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GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

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COMMISSIONER  
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DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**February 20, 2009**

John E. Dority Safety & Performance Training Center (Conference Room, Lower Level)  
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield (Exit 133 from I-95)

**MINUTES**

**9:30 AM**

Present: Eckert, Jemison, Simonds, Ravis, Stevenson, Qualey

1. Introductions of Board and Staff

The Board, staff and Assistant Attorney General Randlett all introduced themselves.

2. Minutes of the January 23, 2009, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or approve

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

In Favor: Unanimous

3. Request from Maine Migrant Health Program to Help Support a Worker Protection Safety Training Program for Summer 2009

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Safety Education Program. During this past year, 380 individuals received training under this project. The Maine Migrant Health Program is planning to provide two or three health and safety outreach workers during the 2009 agricultural season. Funding to support this effort is being requested and the staff will point out that the total cost will be similar to the past year and that amount has been budgeted in the Board's FY '09 work plan.

Presentation By: Chris Huh, Plan Manager, Training & Development Corporation  
Barbara Ginley, Executive Director, Maine Migrant Health Program

Action Needed: Discussion and determination if the members wish to fund this request

- ☑ Barbara Ginley of the Maine Migrant Health Program (MMHP) provided an overview of the history of the partnership dating back to 1995, in the case of the Training & Development Corporation, when implementation of the federal Worker Protection Standard was in its infancy. MMHP joined the partnership a few years ago. They match the BPC funds against federal grants to hire seasonal staff to provide health and safety training to migrant and seasonal farmworkers. The safety trainers are first trained by Gary Fish on the WPS. Ginley mentioned that Haitian and Creole workers have started to show up in Maine. Eckert checked with the staff to ensure that funds were available. She also wondered if there would be additional funding under the new administration.

Qualey/Jemison: Moved and seconded approval of the grant request

In Favor: Unanimous

Jennings alerted the Board to the e-mail from Peter Aldridge in which he questioned whether the grant subsidizes farms that hire migrant labor and/or larger farms that tend to have a larger number of workers needing training. Ginley stated that any seasonal worker is eligible to be trained, and that they will train small groups of workers as well as large ones. For the sake of efficiency, it's beneficial to have a few small farmers join together for worker training.

4. Request from Oldcastle Lawn & Garden for Clarification of Chapter 24 Requirements for Covered and Uncovered Pallets of Herbicide-Treated Mulch

Oldcastle Lawn & Garden, of Atlanta, Georgia, produces Bella Vista Weed Block Mulch with 0.0032% trifluralin. They are asking for clarification about whether the requirements contained in Section 7 of Chapter 24 (specifically the requirement for a roof overhead) applies to bagged, treated mulch, especially in light of the extremely low concentration of herbicide. In addition, the company is also asking if the roof requirement applies to wrapped pallets with a protective plastic cover.

Presentation By: Henry Jennings  
Director

Action Needed: Determine applicability of Chapter 24, Section 7, as it pertains to treated mulch products

- ☑ Jennings reviewed the questions posed by Oldcastle Lawn & Garden about storage of wood mulch with 0.0032% trifluralin, and whether it needed to be stored under a roof when it is in a self-service display area. The Board discussed the matter briefly. Randlett interpreted the rule to require any pesticide located in the self-service display area to be protected by a roof, whether wrapped and on a pallet or not. He preferred that the Board not attempt to craft an exception through policy, feeling a change in the rule is the more appropriate route if that was the Board's inclination. Consensus was reached that the current rule serves a useful purpose and that it was not appropriate to change the rule to accommodate one product.

5. Approval of Proposed Revisions to the Best Management Practices for the Application of Turf Pesticides and Fertilizer

At the June 13, 2008, meeting, three members of the Maine Department of Environmental Protection (DEP), Bureau of Land and Water Quality, attended the meeting to express their concerns about runoff from turf pesticide applications made adjacent to state surface waters. Under these circumstances, some pesticide runoff appeared likely. DEP personnel pointed out that pesticide applicators may comply with all Board requirements while violating DEP discharge laws. Consensus was reached to have the Board and DEP staff work collaboratively on an educational program directed at turf applicators and a review of the recently finalized turf Best Management Practices (BMPs). The BMPs have been revised with DEP's input and are now ready for Board approval.

Presentation By: Gary Fish  
Manager of Pesticide Programs

Action Needed: Approve/amend revised BMPs

- Fish explained the background leading up to the revisions to the turf BMPs. Staff from the Maine DEP had presented concerns to the Board about contamination of waters of the state from turf applications of pesticides and fertilizers, even when conducted in compliance with the existing BMPs. The Board directed the staff to work with DEP on potential revisions to the BMPs to address DEP's concerns. The BMPs were then reviewed and revised by the original committee, before presentation to the Board. Fish briefly reviewed the significant changes from the previous version. Board members supported the changes.

Jemison/Ravis: Moved and seconded approval of the revised Best Management Practices for the Application of Turf Pesticides and Fertilizer

In Favor: Unanimous

6. Workshop Session to Review Proposed Rulemaking Amendments to Chapters 24, 28, and 41

On December 19, 2008, the Board voted to direct the staff to initiate rulemaking amendments to Chapters 24, 28, and 41. Notice of proposed rulemaking amendments was published in Maine's daily newspapers on December 31, 2008, and a public hearing was held on January 23, 2009, at the Hampton Inn in Waterville. The deadline for written comments expired at 5:00 PM on February 6, 2009. The Board will review the comments and determine if changes are warranted and/or whether the rule amendments should be adopted.

Presentation By: Henry Jennings  
Director

Action Needed: Determine whether changes are warranted and/or whether amendments should be adopted

- ☑ Jennings reviewed the single comment received on Chapter 24 suggesting the Board use a more precise date when referring to a federal standard. Board members agreed to incorporate the suggestion, and directed the staff to prepare the necessary documents to adopt the rule at the next meeting.

The Board moved on to discuss Chapter 28. Jennings stated the staff had discussed approaches for posting the registry on the Internet while protecting personal information. One idea is to post only the town and address, while either e-mailing the entire registry to licensed applicators, or by setting up a password-protected Web page.

Jennings asked the Board about its views on updating the registry. A number of comments were received that the registry should be updated regularly, but the staff believes that would create additional work and that a cooperative effort between the Board and the regulated community would be sufficient to keep the registry up-to-date. Board members agreed that no annual renewal is necessary.

Simonds presented some ideas about the applicator's responsibility for publicizing the existence of the aerial registry, which the Board discussed for some time. There was some support for Simonds' ideas, but Randlett advised that Simonds' suggestions would constitute substantive changes and require that the rule be republished. Consequently, Board members decided to set aside the ideas for a future discussion, so that a rule could be adopted for the 2009 season.

Jennings asked the Board to consider the comment suggesting there need not be a deadline for signing up for the registry. The staff did not support this approach because it would require the staff to constantly update the registry and for growers to constantly monitor it. Since the staff is hoping to minimize the resources required to maintain the registry, a deadline makes more sense. Board members agreed that a registry with no deadline for signing up sounded unworkable to them. Jennings alerted the Board to a draft transitional clause the staff is suggesting should be included, since the deadline will be passed by the time the rule may become effective.

Ravis/Jemison: Moved and seconded adoption of Chapter 28 as amended, the basis statement, the response to comments, and the statement of impact on small businesses.

In Favor: Unanimous

The Board next discussed the proposed amendments to Chapter 41. There was general sentiment to move forward with the proposed amendments, despite the news that Syngenta has received approval from EPA to market Bt sweet corn to homeowners. Jemison asked about the wording of the current proposal. He wondered if the language could be crafted to better convey that the preferred option for protecting non-Bt-corn crops is for adjacent growers to work out a plan and agreement that best meets both parties' needs. If no agreement is reached, then the requirements of the rule will dictate the measures for protecting non-Bt corn from pollen drift. The staff agreed to work with Assistant Attorney General Randlett to wordsmith the language so the intent is clearer and bring back the rule for adoption at the next meeting.

7. Consideration of Staff Negotiated Consent Agreement with Scotts Lawn Service of Hermon

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 was reviewed by the Board at its January 23, 2009, meeting and tabled, pending submission of a policy on positive identification of the application site. It involved the misreading of a work slip which led to the application of two lawn insecticides on two consecutive days to the wrong customer's property. Other than the address, there was no positive means of identification; sensitive areas were not identified, as required for this type of application; and there were also violations of the label rates.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors explained this case was tabled from the last meeting because the company had not yet submitted a policy about the positive identification of the target site. Several Board members expressed concerns about the policy that Scotts subsequently submitted in connection with the consent agreement. There was no clear statement that a site would not be treated if it could not be positively identified. Stevenson noted that there was nothing in the policy about employee training, or a requirement for an employee signature showing that they had read and understood the policy.

Jemison/Stevenson: Moved and seconded to table the matter pending resolution of the concerns expressed by Board members.

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with John Tibbetts of Lyman

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 grower with no private applicator license who purchased and used two restricted-use pesticides.

Presentation By: Raymond Connors  
Manager of Compliance

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

- Connors explained that this case represents the last of series of cases arising from an investigation of sales records from a licensed restricted-use pesticide dealer. Consequently, the penalty was kept consistent with similar violations.

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

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with David Charlesworth of Bedford, New Hampshire

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 involves the application of glyphosate adjacent to the shoreline on Spruce Creek, a tidal surface water in Kittery, Maine. Chapter 29 of the Board's rules now prohibits broadcast application of pesticides within twenty-five feet of surface water.

- Connors explained that the complaint was referred through the Kittery code enforcement officer. The landowner had already been subject to an enforcement response from DEP for cutting trees in the shoreland zone. The staff investigation showed the landowner sprayed glyphosate at high concentrations adjacent to the high water mark.

Some Board members expressed the opinion that the negotiated fine was high for a homeowner. Connors explained part of the logic was due to the lack of candor on the part of the landowner, which then forced the staff to submit samples for analysis, and thereby incurring substantial costs.

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

In Favor: Unanimous

10. Other Old or New Business

a. Legislative Update—H. Jennings

- Jennings stated there are currently seven pesticide bill titles printed, not including rulemaking resolves. There are two on the structure of the Board, one on aerial buffers, one on notification, one on Board hearings, one on pesticide use in schools, and one on funding pesticide education. He stated the Department of Agriculture would likely oppose the bills to change the structure of the Board. Most of the bills have not been printed yet. Board members decided not to take any position on the bills covering the structure of the Board.

b. Report on the Use of Bt Corn in Maine During 2008—H. Jennings

- Jennings alerted Board members to the report provided to the Joint Standing Committee on Agriculture, Conservation and Forestry. He pointed out that all 37 purchasers of Bt field corn seed had been inspected and that all 37 had planted the required refuge.

c. MAC Update—L. Hicks

- Eckert described the composition of the MAC and the results of the meeting on February 11, 2009. The consensus of the committee was that there is insufficient chronic effects data at this time to perform a human health risk assessment. The committee requested that Hicks seek out additional data from other sources, such as other commodities that express the same proteins. Eckert stated that EPA's evaluation of the products has left the Board in a difficult position.

Simonds stated that the Board's choice in the matter is to either follow EPA or its own MAC. He also questioned what affect the Board's decisions would have on our diet, since the food supply is likely inundated with Bt commodities anyway. Board members discussed whether there is a demand for Bt sweet corn seed in Maine. Lauchlin Titus stated he knew of some growers who were interested. He said growers would need to know the status of Bt sweet corn by the end of March in order to plant it in 2009. Consensus was reached to place Syngenta's Attribute registration request on the agenda for the next meeting, but to continue the process of reviewing the health effects through the MAC.

d. E-mail from Peter Aldridge on the Use of the Precautionary Principle—H. Jennings

- Board members discussed the precautionary principle and agreed they often incorporate parts of the principle into their decision-making process. However, most Board members also had reservations about the principle. Some believed the precautionary principle tends to favor the use of older chemicals—which in some instances have greater risks—because they were approved prior to the advent of the principle. In addition, there is a debate about what constitutes sufficient proof that a chemical poses acceptable risks. Finally, Simonds pointed out that, in general, the Board relies on EPA to determine which chemicals should be allowed for use, since Maine does not have the resources to do comprehensive risk assessments on all 1,000 pesticide active ingredients.

e. APHIS Reopens Comment Period on Biotechnology Rules—H. Jennings

- Jennings alerted the members that the USDA had reopened the comment period on the biotechnology rules. No consensus was reached about submitting comments.

f. Chapter 29 Variance Approved for Falmouth Country Club—H. Jennings

- Jennings pointed out the variance had been issued.

11. Schedule and Location of Future Meetings

March 27, May 8, June 12, and July 17, 2009, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Board members decided not to add any dates at this time.

12. Adjourn

- Ravis/Stevenson: Moved and seconded that the meeting adjourn at 1:35 p.m.

In Favor: Unanimous