



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

March 27, 2009

John E. Dority Safety & Performance Training Center (Conference Room, Lower Level)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield (Exit 133 from I-95)

MINUTES

9:30 AM

Present: Jemison, Simonds, Eckert, Stevenson, Qualey, and Ravis

1. Introductions of Board and Staff

The Board, staff, and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the February 20, 2009, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

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

In Favor: Unanimous

3. Dow AgroSciences Request for 24(c) Registration for GoalTender™ Herbicide

At the request of Maine broccoli growers, Dow AgroSciences is requesting a Special Local Need [24(c)] Registration to allow the use GoalTender™ herbicide (oxyfluorfen, EPA #62719-447) for post-emergent weed control on broccoli. Where the number of herbicides available to manage weeds in broccoli is limited, this product would allow control of broadleaf weeds that escape pre-emergent herbicide treatment.

Presentation By: Lebelle Hicks
Staff Toxicologist

Action Needed: Approve/Disapprove 24(c) Registration Request

- Hicks reviewed her memo summarizing the toxicity and environmental fate information. Jemison commented that the product should not get into surface or ground water under normal use conditions. He then inquired about the cancer risk cited in the literature. Hicks pointed out that the risk is below EPA's one-in-one-million threshold. Jemison also commented about the high toxicity to fish, but felt that the lack of mobility and required buffers would minimize the threat.

Simonds inquired about what made the proposed use a local need. Emily Smith of Smith's Farm noted that GoalTender has been registered for pre-emergent use on broccoli, but not yet for post-emergent use. Peter Sexton of the University of Maine Cooperative Extension noted that Maine's broccoli industry is the largest in the Northeast, making Maine unique in its pest management issues. The most difficult weed problem is Hairy Nightshade, which has staggered dormancy; this means it can emerge over a long portion of the growing season. Smith and Sexton both conveyed that controlling Hairy Nightshade also results in secondary pest management benefits for area potato growers. Potatoes are grown in rotation with broccoli and other crops. Hairy Nightshade is an alternate host for the late blight pathogen, *Phytophthora infestans*. Reducing the Hairy Nightshade populations helps eliminate a niche for the pathogen. Smith informed the Board that her farm had been in the broccoli business for 26 or 27 years and that they grow 4000 of the 6000 acres of broccoli in Aroostook County.

Simonds/Qualey: Moved and seconded approval of the 24(c) registration request.

In Favor: Unanimous

4. Adoption of Amendments to Chapters 24 and 41

A public hearing was held on January 23, 2009, on a series of amendments to Chapters 24, 28, and 41. Seven people testified at the public hearing and eight written comments were received prior to the February 6, 2009, deadline. At its February 20, 2009, meeting the Board reviewed the comments and followed with discussion. After making changes, the Board adopted Chapter 28. Changes were also made to Chapters 24 and 41, and the Board directed the staff to bring the two revised rules back for adoption at the next meeting on March 27, 2009.

Presentation By: Henry Jennings
Director

Action Needed: Adoption of the Rule, Basis Statement, Rulemaking Statement of Impact on Small Business, and Response to Comments for each of the two rules

- Jennings reviewed the proposed change to Chapter 24 and commented that no one was particularly interested in this amendment with the exception of the Board's enforcement staff. Only one comment was received – from the legal council at EPA Region 1 – who suggested being more specific about citing the date of the federal rule that is being incorporated by reference. This suggestion was incorporated into the proposal.

Simonds/Jemison: Moved and seconded approval of the proposed rule amendment, the basis statement, the response to comments, and the rulemaking statement of impact on small businesses.

In Favor: Unanimous

Next the Board moved on to the amendments to Chapter 41. Jennings commented that the language of the proposed amendment had been reworked to make it clearer that the preferred option is for neighboring corn growers to work out any conflicts through management strategies. If an agreement cannot be reached, the rule would require that Bt-corn growers either plant the refuge as a buffer, or, if no refuge is required, to leave a 300-foot buffer between the Bt corn and the non-Bt corn. Jemison indicated he was satisfied with the current language. Simonds inquired whether the proposed language would cover other genetically modified corn that may be submitted to the Board. Jemison and the Board staff believed it should cover everything that's known at this point.

Stevenson/Jemison: Moved and seconded approval of the proposed rule amendment, the basis statement, the response to comments, and the rulemaking statement of impact on small businesses.

In Favor: Unanimous

5. Consideration of Syngenta Seed's Registration Request for Attribute Insect-Protected Sweet Corn

In August 2008, following a registration request from Syngenta Seeds for its Attribute Bt Sweet Corn product, the Board reached consensus to convene the Bt Corn Technical Committee to review resistance concerns, and the Medical Advisory Committee (MAC) to review any human health concerns, associated with the cultivation and consumption of Bt sweet corn.

In December 2008, the Technical Committee completed its review of the original labels submitted. The MAC met on February 11, 2009, and voted to expand the review to include scientific studies of the Bt proteins in other commodities, in addition to corn. At its February 20, 2009, meeting, in view of the fact that the MAC review will take considerable time to complete and Attribute Bt sweet corn has been registered in all other states since 1996, the Board decided to consider the registration of Attribute at its next meeting on March 27, 2009.

Presentation By: Henry Jennings
Director

Action Needed: Decide whether to approve/disapprove the registration request

- Jennings alerted Board members to an excerpt from Title 7, Section 607 (8-A) (A), detailing the findings the Board must make when determining whether to register a pesticide in Maine. Randlett pointed out that paragraph 8-A (C) also allows the Board to consider public health concerns in determining whether to register a product. Jennings pointed out that the Attribute label had recently been amended to allow sale of the seed to homeowners. Jemison suggested conditioning the registration to sales in quantities of 24,000 seeds or greater. Simonds clarified that this concern is covered in the proposed amendments to Chapter 41.

The Board discussed the status of the Medical Advisory Committee (MAC) review of potential human health effects from consuming Bt sweet corn. The MAC met on February 11, 2009, and reached consensus that there was insufficient information available to adequately characterize the chronic risks from consumption of Bt sweet corn. Consequently, the MAC asked to expand the

search for relevant research to include other crops modified with Bt genes. This effort will require significant time to complete the review. Members discussed the merit of conducting the review given the fact that Bt corn has been pervasive in the American food supply for a decade already. Consensus was reached to continue with the MAC review while recognizing that any decisions made by the Board will have minimal impacts on the safety of the food supply.

The Board next considered the criteria specified in 7 MRSA § 607 (8-A) (A) for determining whether a pesticide should be registered.

- Consensus was reached that the composition warrants the proposed claims (7 MRSA § 607 (8-A) (A) (1)).
- Consensus was reached that the labeling complies with the requirements of Title 7 (7 MRSA § 607 (8-A) (A) (2)).
- Consensus was reached that the product will not cause unreasonable adverse effects on the environment (7 MRSA § 607 (8-A) (A) (3 & 4)).
- Consensus was reached that a need for the product exists (7 MRSA § 607 (8-A) (A) (5)).

Stevenson/Qualey: Moved and seconded approval of the registration request for Attribute Bt Sweet Corn

In Favor: Eckert, Jemison, Simonds, Stevenson, and Qualey

Opposed: Ravis

6. Updates on Bt Corn

- a. On February 26, 2009, Syngenta Seeds submitted registration requests for two Bt-corn products with stacked traits, including the MIR 162 event which codes for the VIP3Aa20 protein in field corn. The Board will consider if these two products require reviews by both the Technical Committee and MAC.
 - Hicks reported that the VIP is vegetative protein and differs from the CRY (crystalline) proteins. Consensus was reached to have the Technical Committee review the VIP proteins and to discuss the proteins with the MAC when it convenes in July.
- b. With the ongoing registration requests for pesticide-containing genetically modified plants (plant-incorporated protectants or PIPs), the opinion of the staff is that the Board would be better served by changing what has been the *ad hoc* Bt Corn Technical Committee to a standing PIP Technical Committee. This new committee, with five standing and up to three *ad hoc* members, would be composed of experts in the fields relevant to the issues at hand.
 - Hicks introduced the idea of changing the *ad hoc* PIP Technical Committee to a standing committee. Jemison commented that he believed it was a good core group for addressing the issues at hand. Consensus was reached to adopt the policy and convert the *ad hoc* PIP Technical Committee to a standing committee.

Presentation By: Lebelle Hicks
Staff Toxicologist

Action Needed: Consider if and when product reviews should occur and whether to adopt the policy to create the PIP Technical Committee

7. Consideration of a Variance Request from Urban Tree Service of Rochester, New Hampshire, Pursuant to Chapter 29, Section 6

Chapter 29, Section 6, requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near surface waters, including lakes, ponds, rivers, streams, certain wetlands, and estuarine/marine waters. This section also contains a mechanism under which the Board or its staff can grant variances. At its March 2008 meeting, the Board reached consensus to allow the staff to approve variances that allow for the use of pesticides on golf course greens and tees located within the 25-foot surface water setback required by Chapter 29, Section 6. Any other variance requests would have to be approved directly by the Board. This variance request, from Urban Tree Service of Rochester, New Hampshire, would allow the application of pesticides to hemlock trees infested with hemlock wooly adelgid that are growing within 25 feet of a body of water.

Presentation By: Henry Jennings
Director

Action Needed: Provide guidance to the staff on how to respond to the variance request

- Jennings stated that the staff has only been authorized to issue Chapter 29 variances for the greens and tees on golf courses so far. Consequently, the Board needs to determine what other types of variances it will approve and whether it wants to delegate further authority to the staff. Simonds asked about the circumstances. Jennings responded that it appeared to be residential property. Simonds stated he could support approval of the variance if it is part of a broader range governmental management program for invasive pests.

Simonds/Jemison: Moved and seconded delegation to the staff variance requests that are part of a broad-range governmental management program.

In Favor: Unanimous

8. Board Discussion of the Distribution of Pesticides from Landlord to Tenant

Historically, the staff has not required landlords to obtain a general-use pesticide dealers license in order to give pesticides to their tenants for use in their own residence. However, an inquiry from the PropSys Company regarding landlords supplying roach traps to tenants has raised concerns about systematic distribution of pesticides and the potential risks and harm that might result from the improper application of pesticides by untrained applicators. Based on these concerns, while the Board does not currently have a formal policy prohibiting this type of distribution, it is now being

discouraged. The staff would like the Board to consider whether establishing a more formal policy is appropriate.

Presentation By: Henry Jennings
Director

Action Needed: Decide whether to establish a formal policy

Consensus reached to table the matter to a future Board meeting

9. Request from Modern Pest Control To Allow for Tick Control Under Chapter 31, Section VII(a)

In March 2007, Chapter 31—Certification and Licensing Provisions/Commercial Applicators, was amended, removing reference to ticks from licensing category (VII)(a)—Industrial, Institutional, Structural and Health Related Pest Control: General, leaving only licensing category VII(e)—Biting Fly & other Arthropod Vectors, to cover ticks. Modern Pest Control, in a letter to the Board, points out that, in the past, tick control was always covered under licensing category VII(a), including training materials and exams. Modern also points out that structural pest management companies are routinely asked to treat for pests covered in the VII(e) group. Modern is suggesting making VII(e) a subcategory of VII(a), rather than having it as a separate category. The company is asking to be grandfathered if VII(e) remains the only tick category.

Presentation By: Henry Jennings
Director

Action Needed: Consider whether Chapter 31 needs to be amended

Stevenson explained that he had checked with the Board's office in 2004 about whether tick control could be done under category 7(A) and received confirmation that it was acceptable. Sometime during 2008, Modern discovered that the Board's office had a different position on the matter. Stevenson wrote a letter to the Board's office questioning the policy change and offering reasons to support the position that tick control should be allowed under category 7(A). The staff position is that category 7(A) is intended to control pests of structures, and that tick control is generally done on the perimeter of a property along the interface of areas with unmanaged vegetation such as forests and fields. Moreover, the category 7(E) training manual has a far more expansive coverage of tick IPM.

Ravis/Qualey: Moved and seconded establishment of an eight-month enforcement grace period for the requirement that applicators be licensed in category 7(E) to control ticks.

In Favor: Eckert, Simonds, Ravis, Qualey, and Jemison

Abstaining: Stevenson

10. Consideration of Staff Negotiated Consent Agreement with Scotts Lawn Service of Hermon

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. This case involved the misreading of a work slip which led to the application of two lawn insecticides on two consecutive days to the wrong customer's property. Other than the address, there was no positive means of identification; sensitive areas were not identified, as required for this type of application; and there were also violations of the label rates. The case was reviewed by the Board at its January 23, 2009, meeting and tabled, pending submission of a company policy on positive identification of the application site. Subsequently, a policy was submitted, but the Board did not feel it was strong enough and tabled the case again at its February 20, 2009, pending revision of the policy.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Review revised policy and approve/disapprove the consent agreement negotiated by staff

- Connors reminded the Board that this case had been held over from previous meetings pending submittal of an acceptable policy on positive identification of the target site. Board members were satisfied with the revisions to the policy.

Simonds/Qualey: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

11. Consideration of Staff Negotiated Consent Agreement with Plants Unlimited of Rockport

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 a commercial greenhouse/nursery that had not been keeping the required pesticide application records, failed to train workers as required by the federal Worker Protection Standard (WPS), and did not have the WPS-required central information display for pesticide and safety information for workers.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reviewed the circumstances and violations involved in this case. Simonds commented that the fine was too low for the list of violations. Ravis asked whether there are procedures in

place to ensure that companies with violations are re-inspected. Connors explained the compliance verification system.

Qualey/Ravis: Moved and seconded approval of the consent agreement

In Favor: Unanimous

12. Consideration of Staff Negotiated Consent Agreement with Patterson Properties of Augusta

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 application of two insecticides to a rented apartment by the owner, who did not have the required commercial applicator's license.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the tenant's mother called the Board's office with concerns about applications made by the landlord. Applications to a tenant's residence are considered commercial applications under Board definitions. Eckert inquired about how landlords are informed about the licensing requirements. Jennings stated the staff uses landlord associations and code enforcement officers to disseminate information.

Jemison/Simonds: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

13. Consideration of Staff Negotiated Consent Agreement with Sugarloaf Golf Course of Carrabassett Valley

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 application of pesticides at a golf course without the required licensed master applicator.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that this was a case in which there was no licensed master applicator employed at the golf course during the period of June through September, although a licensed operator was present.

Stevenson/Qualey: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

14. Consideration of Staff Negotiated Consent Agreement with Orkin Exterminating Co. of Portland

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 an employee of a commercial pesticide applicator applying two insecticides to the wrong site.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that this case involved a commercial pesticide application made at the wrong site. In this case, the person contracting for the application had requested that a rental house be treated. Instead, the applicator treated the home of the person contracting for the application by mistake. The applicator took a number of steps to confirm the correct site, but ultimately they were insufficient. A company policy on positive identification of the target site was submitted with the consent agreement.

Simonds/Jemison: Moved and seconded approval of the consent agreement.

In Favor: Unanimous

15. Other Old or New Business

a. Legislative Update—H. Jennings

- Jennings informed the Board that work sessions on the drift rules will be held on April 1. He also provided a list of other pesticide bills that had not yet been scheduled for a hearing.

b. Central Maine Power Company's Transmission Right-of-Way Vegetation Management Plan for 2009—H. Jennings

- Wes Davis of Central Maine Power Company reviewed the company's vegetation management plan, explaining that it is essentially the same as recent years. Each section of transmission line is treated on a four-year cycle in which tree species capable of affecting the transmission line are selectively sprayed by crews with non-powered backpacks.

c. Update on the 24(c) Registration of Ethrel for Greenhouse Tomatoes—H. Jennings

- Jennings reviewed the letter from EPA in which the 24(c) registration for Ethrel was challenged. The staff sent a response and three studies addressing EPA's concerns and is awaiting a response from EPA.

d. Other?

- Jennings reported that the hearing on the nomination of Curtis Bohlen to fill Lee Humphries' slot was being held at the same time as the Board meeting. Tim Hobbs stated that the ACF Committee voted unanimously to recommend confirmation.

16. Schedule and Location of Future Meetings

May 8, June 12, and July 17, 2009, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Board members elected not to add any dates but discussed the possibility of switching the July date to the tenth so that they could participate in the EPA field trip to Aroostook County sponsored by the Potato Board.

17. Adjourn

- Qualey/Stevenson: Moved and seconded the meeting adjourn at 2:30 p.m.

In Favor: Unanimous