



JOHN ELIAS BALDACCI  
GOVERNOR

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

SETH H. BRADSTREET III  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**July 23, 2010**

Howard Johnson Plaza Hotel & Conference Center, Kennebec Room  
155 Riverside Drive, Portland

**AGENDA**

**9:30 AM**

1. Introductions of Board and Staff
2. Minutes of the June 25, 2010, Board Meeting

Presentation By: Henry Jennings  
Director

Action Needed: Amend and/or Approve

3. Public Information Gathering Session About Development of a Comprehensive Pesticide Notification Registry

On April 1, 2010, Governor Baldacci signed Public Law 2009, Chapter 584, LD 1547, An Act To Revise Notification Requirements for Pesticide Applications Using Aircraft or Air-carrier Equipment. Among other things, the new law directs the Maine Board of Pesticides Control to establish a comprehensive pesticide notification registry which encompasses both existing registries and is expanded to include other types of pesticide application equipment. The new law further directs the Board to report its progress to the Legislature by next February. Thoughtful comments are welcome from the public about any aspect of the registry development. Recent Board discussions have focused on how a comprehensive registry might operate in different settings such as rural/agricultural areas versus urban/residential areas, and the appropriate distances for those settings. Written comments may be sent to the Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to [henry.jennings@maine.gov](mailto:henry.jennings@maine.gov).

4. Board Discussion About Development of the Comprehensive Notification Registry

Public Law 2009, Chapter 584, LD 1547, directs the Board to work to develop a comprehensive notification registry. Initial Board discussions have identified appropriate notification distances and the difficulty of applying the new registry format to residential and urban settings as the most challenging components of a comprehensive notification registry. The Board has begun developing a working position paper outlining current thinking on how a comprehensive registry might operate. Board members will continue discussing the position paper and entertain new ideas and approaches.

Presentation by: Henry Jennings  
Director

Action Needed: Provide Input to the Staff on the Registry Development

5. Consideration of the Staff Negotiated Consent Agreement with J.L. Hayes & Company Inc. Agway of Auburn

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General to 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 involved a store that distributes pesticides that failed to obtain the required distributors license during 2008, 2009 and part of 2010.

Presentation By: Raymond Connors  
Manager of Compliance

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

6. Discussion of Concerns About Unlicensed Commercial Agricultural Producers

At the recent Board Planning Session, concerns were raised about the evolution of state and federal pesticide laws which now allow many commercial growers to apply pesticides to their crops and/or livestock without a pesticide applicator's license or any formal training. The basic standard for requiring a private pesticide applicator's license—triggered by the use of a restricted pesticide—was established in the early 1970s, and has never been updated by the federal EPA. Since that standard was established, a number of legal requirements have been imposed and a series of public health and environmental risks have been identified that were not well documented in the 1970s. Some members of the agricultural community have questioned whether the existing standard is still appropriate. Board members discussed this issue at their June 25, 2010, meeting, and will continue those discussions now.

Presentation by: Henry Jennings  
Director

Action Needed: None—Discussion Only

7. Board Review and Discussion of Its Statutory Purpose and Policy Statements

During the course of the Board's deliberations on the development of a comprehensive notification registry, questions were raised about whether the Board is familiar with and adhering to its statutory purpose and policy statements. The Board will now review and discuss its policy statements and how they affect its process of public policy development.

Presentation by: Mark Randlett  
Assistant Attorney General

Action Needed: None – Informational Only

8. Update on the Clean Water Act/National Pollution Discharge Elimination System Impact on Pesticide Applications

In 2009, the Sixth Circuit Court of Appeals vacated EPA's interpretative rule which asserted that pesticide applications made in compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are not subject to the Clean Water Act (CWA) and its National Pollution Discharge Elimination System's (NPDES) permitting requirements. Consequently, beginning in 2011, the court ruling will require NPDES permits for pesticide applications made in or around surface water when excess pesticide or residue is deposited in jurisdictional waters. EPA has been developing a "general permit" that pesticide applicators can work under in some states. States like Maine, which have been delegated authority to administer the NPDES program, will need to issue their own permits. The staff will review some of the basic concepts and parameters of NPDES program in Maine.

Presentation by: Henry Jennings  
Director

Action Needed: None – Informational Only

9. Other Old or New Business

- a. Update on Back Cove Yardscaping Demonstration Project – G. Fish
- b. Survey Question About the Registry Public Awareness Campaign – P. Schlein
- c. Other?

10. Schedule and Location of Future Meetings

The Board has tentative meeting dates set for August 27, October 1, and November 5.

Adjustments and/or Additional Dates?

11. 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](http://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 Paul Schlein, Public Information Officer, at the Board's office. 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.