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DIRECTOR

MEMORANDUM

DATE: July 8, 2009
TO: Board Members
FROM: Staff
SUBJECT: Discussion of Outdoor Notification Issues

At the June 12, 2009 Board Meeting, I alerted you that our proposed revisions to Chapter 28 were not approved by the Legislature. Instead, it enacted an amended version of LD 1293 that establishes notification procedures for applicators using aerial or air carrier application equipment. At the June meeting, Board members decided against rulemaking in the short term, and instead directed the staff to concentrate on getting the required registry operational. Since that time, the staff has determined that a minimal amount of rulemaking is necessary to establish timeframes for joining the registry and the frequency with which applicators are required to check it.

In addition to the timeframe concern, the staff and members of the regulated community have identified some potential unintended consequences that may arise as LD 1293 is implemented. Subsequent discussions with legislators involved in the evolution of the bill indicate that the bill may be revised during the second legislative session. However, it appears that the concept of a registry administered by the Board will endure, even if some of the details about the initial notification change. Consequently, logic suggests that we move forward with rulemaking to implement registry as described in LD 1293.

The primary detail that needs to be addressed through rulemaking is whether there should be an annual deadline to sign up for the registry. The staff recommends establishing such a deadline, which will make it more manageable for the staff and the regulated community to fulfill our obligations. Applicators will be able to obtain the registry prior to the spray season and work from the same version for the entire growing season, without the need to check constantly to determine if new names have been added. Anyone wishing to be notified after the registration deadline would still have the option of requesting notification as currently provided by Chapter 28. The staff suggests that the deadline be in mid-March, which will allow for the distribution of the registry to applicators before the beginning of April. Some affected applications are generally conducted in April.

The staff doesn't yet have a final plan for distributing the registry to applicators, and a few ideas are being discussed. A pass word protected web site appears to be the favored approach at this time. Hardcopies can be mailed to applicators without internet access upon request. Alternatively, we could email a .pdf file to applicators for whom we have an email address, and/or we could post just the physical addresses on a publicly available website so that applicators could quickly determine whether or not they need the full registry. Board member feedback on the best approaches would be useful. In any case, it appears that how that registry is distributed is not substantive enough to require that it be established in rule. We can simply state in the rule that the Board will distribute the registry to affected applicators by a specified date. This allows flexibility for the system to evolve over time.

Finally, with respect to LD 1293, the Board may have an opportunity to provide some input on the bill in the event that it is revised during the second session. A list of issues and details identified by the staff is attached. Board recommendations on these or other points could be forwarded to the ACF committee for their consideration as it deliberates revisions, if that occurs.