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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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BOARD OF PESTICIDES CONTROL

June 25, 2010

University of Maine at Machias, Sennett Hall, Clipper Lounge
34 Downeast Drive, Machias

MINUTES

9:30 AM

- Present: Eckert, Simonds, Jemison, and Qualey
- As an introduction, Simonds provided some background information about the history and statutory structure of the Board

1. Introductions of Board and Staff

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

2. Minutes of the May 14, 2010, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or Approve

- Jemison/Eckert: Moved and seconded approval of the minutes

In favor: Unanimous

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. 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.

- ☑ Simonds began by asking Jennings to provide some background and history about pesticide notification. Jennings described a long process that began as Board discussions dating back to 2005 which were designed to mitigate the land use conflict between residential and agricultural uses. The hole in the notification system at the time was thought to be the public's lack of awareness about its right to request advance notification. Consequently the Board put forth a proposal that would have required land managers to inform adjacent residents about their right to be notified. This proposal was rejected due to the amount of work it would potentially impose on growers who manage a large number of properties. The Board then proposed a simple notification registry covering only aerial spraying, but a competing bill before the legislature was favored instead. This bill created some unintentional consequences and was amended during the following legislative session to create the current bill calling for the Board to develop a comprehensive registry. Simonds added that the Board was especially interested in hearing ideas about notification distances, registry mechanics, and efficient operation of the registry.

JoAnn Myers, an organic farmer from the Beau Chemin Preservation Farm in Waldoboro spoke first. Myers thanked the Board for all the effort that has gone into the development of a new notification system. Beau Chemin Farm is abutted by a conventional farm. The Myers were responsible for incorporating a 300 foot buffer on their property between their organic crops and the neighboring conventional farm. Myers felt that the notification registry needs to be comprehensive and cover powered backpacks and boom sprayers. She thought ¼ mile was a reasonable notification distance for all technologies. The internet based approach made sense to her. Keeping the registry free is important. Myers felt that reasonable signage at entry points made sense. She stated the Board's ads were effective and urged the Board to continue them. Myers saw no need for an annual renewal for the registry, but she thought continued outreach was important to alert new residents that move into areas where pesticides are applied. Myers noted that homeowners are big pesticide users. She applauded the Board's Yardscaping efforts and felt that homeowner BMPs should be more widely promoted. Myers suggested requiring retailers to post signs alerting them about the use of BMPs. She observed that residential encroachment will only increase in the future.

Jon Olson from the Maine Farm Bureau spoke. Olson relayed a conversation he had with a farm family about the advertisement the Board staff ran to raise awareness about the pesticide notification registry. Family members said they saw the ad in the paper and were deeply hurt. They felt it gave the impression they had done something wrong. They wondered why the Board hadn't used an image of farmer with a basket of freshly picked fruits and vegetables. Olson expressed his opposition to the Board's ad which he stated "instilled fear to the public."

Jody Spear supported the photograph choice used in the Board's registry ad. She cited recent studies that link pesticide exposure to health effects. Spears stated that blueberries are now listed as number five on the "dirty dozen" list of fruits and vegetables. She does not support the reduction in the notification distance to 500 feet. Spear spoke about the Colony Collapse Disorder (CCD) and a recent book written by Dave Hackenburg; according to the book, bee populations rebounded after neonicotinoid insecticides were discontinued. Spear disagreed with the state apiarist's current analysis of the CCD problem. She also disagreed with exempting non-agricultural spraying, such as golf courses, from the registry. Spear suggested that the Board consider establishing buffer zones around public institutions such as schools and health care facilities.

Nancy Oden stressed the need to make the notification system comprehensive. She believes it should cover all types of spraying such as golf courses, lawn care, forestry and roadside spraying. Oden stated that indoor spraying was even more dangerous, so it should not be exempted from notification either. She said that USDA had grant money available to help growers reduce pesticide use. Oden suggested using a picture of someone dying from cancer in the registry advertisements.

Jody Spear returned to offer a few final thoughts. She observed that John Martin had spoken about using vinegar to control weeds, so she wondered why MDOT didn't adopt that strategy. Spear supports advance posting of pesticide application sites. She felt that 250 feet would not be an adequate notification distance for chemically sensitive individuals. Spear emphasized the importance of receiving input from public health officials. She mentioned a renowned epidemiologist, Sheila Hoar Zahm, who has specialized in the health effects of pesticide exposure.

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 will discuss these and other issues and the basis for making its determinations.

Presentation by: Henry Jennings
Director

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

- Jennings began by explaining that ongoing staff discussions led to the realization that notification provisions that were in place prior to recent legislation were well thought out and working. There is no evidence that the established notification distances are inadequate. The hole in the system has been that many people are not aware that they have the right to be notified and that they must first request it. Creating a registry doesn't really alter that dynamic. Jennings stated he wasn't convinced that a comprehensive registry is the best way to address the shortcomings in the notification system. What works well in rural, open landscapes might be unworkable in urban landscapes. Jennings suggested the distances currently contained in rule make sense and the staff supports leaving them alone.

Eckert asked about developing one list with different options. Patricia Kontour observed that most people would just select all the options. Jemison suggested that participants could indicate whether they are near agricultural areas or whether they live in town. Simonds wondered if it would make sense to limit the registry to electronic communication only.

Jennings reviewed the staff memo. The current distance in rule (500 feet) should be adequate to cover boom sprayers. Simonds pointed out that creating extra requirements specific to one type of application equipment will create incentives to use a different type of equipment, so the Board should keep that in mind as move forward. Jennings mentioned the issue of ensuring that the information on the registry is kept current. Randlett believed that the "good faith effort" standard contained in the

statute would protect land managers in the event that the registry contained faulty information. Jennings pointed out that most of the registries that other states have developed are either for residential spraying or specific to people with medical conditions. Simonds asked whether it made any sense to have a “medical” check box on the signup page. He asked the staff to take the most recent staff memo and rework it into a “working position document” and post it on the Board’s web site to solicit additional feedback. Randlett reminded the staff to make sure that it does not resemble a draft rule.

5. Update on Staff Activities Related to Development and Administration of the Agricultural Pesticide Notification Registry

Public Law 2009, Chapter 584, provided for a second sign-up period for the 2010 agricultural notification registry, with a second version to be provided to pesticide applicators by July 1, 2010. Chapter 584 also directed the Board to initiate a public awareness campaign about the registry and allocated \$25,000 from the Board’s dedicated account for that purpose. The staff will report on these and other activities related to development and administration of the registry.

Presentation by: Paul Schlein/Henry Jennings

Action Needed: None—Informational Only

- Jennings acknowledged that some people had been offended by the Board’s newspaper advertisement designed to raise awareness about the new notification registry. He explained that the advertisement is simply the poster that the staff has been distributing since September of 2009 with an image of the spray plane at the top. The newspaper made the ad and recommended including an image that would attract the attention of the target audience. The staff and newspaper concurred that a spray plane was the most recognizable image for that target audience. Jennings accepted full responsibility for approving the ad and offered his sincere apology to anyone who was offended by the ad. Ragnar Kamp inquired if Jennings had considered resigning because of the ad. Jennings stated he had not. Gordon Colby wondered if the Board understood its statutory purpose and policy. Simonds stated that he was well versed in the Board’s purpose and reviews it periodically. Randlett observed that there are really two sections of Title 22 that provide policy guidance: the original policy section written in 1975 (22 M.R.S.A. § 1471-A) and the more recent update written in 1997 (22 M.R.S.A. § 1471-X) which directs state agencies to seek ways to assist Maine applicators to minimize reliance on pesticides. Judy Dimock expressed her support for maintaining the current “by request” option, because she feels strongly that many farmers prefer neighbor to neighbor communications of a more personal nature. Nancy Oden commented that some neighbors have a fear of retaliation if they ask abutting farmers for notification.

Schlein then provided an overview of the Board’s efforts to raise public awareness about the new notification registry. The staff published a newspaper advertisement in all five daily newspapers and in twenty weekly papers selected for thorough coverage of areas of the state where use of aircraft or air-carrier equipment may occur. Total circulation for the combined papers was 440,000. The Staff also posted the ad on the daily newspapers’ websites. They also sent press releases to 170 news organizations and to about thirty environmental organizations, and distributed it through the Maine CDC and the municipalities. Approximately 1,100 individuals signed up for the registry between March 15 and June 15.

Schlein then went on to describe the staff's work at assessing the feasibility of developing automated systems to assist land managers in notifying registry participants. The staff met with representatives from the Maine Office of Geographical Information Systems (MEGIS) to review potential options and was encouraged by the meeting. Technology is already available to locate registry participants (as points) on an internet based map. An inexpensive system could be developed rather quickly that would allow land managers to quickly identify and download a list of registry participants within specified distances of the application site. The downside of this approach is that it would treat participants as points based on their 911 address, while the statute specifies that properties are listed on the registry. There is also a certain amount of error in how the system places the points on the map. But the system could be a great asset for land managers who are not concerned about whether they would notify some people beyond the minimum required distance. Schlein further explained that about 75 municipalities currently have their tax maps digitized and that data is publicly accessible. All the lots in the unorganized territories are digitized as well. Additional towns are digitizing the tax maps as finances allow. For municipalities and townships with digitized maps, MEGIS could develop an application that would identify registry participants within critical distances for land managers, and automatically send emails if the land manager chose. Alternatively, land managers could download a list of applicable registry participants together with their contact information

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.

Presentation by: Henry Jennings
Director

Action Needed: None—Discussion Only

- Jennings explained that staff decided to place the topic on the agenda because it had been brought up at the annual planning session. The same topic had been discussed in 1999. At that time, the Department of Agriculture had agreed to develop a comprehensive mailing list of agricultural producers so that educational information could be mailed to them.

Qualey stated that potato growers all obtained pesticide applicator licenses in the 1980s and he just assumed that all farmers needed one. He was surprised to learn that many commercial farmers are now operating without a pesticide applicators license. Jennings stated he did not think it was appropriate for the Board to advocate for expanding the licensing requirements, but it should be discussed since it's central to the Board's regulatory purview. Private license holders have dropped from approximately 2,000 in the mid 1990s to 1,160 currently. Ragnar Kamp observed that agricultural standards are becoming market driven nowadays. Many of their customers have strict

standards and record keeping requirements. Jennings believed that Maine agriculture had an opportunity to exploit the public's concern for food safety by voluntarily applying higher production standards. He said the issue should be revisited at the July meeting so the rest of the Board could weigh in on it.

7. Other Old or New Business

a. Variances Issued Since Last Meeting—H. Jennings

- o MDOT Roadside Program
- o RWC
- o Green Thumb Lawn Services
- o MDOT Wetlands Mitigation

Jennings alerted the Board to variances that had been issued since the last Board Meeting. Nancy Oden objected to variances; she stated that everyone should be required to follow the law. Randlett pointed out that federal law imposes certain requirements on railroads that the state must follow. Jennings stated that the Board spent considerable time discussing railroad herbicide use, and finally was able to convince companies to discontinue use of the most mobile products and to include adjuvants that fix the herbicides to the target vegetation.

b. Request from Mary Ellen Valentine of Gorham for Designation of Critical Pesticide Control Area—H. Jennings

Jennings directed the Board's attention to the letter from Mary Ellen Valentine requesting a pesticide free zone around her home. He suggested that the Board may prefer to direct the staff to pursue an informal resolution as opposed to a critical pesticide control area designation under Chapter 60. Consensus was reached to so direct the staff.

c. Other?

Jennings inquired about Heather Spalding's request to include a presentation by Dr. Paul Winchester at the July Board Meeting. Board members agreed that having a presentation by one scientist might create a precedent whereby other interest groups will want to have their scientists make presentations at future meetings. They felt there might be more appropriate venues for scientific presentations of this type.

8. Schedule and Location of Future Meetings

On July 23, the Board meeting will be held in Portland, and will be combined with a Public Information Gathering Meeting. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

Board members added August 27, October 1 and November 5 as tentative Board Meeting dates.

9. Adjourn

Qualey/Eckert: Moved and seconded that the meeting adjourn at 1:45 P.M.

In Favor: Unanimous