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## **MAINE BOARD OF PESTICIDES CONTROL INTERIM ENFORCEMENT POLICY ON THE PRODUCTION OF PESTICIDES FOR PERSONAL USE**

**ADOPTED DECEMBER 10, 2010**

### **BACKGROUND**

Periodically, the Board's staff receives inquiries about the legality of using common consumer products such as vinegar, dish soap and other mixtures to control pests. Over the last year MOFGA Certification Services LLC has inquired about a number of products, and a recent newspaper account about municipal employees applying homemade mixtures for weed control resulted in requests for the staff to investigate.

The most current examples of these practices include use of chamomile tea as a fungicide on organic vegetable crops; application of vinegar, essential oils, soaps and salt by municipal officials as an alternative to conventional herbicides; and application of compost tea on vegetable crops and ornamental and turf areas for fungal disease suppression.

While we are not looking for new areas to regulate, these unregistered products are being applied as pesticides by applicators that in similar situations must be licensed to apply registered products. Although many of these materials are exempt from EPA registration (FIFRA Section 25B reduced risk pesticides), they are not exempt from Maine's registration requirements. As we have seen in the past, even though some of these products are made from food-grade ingredients, they may pose potentially significant risks due to the high concentrations used and because the route of exposure is inhalation and not the customary exposure route of ingestion.

At their November 2010 meeting, the Board directed the staff to more specifically define what products/mixtures are considered pesticides and to develop an interim policy which was similar to FIFRA Compliance Program Policy No. 3.5. The Board did not want to require the staff to guess what a person's intentions were when they applied substances that could reasonably be used for non-pesticidal purposes like compost tea or other materials containing plant nutrients.

However, the Federal Food, Drug and Cosmetic Act prohibits "pesticide" residues on agricultural commodities for which there is no tolerance or exemption from tolerance. Growers should contact the Maine Division of Quality Assurance and Regulations to investigate whether or not there is a tolerance for an unregistered product or mixture, or to find out if application of a particular product or mixture will adulterate the agricultural commodity they plan to distribute.

**OVER**

The current statutory definition of a pesticide is: “any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.”

This definition is very broad and does not rule out common consumer products or homemade mixtures. However, the Board does not believe the Maine Legislature intended to regulate an individual’s use of commonly available consumer products for purposes that include pest control or mitigation.

## **ISSUE**

May a person lawfully produce a pesticide for his own use without registering his product in the State of Maine?

## **POLICY**

Generally, a person may lawfully produce a pesticide for his own use without registering his product in the State.

## **DISCUSSION**

Title 7 M.R.S.A. § 607 provides that a pesticide may not be distributed in this State unless it is registered with the Board in accordance with the provisions of Title 7 M.R.S.A. subchapter 2-A. In interpreting this section with respect to pesticides produced for personal use, the Board finds FIFRA Compliance Program Policy No. 3.5 to be informative. In that policy statement, the EPA analyzed the issue in the context of product distribution. Specifically, Section 3 of FIFRA requires a pesticide producer to register his product only if he sells or distributes the pesticide. Furthermore, the regulations (40 CFR Part 167) which address the registration of pesticide producing establishments under FIFRA Section 7 state that persons who produce pesticides solely for application by themselves are not required to register their establishments. Thus, a person who produces a pesticide solely for personal use is not required under FIFRA to register the pesticide or the producing establishment.

The US Environmental Protection Agency considers any application of an unregistered pesticide for other than personal use to be distribution of an unregistered pesticide, a violation under Section 12(a) (1) (A) of FIFRA. This includes applying an unregistered pesticide to another person's property for other than monetary consideration. Furthermore, a person applying an unregistered pesticide for hire, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, would be considered a distributor.

The Board finds that the EPA analysis provides a useful framework for determining whether a pesticide produced for personal use is subject to the registration requirements of § 607 and adopts it as an interim enforcement policy.