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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

June 22, 2007

State of Maine Performance & Training Facility, Annex
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

MINUTES

9:30 A.M.

Present: Eckert, Humphreys, Stevenson, Walton, Simonds, Qualey and Jemison.

1. Introductions of Board and Staff

Board Members and Board staff introduced themselves.

2. Minutes of the April 13, 2007 Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Jemison/Simonds: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Discussion of Rulemaking Proposal to Continue Restrictions Associated with Browntail Moth Applications Near Marine Waters

The Maine Legislature enacted emergency legislation in the spring of 2006 and 2007, placing temporary restrictions of pesticide applications near marine waters for control of browntail moths. In its January 2, 2007, report to the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF), the Board recommended that the Legislature continue the restrictions during 2007, so that the Board could develop a rule to continue the restrictions indefinitely. The ACF agreed with this recommendation and is expecting a rule will be in place before the 2008 browntail moth spray season. The Board will review draft language for a future rulemaking proposal.

Presentation By: Henry Jennings
Director

Action Needed: Determine Appropriate Language for Proposed Rule Amendment.

- ☑ Jennings reminded Board members that their report to the ACF Committee recommended that the Legislature continue the restrictions associated with browntail moth spraying for one additional year so that the Board could codify the restrictions permanently in rule prior to the 2008 spray season. Jennings conferred with Mark Randlett about which rule chapter would be most appropriate for the restrictions. Consensus was reached to place the restrictions in Chapter 29, Standards for Water Quality Protection, since the restrictions relate to pesticide applications near water and are not associated with specific products.

The draft rule language presented to the Board for consideration closely mimics the restrictions in statute. One difference is that the specific active ingredients would not be specified in the rule. Instead, pesticides applied would be limited to a list approved by the Board, which would allow more flexibility to adjust the list in the future. The other difference is there would not be any language in the rule requiring monitoring or a report to the Legislature.

Members generally agreed with the direction of the proposal. Hicks suggested it would be less confusing to place the exemptions at the beginning of the new section instead of the end. Consensus was reached to reorganize the proposal as suggested and bring a new version back to the next Board meeting.

4. Discussion of Concerns Voiced by the Structural Pest Control Industry Relating to Chapter 26 of the Board's Rules

After an exhaustive process, the Board adopted Chapter 26, Standards for Indoor Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools, in May of 2006. The new rule became effective on January 1, 2007. Since the rule was adopted, some members of the structural pest control industry have complained that it is unworkable and burdensome. The New England Pest Management Association was successful in introducing LD 1698, "An Act To Provide for Public Notification of Indoor Pesticide Applications," sponsored by Senator Nancy Sullivan. LD 1698 sought to change the procedures for notification, exempt crack and crevice treatments from the notification requirements and exempt FIFRA Section 25(b) pesticides from the rule. The Joint Standing Committee on Agriculture, Conservation and Forestry reported the bill out as ought-not-to-pass, contingent on the Board's agreement to place the issue on the next meeting agenda. Accordingly, the Board will review the concerns identified by the structural pest management industry and determine if amendments are appropriate.

Presentation By: Henry Jennings
Director

Action Needed: Determine Whether It Is Appropriate to Propose Rulemaking Amendments.

- ☑ Jennings briefly recounted the events leading up to this agenda topic, including the lengthy rulemaking process and the recent bill in the Legislature seeking changes to Chapter 26. The Board's only obligation is to consider industry concerns and then determine if any revisions are warranted.

Stevenson had distributed an electronic handout taken from his testimony on LD 1698 which illustrated Modern Pest Services' efforts and results related to Chapter 26. Ted St. Amand, Scott Stevenson and Richard Stevenson, Sr. were in attendance and offered comments. St. Amand disputed the notion that only one interest group was being represented in LD 1698. He pointed out that a number of business interests also had concerns with Chapter 26.

A discussion of the challenges pest management professionals face when trying to control bedbug infestations ensued. Customers want immediate results when bedbugs are discovered, but the advanced posting requirements mean no liquids can be sprayed until the 24-hour posting has expired. Board members and audience participants discussed various ideas including adjusting the posting requirements so that it does not hold up applicators when it becomes apparent that a liquid spray is the best control option.

Exempting crack and crevice applications from the advance notice requirement is another option that would allow necessary flexibility. Hicks and Eckert agreed that one principle concern is that the rule provides a mechanism for sensitive individuals to receive advance notice of pesticide applications.

Russell Libby suggested that the Board review its notification requirements contained in different chapters for consistency and possible ideas for Chapter 26. He also suggested the Board compare the crack and crevice notification requirements contained in Chapters 26 and 27.

FIFRA Section 25 (b) exempt products were discussed briefly. Members reviewed documents highlighting complaints arising from 25 (b) products. Pest management professionals suggested that an exemption for 25 (b) products would only be important if the more central concern of advance notice is not worked out.

Consensus was reached to ask the staff to develop a series of options to address the concerns of the structural pest control industry and bring them back to the next meeting.

5. Consideration of Staff Negotiated Consent Agreement with Maine Helicopters, Inc. of Whitefield

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 involved applications of Imidan to two blueberry fields in Steuben on

the morning of July 20, 2006. Neither field was supposed to be sprayed. A Maine Helicopters' employee marked the wrong fields on the map supplied to the pilot.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reviewed the circumstances surrounding the case in which an aerial applicator sprayed two blueberry fields without authorization. An employee for the helicopter company had marked the wrong fields on the map that was provided to the pilot. Some discussion ensued as to why an errant map was provided to the pilot, and what responsibility the grower should take for ensuring proper identification of the target field. Board members reiterated the view that spraying the wrong site is completely unacceptable.

Simonds/Jemison: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with The Lawn Ranger of Brunswick

This case is similar to the preceding agenda topic 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. It involved pesticide applications made by an unlicensed commercial applicator, Nathaniel Laine of Brunswick, doing business as The Lawn Ranger. Laine operates a lawn maintenance service. A few of his customers specifically requested that he apply granular fertilizer/pesticide combination products to their lawns. A Board inspector observed him making these applications on two separate occasions.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that Nathaniel Laine is the sole proprietor of a lawn maintenance company that focuses on mowing and raking. Laine had been approached by a few of his customers to spread some of the combination granular products with fertilizer and weed or insect control. A Board inspector observed Laine applying granular lawn pesticides and advised him of the licensing requirements. Laine was observed applying granular materials a second time, however he believed he was not violating pesticide laws because he was not charging for that portion of his service.

Board members and audience discussed different strategies for alerting small lawn businesses about the Board's licensing requirements, such as scanning the yellow pages

for companies to contact, placing posters at stores where mowing equipment is sold or articles in different publications.

Simonds/Qualey: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Northeast Agricultural Sales, Inc.

This case is similar to the preceding agenda topic 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. It involved a licensed restricted-use pesticide dealership operating a major pesticide storage facility that did not comply with Board requirements contained in Chapter 24. The staff pursued enforcement action after the company was very slow in responding to Board efforts to bring the facility into compliance.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reviewed the sequence of events leading up to the consent agreement. Gary Brown of Northeast Agricultural Sales had inquired about the storage requirements as the business was starting up. A Board agent conducted an inspection of the facility in 2004 and determined that the business was operating a Major Pesticide Storage Facility that did not comply with Board requirements contained in Chapter 24. A second inspection was conducted during 2006, and little progress had been made toward upgrading the facility. Board staff sent a letter to Gary Brown following the 2006 inspection listing steps necessary to come into compliance with dates specified for each step to be accomplished. None of those milestones were met.

Northeast Agricultural Sales hired a new manger late in 2006. Steady progress was made until the facility was in full compliance by early 2007. The consent agreement negotiated by the staff took into account the efforts made by current management while recognizing that the company had economic advantage over competitors while operating with a non-compliant facility.

Russell Libby questioned why the Board waited two years before reinspecting a noncompliant facility. Lauchlin Titus pointed out how expensive it was for companies to build new facilities or retrofit existing ones.

Jemison/Simonds: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

8. Discussion of Need/Benefit for Bt Corn Field Products

At its April 13, 2007, meeting, the Board discussed pending registration requests from three companies covering seven Bt Corn products. A technical committee is reviewing the concerns relating to insect resistance and gene flow. Lauchlin Titus, Certified Professional Agronomist, has coordinated the collection of data to support the need for these products. Titus will now present his findings to the Board.

Presentation By: Lauchlin Titus
Certified Professional Agronomist

Action Needed: Determine Whether There is a Need/Benefit for Bt Corn Field Corn in Maine

- Titus reviewed his handout with the Board, first discussing the degree to which soil insecticides are likely used on field corn in Maine. A 2003 estimate suggested that approximately 15% of the field corn was treated with a soil insecticide. More recent estimates indicate approximately 40% of Maine's 24,000 acres of field corn may be treated. Titus offered possible explanations for the difference. He said the use of Bt Corn products would reduce the amount of soil insecticides used.

Titus also discussed how available seed varieties are affected. Seed companies are now focusing development efforts on genetically modified varieties, with the result that many of the best yielding varieties are only available in genetically modified versions.

Titus next discussed yield advantages to Bt Corn and review trials from the northeast, illustrating that yields are generally improved slightly with the "traited" varieties. Very limited Maine data has not shown a yield advantage to date, but more data points are necessary before a determination can be made.

Finally, Titus briefly discussed how traited varieties reduce plant injury associated with insect feeding. Less plant injury results in less fungal growth and lower levels of mycotoxins.

Board members and audience discussed different viewpoints for evaluating the need for Bt Corn products. Hicks pointed out that the products currently being considered have traits effective against soil insects. She indicated that was not the case when the Board last considered Bt Corn registration and that field corn growers are far more likely to treat for soil insects than they are for foliage feeders.

Jennings asked if the Board was ready to make a determination on the need for the products, since Title 7 specifies there must be a need for products registered in Maine. Members questioned whether a determination should be made based solely on need, suggesting that a risk/benefit analysis was more appropriate. The Board decided to postpone the need determination until the next meeting, and instead held a straw poll

about need, showing most members felt there was sufficient evidence of need to continue with the review process. Two Board members will likely abstain from voting.

9. Preliminary Discussion about Acceptable Systems of “Verifiable Authorization”

A public hearing was held on November 17, 2006, on a series of minor housekeeping amendments to eight different rule chapters. Among the proposed changes was a new provision in Chapter 20 that would require commercial applicators providing ongoing, periodic applications to enter into a written contract with their customers. The Board subsequently modified the requirement based on comments to allow companies to either enter into written contracts or to utilize another system of verifiable authorization approved by the Board. The new provisions will become effective on January 1, 2008. The Board will now begin discussions on what approaches they will likely approve for verifiable authorization.

- Jennings provided an overview of the suggestions received to date relating to verifiable authorization. He suggested that long-standing agreements need not be a concern for the Board since those customers would be fully aware of the ongoing nature of the agreements. He further suggested that the key areas of focus should be new customers and customers of seasonal businesses. The status of seasonal customers can change during the off-season, so applicators should verify that customers still own the subject property and still wish to have the service for the upcoming season.

Members discussed the various options and agreed the key point is verification. A number of methods can be used to verify that customers want an ongoing service, including a signature, a recorded phone conversation, return of a postcard, prepayment for services or an electronic confirmation (such as an email) from the customer. There are other methods to confirm an agreement that are more difficult to verify, such as a telephone call sheet or confirmation letters from the applicator to the client. Using more than one of these types of methods is prudent. Board members directed the staff to develop a menu of options for adoption at a future meeting.

10. Continued Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006, meeting, the Board reviewed its prioritization balloting for discretionary tasks discussed at its 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board’s number four priority. The Board reviewed potential language and concepts at the January, February and March Board Meetings, and directed the staff to develop a summary of which types of surface waters would be affected under the language discussed to date. The Board will review that summary and further discuss the buffer concepts.

- Due to concerns expressed by applicators, especially foresters, Jennings explained he had revised his thinking on trying to define surface waters to be protected with a 25' buffer. Applicators are concerned with the difficulty involved in trying to determine the location of intermittent streams and those wetlands characterized primarily by hydric soils.

Consequently, he felt it was more prudent not to rely on existing DEP definitions for this purpose.

Board members reviewed the latest draft language attempting to define the surface waters to be protected and generally felt there was progress in the right direction. The simplest possible approach is preferred, since applicators need to be able to easily identify what needs to be buffered. Russell Libby suggested reviewing definitions relating to shoreland zoning laws to see if they may be useful. Members directed the staff to incorporate suggestions and return with a new draft next meeting.

11. Other Old or New Business

a. Variance Permit Issued to the Maine Department of Transportation
H. Jennings

Jennings alerted members that the staff had renewed the variance application from MDOT.

b. Variance Permit Issued to Basham Tree Services
H. Jennings

Jennings stated that the variance permit for Basham Tree Service had also been renewed.

c. Letter from Bangor Hydro Outlining Its Substation Treatment Plans
H. Jennings

Jennings pointed out the Board had received a letter from Bangor Hydro outlining its substation vegetation management plans.

d. Legislative Update H. Jennings
LD 1891
LD 861
LD 1698
LD 1798

Jennings reported that LD 1891 was enacted to designate substantive Board rulemaking that will require legislative review.

LD 861 was enacted to require persons spraying in eating or food establishments to have a commercial applicators license.

LD 1698 was voted out ought-not-to-pass contingent on the Board's willingness to review the concerns of the structural pest industry.

LD 1798 has been enacted to create a pesticide education fund in Cooperative Extension with a \$500 allotment. Essentially, there is a fund with no revenue.

- e. PIP Technical Committee Update J. Jemison
 - Jemison reported that the PIP Technical Committee will meet on July 9 and he hopes to have a report by the next Board Meeting.
- f. Stakeholders Committee Update J. Jemison
 - Jemison distributed the list of recommendations that the Stakeholders Committee will be voting on. The next, and hopefully last, meeting will be also be held on July 9.
- g. Letter/Emails on Aerial Spraying H. Jennings
 - Jennings pointed out that the main office continues to receive letters and emails from citizens concerned about aerial spraying.
- h. Emails from Nancy Oden on Pesticides/Bees
 - Jennings stated that he and the governor had been receiving emails from Nancy Oden relating to pesticides and bee decline. All information is being forwarded to Tony Jadczyk, the State Apiarist with the hope that Jadczyk could provide an update to the Board when a consensus view emerges.

12. Schedule and Location of Future Meetings

- The next meeting will be held on July 27, 2007, at the Hampton Inn in Waterville. The Board elected to change the August 29, 2007, meeting to September 7, 2007. The Board also set tentative dates for future Board meetings of October 5, 2007, and November 16, 2007. The conference room at Maple Hill Farm has been reserved for a planning session on October 26, 2007.

13. Adjourn

- Jemison/Simonds: Moved and seconded that the meeting adjourn at 1:41 p.m.

In Favor: Unanimous