

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (Department)
FERTILIZER INSPECTION ADVISORY BOARD (FIAB)**

**DoubleTree by Hilton Fresno Convention Center
2233 Ventura Street
Fresno, CA 93721**

**March 8, 2018
9:00 a.m.**

MINUTES

MEMBERS

Andrew Godfrey
David McEuen
Gary Silveria
Jake Evans
Jay Irvine
Melissa McQueen, Chair
Ron Naven
Steve Spangler, Vice Chair

MEMBERS ABSENT

Doug Graham

CDFA

Amadou Ba
Angelia Johnson
Brittnie Sabalbro
Dale Woods
Kristopher Gulliver
Mark Cady
Martin Burger
Maryam Khosravifard
Mike Gingles
Natalie Jacuzzi
Nick Young
Pam Rodriguez

INTERESTED PARTIES

Renee Pinel

INTRODUCTIONS AND ANNOUNCEMENTS

Ms. Melissa McQueen, Chair, called the meeting to order at 9:04 a.m. Self-introductions were made and a quorum was established. Mr. Doug Graham was absent.

Chair McQueen announced that board terms expire on October 14, 2018 for three current board members.

APPROVE SEPTEMBER 12, 2017 MEETING MINUTES

Chair McQueen requested the board review the minutes from the September 12, 2017 FIAB meeting.

MOTION: Mr. Gary Silveria moved to approve the minutes; Mr. Ron Naven seconded. The motion passed by all board members present with a vote of 7 - 0. Mr. Jake Evans was not present.

DEPARTMENT / DIVISION / BRANCH UPDATES

Dr. Amadou Ba stated the Branch received guidance from the Department's Executive Office (EO) and the secretary, that a consecutive period of nine years of service is appropriate for board members, this will allow for new members to apply. Mr. Steve Spangler, Vice Chair, asked if the nine-year board term limit is the law and inquired if it was consistent throughout the Department's boards. Dr. Ba stated the board term limit is not in the law and the rationale for this is to bring in new board members with different perspectives and give all boards the opportunity to look at all sectors of the industry.

Discussion ensued regarding board term service.

Dr. Ba agreed to set a meeting with Chair McQueen and a couple board members to the Executive Office to address concerns regarding term limit. Chair McQueen agreed to follow up moving forward with the next meeting.

Dr. Ba announced Ms. Natalie Krout-Greenberg, Division Director, is attending the Food and Drug Administration's Food Safety Modernization Act State Consortium meeting in Irvine, California regarding food safety issues. Dr. Ba announced the Fertilizer Research and Education Program (FREP) Technical Advisory Subcommittee's (TASC) newly appointed members, Dr. Eric Ellison, Dr. Jerome Pier, and Dr. Marja Koivunen.

Dr. Ba gave federal updates. Mr. Miles McEvoy, former Deputy Administrator of the Agricultural Marketing Service (AMS) National Organic Program (NOP) has left and Dr. Ruihong Guo is Acting Deputy Administrator. Dr. Lisa Brines, United States Department of Agriculture's NOP National List Manager, is now with the private sector. Dr. Ba gave Department updates stating Mr. Jim Houston, former Undersecretary, joined the California Farm Bureau Federation (CFBF) as Manager of Government Affairs; Ms. Jenny Lester Moffitt is the newly appointed Undersecretary; Ms. Taylor Roschen, former Legislative Manager, also joined the CFBF; and Ms. Rachael O'Brien is CDFA's newly appointed Assistant Secretary for Legislative Affairs.

Dr. Ba provided Branch updates and reported Mr. Mark Cady, former Senior Environmental Scientist (SES) (Specialist) was appointed to SES (Supervisor) for FREP. After 30 years of state service, Mr. Charlie Nelson, Special Investigator (SI) for the northern district, retired January 31, 2018. Mr. Leo Campos, Environmental Scientist (ES), is now assigned the northern region area. Dr. Ba presented the Branch organizational chart restructure and supervision change for the Fertilizer program's SI Retired Annuitants, Mr. Dale Rice and Mr. Marshall Stoddard. Both have primarily worked with field staff on inspections but will now work with the program's registration staff on product label registration. Ms. Vanessa Jivan, Feed program's Agricultural Technician, was promoted to Program Technician I and will continue to handle Feed contracts in addition to becoming part of the administrative support team. Ms. Jessica Valdez, ES, was hired for the Antimicrobial Use and Stewardship (AUS) program; Ms. Casey Dykier, ES, was hired for the Feed program; and Mr. Trevor Morgan, who was an ES for AUS, has returned to the private sector in Arizona. Ms. Elaine Wong,

Environmental Program Manager I (EPM I) for the Center for Analytical Chemistry lab, retired December 2017. Ms. Maryam Khosravifard is the newly appointed EPM I for the lab. Ms. Khosravifard has worked with the Branch for 14 years and is familiar with the Fertilizer program.

The AUS program has released a modified regulation text regarding the sale of medically important antimicrobial drugs and restricted livestock drugs. The comment period for the modified text opened February 20, 2018 and closes on March 22, 2018. The Fertilizer program has proposed new rulemaking regarding the administrative penalties matrix which will later be presented to the board.

Dr. Ba gave budget change proposal (BCP) updates. A BCP for Feed was sent to request funds to implement the feed safety program. Another BCP was submitted for AUS. The AUS BCP included a request for funds and additional staff to assist with the newly added AUS duties.

Mr. Jake Evans arrived at 9:13 a.m.

LEGISLATIVE UPDATES

Ms. Renee Pinel, Western Plant Health Association's President and Chief Executive Officer, reported Senate Bill 623 was adopted in the Governor's budget which will likely pass in June. The Governor's budget requires a majority vote and the funding for the program are taxes will pass. However, the mill assessment and use fee, will require a two-third vote of the legislature. Ms. Pinel stated water agencies are still opposed to the bills and a vast majority of agricultural groups are neutral. There has also been discussion taking place in Los Angeles at the Metropolitan Water District expressing an interest in use fee that will allow them to resolve water quality issues in Los Angeles, California. It is not certain that it will pass.

Chair McQueen asked for clarification on the Fertilizer programs request for additional staff. Dr. Ba responded that once the bill passes, the Branch will identify how the bill will impact the Fertilizer program. The Branch will require additional staff and the cost of database enhancements required for the newly added assessments. The funding for the additional staff will come from the six mill fertilizer safe drinking water fee which will likely impact all fertilizing material products. There is also a dairy and concentrated animal feed operation component fee that these entities will pay on the agricultural side and another payment fee will be from water purveyors. Ms. Pinel explained the breakdown of the overall contribution from each entity.

PROGRAM UPDATE / FUND CONDITION / MILL ASSESSMENT

Dr. Dale Woods reported, as of July 1, 2017, the beginning fund balance of commercial fertilizer was \$8,455,352; organic input material (OIM) \$743,174; a combined total of \$9,198,526. Dr. Woods highlighted the combined total was more than previous years due to the Fertilizer program's anticipation of a decline in mill assessment and reduced

expenses from staff turnover. Commercial fertilizer revenue was \$2,995,145 and OIM revenue was \$464,415 highlighting the revenue around this time of year is primarily based on mill assessment. Expenditures were \$1,938,794 for commercial fertilizer and \$695,564 for OIM. Combined total funds for commercial fertilizer and OIM were \$10,023,728 with an adjusted balance of \$9,753,773.

Chair McQueen shared a question from board member Mr. Doug Graham who was absent. An interested party has paid mill assessment as a conventional product although it was an OIM product. Dr. Woods responded stating firms were used to paying under the conventional system due to the language that directed firms on where to assign the mill assessment fees. The program has identified where the problems lie in the database and is working towards applying the payment in the appropriate area.

Dr. Woods reviewed the FREP fund condition highlighting the program bases its funding on mill assessment. As of July 1, 2017, beginning balance was \$3,649,076; revenue was \$1,607,466; expenditures were \$812,545; encumbrances through June 30, 2018 were \$1,762,210 with a total adjusted balance of \$2,680,787.

Dr. Woods presented the mill assessment update reporting the fees received for last half of fiscal year (FY) 2017-18 are \$4,959,441 and highlighting the mill assessment for the first six months of FY 2014-15 and FY 2016-17 were relatively comparable.

TONNAGE REPORTING

Mr. Kris Gulliver, SES (Specialist), gave an update on fertilizing materials tonnage. The 2016 tonnage report data is published and available on the Department's website. Mr. Gulliver is currently auditing the 2017 tonnage data; he reported January through June 2017 is complete. He presented a line graph with data trends from 2013-2016 for nitrogen, phosphorus, potash, gypsum, and liming materials. He stated most trends have a downward slope partially due to audits and ensuring that firms report nutrients correctly and do not report blends as total tons of material, double report, or report tons in incorrect units.

The upcoming change in 2018 impacting the specialty fertilizers is nutrient reporting for non-farm use products for accuracy of data collection. Mr. Gulliver will provide outreach, education materials, and training. Currently, Nitrogen (N), Phosphorus (P), and Potassium (K) have general categories for reporting, which do not differentiate the types of material such as a blended synthetic or organic product. Compost N, P, K reporting will allow the program to identify the amount of nutrients reported from compost products. Bulk OIM compost soil amendment reporting will allow the program to track the number of tons of bulk OIM compost. In prior years, bulk OIM compost only reported for the materials that guaranteed nutrient content.

Mr. Gulliver emphasized the importance of clarification to industry on who is responsible for reporting tonnage. He stated that in the mill assessment law, the person whose

name appears on the label must report the tonnage, however, the language in the tonnage law states that the last licensee selling to the end user must report the tonnage. A licensee list, available on the Department's website, is a useful resource for determining if the person or a firm is selling to is a licensee, which determines who is responsible for reporting the tonnage.

PROPOSED REGULATIONS, INSPECTION AND COMPLIANCE UPDATES

Mr. Nick Young, Supervising Special Investigator (SSI) II, provided an update on sampling for 2017; the Fertilizer program received 1,433 samples with a 19 percent violation rate.

Mr. Young attended the Association of American Plant Food Control Officials (AAPFCO) Winter Annual Conference in Savannah, Georgia; 29 states plus Canada were represented with 160 attendees, including industry. AAPFCO is funding a study of the 15 percent Slow Release rule. This rule is in AAPFCO's Official Publication, and California regulation; applies to N, P, K, and will affect California when data from the AAPFCO study is published. This AAPFCO study is to be completed in a year and the lab services committee will be evaluating how to apply the 15 percent Slow Release rule. Mr. Young provided an update on official definitions for Enhanced Efficiency Fertilizer, Compost, Calcium Glucoheptonate, and DMPSA which is a nitrification inhibitor. Mr. Young stated the industry wants to have universal labels that will work across all 50 states. It is relatively easy to have a universal label for fertilizer, but it is problematic for nonplant food ingredients due to differing laws and regulations throughout the states. AAPFCO acknowledges that the term "nonplant food ingredient" differs in other states laws and regulations and is working to standardize a uniform format by a working group discussion.

Mr. Young reported on the proposed regulations to revise administrative penalties. The Fertilizer program proposes to revise 11 regulation sections and add 35 previously missing laws and regulations in the administrative penalty matrix. The revisions are to improve standardization and fundamental fairness in enforcement and improve transparency. He detailed the proposed regulation changes to specific sections: labeling requirements, biotics, soil amendments, sampling procedures, licensing, registration, tonnage reporting, hearing schedule and notification, and hearing procedures.

Break was taken from 10:55 a.m. to 11:10 a.m.

REGISTRATION UPDATES

Dr. Martin Burger, SES (Supervisor), stated the program sent out a notice to industry regarding OIM early renewal submissions. As of December 31, 2017, the program received 542 OIM renewal documents and completed 259 of that total. Dr. Burger provided provisional status updates, reporting that 2,303 conventional fertilizer labels

and 392 OIM labels were approved. He gave registration status on labels that are pending review, resubmitted, or revisions required.

Mr. Jake Evans asked the program for a general timeframe from when an application is received to the time it is completed and product labels are approved. Dr. Woods stated from January 1, 2018 forward, the program will track new applications from the time a new application is received until it is approved. The program will have that information available at a later date.

Discussion ensued regarding the review process and amount of time it takes for the program to approve labels.

Dr. Burger announced that there have been no major problems with the ExtraView Database during the renewal period. The Fertilizer program hired an additional registration staff, Dr. Yanhong Li, ES, and is in the process of filling two ES vacancies. There are 15 new label aids available on the Department's website. The new label aids are specific materials to assist in improving the process of label registration.

FREP UPDATES

Mr. Mark Cady, SES (Supervisor), presented the proposals received in response to the 2018 Request for Proposals (RFP). FREP received a total of 57 proposals and the Technical Advisory Subcommittee (TASC) recommended 12 proposals to submit it for full review. Most of the proposals revolve around nitrogen, and come from the University of California (UC) and the UC Cooperative Extension. TASC will review full proposals and expect to be completed by the end of July for recommendation to go forward for the following meeting.

Mr. Cady provided an Irrigated Lands Regulatory Program update highlighting the new East San Joaquin Order adopted by the State Water Board (SWB) revising agricultural requirements for the Eastern San Joaquin River Watershed to reduce nitrate contamination of groundwater and surface water. This is a precedential, statewide order, in response to an appeal by the agricultural groups and environmental justice groups where all regional water boards must follow the elements of the order in their subsequent orders. Mr. Cady presented the major changes of the order will affect growers statewide.

Mr. Cady reported on the article by UC Davis (UCD) researchers about nitrogen oxides (NO_x) emissions from agricultural lands, published January 31, 2018. The UCD conclusions are not consistent with the previous data that shows NO_x from agriculture to be minimal.

None of the projects funded through FREP have looked at NO_x; however, most data show that nitrogen use has been more efficient over the years, with less nitrogen loss to water or air. The California Air Resources Board (CARB) research data shows the main

emissions of NO_x are from mobile sources, such as automobiles. With California's rigorous standards, NO_x has been reduced.

The UCD study concluded that 15 percent of the applied fertilizer nitrogen is emitted as NO_x, which is significantly more than the roughly one percent found in the previous research. The NO_x estimate by the UCD researchers was generated through modeling. To compare the modeled data to the findings of previous research, data were transformed to annual emissions. To use measurements from a particular day and time, and extrapolate that annually, creates a large uncertainty.

Chair McQueen asked about plans going forward to address the UCD report. Dr. Burger stated CARB wants to publish its own data, a scientific compilation, but that will take a few more weeks.

Mr. Evans asked whether there was any regulation or limitation on nitrogen in any specific areas and if the reporting being gathered would potentially lead to regulation and limitations. Mr. Cady opined that it would not be surprising if a target ratio of nitrogen removed versus nitrogen applied became a regulation, stating it is likely and that it may be that regulations would be on a regional or individual basis.

Chair McQueen asked if everyone was satisfied with the Department waiting for CARB to publish. Ms. Pinel asked if there was a time frame because publishing six months from now, will have no relevancy to the current article on the UCD study. Dr. Burger replied it could be a few months, but CARB is committed to using very serious science. In the meantime, there will likely be some rebuttals coming out.

Vice Chair Spangler asked if the Department could issue a statement that the figure of 15 percent is inconsistent with previous UC research, and inconsistent with one percent, actual figure from research data for decades. He stated if the 15 percent is left to stand without a quick response, people will accept the UC figure as accurate, establishing an inaccurate perception of agriculture that will be hard to overcome.

Dr. Ba stated the Department has been engaged on the science side of this issue, but the lead agency on this is CARB, which is also the agency that funds those issues. The Department has consulted with CARB and met with its researchers and both agencies feel that they have the tools to respond effectively in the scientific arena.

Ms. Pinel stated she was responding on behalf of agriculture. She specified that her remarks were not aimed at the board or staff, as they are within the Department and cannot act independently to put out their own press releases. She stated she has had meetings at UCD and has met with the researchers. Additionally, she has met with agricultural groups all over the state, and with county farm bureaus through the Central Valley and they are extremely disappointed with the Department. She felt that letting CARB be the lead agency on this without further action was not sufficient. When the Department does not respond publicly and when the agency that is supposed to enforce regulations for agriculture and represent it says nothing publicly, it is disappointing to

agriculture. She was giving this message from agriculture, that across the board, agriculture is extraordinarily disappointed with the Department's response.

Dr. Ba replied that Ms. Pinel could use her access to be the voice for industry. The Department has an open door policy to address stakeholders' concerns, and a meeting with our executive office would have been granted if one was requested to address the Department's response.

Discussion ensued regarding the scientific merit of the paper and what should have been an appropriate response of the UCD NO_x paper.

LABORATORY UPDATES

Ms. Maryam Khosravifard, EPM I, reported the lab received 1,443 samples which were consistent with a 10 percent increase from last year and 1,177 rush samples which were a 40 percent increase from last year. Ms. Khosravifard announced the retirement of Dr. Silvia Richmond, Chemist. A Scientific Aid was hired in October 2017, Ms. Danielle Magadia, a student at UCD majoring in Chemical Engineering.

The sample turnaround time has improved 12 percent (15-21 days) compared to last year. The lab's goal is to analyze 100 percent of samples within a 21-day turnaround time, but the lab is at a 22-28-day turnaround currently. Ms. Khosravifard is evaluating the program efficiency in the lab to ensure timely reporting of sample results.

AGENDA ITEMS FOR FUTURE MEETINGS

Chair McQueen asked for agenda items for the next FIAB meeting.

Mr. Evans stated the final blended product of two already approved OIM products that change NPK must go through the registration renewal approval process of six-seven months. He stated this is a challenge for industry due to the difficulties of meeting the grower's need for product use. Mr. Evans suggested that the program focus on the process to service the grower's needs by the possibility of creating some sort of "fast-track" approval timeframe and recommended the board discuss options that will work for the program and the growers to allow a realistic timeframe for already approved OIM products. Mr. Evans stated he would like to work with the program to address the approval timeframe for custom blend products. He stated he would like to make it an agenda item, but left it up to the program if they would prefer to meet first and then present an update at the next meeting.

Dr. Woods stated that according to the requirements of the NOP standard guidance, the program is required to review each combination blend of already approved products. There are no exceptions, and there is no automatic approval process for two pre-approved products. He stated Mr. Evan's suggestion of a "fast track" method with a different fee structure will require a change in law or regulation.

Vice Chair Spangler asked if the program can address the issue with the NOP. Dr. Woods replied that this topic can be addressed to the NOP. Dr. Ba added the program can begin by discussing the specific components to this topic with Mr. Evans to determine if there is an approach to move forward. Dr. Woods stated the program will have an update on the next meeting's agenda.

NEXT MEETING

The next FIAB meeting will be July 10, 2018 at 9:00 a.m., in Sacramento, California.

MOTION: Mr. Ron Naven moved to adjourn the meeting; Mr. Andrew Godfrey seconded. The motion passed unanimously by all board members present with a 8 - 0 vote.

Chair McQueen adjourned the meeting at 12:54 p.m.

Respectfully submitted by:

ORIGINAL SIGNED BY DALE WOODS

Dr. Dale Woods
Environmental Program Manager I
Fertilizing Materials Inspection Program

3/08/2018
Date