

BOARD OF PESTICIDES CONTROL

April 23, 2004

Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville

AGENDA/MINUTES

The regular monthly meeting was called to order at 9:31 A.M. by Chair Carol Eckert. Other members in attendance included Berry, Bradstreet, Humphreys, Jemison, Simonds and Walton.

9:30 A.M.

1. Introductions of Board and Staff

The members and staff introduced themselves.

2. Minutes of the March 19, 2004 Board Meeting

Action Needed: Amend and/or Approve.

Walton/Berry: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

3. Development of Regulation to Establish Standards for Indoor Applications

At its April 11, 2003 planning session, the Board determined that the top priority for any discretionary tasks should be to revisit the subject of developing standards for indoor pesticide applications. This topic has been discussed on several occasions since 1987 and was last addressed by a stakeholder group in 1998 and 1999. A wide range of recommendations has been generated over the years but more pressing needs for rule-making have prevented the Board from taking any action. At the March meeting, the staff briefly reviewed the various proposals to date and recommended developing a new draft regulation following the model of Chapter 27. The Board agreed and the staff has prepared a proposed rule that focuses on buildings that are occupied for long periods by residents, workers or children in licensed daycare facilities.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the Board wishes to seek additional input before initiating rule-making.

☑ Batteese called the member's attention to his memo of April 15th and recommended that they review it point by point. There was agreement to proceed in this manner, and after a lengthy discussion, there was consensus on the following points:

- i. Staff should continue to develop the proposed rule and keep it a separate chapter for the time being rather than trying to incorporate at least portions of it into Chapter 28.
- ii. Draft rule should not attempt to address short-term visitors to restaurants, offices and other retail outlets.
- iii. Additional effort should be made to address persons living in residential care facilities.
- iv. Staff should check with OSHA to see if their Hazard Communication laws and regulations already require notification to workers about pesticide applications.
- v. Daycare populations are especially sensitive so staff should look at DHS rules to determine if it is feasible to include the 1800 certified family day care homes.
- vi. Staff should explore with Randlett whether all daycare facilities are open to use by the public.
- vii. Staff should add re-entry interval to Section 3.B if it finds such information is on the labels of products regularly used for indoor treatments.

Humphreys requested that staff prepare a table for the next meeting showing the sections where they are recommending new language.

4. Review of Staff's 2003 Surface Water Results for Corn, Potato and Residential Pesticides

The staff has previously reviewed its 2003 results from monitoring for drift on the Pleasant and Narraguagus Rivers plus a pilot study of railroad right of way herbicide spraying. During this past year, the staff also conducted other surface water studies that included sampling near forage corn fields in Thorndike, Vassalboro and Dayton; potato fields in Mars Hill and residential lawns in Brewer. The staff will review the results of this work that included seven of nineteen samples containing low levels of atrazine and two of nineteen containing low levels of metolachlor near corn fields, both of two samples containing low levels of metribuzin near potato fields, and two of four samples containing a low level of either dicamba or 2, 4-D near the residential area. The staff will also discuss plans to continue gathering more data in the spring and summer of 2004.

Presentation By: Heather P. Jackson
Water Quality Specialist

Action Needed: Discussion and determination if the members have any suggestions

regarding the upcoming monitoring season.

- Jackson walked the members through her memo and explained that at least another year's data was needed before the staff could develop a final report. She pointed out that one of the sampling sites was questionable and that more sites with streams that flowed all year long were needed. She also indicated that she will be looking at the soils maps to identify the types of soils. Hicks recommended that a few wells in the area also be sampled to determine if the chemicals were contaminating ground water. Humphreys observed that Joyce "Esperanza" Stancioff at Cooperative Extension has had considerable experience with surface water monitoring and might have some recommendations. Jackson agreed to contact Stancioff in the near future.

5. Consideration of Staff Negotiated Consent Agreement with Aquacide Company of White Bear Lake, Minnesota

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. On December 6, 2002, the Board approved a consent agreement with this firm for selling Aquacide Pellets to Maine citizens without having first registered the product or licensed as a general use pesticide dealer. The consent agreement included a monetary penalty of \$6,000.00 with \$4,500.00 suspended so long as the company complied with all other terms of the agreement. These included registering the product, obtaining the appropriate dealer license and adding a statement to their sales brochure notifying prospective purchasers that the application of aquatic herbicides may require a permit issued by an appropriate state environmental agency. In monitoring the terms of the agreement, the staff noted that while the company registered the product in 2003 they failed to obtain a restricted use pesticide dealer license in order to sell aquatic herbicides in Maine. Furthermore, the company accepted a telephone order from the Board's Director on August 28, 2003 for 10 pounds of Aquacide Pellets without making any inquiry about licensing. The staff was prepared at the January meeting to ask the Board to refer the case directly to the Office of the Attorney General but the matter was then tabled after the company indicated it was willing to settle the case. A new consent agreement has been negotiated that includes payment of the suspended fine and submission of a plan to no longer distribute aquatic herbicides into the State of Maine.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff.

- Jennings briefly reviewed the compliance history of this company and noted that the new consent agreement included payment of the previously suspended fine and adoption of a plan to no longer sell aquatic herbicides to persons with Maine addresses.

Bradstreet/Berry: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

6. Other Old or New Business

a. Update on Pesticide Container Recycling - R. Batteese

- Batteese explained that plans were progressing for Northern Aroostook Regional Waste Facility in Frenchville to accept all the plastic containers, bale them, and ship them to an ACRC designated shredder for recycling. He also explained that ACRC was still prepared to provide a baler for a central Maine location and Bradstreet indicated he was still working with a dealer to finalize that arrangement.

b. Status of Four Section 18 Registration Petitions to EPA - W. Smith

- Smith announced that EPA had approved all four petitions for Reflex, Indar, Checkmite+ and ApiLife. Batteese called the member's attention to the letter from the Maine Wild Blueberry Commission expressing thanks for helping get the Indar application approved, and seeking suggestions for ensuring a fungicide product receives a full label for controlling Mummyberry in the near future.

c. Variance Permit Granted to RWC, Inc. for Railroad Vegetation Management Program on Eleven Rail Lines - R. Batteese

- Batteese advised he included this permit in their packets to show that it was conditioned upon the contractor keeping the staff apprised of their spray schedule and product choices.

d. Variance Permit Granted to Maine Department of Transportation for both Woody Brush and Grass Control Programs on State and Federal Highways - R. Batteese

- Batteese pointed out there had not been any complaints regarding the MDOT's program the previous year so staff had renewed the permit and were just notifying the members according to the Board's policy.

e. Other ???

- Batteese reminded the members of the planning session scheduled for May 14th at Maple Hill Farm in Hallowell. He promised to send out last year's list of topics so the members could review them and respond with any suggestions for new

agenda topics.

7. Schedule and Location of Future Meetings

- a. The Board has tentatively scheduled the next meeting for Friday, June 4th.
 - The Board scheduled the next meeting for Friday, June 4th in Waterville.
- b. The Board is holding open the dates of July 21 - 23 for possibly holding a meeting in Aroostook County in conjunction with the Maine Potato Board's Tour.
 - The Board learned the dates for the Maine Potato Board's Tour had changed and the members agreed to hold open the dates of July 14 - 16 for possibly holding a meeting in Aroostook County in conjunction with the tour.

8. Adjourn

- A motion to adjourn was accepted at 12:01 P.M.

Robert I. Batteese, Jr.
Director