minutes be approved as submitted. Mr. John Peterson seconded; the motion passed unanimously.

IMPLEMENTATION UPDATES

Dr. Asif Maan stated he recently met with the National Organic Program (NOP) to discuss the progress in regards to implementing AB 856. Dr. Maan stated discussion ensued regarding the NOP recognition of CDFA's Organic Input Material (OIM) inspection program. There will be another meeting around April 2011 to discuss the implementation in further detail.

Ms. Katherine Borchard asked who the representative from the NOP was. Dr. Maan stated Ms. Rayne Pegg, Administrator, Agricultural Marketing Services, and Mr. Miles McEvoy, Deputy Administrator, NOP, attended. Ms. Claudia Reid asked who attended the meeting

from CDFA. Dr. Maan stated he, Dr. Amadou Ba, Mr. Rick Jensen, and Mr. Steve Patton attended.

Mr. Peterson asked if the NOP explained the process of how entities are approved and if there is an auditing process. Dr. Maan iterated the NOP requested more information regarding CDFA's appeal process; details on the process still need to be finalized. Dr. Maan stated the NOP would like CDFA to obtain International Organization for Standardization (ISO) 65 certification. Ms. Reid commented she is very happy to hear the OIM Program is joining the State Organic Program in pursuing ISO 65 certification. Dr. Maan stated there is a National Organic Standards Board (NOSB) meeting from April 26, 2011 – April 29, 2011 in Seattle and material review is on the agenda. Discussion ensued regarding ISO 65 certification.

Dr. Ba stated the composting technical working group recently met to address issues regarding the differences of CDFA's analytical methods and private labs methods. The issue was brought up by Mr. Matthew Cotton at the November 12, 2010 meeting. The issue has a good basis; private labs use certain methods and CDFA uses the Association of Analytical Chemicals methods to analyze compost for plant nutrients.

Dr. Ba stated the Program performed a comparative study of CDFA's laboratory methods and methods used by private labs to analyze compost nutrient content. This study was done by CDFA staff taking samples at nine composting facilities and requesting the samples be divided in two to mitigate variation in analyzed results. The results showed a high degree of correlation between CDFA and private labs analysis. Dr. Ba stated the results should provide composters with a level of comfort since there were no major discrepancies. There are no current issues on testing or sampling methods.

Dr. Ba stated there were no additional issues needed to be addressed at yesterday's technical group meeting. Dr. Ba thanked Mr. Peterson, Mr. Cotton, and the CDFA lab staff for their efforts in the technical group. Mr. Cotton commented the CDFA lab was higher on all samples that were tested for aggregate. Dr. Ba stated if anyone is interested in receiving the data, they should contact him directly. Dr. Ba iterated his thanks to all of the entities that were involved in the testing process.

Dr. Ba stated the AB 856 regulations were noticed on January 21, 2011; the comment period will close on March 7, 2011. The AB 856 subcommittee worked diligently in amending the proposed regulations, including the civil penalty matrix. Dr. Ba acknowledged the subcommittee and the staff for their input and stated the final product is quite good. The public hearing on the proposed regulations will be on March 8, 2011 at the CDFA headquarters building in the main auditorium from 10:00 a.m. – 2:00 p.m. Dr. Ba stated there will be an administrative law judge who will provide instructions on the process and individuals will need to sign up if they wish to make a comment. The comments will then be recorded and compiled, and sent to the Department for response. Dr. Ba stated the hearing will not be a question and answer session; it is for public comments only; comments can be in support or opposition of the AB 856 regulations or any other type of comment. Mr. Robert Horowitz stated the Department has gone to great lengths to show transparency in the process and wants to keep that transparency.

Mr. Salmonson asked if all comments have to be responded to. Dr. Ba stated once comments have been compiled, responses will be made. Mr. Bill Wolf asked if in the final statement of reasons, might there be some modifications to the regulations based on public comments. Dr. Ba stated there is a possibility. Mr. Salmonson asked if changes are recommended by the Department, will the Department be required to Re-notice the industry. Dr. Maan stated the final approval is through the Office of Administrative Law (OAL); if changes are made, there will be a 15 day comment period.

CDFA has conducted two workshops in regards to the implementation of AB 856: October 27, 2010 in Sacramento, CA and February 2, 2011 in Modesto, CA that specifically focused on OIM. At the Modesto workshop, there were 77 attendees. The Department plans to continue outreach activities, including a workshop in San Diego on April 14, 2011 to coincide with the Biocycle workshop. In addition, the Department is planning another workshop in Los Angeles in which the date has not yet been confirmed.

CDFA was invited to attend a US Composting Council conference to discuss the impact AB 856 may have on the composting industry. CDFA also attended the Ecofarm annual conference and presented different entities with information regarding AB 856. It transpired that CCOF will not be recognizing CDFA's review of OIM.

Dr. Maan stated CCOF has made a business decision not to recognize CDFA's review of OIM. Mr. Wolf stated it is necessary to ensure that services are not being duplicated by AB 856. When AB 856 legislation passed, CDFA was mandated by California law to review and register OIM. Dr. Maan stated the issue of duplication has been discussed previously and CDFA does not see AB 856 as duplication.

Discussion ensued regarding starting the registration of OIM and how that will work with the current state hiring freeze. Dr. Maan stated the Department has submitted a new request for an exception from the hiring freeze. Dr. Maan stated Ms. Luz Roa and Dr. Wei Wu were tasked with reviewing and registration of OIM. There is one additional scientific position that is vacant; the Department hopes to get an exception approved to fill it. There were 19 OIM registration applications submitted last week. Dr. Maan stated people should be encouraged to register their OIM. Bulk materials were not registered before, but they now need to submit an application and label for review and registration of bulk OIM. Registrations must be completed by the Department by January 2012 per this committee; the committee also agreed the deadline is April 30, 2011 to submit license and registration applications.

Ms. Lindsay Fernandez-Salvador asked if the issue of promulgating regulations would have to go through public comment again and how that would affect registrations. Dr. Maan stated the two processes will occur simultaneously. Mr. Salmonson asked what would happen if OAL made changes, how that would impact the registration process. Dr. Maan stated the Department does not foresee many changes after the hearing; the licensing and registration processes are in the statutes and they will not be impacted. Mr. Salmonson stated that people need to be reminded of that.

Ms. Fernandez-Salvador asked how the Department is going to address the issue of getting complete applications and stated Organic Materials Review Institute (OMRI) tracks their

completed applications. Ms. Fernandez-Salvador commented that on an average, 89 percent of applications OMRI receives are incomplete. Ms. Fernandez-Salvador stated while people are going through the registration process, products that may not meet standards are going to be on the market. Ms. Fernandez-Salvador asked how the Department will deal with that issue. Dr. Maan stated this is the transition year; applications received by April 30, 2011 shall be reviewed by January 1, 2012. If a company is not in compliance by January 1, 2012 and the OIM product is not registered with CDFA, the Department will work with the company to bring them into compliance. Discussion ensued regarding how the transition period will work.

Ms. Fernandez-Salvador questioned how confidential the submitted information is and if they are under the Public Records Act (PRA). Dr. Maan stated it is in the regulations that there would be ten days for the company to identify what is confidential versus non-confidential. Mr. Salmonson said there would have to be a strong due cause; Dr. Maan highlighted the California Code of Regulations 2300.2 and 2300.3 spells out the process. Ms. Fernandez-Salvador stated OMRI has 75 third party agreements.

Mr. Robert Horowitz commented to Ms. Claudia Reid he was surprised that CCOF will not be recognizing CDFA's approval of OIM. Ms. Reid stated CCOF can not recognize CDFA until the NOP does. Dr. Maan stated Ms. Reid was part of the process the whole time and highlighted CCOF recognizes OMRI. Ms. Reid stated CCOF does recognize OMRI and at every AB 856 meeting, she iterated that CCOF follows the NOP. CCOF will recognize CDFA when the NOP does. Ms. Fernandez-Salvador stated in the NOP's 2011 handbook there is a statement in writing they are recognized by the NOP.

Mr. Ray Green commented an accredited certifying agent (ACA) can not rely on any list unless it is approved and endorsed by the NOP in writing. Ms. Reid stated CCOF has its own review program; OMRI was not accepted by the NOP before the letter from the NOP. Mr. Wolf asked if it was against the law for CCOF to recognize OMRI before the letter. Ms. Fernandez-Salvador stated they could be recognized if a memorandum of understanding (MOU) was in place. Dr. Maan stated AB 856 became a law, effective January 1, 2010 and the Department is now going through an implementation phase. Therefore, effective January 1, 2012, there should be no OIM sold, distributed, or manufactured without CDFA's approval.

Ms. Reid asked what the Department is planning to do when there are no products available for CCOF's clients. Dr. Maan stated that is the wrong assumption. There is misinformation being spread to the growers as of January 1, 2012 there will not be products available to the organic industry. All applications received will go through the review and registration processes as they are submitted. Dr. Maan stated the misinformation being provided to the industry is creating unnecessary fear in the agriculture community and that is wrong.

Ms. Fernandez-Salvador asked what she should tell farmers with contingency plans. Dr. Maan stated no one should speak on behalf of CDFA; inquiries should be directed to CDFA and the Department will assist them.

Ms. Fernandez-Salvador asked why CDFA is seeking recognition from the NOP. Dr. Maan stated the Department believes it will harmonize the process and make it easier for ACA's to accept CDFA's OIM registration.

Dr. Ba distributed a sample OIM seal. Mr. Cotton asked where this seal is used. Dr. Ba stated the seal will be used on packaged materials being sold at stores such as Lowe's, Home Depot, etc., and on all product labels, including bulk.

Dr. Maan stated CDFA has been very deliberate in the implementation of AB 856. There was a lot of learning and appropriate adjustments were made. The Fertilizer Inspection Advisory Board put together this group of experts who assisted in guiding CDFA through the process. The process has been working very well and tremendous progress has been made. Dr. Maan commended the AB 856 subcommittee for their input and insight on various issues and stated we will continue having quarterly update meetings.

Ms. Reid stated CCOF would like to have a webinar for their clients and would like the Department to participate. The specific group is farmers, not manufacturers. Discussion ensued regarding the webinar. Dr. Maan stated it is an excellent idea and the Department's participation in CCOF's webinar can be discussed in detail at a later date.

ADDITIONAL ITEMS/NEXT MEETING

Mr. Wolf made a statement regarding the broad framework of the comments that will be submitted in writing from the Organic Trade Association's (OTA) to CDFA regarding AB 856. Mr. Wolf stated OTA praises CDFA for the open and transparent process for implementing AB 856. The OTA appreciates the opportunity to participate in the subcommittee. The OTA recommends CDFA make the following changes to the draft regulations for implementing AB 856:

- Clarify and interpret the scope of the definition of OIM to apply only to products of companies who make the claim their products meet the NOP rules
- Recognize in-state and out-of-state inspections from ACA's and other NOP recognized third parties
- Recognize in-state and out-of-state materials reviews by ACA's or NOP recognized third party reviewers, such as OMRI and Washington State Department of Agriculture (WSDA), by including language reflecting that interpretation in the regulations
- Consider the organic system plan as a model for input producers to maintain their records
- Revise the fee structure so that it is based on a fee-for-formula in appropriate places rather than per label
- Consider other definitions and terms to be included in the regulations as specified in the full comment letter that will be submitted such as Association of American Plant Food Control Official's term "organic input"
- Clarify some of the processes and schedules from implementation as will be noted in the comment

Mr. Salmonson stated through the course of the AB 856 subcommittee meetings, many of these issues have been addressed and several recommendations have been adopted. The adopted recommendations are more paramount to us here, rather than making changes for them back there. Mr. Salmonson stated the subcommittee has done what needed to be done; AB 856 is now a law. It may not be easy trying to change what has already been done. The subcommittee has done a lot of hard work and was open about the process. Mr. Salmonson stated he does not like seeing stumbling blocks; the economic part of the issue is the organic entities are getting off pretty soft. Mr. Salmonson further stated the conventional side of fertilizer is providing most of the funding for the program in order to implement the OIM Program. Asif and Amadou have made overtures they are willing to listen and to not be rigid as to what industry people are saying, stated Mr. Salmonson; there is not much more that can be asked for. The Department has been very customer friendly and easy to work with. They are an open agency and the industry wants to keep it that way, they do not want to get an adverse relationship between conventional and organic or between anyone. Mr. Salmonson stated he thinks a lot of the concern on the organic side is that many people have not been exposed to the Department as the conventional side has. The conventional side is familiar with how they work through issues with the industry. Mr. Salmonson stated commerce can not be impacted; products need to be allowed to go to the farmers.

It will be important to have all subcommittee members in attendance at the next meeting. The tentative date is June 8, 2011 in Monterey at the Embassy Suites. The state rate will be offered.

MOTION: Mr. Doug Graham moved to adjourn the meeting. Mr. Salmonson seconded. The motion passed unanimously.

The meeting was adjourned at 11:15 a.m. by the Chairperson, Mr. Salmonson.

Respectfully submitted by:



Asif A Maan, Ph.D., Branch Chief II
Feed, Fertilizer, Livestock Drugs and Egg Regulatory Services
Inspection Services

Date