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GOVERNOR

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

BOARD OF PESTICIDES CONTROL

April 24, 2015

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

AGENDA

8:30 AM

1. Introductions of Board and Staff
2. Minutes of the December 5, 2014 and January 14, 2015 Board Meetings

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

3. Section 18 Emergency Registration Renewal Request for HopGuard to Control *Varroa* Mites in Honey Bee Colonies

The Division of Animal and Plant Health, in the Maine Department of Agriculture, Conservation and Forestry, is requesting that the Board recertify the petition to EPA for a FIFRA Section 18 specific exemption for use of HopGuard (potassium salt of hop beta acids) to control *Varroa* mites in managed bee colonies. State Apiarist Tony Jadczyk is seeking approval to continue use of this product, which has provided consistent control against *Varroa* mites during the last three seasons, and is an important alternative in resistance management and organic honey production. He points out that a healthy bee keeping industry is needed to support Maine agriculture, and that this product is essential to honey production and commercial bee operators. The request is supported by the registrant, BetaTec Hop Products, a wholly owned subsidiary of John I. Haas, Inc.

Presentation by: Henry Jennings
Director

Action Needed: Approve/Deny Request to Petition EPA for a Section 18 Specific Exemption Registration for HopGuard for Use with Bees.

4. Final Adoption of Amendments to Chapters 22 and 28

On July 16, 2014, a Notice of Agency Rulemaking Proposal was published in Maine's daily newspapers, opening the comment period on the proposed amendments to Chapters 20, 22, 28, 31, 32, 33 and 41. A public hearing was held on August 8, 2014, at the Deering Building. The Board reviewed the

rulemaking record on September 12, 2014, addressed the comments and provided direction to the staff on appropriate revisions to the proposals. On October 24, 2014 the Board adopted amendments for Chapters 20, 31, 32, 33 and 41 and provisionally adopted amendments to Chapters 22 and 28. The Joint Standing Committee on Agriculture, Conservation and Forestry held public hearings on February 24, 2015 and voted out-to-pass on two resolves on February 27, 2014 and they were enacted as emergency legislation and became law without the governor's signature on March 29, 2015. The Board has 60 days from the effective dates of the resolves to finally adopt the rules.

Presentation by: Henry Jennings
Director

Action Needed: Final Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for Chapters 22 and 28

5. Development of Guidelines for the Board Related to the Issuance of Variance Permits for Spraying Railroads Adjacent to Surface Waters

At the May 16, 2014, meeting, the Board granted a one-year variance from Section 6 of Chapter 29 to Asplundh Tree Expert Company—Railroad Division to make broadcast herbicide applications less than 25 feet from surface water. At that time, the Board also directed the staff to develop guidelines/criteria for issuance of railroad variances prior to next season. Robert Moosmann of MDOT has developed some draft guidelines and the staff has been researching the Board concerns. The staff will present its findings and seek feedback from the Board.

Presentation By: Henry Jennings
Director

Action Needed: Establish Criteria for Granting Railroad Variances

6. Review of Interim Guidelines for Forest Pesticide Applications Intended to Prevent Discharges of Pesticides to Waters of the State

On June 27, 2012, the Board approved *Interim Guidelines for Forest Pesticide Applications* with the statement: "These guidelines were not developed for and are not intended to serve as standards for permitting purposes." At that time there was not a general pesticide permit to cover pesticide applications made over or near water and these guidelines were intended to help prevent discharges of pesticides. In April, 2015, the Maine Department of Environmental Protection finalized a general permit for aerial application of forest pesticides and referenced BPC Best Management Practices. Additionally, at the Joint Standing Committee on Agriculture, Conservation and Forestry work session for LD 817, An Act Regarding Aerial Pesticide Spray Projects, there was discussion about adding references to technological advances for aerial spraying. Should anything be added to improve this document? Should the condition be removed given that the document has been referenced in a state permit?

Presentation By: Henry Jennings
Director

Action Needed: Provide Guidance to the Staff

7. Consideration of a Board Policy Regarding Application of Pesticides to Unoccupied Hotel Rooms and Apartments

At the December 5, 2014 meeting, the Board had a discussion regarding pesticide use in hotel rooms and unoccupied apartments. State statutes define pesticide applications made to property open to use by the

public as “custom applications” which may only be conducted by a licensed commercial applicator. Section 2 (P) (2) of Chapter 10 provides the exemption, “where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application.” The Board expressed concerns about the higher risk of exposure from indoor applications and came to a consensus that the term “property” means the entire building when it involves residential apartments and lodging places. The staff has drafted a policy attempting to capture the Board’s intent. The Board will review the draft and determine whether it needs to be amended.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Review/Approve Draft Policy

8. Interpretation of CMR 01-026, Chapter 10, Section 2 (P) (2), Definition of Property Open to Use by the Public as Regards Outdoor Applications

At the December 5, 2014, meeting, the Board had a discussion about the definition of “property open to use by the public,” which state statutes defines as commercial applications requiring a licensed applicator. Section 2 (P) (2) of Chapter 10 provides the exemption, “where the public has not been permitted upon the property at any time within seven days of when the property received a pesticide application.” During that discussion it was noted that this exemption has been used most commonly by land trusts to treat for invasive plants where they post and indicate the area (but not the entire “property”) is temporarily closed to the public. The Board tabled the issue until Curtis Bohlen was present as he has experience working with land trusts. The staff seeks guidance from the Board on whether this is the appropriate interpretation of the rule.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance on Interpretation of the Chapter 10 Definition

9. Consideration of a Consent Agreement with Dan Brown of Blue Hill

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 involves the purchase of a Restricted Use Pesticide (Gramoxone) by an unlicensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

10. Consideration of a Consent Agreement with Lucas Tree Experts Company of Portland

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 an application of lawn care pesticides within 250 feet of a property listed on the Maine Pesticide Notification Registry. The registry member did not receive advance notice.

Presentation By: Raymond Connors
Manager of Compliance

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

11. Consideration of a Consent Agreement with Theriault Lawn Care Inc. of Caribou

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 a company making commercial pesticide applications expired licenses over multiple years. In addition, the company's applications records were incomplete and a pesticide was applied to a site not listed on the label.

Presentation By: Raymond Connors
Manager of Compliance

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

12. Other Old or New Business

a. Legislation

- LD 708, An Act To Limit the Use of Pesticides on School Grounds
- LD 817, An Act Regarding Aerial Pesticide Spray Projects
- LD 1098, An Act To Protect Children from Exposure to Pesticides
- LD 1099, An Act To Establish a Fund for the Operations and Outreach Activities of the University of Maine Cooperative Extension Animal and Plant Disease and Insect Control Laboratory
- LD 1105, An Act To Protect Populations of Bees and Other Pollinators
- LD 1106, An Act To Compensate Beekeepers for Hive Losses

b. NPDES update (link for *General Permit for the Discharge of Pesticides* on BPC home page)

c. 2015 ERAC Report to the Legislature

d. CMP Drift Management Plan

e. Variance Permit to The Woodlands Club

f. Variance Permit to Vegetation Control Service, Inc. for control of invasive plants in Biddeford Pool

g. Variance Permit to Vegetation Control Service, Inc. for the transmission line at the Kibby Wind Power Project

h. Letter to Health Care Facilities

i. Discussion of Federal Environmental Protection Agency Labeling Limiting Crop Planting Options After Certain Herbicide Applications

j. Other?

13. Schedule of Future Meetings

June 5, 2015 is a tentative Board meeting dates. The Board will decide whether to change and/or add dates.

- Tentative plan for field trip/Board meeting August 27-28 (Thanks to Nancy McBrady for her hard work on this)

- Leave Augusta Thursday morning, August 27, arrive in Jonesboro around noon. Have lunch and tour the Blueberry Hill Farm Experimental Station.
 - Proceed to Wyman's of Maine, Deblois for a tour of the processing facility and fields.
 - Proceed to Machias for dinner/overnight. Listening session in the evening?
 - Board Meeting Friday, August 28 at University of Maine Machias. Listening session before meeting?
 - Eat lunch.
 - Return to Augusta.
- Adjustments and/or Additional Dates?

14. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Anne Chamberlain, at the Board's office or anne.chamberlain@maine.gov. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.