BOARD OF PESTICIDES CONTROL

September 9, 2005

Colby/Thomas Room, 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, Humphreys, Jemison and Simonds. Bradstreet and Walton were unable to attend. Assistant Attorney General Mark Randlett was also present.

1. Introductions of Board and Staff

☑ The members and staff introduced themselves.

2. Public Hearing on Adoption of New Chapter 26 - Standards for Pesticide Applications and Disclosure and Notification for All Occupied Buildings Except K-12 Schools

The Board has redrafted a proposed rule to establish standards for applicators applying pesticides inside occupied private and public buildings other than K-12 Schools covered by Chapter 27. Additional details of the proposed rule were described in the public hearing notice published in major newspapers on August 17, 2005. Copies of the proposed rule are available upon request or may be viewed on the Board's web site at www.thinkfirstspraylast.org .

A sign up sheet will be available at the door for persons wishing to present information about the proposed rule. Written comments may be submitted to the Board's address above until 4:00 P.M. on Monday, September 26, 2005.

☑ A court reporter was present to record the public hearing and will submit a transcript at a later date. The hearing concluded at 11:50 A.M. and the Board took a ten-minute break. Humphreys left for another commitment before the Board reconvened.

3. Minutes of the July 29, 2005 Board Meeting

Action Needed: Amend and/or Approve

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

In Favor: Unanimous
Absent: Humphreys

4. 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

This topic was tabled at the July meeting due to time constraints. 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.

☑ Eckert began the discussion by reviewing some of the points from her memo summarizing the last meeting of the Medical Advisory Committee (MAC). These included requiring an applicant to submit letters of recommendation from two providers, requiring the providers to specify the products of concern, accepting laboratory data only from licensed facilities and having the MAC review the data before the Board determines an application is complete. Eckert noted the MAC members were divided on many of the above points and some felt no amount of data would resolve the problem of inexact or disputed diagnoses. Hicks pointed out one of the MAC members recommended the Board recognize up front that there will be issues that they can't solve. She also asked Randlett to comment on how the Health Insurance Portability and Accountability Act of 1996 (HIPAA) would impact the discussion of medical records in a public meeting. Randlett responded that the act applied to medical providers and not the Board. He also commented briefly on the 1993 U.S. Supreme Court Case of Daubert v. Merrell Dow Pharmaceuticals that established a five-factor, non-exclusive test for federal district courts to consider when assessing the opinion of scientific experts. Jemison pointed out the need to differentiate between a pesticide and the solvent in a formulation. Eckert noted there would not be enough time to resolve this topic at this meeting. Instead, she asked staff to work with Randlett to revise the application for a critical pesticide control area and bring the matter back to the next meeting.

5. Discussion of Citizen Concerns Over Exposure to Aerial Pesticide Applications and Need for Increased Community Right to Know

The Toxics Action Center has recently published a report entitled "Catching the Toxic Drift". It describes how they believe pesticides used in the blueberry industry threaten the state's communities, water and the environment. The group is currently collecting signatures on petitions to have the Board initiate rule-making to address the concerns noted in their report. They have requested an opportunity to brief the Board and receive

any feedback the members may wish to provide at this time.

Presentation By: Will Everitt
Associate Director, Toxics Action Center

Action Needed: Discussion and determination if any action is needed at this time.

☑ Everitt remarked he was glad to hear the Board was also interested in addressing aerial applicator issues. He thanked the members for allowing him time to present some of the concerns of his organization that is working on behalf of citizens living in blueberry production areas. He pointed out that his group had been involved in the lawsuits under the Clean Water Act that had resulted in Cherryfield Foods and Wymans switching to ground application. He regretted that other growers were still continuing to use aerial application and contaminate waterways. He observed that ground spraying represented a greater risk to the applicators and recommended the Board work with the Department of Human Services to conduct a study of the body burden of applicators. He also stressed that a lot of the people living down east don't know who to call when pesticide drift occurs. He then introduced Matthew Davis of Environment Maine. Davis focused on monitoring for drift and stated that previous BPC studies were the best evidence drift is occurring. He stated the studies only showed the tip of the iceberg and encouraged the Board to get back to drift monitoring. He further indicated his organization's goal was to reduce exposure from all applications and explained they were also interested in broccoli and forestry applications. In addition, he expressed support for increasing fees on polluting industries and shifting the cost of the pesticide notification registry from the public to commercial applicators.

6. Consideration of Staff Negotiated Consent Agreement with Hendrix & Dail of Greenville, North Carolina

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. It involves the for hire soil fumigation treatments to two strawberry farms during the summer of 2004. At the time of the applications, the spray contracting firm did not have a master applicator available in Maine. This action constitutes a violation of the Board's Chapter 31 regulation that requires a licensed master applicator be available to be on-site within six hours driving time to assist any person applying pesticides.

Presentation By: Henry S. Jennings
Chief of Compliance

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

☑ Jennings was unable to be present so Batteese reported this company has been coming up from North Carolina for many years to perform soil fumigations for strawberry growers. Last fall, their master applicator was called up for active duty in the National Guard so this summer they sent two other employees up to take our master applicator exams.

Unfortunately the pair did not pass their exams and the company was then in a time bind to get the work done. Although the firm eventually hired Lauchlin Titus to serve as their master applicator, the clerical staff learned that the two who failed the exams had gone on to make treatments in Maine before arrangements to license Titus were completed. Batteese noted the usual penalty for an unlicensed application was reduced to reflect both the predicament the company faced and the fact they were arranging to get a licensed master applicator on staff.

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

In Favor: Unanimous
Absent: Humphreys

7. Consideration of Staff Negotiated Consent Agreement with River Meadow Golf Course of Westbrook

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. This case involved the application of a pesticide during the spring of 2004 to the turf at the River Meadow Golf Course that is considered a place open to use by the public. At the time of this application, no company employee was licensed as a commercial applicator. In addition, the course had failed to maintain a record of the application. These actions constitute violations of the Board's statutes and regulations that require a licensed applicator be present whenever custom applications are conducted and that records be maintained for all applications.

Presentation By: Henry S. Jennings
Chief of Compliance

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

☑ Batteese explained the current owner purchased the course in the fall of 2003 but apparently did not immediately understand the need to have a person licensed to apply pesticides on the course. Gene Meserve had conducted a routine inspection of the course in September of 2004 and learned that at least two applications had been made to the turf. In addition, no pesticide application records had been maintained for these treatments. Although it is a small course, the standard penalty for no license was sought in this case partly due to the lack of records and the fact they initially tried to show the applications were made by an individual from another golf course.

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

In Favor: Unanimous
Absent: Humphreys

8. Other Old or New Business

a. Results of Planning Session Balloting – R. Batteese

☑ Batteese called the member's attention to the sheet containing the ballot results and pointed out that addressing aerial application issues was the top priority for discretionary tasks. He also indicated that he and Jennings had met earlier in the week with Randlett and reached agreement that the two 2004 leftover issues could be handled by amending Chapter 20 – Special Provisions. He promised that they would try to have draft language for Board consideration in the near future.

b. ERAC Update – L. Hicks

☑ Hicks indicated that the committee would be holding its first meeting on September 13th to review the Brown Tail Moth control products and their potential effect on lobsters.

c. Budget/Legislation Update – R. Batteese

☑ Batteese informed the members he and Terry Bourgoin, Director of the Division of Plant Industry, had met with Commissioner Spear who preferred to hold off on legislation to raise fees since the topic would be covered with the Joint Standing Committee on Agriculture, Conservation and Forestry when they review the Board's Program Evaluation Report. Batteese called their attention to a new Pesticide Control Fund Comparison table in their packets. He explained that if the number of registered pesticide products continued to increase there would be just enough funds to squeak by for at least another fiscal year.

d. Other ???

☑ Batteese reminded the members of the discussion at the previous meeting about creating a committee to establish best management practices for lawncare applicators treating soggy lawns. He observed that a Board member should chair the committee and that Jemison, Simonds and Walton might be prime candidates. It was agreed that the staff should develop a vision for the committee for the next meeting.

☑ Hicks reported the West Nile Virus (WNV) Work Group had been renamed the Vector Borne Disease Work group. As such, this group will address all mosquito borne diseases including WNV and Eastern Equine Encephalitis (EEE). It will also address tick borne diseases including Lyme disease and Powassan. She noted this was an important shift because with the monitoring for WNV the Bureau of Health identified EEE in a bird in 2004 in Southern Maine. To date, there have been seven human cases of EEE in New England (3 in Massachusetts (2 fatal) and four suspected cases in New Hampshire (2 in Concord and 2 in Manchester; no fatalities). Hicks also advised that nationally 689 cases of WNV infection have been reported to CDC as of September 6th. Fortunately, none have been from New England with the hardest hit areas being California (268 cases) and South Dakota (110 cases). In Maine, 198 dead birds have been

reported and 46 tested resulting in 34 negative results and four positives from York County. Eight of the tested birds are still pending final analysis.

9. Schedule and Location of Future Meetings

a. Date and location for the next meeting.

☑ The Board scheduled the next meeting for Friday, October 28th.

b. Date and location for the following meeting.

☑ The Board tentatively scheduled the following meeting for Friday, November 18th. The members also tentatively scheduled a meeting for Friday, December 16th.

10. Adjourn

☑ A motion to adjourn was accepted at 12:59 P.M.

Robert I. Batteese, Jr.
Director