

BOARD OF PESTICIDES CONTROL

July 29, 2005

Colby/Thomas Rooms, Hampton Inn
425 Kennedy Memorial Drive, Waterville

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert called the meeting to order at 9:34 A.M. Other members in attendance included Berry, Bradstreet, Humphreys, Jemison, Simonds and Walton. Assistant Attorney General Mark Randlett was also present.

1. Introduction of Board and Staff

The members and staff introduced themselves.

2. Minutes of the June 17, 2005 Meeting

Action Needed: Amend/ and or Approve

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

In Favor: Unanimous

3. Cooperative Extension Proposal to Establish a Surcharge on Homeowner Packaged Pesticides to Fund Pesticide Education and Pesticide Disposal Programs

The University of Maine Cooperative Extension (UMCE) was instrumental in developing LD 1227 An Act to Fund Pesticide Education in the State. This bill sought to establish a Maine Pesticide Education Fund that would receive monies from the sale of a dedicated scratch lottery ticket. Proceeds of the fund would be distributed at a rate of 3% to the Integrated Pest Management Fund, 52 % to the Board for pesticide education and obsolete pesticide collection and 45% to the UMCE for pest management education including homeowner IPM, structural and school pest management and medical and veterinary pest management. Although some of the members of the Joint Committee on Legal and Veterans Affairs voiced support for the goals of the legislation at the public hearing in April, the Committee vote was unanimous ought not to pass because any new lottery ticket would take money from the General Fund. A serious need for funding still exists and UMCE is seeking Board support for additional ways to raise revenue including seeking legislation to establish a surcharge on homeowner packaged pesticide sales.

Presentation By: James F. Dill
UMCE Associate Program Director

Action Needed: Discussion and determination if the Board wishes to support this legislative attempt to raise needed revenue.

- ☑ Dill reminded the members he had developed a similar proposal for a surcharge back in 1999 or 2000, and that DEP's legislation for a surcharge to fund household hazardous waste collections had passed the Maine Legislature but been vetoed by the Governor in 2003. He noted his current proposal would place a 20 cent fee on homeowner packaged products and be charged at the point of sale rather than on out of state distributors. He advised it was not feasible to ask retailers to place a sticker on each container but displayed an example of a sticker that might be posted in the store and on Cooperative Extension publications to show that a portion of the fee was being spent on pesticide education efforts. Hicks questioned if the surcharge would make repellents less affordable in a public health emergency, and Simonds estimated the fee would generate too much money. Dill agreed it might be necessary to have a cap placed on the amount of money to be generated for the three agencies and that the excess go into the General Fund. Walton expressed his view that it was important to put the disposal costs back on the people creating the problem. Michael Legasse of Green Thumb Lawn Care objected to state agencies adopting additional taxes while Ron Lemin of UAP Timberland supported the proposal because it is too easy for people to go into big box stores and purchase too much product they don't need in the first place. Batteese summarized the Board's need for additional revenue and noted all the revenue options would likely be described in the Program Evaluation Report due in November. Eckert thanked Dill for presenting the information and Dill responded that he would meet with Board staff the following week to refine a legislative bill for Representative Richard Blanchard to sponsor.

4. Workshop Session to Review Staff Redraft of Proposed Chapter 26

Over a year ago the Board and staff prepared a proposed new rule to establish standards for indoor pesticide applications. A public hearing was held on July 21, 2004, and a large amount of opposition was expressed in testimony and written comments. The Board voted at the September 8th meeting to reject the proposed rule in favor of hosting a series of public information gathering meetings. Interested parties were also invited to submit written comments during a period that extended to January 21, 2005. The staff then prepared a summary of all that had transpired and the Board considered that information at a workshop session on February 18th. At that time, the members asked staff to prepare a revised draft rule taking into account all the concerns expressed at the previous meetings and public hearing. The staff has finally had time to attempt this task and the Board will likely devote an hour of this meeting to a review of the revised staff proposal.

Please note the Board will not entertain any questions or additional comments from persons in the audience during this or any future workshops needed to prepare a rule to take to public hearing.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if additional revisions are needed before the Board initiates rule-making.

- ☑ Eckert asked for general comments from the Board and stated she would like to see the exemptions for baits and gels separated from the crack and crevice treatments. Simonds stated that he did not agree there was a need for a separation, but wondered if there should be a requirement that concentrates be mixed outside the buildings. Fish indicated he did not think this was a problem and promised he would address it in future training meetings. Simonds also observed that Section 3.A should specify more clearly what is to be included in the notice to tenants. Jemison recommended changing the wording in all the sections regarding use of baits, gels, pastes, dusts and granular materials from “areas inaccessible” to “areas not readily accessible”. Randlett pointed out in Sections 3.B, 3.C and 3.D each provision related to applications exempt under Section 2.B, and he felt they should be exempt under all of Section 2. There was consensus that staff should make these plus a few other grammatical changes and initiate rule-making with a public hearing scheduled for the next meeting.

5. Dupont’s Request for 24c Registration for Assure II Herbicide to Control Various Grasses in the Establishment of Hybrid Poplar Plantings

Dupont has requested a Special Local Needs (24c) Registration for Assure II Herbicide (quizalofop-p-ethyl) to control various grasses in the establishment of hybrid poplar plantations. The current federal label does not list poplar as an allowed crop species (site) but states the product controls the grass species that are causing a problem in Maine plantations. This request is supported by a forester who has included a Champion International Research Note that describes a 1999 Lakes Region Study that showed the product was efficacious in controlling the grass species without causing any phytotoxicity to the hybrid poplar trees.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny the 24c registration request.

- ☑ Smith pointed out that the product label lists all the grass species Maine foresters wish to control but that the site (Hybrid Poplar) is not on the label. Hicks stated that there are no food uses for the product so toxicity data is limited but she did not foresee any problem with the proposed use. Ron Lemin, UAP Timberlands, advised that there were very few plantations where it would be needed, and he also pointed out that it would only be used as a first stage to remove grasses in plantations. He further noted it is a general use pesticide but bears the signal word danger because of concerns with getting it in the eyes.

Berry/Bradstreet: Motion made and seconded to approve the 24c registration request.

In Favor: Unanimous

6. Report from Medical Advisory Committee on Review of Trichlorfon and Comparative Risks of Other Grub and Chafer Control Products

Trichlorfon, the active ingredient in Dylox, was initially added to the Board’s restricted use list in 1981 based on mutagenicity concerns with no consideration of exposure patterns. At that time, it was only being used to control spruce budworm and the

registrant amended the label to prohibit use of the product in Maine. By 1988, blueberry growers needed the product to control an outbreak of spanworm and the registrant was agreeable to having it moved to the Board's limited use list where a permit was also needed in order to purchase and use the product. Recent studies have shown that Dylox products are very effective for the control of grubs and chafers in turf so golf course and lawn care operators have requested that the Board reconsider having the product on the limited use list when it is available as a general use product in the rest of the country. The Board's Medical Advisory Committee (MAC) has completed an evaluation of trichlorfon based on EPA's organophosphate risk assessment. In addition, the MAC has also reviewed the relative risks of five other products that could be used in a grub/chafer program.

Presentation By: Lebelle R. Hicks, PhD DABT
Pesticides Toxicologist

Action Needed: Discussion and determination if the members wish to initiate rule-making to change the status of trichlorfon.

- Hicks briefly reviewed the history of trichlorfon in Maine and explained that EPA does not view use on lawns as contributing to chronic exposure. She also pointed out that the higher the margin of exposure numbers in her tables the less risky the product. Eckert noted the MAC had discussed this active ingredient over the course of three meetings and that it was difficult to reach a clear consensus. Many of the MAC members were not interested in encouraging more use of an organophosphate insecticide and they definitely were not in favor of it becoming a general use product like it is in the rest of the country. Mike Legasse, Green Thumb Lawncare, informed the members its use would not explode in Maine but that commercial applicators needed the product because it was the only material with curative power. Humphreys observed that the Board had given permits for turf farms and again questioned the need to use the material on lawns. Eckert noted that there had not been a lot of requests for its use and asked how the members wished to proceed. There was consensus to take no action.

7. Adoption of Policy Concerning Positive Identification of Proper Treatment Site by Commercial Applicators Treating Residential Properties

At its June 17, 2005 meeting, the Board listened to many concerns from two neighbors at 34 and 38 Bay Road in Bowdoinham who had come home recently to find that they had received unwanted pesticide applications that should have been made to residential lawns at 34 and 38 Middlesex Road in Topsham. They requested that the Board take action to prevent similar incidents from happening to other Maine citizens. The members observed that the recent number of cases where the wrong property had been treated by commercial applicators demonstrated the need for action. They directed staff to draft a positive identification policy regarding outdoor applications to residential properties. The staff will recommend that applicators follow at least one of four positive methods that include checking for an electric meter number, a GPS reading, a photograph or a company tag before commencing treatment.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Amend and/or adopt the policy statement prepared by staff until such time as a regulation may be amended to address this issue.

- Batteese pointed out the two people who had requested the Board take action supported the draft policy. Jemison observed that he still preferred having applicators make an advance visit to the property to talk with the person requesting the treatments but could support the policy as currently drafted.

Simond/Humphreys: Motion made and seconded to adopt the policy statement.

In Favor: Unanimous

8. Staff Review of Commercial Lawn Care Applicator Records During Rainy Week of May 23 – May 27

The Board's staff received complaints from a couple of commercial lawn care applicators and several private citizens that certain lawn care companies were continuing to make pesticide applications during periods of heavy rain and when the lawns were saturated. The staff requested records from several large companies serving the Portland, Augusta and Bangor areas and compared the number of applications conducted per employee per day during the very rainy week of May 23 –May 27. The staff also obtained weather reports for these five days and reviewed the labels of pesticides used during this period for pertinent precautionary statements.

Presentation By: Gary D. Fish
Certification & Licensing Specialist

Action Needed: Discussion and determination if the Board wishes to have a stakeholder group develop best management practices or take some other action to address pesticide applications made during excessively rainy weather.

- Fish made a Powerpoint presentation summarizing the staff findings with regard to dates of rainfall, number of applications conducted by companies in the three areas, and the pertinent label statements pertaining to applications prior to rainfall or to saturated soil. David Ladd, DEP Division of Watershed Management, noted his agency was very concerned about the leaching and runoff of nutrients and indicated DEP staff would like to be part of any working group to make recommendations on BMPs. Simonds and Bradstreet expressed concerns about the number of applications that seemed in violation but Jemison pointed out the difficulty in sometimes determining the point of saturation. Randlett discussed the label statements and the statutory language regarding careless, faulty or negligent manner or in a manner potentially harmful to the environment. Jennings observed that a task force or stakeholder group could be helpful in establishing benchmarks. Eckert asked how the members wished to proceed and found there was consensus the staff did a great job pulling the information together and that they should proceed both on the development of a stakeholders group and an examination of cases for enforcement action.

9. Report from Medical Advisory Committee on Recommendations for Scientific Criteria for Medical Records and Exposure Data that the Board Should Require with an Application for a Critical Pesticide Control Area

On March 18, 2005, the Board held a public hearing to consider an amendment to Chapter 60 to exclude a single person or family with health concerns from being eligible to seek a critical pesticide control area designation. Considerable opposition was expressed and the Board voted at the April 15th meeting to abandon the proposed Chapter 60 amendment. Instead, the members asked to have the Medical Advisory Committee (MAC) look at the issues of validating exposure and verifying medical records while staff developed waiver language an applicant would have to sign granting permission for their medical records to be discussed in public meetings. The MAC has met and proposed several issues for Board consideration.

Presentation By: Lebelle R. Hicks, PhD DABT
Pesticides Toxicologist

Action Needed: Discussion and recommend to staff the points the members would like to see incorporated into the Chapter 60 Application.

- Batteese noted that the meeting was running late and that the Board might wish to table this topic until the next meeting. Eckert announced that Berry had to leave and asked how the members wished to proceed.

Bradstreet/Jemison: Motion made and seconded to table this agenda topic until the following meeting.

In Favor: Unanimous
Absent: Berry

10. Nominations to the Environmental Risk Advisory Committee to Evaluate the Potential Risks Browntail Moth Insecticides May Pose to Lobsters and Other Marine Organisms

The Joint Standing Committee on Agriculture, Conservation and Forestry carried over to the next session LD 1657 An Act to Minimize the Risk to Maine's Marine Waters and Organisms Posed by the Application of Pesticides. In the meantime, they requested the Board to evaluate ongoing studies of the potential for pesticides to cause adverse effects on lobsters and report back to them by January 2, 2006. At the June meeting, the staff pointed out the Environmental Risk Advisory Committee (ERAC) needed to be reconstituted since at least one of the standing members was no longer available to serve and a new set of ad hoc members with expertise in marine life biology, oceanography and pesticide drift issues would be needed. The Board agreed and requested staff to solicit volunteers to serve on this new panel. The staff has two candidates for the two openings on the standing committee and four candidates to serve as ad hoc members.

Presentation By: Lebelle R. Hicks, PhD DABT
Pesticides Toxicologist

Action Needed: Approve/disapprove the nominations of volunteers to serve on the ERAC.

- Hicks briefly reviewed the credentials of volunteers included in the mailing and pointed out an e-mail message in their folders from Jay Krause who was also willing to serve on the ad hoc committee.

Jemison/Simonds: Motion made and seconded to appoint John Wise and Leon Tsomides to be standing members of the ERAC and Andy Berry, Carl Wilson, John Sowles, Lawrence LeBlanc and Jay Krause to be Ad Hoc members of the Lobster ERAC.

In Favor: Unanimous

Absent: Berry

11. Consideration of Staff Negotiated Consent Agreement with Smith Farms, Inc. of Presque Isle

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. This case resulted from a complaint that approximately 180 pine trees were showing significant desiccation on the side facing two adjacent broccoli fields. An investigation revealed that an application of herbicide to the broccoli fields had drifted onto a 27 year old pine plantation. This action constitutes a violation of the Board's Chapter 22 regulation requiring applicators to take reasonable precautions to minimize pesticide drift to the maximum extent practicable.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings noted this farm had been very progressive in complying with the worker protection standard but made two applications of paraquat to the broccoli fields during fairly windy conditions. They treated these fields because they were surrounded by trees but failed to recognize that pines are very sensitive to the herbicide.

Humphreys/Simonds: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

Absent: Berry

12. Consideration of Staff Negotiated Consent Agreement with Tina Hamilton of Scarborough

This case is similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to

pay a fine and resolve the matter. It involves for hire applications of pesticides to the lawns of four customers during the summer of 2004. At the time of the applications, the applicator had failed to renew her master applicator license. This action constitutes a violation of the Board's statute that requires a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings explained that Hamilton had never been a large operator and that she was in the process of selling her business. However, she had failed to renew her commercial license and made four commercial applications before an inspector stopped for a visit.

Jemison/Humphreys: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous
Absent: Berry

13. Consideration of Staff Negotiated Consent Agreement with Evergreen Golf Club & School of Rangeley

This case is also similar to the preceding agenda topic where there was no dispute of material facts or law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involves a July 27, 2004 herbicide application to the turf at the Evergreen Golf Club & School that is considered a place open to use by the public. At the time of the application, no company employees were licensed as a commercial applicator. This action constitutes a violation of the Board's statute that requires a licensed applicator be present whenever custom applications are conducted.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings advised that this course was a very small operation that started out as a driving range and had grown to a nine-hole course.

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

In Favor: Unanimous
Absent: Berry

14. Other Old or New Business

- a. Departmental Reorganization Shifts Administrative Responsibility for the Board from the to be Dissolved Office of Agricultural, Natural and Rural Resources to the Division of Plant Industry – R. Batteese
 - Batteese advised that he would keep the members informed of any changes that might impact the staff's current operation.
- b. Variance Permit Granted to Aroostook Arboriculture for 2005 Roadside Brush Control Program in Nine Towns – R. Batteese
 - Batteese noted this was an informational item only.
- c. Bangor Hydro Electric Company's Vegetation Management Program for 2005 – R. Batteese
 - Batteese reported that this was also an informational item only.
- d. Results of Planning Session Balloting – R. Batteese
 - Batteese passed a blank ballot to Bradstreet who had not previously returned a completed one. He promised to have them tallied by the next meeting.
- e. Other ???
 - Hicks commented that the Journal of the American Medical Association had recently published a report about pesticide exposures in schools. Eckert handed Hicks a copy of the report to review in advance of the next meeting.

15. Schedule and Location of Future Meetings

- a. Date and location for the next meeting.
 - The Board scheduled the next meeting for Friday, September 9th.
- b. Date and location for the following meeting.
 - The Board tentatively scheduled the following meeting for Friday, October 28th.
- Adjourn
- A motion to adjourn was accepted at 12:59 P.M.

Robert I. Batteese, Jr.
Director