

BOARD OF PESTICIDES CONTROL

October 8, 2004

Embassy Room, Senator Inn & Spa Inn
284 Western Avenue, Augusta

AGENDA/MINUTES

9:30 A.M.

Chair Carol Eckert opened the regular monthly meeting at 9:37 A.M. noting that the Board did not have a quorum but that the members would proceed with introductions and the public information gathering session. Other members in attendance included Berry and Jemison. Bradstreet, Humphreys and Walton were unable to attend. Simonds arrived shortly after the introductions and opening of the public information gathering session.

1. Introductions of Board and Staff

The members and staff introduced themselves.

2. Public Information Gathering Session Regarding Development of a New Proposal for Chapter 26 - Standards for Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

At the September meeting, the Board recognized there had been considerable opposition to the initial June 30, 2004 proposed rule. The members voted to reject that version in favor of hosting a series of public information gathering sessions. The purpose will be to seek input from affected parties before the staff develops a new proposed rule. Health care providers, correctional officials and pest control applicators servicing these groups have been invited to this meeting to discuss ways IPM and notice to long term occupants may be more effectively implemented. Persons involved with food preparation, processing or serving will be invited to participate in the following meeting tentatively set for November 5th. Other groups will be invited to subsequent meetings.

Eckert expressed pleasure that several people were present to participate in a discussion with the Board. She then invited them to offer their thoughts on the Board's attempt to develop a new proposed rule regarding implementation of IPM and notification to long term occupants. Organizations represented included the National Pest Management Association, Maine Health Care Association, Department of Corrections, 75 State Street, Maine Hospital Association, Atlantic Exterminating, Modern Pest Services and Advantage Pest Control. Some of the points raised during this hour and a half period included the following:

- Nursing homes house many long term care patients who are bed ridden and a high percentage suffer from dementia so they can't give consent.

- Many residential care patients do come and go from the facility and frequently bring food into their rooms creating pest problems.

- Prison or jail inmates are not easily relocated and would never offer consent.
- Many hospital patients are only in for day surgery so providing 24-hour advance notice is not possible.
- Many of the speakers believe the Board is attempting to create a very complicated rule and should establish a stakeholders group to develop a reasonable proposal.
- County jails and mental health institutions were not represented at this meeting although they were invited.

After everyone had an opportunity to address the Board, Eckert asked how the members wished to proceed. There was agreement to wait until after hearing from the restaurant, hotel, grocery and food processing representatives at the November meeting before making any decisions.

3. Minutes of the September 8, 2004 Board Meeting

Action Needed: Amend and/or Approve

- At the conclusion of the public information gathering session, Eckert formally opened the meeting at 11:07 A.M. Batteese advised that on Randlett's recommendation he would be removing the word "all" from the 8th line of the discussion under Agenda Item #4 regarding the Board's rules.

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

In Favor: Unanimous

4. Further Review of Proposed Housekeeping Amendments to Chapters 10 and 50

At the July meeting, the Board reviewed staff recommendations for revisions to several chapters of the Board's regulations. There was consensus that the proposed changes to Chapters 22, 24, 32, 41 and 50 were appropriate but that more definitions might need to be added to Chapter 10. These would include adding some certification terms the EPA may wish to see in an updated Maine State Plan for Certifying Applicators, and amending the definition of "pesticide" to include nitrogen stabilizers. At the last meeting, the Board decided to re-examine whether dye products labeled for aquatic herbicide use should be restricted by Chapter 41. In addition, the staff has encountered a situation where pesticide application records were not available at a golf course because the applicator kept them at his home. The staff is therefore recommending additional revisions to Chapters 10 and 50 and tabling plans to amend Chapter 41 at this time.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the Board is ready to initiate rule-making without a public hearing but with a 30 day comment period on Chapters 10, 22, 24, 32 and 50.

- Batteese briefly reviewed the points raised in his memo of September 30th and noted Jennings had recently recommended that the staff revise the definition of non-volatile to address concerns raised in the public hearing on proposed Chapter 26. Fish followed with an explanation of the need to update the state pesticide applicator plan by including the certification and licensing definitions from the Code of Federal Regulations. There was also discussion about not addressing Chapter 41 while staff continues to study the inclusion of dyes such as the Aquashade products.

Simonds/Jemison: Motion made and seconded for staff to revise the definition of non-volatile, include the CFR definitions and send Chapters 10, 22, 24, 32 and 50 to the Secretary of State without a public hearing but with a 30 day comment period.

In Favor: Unanimous

5. Consideration of Staff Negotiated Consent Agreement with Richardson's True Value of Patten

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 a general use dealer who (1) continued to sell chlorpyrifos products after they were no longer legal to be sold, (2) stored pesticides outdoors in an unprotected area and (3) stored pesticides within 10 feet of animal food. These actions constituted violations of the Boards statutes and regulations governing pesticide storage.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings explained this case was pursued because the owner had been warned the past three years that chlorpyrifos products had been withdrawn from the market because of health concerns.

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

In Favor: Unanimous

6. Consideration of Staff Negotiated Consent Agreement with The Porter's Farm & Greenhouse of Lincoln

This case is similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved the grower's failure to maintain pesticide application records for applications made inside a greenhouse during 2002 and 2003. This action constituted a violation of the Board's Chapter 50 regulation requiring

commercial agricultural producers to maintain written records of all their pesticide applications for a period of two years.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings pointed out this case resulted from repeated failures by the grower to maintain proper records. He noted it was necessary to take action on these types of violations in order to support the inspectors who are enforcing the Board's rules.

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

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with RWC, Inc. of Westfield, Massachusetts

This case is also similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved the drift of two herbicides from a railroad right of way onto a lawn in Rockland that resulted in damage to turf and ornamental plants. This action constituted a violation of the Board's Chapter 22 regulations requiring applicators to protect sensitive areas from pesticide drift.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings explained that the drift was confined to a small area of the lawn and that the company had engaged in extensive remediation efforts to replace the contaminated soil and install new turf and ornamental plants.

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

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with JBI Helicopter, Inc. of Pembroke, New Hampshire

This case is also similar to the preceding agenda topic where there was no dispute of material facts and law, and the violator admitted to the violation and acknowledged a willingness to pay a fine and resolve the matter. It involved the drift of a fungicide from an aerial application to a blueberry field onto a lawn located on the opposite side of the highway in Charlotte. This action constituted a violation of the Board's Chapter 22

regulations requiring applicators to protect sensitive areas from pesticide drift.

Presentation By: Henry S. Jennings
Chief of Compliance

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

- Jennings advised that the residue level had exceeded 50 % of the target level and pointed out this company had a violation from the previous year.

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

In Favor: Berry, Eckert and Jemison
Abstain: Simonds

9. Other Old or New Business

a. Update on Pesticide Container Recycling - R. Batteese

- Batteese reported that the ACRC had agreed to pay the transportation charges for having the containers from outside of Aroostook County trucked to Frenchville for baling and future shipment to an ACRC shredder for recycling.

b. Review of Meeting with Commissioner Spear on Financial Matters – H. Jennings

- Jennings reported the Commissioner was willing to support a doubling of the Horticulture fees but that action alone would not fully address the potential shortfall. Batteese indicated that staff would keep track of budget actions and report back to future meetings.

c. Update on 2004 Obsolete Pesticide Collection Program – R. Batteese

- Batteese announced that collections would be held the week of October 18th and that 85 people were expected to bring in over 6,500 pounds of old pesticides.

d. Other ???

- Batteese called the members' attention to an e-mail message from Hicks asking them to indicate whether she should first concentrate more on the aquatic dyes or trichlorfon. There was consensus that the dyes should be the top priority because more inquiries were being received about them than trichlorfon for lawn care applications.

- Eckert reported she and Hicks had attended an Environmental Tracking Conference but that most of the focus was on heavy metals and carbon monoxide poisoning. She noted that David Littlell from DEP had indicated his agency was again interested in seeking a surcharge on paints and pesticides. Batteese indicated he was aware of their action and was hoping the Department of

Agriculture could squelch it at the Governor's Office.

- Eckert also reported that she collects water samples for the Sheepscott Valley Conservation Association and suggested that Jackson might be able to coordinate with them on future sampling programs. Jackson responded she would be working with Jeff Varricchione at DEP who is establishing a statewide volunteer monitoring group.
- Fish announced that the staff had been awarded a \$33,700 Pesticide Environmental Stewardship Program demonstration grant from EPA. He indicated the funds would be used to establish a Yardscaping demonstration site at Back Cove in Portland .

10. Schedule and Location of Future Meetings

a. Location and date for the next meeting.

- The Board scheduled the next meeting for Friday, November 5th in Augusta.

b. Location and date for the following meeting.

- The Board tentatively scheduled the following meeting for Friday, December 17th.

11. Adjourn

- A motion to adjourn was accepted at 12:35 P.M.

Robert I. Batteese, Jr.
Director