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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

January 14, 2015

Augusta Civic Center, 76 Community Drive, Kennebec/Penobscot Room, Augusta, Maine

MINUTES

3:00 – 4:00 PM BOARD MEETING

4:00 – 5:00 PM OPEN FORUM

5:00 – 6:00 PM BOARD MEETING CONTINUED IF NECESSARY

Present: Bohlen, Eckert, Flewelling, Granger, Jemison, Morrill, Stevenson

1. Introductions of Board and Staff

- The Board, Staff, and Assistant Attorney General Randlett introduced themselves.
- Staff Present: Chamberlain, Connors, Hicks, Jennings, Patterson, Tomlinson

2. Minutes of the December 5, 2014, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- Minutes were not available for review.

3. Request from Maine Migrant Health Program and Eastern Maine Development Corporation to Help Support a Worker Safety Training Program for Summer 2015

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Safety Education program. During 2014, 274 individuals received Worker Protection Standard (WPS) training, 218 individuals received take-home exposure training, and 278 received heat stress training. The Maine Migrant Health Program and Eastern Maine Development Corporation are proposing to provide one health-and-safety outreach worker trainer during the 2015 agricultural season. Funding to support this effort is being requested in the same amount as last year and funding has been accounted for in the Board's FY'15 budget.

Presentation By: Chris Huh, Program Manager, Farmworkers Jobs Program,
Eastern Maine Development Corporation

Elizabeth Charles, Enabling Services Coordinator, Maine Migrant Health Program

Action Needed: Discussion and Determination if the Board Wishes to Fund this Request

- Elizabeth Charles, Maine Migrant Health Program, explained that in 2014 they hired one person rather than the two they had hired in the past. They were still able to meet all requests from growers by staggering start days for different crops. The woman they hired had worked for AmeriCorps in 2007 so she was able to hit the ground running. The trainer presented standardized WPS curriculum, farmworker opportunity curricula, and pesticide safety around families and children. The training also included heat stress prevention. The trainer did some training with dairy farms, and formed new relationships there. Charles stated they want to continue the same model in 2015. They are requesting \$3,500 from BPC, which is the same as last year. A requirement of the farmworker opportunity funds is pre- and post-tests. They would be happy to provide data if it would be valuable. Fish agreed that he would look at the data.
 - **Jemison/Eckert: Moved and seconded to approve grant**
 - **In Favor: Unanimous**

4. United Phosphorus, Inc., Request to Renew Its FIFRA Section 24(c), Special Local Need Registration for Asulox[®] Herbicide (EPA# 70506-139) for Control of Bracken Fern on Low Bush Blueberries

At its November 5, 2010, meeting, the Board approved a Special Local Needs [24(c)] registration for the use of Asulox Herbicide (EPA# 70506-139) for bracken fern control in wild blueberries. This label allows for spot treatment of bracken fern only during the non-bearing year. That registration expired November 5, 2014; University of Maine Blueberry Extension Specialist Dr. David Yarborough, and the product registrant, United Phosphorus, Inc. are requesting a five-year renewal of the 24(c) registration.

Presentations By: Mary Tomlinson
Pesticides Registrar and Water Quality Specialist

Action Needed: Approve/Disapprove 24(c) Registration Request

- Tomlinson explained that this request from Dr. David Yarborough is the same as the previous registration, which expired after five years. He is requesting another five-year registration. The label is the same; the need still exists; nothing has changed.
- Jemison asked if the reason we haven't tested for this in water is because we didn't have the capacity. Tomlinson replied that it is not in the screen that was used. Jemison asked when the sampling down gradient from blueberry fields was conducted; Tomlinson said that in 2014 there were just three sample points. Jemison asked why we don't ask if they used this product; Tomlinson said the staff talks to the homeowner, not the grower.
- Jemison said that he doesn't have a big problem with it but the application rate is one gallon per acre/3.3 pounds active ingredient per gallon; it sticks around for a while; that's a lot of material. Hicks noted that it is for spot treatments. Jemison said that a spot could be quite large, especially for bracken fern. In the 25 foot zone around water, the Board determined spot treatment was not more than 100 sq. ft. or 20% of the area within 25 feet of the water/wetland. This product is not used a lot, they just want to have in their toolbox, but Jemison would still like to see us test for it. Tomlinson said she has inquired of the lab if they can test for it, still waiting for an answer. It would be a separate analysis. Jemison noted that it's hard to justify if you can't ask whether the product was used.
- Bohlen said it is important to think about what other goals the Board wants to accomplish with water sampling, given limited resources. If you don't know whether it's being used, it's not going to tell you much. Jemison agreed it would be a waste of money if testing were done where the product wasn't used, but he said he has concerns because it is a toxic product, being applied in high amounts.
- Jennings said it might be necessary to design a different study; in the last one the staff used a system of random points which didn't include many places where there were houses near blueberry fields.

- Granger noted that the registration is only for five years; it will have to be reviewed again at that time.
 - **Granger/Flewelling: Moved and seconded to approve registration**
 - **In Favor: Unanimous**

5. Consideration of a Staff Request to Refer an Enforcement Matter to the Office of the Attorney General

The Enforcement Protocol describes the Board’s recommended procedures for resolving violations of pesticide law of sufficient public consequence to warrant a formal enforcement response. In matters where the alleged violator and the Board staff cannot agree on a resolution, the protocol specifies that the case be placed on a meeting agenda for Board consideration. The staff is presenting a case in which an unlicensed company advertised for and conducted mosquito control services.

Presentation By: Raymond Connors
 Manager of Compliance

Action Needed: Determine Appropriate Enforcement Response

- Connors explained that this case started in May 2013 with a call about a brochure circulating in southwest Maine advertising pest control services by a person the caller thought was unlicensed. The inspector got a copy of the brochure; the company is called Bug Guys. The inspector went to the address where he saw a pickup truck with application equipment in it. He met with the owner/operator who said he put the brochures out as a feeler but had not done any work. There were three testimonials in the brochure; he said he treated the yards of friends. He admitted he made some applications in 2012 using Mosquito Barrier but didn’t have records. The inspector took a picture of the container of the product he said he used. Connors tried to call the company owner to discuss a settlement but couldn’t get a response. He sent a consent agreement by certified mail; it came back undeliverable. Randlett then sent a letter and received a voice mail message in response. The company owner indicated that the activity he was doing wasn’t an issue and did not respond to calls after that. He had taken the core and category exams in the past but did not pass and did not reschedule. He was obviously aware of the process. The staff has been unable to reach a settlement and would like the Board to refer the case to the Attorney General for resolution as the Board’s Enforcement Protocol stipulates.
- Morrill noted that the person in question was sent a letter in December and invited to attend; he asked if he was in attendance. No one responded.
- Granger asked if he is still practicing. Connors replied that the message on his phone is Painters Plus and Bug Guys, so he seems to still be soliciting for commercial work.
- Flewelling asked if anyone had an application done by this person. Connors said the staff could not locate any customers, because he wouldn’t really admit that he has any. The inspector indicated he had verbally acknowledged that he had applied Mosquito Barrier to customer’s properties. Standard practice is to meet with a customer; he wouldn’t give us information on who the customers were, but he provided details on how the application was made. Evidence indicates that he has done commercial work, is soliciting commercial work, and is aware of the licensing requirements.
- Eckert asked what the Mosquito Barrier contains. Connors said it contains 25b ingredients; the brochure talks about products plural, so the staff isn’t sure if Mosquito Barrier is the only product used.
 - **Flewelling/Eckert: Moved and seconded to refer to the Attorney General**
 - **In Favor: Unanimous**

6. Consideration of a Consent Agreement with Charles A. Dean Hospital of Greenville

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 on 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 to resolve the matter. This case involved the unlicensed application of an ant control product on multiple occasions by the maintenance staff at a hospital.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that the staff conducted a routine pesticide use inspection at a critical access hospital in Greenville. In the course of talking to the maintenance supervisor, the inspector noticed that there was a buffing and burnishing product container with the words “kills ants and ant spray” handwritten on it. The supervisor denied any knowledge but another employee said it contained Orange Guard; the supervisor admitted buying it at a local hardware store and using it to control ants in patient rooms the previous summer. The hospital acknowledged the violations, signed and paid the consent agreement.
- Jemison asked what Orange Guard is and whether it is a 25b; Connors said it is a citrus extract; Tomlinson said that it is not a 25b product, it has an EPA registration number.
 - **Jemison/Stevenson: Moved and seconded to approve consent agreement as written**
 - **In Favor: Unanimous**
- Eckert noted that this is not the first hospital to come before the Board. Are they not aware? Should we send them a notice? Morrill remarked that it might be difficult to get a letter to the proper person. Will it reach the person responsible for cleaning? Connors believed it would be better to send it to administrators. Eckert agreed that the administrators are the ones that need to get the message to the employees that it’s not okay to go out and buy products even if they seem safe.
 - **Consensus reached to send a letter to hospitals about pesticide use and licensing.**

7. Consideration of a Consent Agreement with Dan Davis of Corinna

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 on 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 to resolve the matter. This case involved the purchase of a restricted-use pesticide by an unlicensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that this case stemmed from the same inspection of the pesticide dealer in the Dan Brown case. This individual purchased a restricted use pesticide; he acknowledged that he did not have a license at the time of purchase, signed the consent agreement and paid the fine.

- Flewelling asked if Northeast Ag was fined also. Connors explained that when the consent agreement around the pesticide storage facility in Aroostook County was negotiated, this was rolled into it, as well as the sale to Dan Brown.
- Jennings noted that the staff had, per the Board's instruction, included information to restricted use dealers in the renewal letter this year, and sent via email earlier.

- **Bohlen/Eckert: Moved and seconded to approve consent agreement as written**

- Stevenson commented that the average customer has an expectation when they make a purchase that it is a legal purchase. Is this someone who would know? Connors said that the purchaser's son is licensed as a commercial applicator, which is not valid for this type of purchase. Jennings said the federal government draws a very distinct line between private and commercial use: a commercial applicator may not apply restricted use pesticides to their own property for agricultural purposes.

- **In Favor: Unanimous**

8. Update on Water Quality Monitoring Activities

7 M.R.S. § 607-A, Section 2-A, directs the Board to conduct water residue surveys, for both ground and surface water, in order to prepare profiles of the kinds and amounts of pesticides present. Over the last 12 months, the Board's staff has been involved in both ground water sampling and marine sediment sampling. The staff will update the Board on those activities and the sampling results.

Presentations By: Mary Tomlinson
Pesticides Registrar and Water Quality Specialist

Action Needed: None – Informational Only

- Tomlinson explained that groundwater sampling was conducted in March and April. Samples were sent to the Montana lab which tested for 96 pesticides. Thirty-two wells were positive; 23 analytes detected for a total of 81 hits. Ten wells were very low in terms of concentrations. Details are in the memo. One well was re-tested because the numbers were above the Maximum Contaminant Level; Jemison has agreed to work with us to try to mitigate impacts on that well.
- The staff also sampled 20 marine sediment sites from Kittery to Cobscook Bay in conjunction with the lobster Environmental Risk Advisory Committee (ERAC), including urban, suburban and rural sites. Southwest Research Institute did not have very low detection limits; the results were not that useful. The Montana lab did have detections for several sites. The staff was surprised by the detection of cypermethrin. It will be interesting to retest that site and see what is found.
- Bohlen pointed out that this was designed as a screening test, so sites were deliberately picked to represent the sites most likely to have detectable residues. The staff deliberately looked where there was an expectation of finding something; it wasn't random; it's important to keep that in mind.
- Hicks said there needs to be a discussion on the detection limits and what they mean. USDA labs look for residues on food and have very low detection limits. All the food levels are higher than what we found in the samples sent to the Montana lab. Also of interest is the variation between detection limits. The detection limit for bifenthrin is lower than most of the other analytes, which could be a partial explanation for the prevalence of the bifenthrin positives as opposed to the other pyrethroids.
- Jemison asked if there is a sense of what the results really mean. Hicks and Tomlinson agreed that more work needs to be done to determine that. Bohlen said they need to look at the toxicity numbers and relate those numbers to the detection limits of things that weren't detected. Hicks said they also need to look at whether residues are bioavailable and how tightly are they bound to the sediment. She also noted that the Montana water screen can't be done using salt water, only fresh water. Bohlen noted that the focus was on areas where we thought there was a high potential for runoff.

The sample size was too small, but as a first conclusion, we are seeing the pyrethroids getting into the marine environment where we thought we would find them. This was designed as the pilot year, not as a big statistical study, and it worked for that.

9. Update on Managed Pollinator Protection Plans

At the December 5, 2014, meeting, the staff provided the Board with an overview of Managed Pollinator Protection Plans which are being promoted by the federal Environmental Protection Agency (EPA) as part of its overall strategy for reducing pesticide risks to pollinators. EPA guidelines had not yet been published, but states were being encouraged to start working on state-specific plans. After some discussion the Board reached consensus that because pollinator protection consists of more than pesticides alone, the Department, or the Bureau of Agriculture, Food and Rural Resources should take the lead role on a state plan. The Board requested an update once the EPA guidance is publicly available.

Presentation By: Henry Jennings
Director

Action Needed: None – Informational Only

- Jennings said he had participated in a conference call with EPA; they are pushing state lead agencies to start working on state-specific plans. In the Board packet is a draft Pollinator Protection Plan guidance policy from EPA. At the last meeting, the Board indicated that the issue was broader than pesticides and the BPC should not be in charge of the plan. Jennings spoke to Ellis Additon, the Bureau Director, and while the department clearly has a vested interest, there is a lot going on. Jennings isn't sure where it will fall in the list of priorities. There are five bills in the legislature around pesticides, two of them are acts to protect pollinators. It's more difficult to be compelling in testimony if we're not doing anything. At this point, instructions to the staff were to pass the message on to the department and the staff has done that. Board members can read the guidance from EPA themselves. A lot of it is around communication. Some have observed that the EPA guidance really focuses on managed bees and does nothing for other pollinators, but there is nothing to prevent the state from looking at the broader issue.
- Eckert noted that a lot of the guidance seems to focus on mapping and asked if anything is being done in Maine. Are there any ideas on how to do the mapping that would be acceptable to the bee-keeping community?
- Bohlen said he was struck with the commonalities with other issues, mostly around communication. There is an urban component, sensitive areas for aerial spraying, identifying key locations and, figuring out who to talk to. It looks like the same problems. Barriers to implementing an online tool to assist with communication are that it's big and it's expensive. We need to get on this, the same issue around geography keeps coming up.
- Connors noted that apiaries are defined as sensitive areas and they are registered with the Department.
- Morrill said that the Department needs to be taking the lead on this. At the pollinator conference, Frank Drummond said 90% was other issues, 10% are pesticide problems. There should be a lot of others working on getting this done.
- Jennings noted that a couple of years ago we looked into a mapping program run by Purdue called DriftWatch. The interesting part is that it deals with two types of sensitive areas, beekeepers and organic farmers. At the time it was \$25,000 to sign up; that may have changed. A number of other states have signed on. Beekeepers mark their location, the applicator marks a location, then an auto email notice is sent. The staff could take a fresh look at that. Bohlen said that might be cheaper than trying to build something.

- Jemison said that if we can figure out a notification process for this, the Board would have a roadmap for any type of notification. If the Board doesn't do it, or lead it, it's not clear when or if it will happen. Seems like it's a pretty big priority.
- Tim Hobbs asked how EPA defines a managed pollinator; is it one hive or some other number? Is it many hives specifically for pollination, or can anyone sign on? Jemison said that if someone has hives, they have a purpose, and would like to succeed. If you're actively working at it, you wouldn't want someone to do something that defeats your purpose. Hobbs said that this came as an edict from the White House; the people writing the rules have never seen the equipment, so we have no idea what their definition is or what the intent is. It's a much bigger issue if it's all pollinators, not just managed hives. Fish said the intention was for "registered" beekeepers; he doesn't know what the qualifications are. Bohlen said he felt they referred it to the states to define that.
- Jemison said that at the meeting in Machias the Board heard from at least two beekeepers who were concerned about the health of bees and wanted to be notified when pesticides were going to be applied.
- Granger said he is concerned that we already have two types of regulatory systems for notification. Nothing is settled. There will always be bills coming in around notification, but he is uncomfortable with a notification system that's inconsistent with the rest of agriculture. Morrill said we should look at the rules we already have; the guidelines from EPA might be followed with our current rules. Granger said he would like to see it worked around the rules already in place. Fish noted that the issue with bees is that they can travel two to three miles, so 500 feet might not be enough.
- Stevenson asked what a beekeeper does if he's notified. Fish replied that he cover the hives temporarily. Bohlen noted that if there are a lot of applications, the hives might be covered a lot. Fish said it would depend on what was used, whether it's going to be on something the bees would forage on. Applicators shouldn't really be applying to sites the bees would forage on anyway. It could be an orchard with clover underneath, or a lawn with dandelions. Those are the kinds of things that cause conflict. Granger suggested the best outcome might be BMPs.

10. Other Old or New Business

a. Other

- Jennings noted that the ERAC minutes were available. Bohlen suggested calling them DRAFT until they had been formally approved by the committee.
- Jennings noted that the list of bills had been posted and that there are five bills around pesticides and one funding bill, as well as the two around the Board's major substantive rulemaking. He said he would email the bills to the Board members as soon as they are printed. He noted again that it is difficult for the Board to take a position on a bill they haven't seen. They probably wouldn't meet between the time they are printed and the public hearing. The Department may take a position on some. Jennings asked Randlett what he could do as far as representing the Board's position on the bill; Randlett said the Board can only take a position on a bill by voting on it during a public meeting.

11. Schedule of Future Meetings

March 13, April 24, and June 5, 2015, are tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Adjustments and/or Additional Dates?
 - Some discussion ensued about possible places to meet this summer. Consensus was reached to have a meeting in eastern Maine and include a public listening session, a field trip to a blueberry operation and the Cooperative Extension Experimental Station. Staff will explore options.

12. Adjourn

- **Jemison/Flewelling: Moved and seconded to adjourn at 4:58 PM**
- **In Favor: Unanimous**