

MONTANA ORGANIC COMMODITY ADVISORY COUNCIL
Business Meeting — February 5, 2003
Helena, Montana

CONFERENCE CALL ATTENDEES:

Council Members

- Judy Owsowitz, Producer
- Bob Quinn, Producer (absent)
- John Hoffland, Consumer
- David Oien, Producer
- Nancy Matheson, Producer
- Mikel Lund, Producer (absent)
- Bob Boettcher, Producer

MDA Staff Members

- Greg Ames, ASD Administrator acting as chairperson on behalf of Ralph Peck, the MDA Director
- Doug Crabtree, Organic Certification Program Manager
- Debbie Stone, Administrative Assistant
- Steve Baril, FSB Chief

Greg Ames called the meeting to order at 8:35 am. Greg's opening comments expressed Director Peck's gratitude to everyone for the contributions they have made to the MDA Organic Certification Program.

Greg requested a formal approval of the January 15, 2003 meeting minutes.

Nancy Matheson requested to **add to the minutes the consensus decisions made during the meetings and to include more of the discussion.**

Greg Ames requested the first bullet on page 4 be amended to read:

- **Suggested that the program make more revenue so that extra money can be placed into an organic program revenue account for the operating budget during hard times**

A motion was made by Nancy Matheson to approve the January 15, 2003 meeting minutes.

David Oien seconded the motion.

The motion to approve the January 15, 2003 meeting minutes passed unanimously.

Old Business

A motion was made by David Oien to approve appointing Nancy Matheson and John Hoffland as the program review subcommittee. They will review a minimum of six files and report to the council their findings. If they feel it is necessary, they may review more than six files and they may also bring in extra council members to review the program.

Bob Boettcher seconded the motion.

This motion was approved unanimously.

Review of Draft Administrative Rules

Rule IV. STATE SEAL

- Greg stated that the request for additional changes to be made by a second artist has been approved by Director Peck
- Steve stated that the Dept. is ready to go forward with the second artist; the delay was due to unresolved issues with the first artist
- It was the consensus of the council to discuss more about the State Seal when the seal is completed

Rule VII. ANNUAL REPORT AND ASSESSMENT FEES

Discussion:

- Nancy suggested the dept. go to a flat fee for producers
- David discussed a Wolf Point meeting he attended as a member of the MSOCAC (many of the state's larger organic grain growers attended); there was a universal opposition to the flat fee by those attending that meeting due to the drought last year. Consequently, no organic or non-organic crops were sold.
- Nancy suggested we proceed as is and fix later, if needed

Greg stated that Doug and Debbie cannot do anymore work than they are already doing. If the workload increases, the dept. will need to get additional help for the program.

- Nancy will wordsmith the second sentence in subsection (1) for approval at the next meeting.

A motion was made by Nancy Matheson to approve subsection (1) (a) and (1) (b) at the next meeting.

Bob Boettcher seconded the motion.

The motion to approve subsection (1) (a) and (1) (b) at the next meeting passed unanimously.

A motion was made by David Oien to have the dept. staff rewrite subsection (2) (a) through (d) and have available for approval at the next meeting.

John Hoffland seconded the motion.

The motion to approve subsection (2) (a) through (d) passed unanimously subject to consensus that the dept. staff will rewrite these subsections and have them available for review at the next meeting.

Doug stated that currently, operations certified with the MDA might not be able to access all foreign export markets for organic products. This is due to lack of reciprocity between the NOP and EC authorities. The Dept. plans to have this resolved in the near future.

A motion was made by David Oien to delete subsections (3) (b), (c) and (d) with a friendly amendment to take all reference to handlers out of subsection (3) (a).

Bob Boettcher seconded the motion.

The motion to delete subsections (3) (b), (c) and (d) with a friendly amendment to take all reference to handlers out of subsection (3) (a) passed unanimously.

It was the consensus of the council to accept subsection (4).

Steve asked for clarification on the determination of the application fee. Doug stated the appropriate application fee should be determined by gross sales of the entire business (total sales).

Rule XI. RECORDS

Nancy Matheson proposed subsection (2) to read as follows:

- (2) Certified operations must have records of all non-organic production and handling. Such records must be sufficient to clearly document that there is no commingling of organic and non-organic products, and that there is no contamination of organic products with prohibited materials used in production or handling of non-organic products, and that no non-organic products are sold or represented as organic.

It was the consensus of the council to agree with the proposed amendments to subsection (2).

Nancy Matheson proposed to draft a new subsection (3) and provide the new subsection to the council for review before the next meeting.

It was the consensus of the council to agree with Nancy creating a draft subsection (3) and providing it to the council for review before the next meeting.

It was the consensus of the council to leave subsection (4) as is pending Mikel Lund's comments.

It was the consensus of the council to approve subsection (5) pending the formal approval of Rule XI at the next meeting.

Department staff will distribute revisions of this rule for consideration by the MOCAC prior to the next meeting.

Rule XII. SAMPLING

Discussion on who is responsible for the cost of sampling:

- Doug stated that this rule is for entities that are already certified with MDA
- If the entity decides they want to do testing, then the entity pays for the cost
- The MDA pays for the cost of testing if there is suspicion or a cause for the sampling
- The MDA cannot require routine sampling without a cause (i.e., an inspector sees contamination while performing an inspection)
- The NOP states that the certified agent must have a sampling program that allows and enables sampling
- The MDA currently has a procedures manual, but it does not include procedures for sampling.
- Sampling protocol are described in the Organic Certification Program Quality Manual, Section 8, Compliance Procedures; and Section 11, Sampling Procedures.

It was the consensus of the council to help with the development of a sampling section in the procedures manual.

A motion was made by David Oien for the adoption of Rule XII with no changes.

Nancy Matheson seconded the motion.

The motion to adopt Rule XII with no changes passed unanimously.

Rule XIII. COMPLAINTS AND INVESTIGATIONS

A motion was made by Bob Boettcher for the adoption of Rule XIII with no changes.

John Hoffland seconded the motion.

The motion to adopt Rule XIII with no changes passed unanimously.

RULE XIV. COMPLIANCE ENFORCEMENT AND PENALTIES

It was the consensus of the council to approve subsections (1) (a) and (b) with no changes.

It was the consensus of the council to approve subsections (2) (a), (b), (c), and (d) with no changes.

It was the consensus of the council to approve subsection (3) with no changes.

Discussion on civil penalty:

- The MDA will work on a civil penalty matrix once the rules have been adopted
- The first step is to discuss the need for a civil penalty
- The maximum civil penalty in the pesticide department is \$5,000

It was the consensus of the council to amend subsection (4) to read:

- (4) The director may assess a civil penalty not exceeding \$10,000 per violation when the department concludes that a producer or handler committed a violation. The department will establish by rule a civil penalty matrix. The department in selecting an appropriate penalty amount shall consider the severity of the violation and other gravity factors such as negligence and willingness. A civil penalty may not be assessed until the person charged is given notice of opportunity for a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

It was the consensus of the council to add a new subsection between subsections (3) and (4), written by the MDA to address cost recovery for sampling and investigation.

It was the consensus of the council to amend subsection (5) to read:

- (5) This rule does not require the department to revoke or suspend certification, issue stop sale orders, or assess civil penalties when other remedies such as a written notice or warning are sufficient to resolve a violation.

It was the consensus of the council to take action on the entire rule at the next meeting.

Greg moved to schedule the next meeting.

It was the consensus of the council to schedule the next conference call for Wednesday, March 5, 8:30 to 11:30 am.

There was a brief discussion about creating an organic directory:

- Should we work with ADD --- cost is significant
- Provide AERO with an insert into their directory for a more reasonable cost
- Website listing

No decision was made about the creation of an organic directory.

The meeting was adjourned at 11:30 am.