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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

SETH H. BRADSTREET III  
COMMISSIONER  
HENRY S. JENNINGS.  
ACTING DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**March 16, 2007**

Colby Thomas Rooms, Hampton Inn  
425 Kennedy Memorial Drive, Waterville  
(Exit 127 from I-95)

MINUTES

**9:30 A.M.**

Present: Walton, Eckert, Humphreys, Jemison, Stevenson

1. Introductions of Board and Staff

Board Members, Staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the February 16, 2007 Board Meeting

Presentation By: Henry Jennings  
Acting Director

Action Needed: Amend and/or approve

Jemison/Stevenson: Moved and seconded approval of the minutes.

In Favor: Unanimous

3. Consideration of Pioneer Hi-Bred International's and Dow AgroSciences LLC Applications for Registration for Three Bt Corn Products

Pioneer Hi-Bred International, Inc., and Dow AgroSciences have submitted applications to register three Bt Corn products in the state of Maine. These products were jointly developed by the two companies and are identical. At its December 15, 2006 meeting, the Board discussed Plant Incorporated Pesticides and what information it would want to review in considering requests to register such products. The Board determined that it would want to review information relative to three different issues: (1) the need/benefit for the products, (2) the risks of insect resistance development, and (3) the risks of gene drift. The Board will review Pioneer's product registration request and outline a process for reviewing the three identified issues.

Presentation By: Henry Jennings, Acting Director

Lebelle Hicks, Toxicologist  
Representative from Pioneer Hi-Bred and/or Dow AgroSciences

Action Needed: Determination of Process for Considering the Application

- ☑ Jennings stated that the applicants had requested that consideration of the requests be postponed until the next Board meeting on April 13, 2007 to allow the companies additional time to develop supporting information. Notice of the postponement was posted on the Board's web site.

Jennings suggested Board members use the available time to discuss the process for reviewing the three issues they identified at the December 15, 2006 meeting. The three issues identified were: 1) the need/benefit for the product, 2) insect resistance, and 3) gene drift. Jennings reported the staff had discussed the process with Jemison and reached consensus to recommend that a subcommittee be enlisted to review information on gene drift, and possibly resistance.

Jemison reported on a grant application he had submitted requesting funding to educate growers on the proper use of plant-incorporated pesticides (PIP), and strategies for reducing the risks. Jemison envisioned a mapping program to alert growers to the location of organic crops.

Humphreys raised the issue of liability for gene drift. She wondered who would be liable for gene drift under current law and whether liability is within the purview of the Board. A bill before the legislature would assign liability to the seed producer.

Members discussed a process for reviewing the issues through a committee. Jemison agreed to assemble a small committee for that purpose. Randlett reminded members that the statute requires the Board to take action on the application within 180 days of receipt, or the product will be deemed registered. Members asked the staff to prepare a concise background paper summarizing the history of PIP applications in Maine.

4. United Phosphorus, Inc. Request for 24C Registration for Devrinol 50-DF to Control Weeds in Cranberries

United Phosphorus, Inc., is requesting a Special Local Needs (24C) Registration to allow the use of Devrinol (napropamide) on a pre-emergence basis to control annual grasses and broadleaf weeds infesting cranberry bogs. The product is currently registered for use on fruit, nut and vegetable crops. EPA has established a tolerance for napropamide on cranberries and Maine growers are currently allowed to use a 10% granular formulation. However, granulars can be difficult to properly apply in the spring. This request would allow growers greater application flexibility.

Presentation By: Wesley Smith  
Pesticides Registrar

Action Needed: Approve/Disapprove 24C Registration Request

- Wesley Smith introduced the agenda item, pointing out the application is for the 50% Dry Flowable. A ten-percent granular is already registered. Smith introduced Charles Armstrong, the Extension Crop Specialist for Cranberries. Armstrong stated that a dry flowable product would make it easier to correctly time the application and easier to apply it, because the irrigation system could be used. These advantages would also improve the efficacy of the product. Weeds are currently a major impediment to profitability in cranberries, so improvements in weed management would be beneficial to the industry.

A discussion on the profitability of cranberry culture in Maine ensued. Cranberries are little more than a breakeven proposition for most commercial growers, although the wholesale price has been going up lately. The availability of the 50-DF will serve to improve the viability of the crop in Maine.

Members were concerned about the environmental fate of napropamide, the active ingredient in Devrinol. Napropamide is rated as intermediate for leaching potential. Armstrong and Tamara Parker from Jasper Wyman & Son's reviewed for the Board how cranberries are grown in Maine. Maine has so-called upland bogs in which the bog is built on a well-drained site with several inches of sand over a clay liner. Excess water is collected and recycled.

Stevenson/Jemison: Moved and seconded approval of the FIFRA Section 24C label for Devrinol 50-DF

In Favor: Unanimous

5. Workshop Session to Review Comments on Proposed Rulemaking to Chapters 40 & 41

On October 25, 2006, Notice of Agency Rulemaking was published on a series of housekeeping amendments to eight chapters of the Board's rules. Among those was a proposed change to reclassify trichlorfon from limited use to restricted use and delete the special use requirements contained in Chapter 41. At their December 15, 2006 meeting, Board members reached consensus to not adopt the proposed changes, but they indicated they might approve a reclassification if additional requirements were created to minimize the chances of human exposure.

At its January 26, 2007 meeting, the Board reviewed a proposal to exempt certain pond dyes from the applicator licensing requirements contained in Chapter 41. At the same time, it reviewed a new proposal to reclassify trichlorfon from limited use to restricted use. The Board decided to move forward with rulemaking on both proposals.

On February 7, 2007, Notice of Agency Rulemaking was published on the proposed changes. No hearing was scheduled, and a deadline for comments was set for March 9, 2007. The Board will review the written the comments and determine whether it will

adopt the proposed amendments at its next meeting, and if so, whether any changes should be made in the proposed language based on the comments.

Presentation By: Henry Jennings  
Acting Director

Action Needed: Determine Whether to Adopt Proposed Amendments and/or  
Whether Changes Should be Made

- Jennings reminded Board members about the most recent rulemaking proposals affecting Chapters 40 and 41. Two separate issues are being addressed: 1) to allow licensed applicators to apply trichlorfon to lawns with certain restrictions, and 2) to allow unlicensed applicators to apply certain pond dyes to private surface waters. The Board had elected not to adopt the previous proposal affecting trichlorfon, because it did not contain sufficient safeguards to prevent exposure.

Jennings reported that three written comments had been received on the proposal affecting trichlorfon and no comments were received relative to the pond dyes. Two persons supported the trichlorfon proposal, while the third person supported the proposal, but questioned the practicality of requiring the licensed applicator to ensure the product is watered in.

Board members briefly discussed the comments and quickly determined that the proposals should be adopted as written.

Humphreys/Jemison: Moved and seconded that the staff should prepare basis statements and summaries of comments to adopt the proposals at the next meeting.

In Favor: Unanimous

6. Preliminary Discussion about Acceptable Systems of “Verifiable Authorization”

A public hearing was held on November 17, 2006 on a series of minor housekeeping amendments to eight different rule chapters. Among the proposed changes was a new provision in Chapter 20 that would require commercial applicators providing ongoing, periodic applications to enter into a written contract with their customers. The Board subsequently modified the requirement based on comments to allow companies to either enter into written contracts or to utilize another system of verifiable authorization approved by the Board. The new provisions will become effective on January 1, 2008. The Board will now begin discussions on what approaches they will likely approve for verifiable authorization.

Presentation By: Henry Jennings  
Acting Director

Action Needed: Discuss Appropriate Options for Verifiable Authorization

- ☑ Jennings reminded Board members that a recently adopted amendment to Chapter 20 will require commercial applicators to either enter into written contract or use another Board-approved system of verifiable authorization to ensure that customers fully understand the terms of the agreement and the services to be provided.

Jennings reviewed the various approaches for verifying agreements that commercial applicators had detailed in the rulemaking record, including recorded phone conversations, customer signatures and confirmation letters. The staff was also aware that some companies maintain a written record of phone calls in which agreements are confirmed. Jennings stressed that whenever a confirmation letter is used, it should be on a separate paper, printed in a prominent typesize, to avoid being lost or overlooked. Eckert pointed out that even if separate, what happens if the recipient discards the entire letter as “junk mail”. Of the verification methods discussed, a customer signature or audio recording were considered the most reliable form of proof.

Jennings suggested that the best source of additional ideas would be the regulated community. Consequently, consensus was reached to solicit additional input from commercial applicators and then report back to the Board.

7. Continued Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006 Board Meeting, members reviewed their prioritization balloting for discretionary tasks discussed at their 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board’s number four priority. The Board reviewed a memorandum summarizing surface water data, other state requirements for buffer zones and an initial concept for a future rule at their January 26, 2007 meeting. Members were concerned that using DEP’s definition of state waters may create a rule that is too broad. Consequently, Jeff Dennis from DEP attended the February 16, 2007 meeting and offered some alternative definitions from DEP’s statutes. The staff will present revised regulatory language which includes the preferred definition and new exemption for spraying public health pests.

- ☑ Jennings began by pointing out that the definition of surface waters that had been developed with input from DEP, did not include marine waters. Consequently, he had again been in contact with Jeff Dennis from DEP to discuss language options to add marine waters. DEP staff suggested the definition for “coastal wetlands” be added to the existing definition. Randlett said that Title 38, Water Statutes, should be referenced.

The subject of definitions was discussed, where certain terms, including terrestrial, broadcast and possibly others, needed to be defined.

Dave Whitworth from CMP expressed concerns about the current surface water definition, specifically whether intermittent areas that dry up seasonally are included. Eckert said the Board will try to address CMPs concerns. Members requested more information on mapped wetlands and directed the staff to research the issue and create a

summary of which surface will be included under the current definition and which would not. Randlett pointed out that any outside sources must be identified with name and date.

Eckert suggested that necessary changes should be made and the new language brought back to the Board for review.

8. Consideration of Staff Negotiated Consent Agreement with GM Allen & Son, Inc.

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 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. In this case, a company applicator applied Sinbar herbicide to blueberry land without wearing chemical-resistant gloves as required by the label, and his pesticide application record was not filled out completely. Also, the company did not post the Restricted Entry Intervals at their Central Information Display as required under the Worker Protection Standard.

Presentation By: Raymond Connors  
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors explained that the violations had been discovered by Board inspector Arthur Shaw during a routine pesticide use inspection with a company employee. Humphreys remarked that the fine seemed too low.

Humphreys/Jemison: Moved and seconded approval of the consent agreement

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Cherryfield Foods, Inc.

This case is similar to the preceding agenda topic 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. It involved drift of an insecticide from a ground application to a blueberry field onto a lawn and garden located on the opposite side of the highway in Cherryfield. This action constituted a violation of the Board's Chapter 22 regulations requiring applicators to protect sensitive areas from pesticide drift.

Presentation By: Raymond Connors  
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors reviewed testing of the sample collected on the day of the incident. Phosmet, the active ingredient in Imidan, was detected on foliage located on the complainant's property. Board inspector Shaw, who conducted the investigation, said the weather on the day in question was very foggy and spraying should not have been done. Humphreys questioned the amount of the fine and whether fines for this type of violation should be higher in the future.

Jemison/Walton: Moved and seconded approval of the consent agreement

In Favor: Unanimous

10. Consideration of Staff Negotiated Consent Agreement with Greenscapes Lawn Care, Inc.

This case is similar to the preceding agenda topic 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 the commercial application of an herbicide to a property in Kittery that was listed on the 2006 Pesticide Notification Registry. The company only provided notice to the registrant 2 hours and 10 minutes in advance of the application, which is a violation of the registry provisions in Chapter 28.

Presentation By: Raymond Connors  
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors stated this case arose when a Greenscapes employee applied pesticides adjacent to the registry participant without the required advance notice. Company officials stated that they were in the area and made the decision to make the application even though the required minimum of six hours advance notice was not achievable. Consequently, the staff treated the incident similar to cases where no notice had been given.

Jemison/Stevenson: Moved and seconded approval of the consent agreement

In Favor: Unanimous

11. Consideration of Staff Negotiated Consent Agreement with Lucas Tree Expert Company

This case is similar to the preceding agenda topic 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. It involved the mistaken application of pesticides to a property in Saco where the owner had not requested and did not wish to receive a mosquito control application. These actions constitute a violation of the Board's statute dealing with the use of pesticides in a careless, negligent or faulty manner.

Presentation By: Raymond Connors  
Acting Chief of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors summarized the violations, stating that the applicators did not tell the owner of the wrong property or their company supervisor of the mistaken application. It was witnessed by the complainant's in-laws, present in the house at the time. When Humphreys said the fine was too low, Jennings pointed out that the amount of the fine had been determined before the last Board meeting. Fish commented that this company is generally very careful about these matters.

Humphreys/Walton: Moved and seconded approval of the consent agreement

In Favor: Unanimous

12. Other Old or New Business

a. Legislative Update H. Jennings

- Jennings updated the Board on the various bills currently in the legislature.

Jennings informed the Board that the Agriculture, Conservation & Forestry Committee (ACF) conducted hearings on March 5 and workshop sessions on March 12 for LD 406, "An Act To Prohibit Aerial Spraying of Pesticides near Buildings, Roads and Bodies of Water," and LD 875, "An Act To Continue the Protection of Marine Waters and Organisms from the Risks Posed by the Applications of Pesticides." Based on testimony from several sources indicating that a systematic evaluation process was already underway for aerial spraying, the committee voted Ought Not To Pass for LD 406, but expected to see results from the Board's work by the next legislative session. Regarding LD 875, the committee still wants drift monitoring using cards for air blast sprayers, but no additional monitoring is mandated. The wording of the bill will be "the Board may do water and sediment monitoring."

With respect to the regulatory agenda, the Board's list of likely rulemaking efforts will be reviewed each year by the ACF for significant issues. The ACF will then select any potential rules they wish to review and designate them as major substantive by reporting out a bill to that effect. Randlett explained that the Board can provisionally adopt rules designated as major substantive, but the legislature will retain final authority over the content of the rules.

b. Aerial Committee Updates

- Hicks stated that both the technical and stakeholders committees had met on February 27 and March 12, respectively, and the next meetings were scheduled

for April 12 and 23. She was preparing a background paper to share with the technical committee.

Jennings stated that University of Maine extension professor, Louise Frank Cyr, had done an excellent job with chairing the stakeholders group.

c. Letter from Mary Dolan

- Jennings explained that the letter received from Mary Dolan of Old Orchard Beach requested that the Board revise current regulations concerning posting when pesticide applications are made to include public areas such as playgrounds and parks. He thought this was a legitimate point and that it might be something to discuss under housekeeping amendments.

Randlett pointed out that the letter can be treated as a petition, since the Board has a petition process for rulemaking. The Board has 60 days from when the letter was received to reply to Dolan and either initiate rulemaking or explain why rulemaking will not be initiated.

d. Other

- Randlett relayed that the lawsuit against Maine Helicopters had been dismissed, contingent on a consent agreement. Maine Helicopters did not admit to a violation, but a \$1,500.00 fine was imposed on the company.
- After Batteese announced that he had been officially appointed Director of the Division of Plant Industry, the Board, Randlett and Batteese went into executive session to discuss the matter of the replacement of Batteese as director of the Board.

Jemison/Humphreys: Moved and seconded move to executive session

In Favor: Unanimous

13. Schedule and Location of Future Meetings

April 13, 2007 at the Maine State Performance and Training Facility in Fairfield, and May 11, 2007, and June 22, 2007 are the tentative dates for the next Board meetings. The conference room at Maple Hill Farm has been reserved for a planning session on October 26, 2007.

Adjustments and/or Additional Dates?

- Jennings stated that Board meeting dates were set through June and the date for the annual planning session was set for October 26, 2007, at Maple Hill Farm. Members elected not to set additional dates because too few members were present at that point.

14. Adjourn

- Walton/Stevenson: Moved and seconded that the meeting adjourn.

In Favor: Unanimous.

The meeting adjourned at 12:41 PM