

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)  
FERTILIZER INSPECTION ADVISORY BOARD (FIAB)  
AB 856 Subcommittee Meeting  
Sacramento, California  
October 21, 2010  
MINUTES**

**MEMBERS**

Matthew Cotton  
Neil Edgar  
Robert Horowitz  
Claudia Reid  
Michael Brautovich  
Bill Wolf  
Jake Evans  
Katherine Borchard  
Doug Graham  
John Peterson  
Rachel Oster  
John Salmonson  
Sandy Simon

**CDFA**

Asif Maan  
Amadou Ba  
Avnee Jivabhai  
Dale Rice  
Natalie Krout-Greenberg  
Luz Roa  
Mike Gingles  
Erica Jue  
Wei Wu  
Nick Young  
Pierre Labossiere

**INTERESTED PARTIES**

Tim Stemwedel  
Lindsay Fernandez-Salvador  
Ray Green  
Steve Beckley  
Deborah Stemwedel  
Vicky Duke  
Peggy Miars  
Martin Beagle  
Johnny Beck  
Ralph Iliff  
Bob Myers  
Richard Nutter  
Renee Pinel  
Nancy Tomi  
Dave Baldwin  
Nick Lapis  
Mike Gursky  
Katherine Witkey  
Rebecca  
Jim Joseph  
Meghan Butler  
Irene Sanchez  
Ivonne Sanchez  
Kim Dietz  
Laurence London

**CALL TO ORDER**

Chairman John Salmonson called the meeting to order at 9:00 a.m. A quorum was established.

**INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Salmonson welcomed everyone to the meeting. Self-introductions were made. Mr. Salmonson noted that although this was scheduled to be the last meeting for the AB 856 subcommittee, the committee will continue for another year to allow for subcommittee input through the enforcement and registration process next year. The

goal of this meeting is to complete the language of the draft regulations. Once the draft regulations are completed, they will go to the Office of Administrative Law, then to the public for 45 days for open comment so there will be several opportunities for further input before it becomes final. Mr. Salmonson noted that members will need to note if they are interested in staying on the committee for another year. They are not obligated but have the option to stay on the subcommittee.

Dr. Maan introduced Dr. Wei Wu and Ms. Erica Jue, Environmental Scientists who are now working with the registration staff.

### **MINUTES OF THE LAST BOARD MEETING**

Mr. Salmonson asked the Fertilizer Inspection Advisory Board AB 856 Subcommittee members to review the minutes of the September 15, 2010 meeting. Mr. Robert Horowitz asked that the minutes correctly note that he objected the language of the custom blend and he presented new language. Dr. Maan requested that Mr. Horowitz send the verbiage via email. Mr. Neil Edgar noted that the meeting occurred in Seaside not in Sacramento.

**MOTION:** A motion was made by Mr. Bill Wolf to accept the minutes with the two changes as discussed. Mr. John Peterson seconded the motion. The motion passed unanimously.

### **PUBLIC COMMENTS**

Ms. Deborah Stemwedel quoted the Bagley-Keene act and noted that every person in attendance has the right to speak on every point. Mr. Peterson noted that in these types of meetings, people are allowed to make statements but the public comments agenda item is to make any announcements, not the only time for input. He noted that if it gets to the point where it becomes more individual issues rather than public issues then the chairman has the right to keep the subject on track in order to facilitate progress.

Mr. Nick Lapis noted that there was some comments he brought up about custom blends that need to be discussed, but are not on the agenda. He wanted to make sure that there was time set aside for that discussion.

Ms. Rachel Oster noted that she had emailed Dr. Maan some points to include in the agenda that have not been added. Dr. Maan noted that it was too late to add them to the agenda then but they can be added now. She asked the group review custom blending and claims for micronutrients and microorganisms. Mr. Salmonson noted that those points will tie in with the AB 856 recap.

Mr. Bill Wolf requested clarification regarding the review of the proposed regulatory text and where it will be discussed in relation to the agenda. Mr. Salmonson replied that there will be opportunity during the recap. He also noted that there will be a year to

correct any problems and any major concerns which have not yet been resolved to individual's liking.

Mr. Sandy Simon noted that a change to the draft regulations that was discussed at the last meeting was not made and needs to be discussed.

### **SCOPE OF ENFORCEMENT ON OIM WORKING GROUP REPORT**

Mr. Wolf asked that any other members of the group provide input as he presented to ensure thoroughness. He noted that the group met via email and while members of CDFA were included in the group, they were not involved. The group worked to bring some material to the subcommittee for discussion. He presented the summary of the work in the form of a handout. They addressed the issue of scope and the materials they felt were most important to focus on. They pointed out the high-risk materials that needed to be addressed first. They also discussed having a process that allows materials already reviewed by CDFA to be reviewed first.

The group came to 3 specific recommendations:

- 1) Making claims of compliance to NOP, or claims for use in organic production including submission by the supplier for listing by other third party reviewers recognized by NOP.
- 2) Claims on labels, literature, or extensions of labels, websites, etc. that the products are suitable for use by organic producers;
- 3) Revenue from sales of products to California organic producers in excess a specified dollar amount, such as \$100,000.

Mr. Salmonson noted that setting a monetary amount is exempting producers and could lead to problems. Discussion ensued about the amount that would be appropriate for an exemption. Dr. Maan noted that the third recommendation is beyond the scope of law and that the purpose of the group was to clarify the scope which was done in the first two points. He commended the working group on working hard and coming up with the recommendations. Discussion ensued about the scope and it was determined that the Department does not have the authority to adopt the third recommendation, therefore it should be removed from the above recommendations.

**MOTION:** A motion was made by Mr. Bill Wolf to accept the first two recommendations of the scope of OIM working group's recommendations. Mr. Doug Graham seconded the motion. The motion passed unanimously.

Mr. Peterson questioned "should be limited to bulk" in last paragraph because it suggests packaged materials should not be included. Mr. Wolf noted that the group did not intend to exclude packaged products. Mr. Salmonson replied that a change of brand or name makes a new product; therefore it has to be registered. Dr. Maan noted that if a producer is not making claims, there is nothing to regulate. Ms. Lindsey Fernandez-Salvador noted that if they are not making the claim, there is no fraud. If recognized by NOP, then they are OIM. Discussion ensued about the various authorities with which products are registered and whether or not product registry with any one defines the

product as an OIM. Dr. Maan asked Mr. Wolf for clarification about the last sentence on his handout. Discussion ensued about the last two paragraphs of Mr. Wolf's handout. It was determined that the second to last paragraph should be removed and the last sentence in the last paragraph should be removed to read:

~~"The licensing and registration process of fertilizer materials will capture OIM manufacturers or distributors making organic suitability claims. Historically, commercial fertilizers, agricultural minerals, auxiliary soil and plant substance or packaged soil amendments have been regulated by this process. With the addition of OIMs, that initial regulatory inspection and enforcement scope should be limited to "Bulk Organic Input Materials" (including compost) manufactured and distributed in the state of California."~~

**MOTION:** A motion was made by Ms. Claudia Reed to accept the change to the last paragraph. Ms. Rachel Oster seconded the motion. The motion passed unanimously.

### **COMPOST BLENDING**

Dr. Maan presented the custom blend working group recommendations and then noted that there was a conference call last week by CalRecycle and the question came up about how many blends they do in a year. There was a wide range of zero to four hundred custom blends made in a year by composters. There is no data regarding these blends and which of them are for organic production. CDFA proposed that the first year of regulation (2011) be spent gathering data about blends and how many are made in order to make a determination about the methods needed to regulate custom blends. CDFA will ask that custom blend labels be submitted so that CDFA can determine: what is being blended; how often; who is blending; what are the various commodities; and if the farmer brings ingredients to be blended, who is responsible. This will provide some insight about the scope of the custom blends and ways to regulate them. Mr. Cotton questioned if there is any worth in regulating composter's blends since the risk of them adding anything is so small. Discussion ensued about the necessity for regulating compost custom blends.

Mr. Nick Lapis reminded the group that it was suggested that a short list of ingredients be preset with allowed ingredients. Discussion ensued about where the risk is in regards to custom blends. It was suggested that the compost ingredients be incorporated in the tonnage report. Dr. Maan will work with compost industry to figure out what "data" will need to be submitted to CDFA. Dr. Maan requested some technical people that are composters help to develop the data collection mechanism. Mr. Matthew Cotton, Mr. Robert Horowitz, Mr. Doug Graham, Ms. Rachel Oster, Mr. John Salmonson, Mr. Dave Baldwin, Mr. Mike Brautovich, and Mr. Steve Zuhat volunteered to provide technical assistance to help develop the data collection procedure and documents for custom blends.

Question arose as to whether the blender or the manufacturer of the individual ingredients is held responsible for registrations.

Ms. Oster questioned if there is an allowable variability of micronutrients and microorganisms in compost and whether there are any that cannot be claimed. Dr. Amadou Ba noted that for nitrogen, phosphorus and potassium, the Association of American Plant Food Control Officials investigational allowances will be applied for compost and for micronutrients there are investigational allowances with minimum amounts and variability. Producers are required to list the species, genus, concentration, storage conditions, expiration date and viability guarantee. He noted that these requirements can be found in the California Code of Regulations in Section 2304 Biotics.

### **ON SITE INSPECTION CHECKLIST UPDATE**

Mr. Nick Young presented the CDFA Organic Input Material Inspection Audit Form. He noted the changes as discussed in the working group including adding a comment section and volume categories to capture small, medium and large. It was noted that knowing the size of the business would help CDFA's inspection staff plan better for the on-site inspection. Discussion ensued about whether the information requested was enough to perform an audit. Mr. Jake Evans verified that this checklist is private and cannot be shared with anyone outside of CDFA. Mr. Salmonson suggested having an attachment on the last page stating that the information provided is confidential and to provide a producer with a copy of this statement of confidentiality upon completion. Mr. Wolf suggested having the size of business in tons or dollars be an optional field.

**MOTION:** A motion was made by Mr. Jake Evans to approve Mr. Wolf's suggestion of keeping the size of the business as an optional field. Mr. Doug Graham seconded the motion. The motion passed unanimously.

Mr. Wolf suggested that CDFA reference the National Organic Program document 50-12 for a supplemental section if the facility is working with liquid fertilizers over 3%. He then suggested incorporating the six bullets listed into the checklist.

**MOTION:** Mr. Jake Evans made the motion to add a section to the checklist that adopts the guidelines from NOP 50-12 which include the perimeters as a standard for nitrogen fertilizers labeled greater than 3%. Mr. John Peterson seconded the motion. The motion passed unanimously.

### **OUT-OF-STATE INSPECTION DISCUSSION**

Mr. Salmonson stated that there will not be any out of state inspections or international inspections conducted next year.

### **DRAFT REGULATIONS DISCUSSION**

Dr. Ba indicated that the changes that were made on the draft regulation document were based on AB 856 Subcommittee input from the last meeting. He pointed out that the changes on the Civil Penalty Matrix started on page four and are shown in blue text.

Mr. Sandy Simon suggested CDFA include information in the provisions to include a language that addresses the variability of product composition due to lack of uniformity during the process of blending. Mr. Wold suggested that NOP has a definition of ingredient and NOP has a draft guidance document on compost that has a definition of the ingredients. Mr. Wolf suggested having a statement that states our intention for ingredients. Mr. Cotton and Ms. Oster recommended changes on items 7,8 and 9 of the proposed Civil Penalty Matrix. Those changes should take into account impurities and contamination and differentiates them from knowingly adulterating fertilizing materials.

Ms. Renee Pinel reiterated the point she made previously at the Seaside meeting and suggested moving the first three items on the violation matrix (unlicensed manufactures, unregistered products, and unlabeled products) to minor instead of moderate violations.

Mr. Wolf noted that the regulation languages that states "Organic input materials labels submitted for review shall comply with the requirements of the National Organic Program (NOP) standards, as specified in Part 205 (commencing with Section 205.1) of Subchapter M of Chapter I of Subtitle B of Title 7 of the Code of Federal Regulations" was missing from the regulation text. He also noted that the regulation language on access to premises for inspection was removed. The regulation language states that "the secretary shall have free access at reasonable times to all records, premises, production processes, storage facilities, inventories or conveyances that are used in the manufacture, transportation, importation, distribution, storage, or application of any organic input material." Dr. Ba replied that the language was removed by the subcommittee because it was the law. Mr. Wolf expressed the necessity to have both proposed regulations sections back in the draft regulations.

**MOTION:** A motion was made by Mr. Bill Wolf to have the regulation language that specifically requires compliance with NOP standards and language on access to premises for inspection be put back in the draft regulations as previously submitted in the regulation text during the Seaside meeting. Mr. Michael Brautovich seconded the motion. The motion passed with Mr. Horowitz opposing the motion.

### **RECAP OF AB 856 SUBCOMMITTEE ACCOMPLISHMENTS**

Dr. Asif Maan gave a recap on AB 856 as well as the recommendations developed by the following: Custom Blend Working Group, Compost Working Group, On-Site Checklist Working Group, and Scope of OIM Working Group.

### **ADDITIONAL ITEMS / NEXT MEETING**

The next AB 856 Subcommittee meeting will be on November 12<sup>th</sup>, by web or at the Stanislaus County Agricultural Center from 9:00 a.m. to 12:00 p.m. The agenda items will include the regulation packet and inspection checklist.

The AB 856 Subcommittee will plan to meet quarterly in the future.

**MOTION:** A motion was made by Mr. John Peterson to adjourn the meeting. Ms. Rachel Oster seconded the motion. The motion passed unanimously. The meeting was adjourned at 3:22 p.m.

Respectfully submitted by:

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

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Date