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GOVERNOR

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

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS
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BOARD OF PESTICIDES CONTROL

May 8, 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: Eckert, Simonds, Stevenson, Jemison, Bohlen and Ravis

1. Introductions of Board and Staff

The Board, Staff and Assistant Attorney General Randlett introduced themselves

2. Minutes of the March 27, 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. Syngenta Crop Protection, Inc., Request for 24(c) Registration for Callisto Herbicide on Cranberry

At the request of University of Maine Cranberry Extension Specialist Charles Armstrong, Syngenta Crop Protection, Inc., is supporting a Special Local Need [24(c)] Application to allow chemigation with Callisto herbicide for weed control on cranberry. Armstrong's letter of support indicates that chemigation will save cranberry growers significant time, labor, and money, in comparison to the application methods currently used in Maine.

Presentation By: Lebelle Hicks
Board Toxicologists

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

- ☑ Hicks reviewed the materials contained in the Board packet. She explained that Callisto is already registered for use on Cranberries, just not for chemigation. Simonds inquired about any additional risks associated with chemigation such as potential leaching. Jemison asked Charlie Armstrong, Extension Crop Specialist, to provide an overview of cranberry production in Maine and how it differs from cranberry production in Massachusetts. Armstrong explained that Maine cranberries are grown in “upland bogs” that are constructed with a clay liner. The bogs are designed as closed systems with respect to water discharge, meaning all the water is collected in a tail water retention pond and recycled.

Armstrong described the cranberry business in Maine as consisting of about 30 primarily small growers, generally of less than two acres. There are a total of about 110 acres of cranberries in Maine. Jemison asked about the primary weed problems that Callisto is intended to address. Armstrong stated that broadleaf weeds are the biggest concern because they reduce yields more than grasses do.

Armstrong also provided information about the use of chemigation on Maine cranberries. Many growers currently use chemigation to apply insecticides. Growers minimize the volume of water applied when doing chemigation. Otherwise, the products would leach past the target area. Board members discussed whether there would be additional water quality risks caused by the application of Callisto using chemigation. Consensus was reached that risks should be negligible regardless of the application equipment so long as closed system of upland bogs was used.

Simonds/Stevenson: Moved and seconded approval of the 24(c) request

In favor: Unanimous

4. 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 dormant oil to hemlock trees infested with hemlock wooly adelgid that are growing within 25 feet of a body of water. At its March 27, 2009, meeting, the Board indicated that it did not want to exempt routine cosmetic spraying within the 25-foot zone, but would consider approval if the application in question was part of a broader range of management carried out with other agencies, such as the Maine Forest Service. The Board directed the staff to further research this matter and report back at the next meeting. The staff has determined that the proposed application is not part of any broader management program, and is therefore seeking additional guidance from the Board as to how to proceed.

Presentation By: Henry Jennings
Director

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

- Jennings reminded Board members that they had approved this variance request at the previous meeting contingent upon the application being part of a broader governmental eradication program. However, the proposed application was not part of a governmental program, so the Board needed to determine whether to approve the request in that context.

Board members discussed whether they felt comfortable with the request in light of the intent of the Chapter 29 provisions. They were mindful that every Chapter 29 variance decision at this stage sets a precedent. Members felt that horticultural oil was probably a relatively low risk product for use near surface water. They also believed that preserving mature hemlock trees along the shoreline would have environmental benefits.

Stevenson/Simonds: Moved and seconded approval of the variance request

In favor: Unanimous

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

An inquiry from the PropSys Company regarding landlords supplying roach traps to tenants has raised concerns about 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 establishing a more formal policy.

Presentation By: Henry Jennings
Director

Action Needed: Decide whether to establish a formal policy

- Jennings reminded Board members that this item was tabled from the previous meeting. The staff has not taken the position that giving pesticides away is unlawful. However, concern was expressed to the Board's staff recently about a large property management company systematically distributing pesticides to low income tenants, including some non-English-speaking tenants. Overuse of liquid sprays was of particular concern.

Board members discussed the concerns. There was some sentiment that certain baits and traps present minimal risks even for untrained applicators, but that liquid sprays can present risks when improperly applied. Consensus was reached to direct the staff to develop a draft policy for consideration at a future meeting.

6. Consideration of Staff Negotiated Consent Agreement with Kezar Falls Hardware of Parsonsfield

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 distribution of general-use pesticides by a dealer for almost six years after the dealer's license expired.

Presentation By: Raymond Connors
Manager of Compliance

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

- In Connors' absence, Assistant Attorney General Randlett summarized the circumstances leading up to the proposed agreement. The hardware store distributes general use pesticides and had not renewed its license since 2002. Jennings commented that past policy had been to assess a fine of twice the cost of complying with the law.

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

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with DSS Lawn Care & Maintenance of Skowhegan

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 a herbicide by a commercial lawn care company that did not have the required firm license or any licensed applicators to do the work.

Presentation By: Raymond Connors
Manager of Compliance

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

- In Connors' absence, Randlett informed the Board that this case involved a lawn maintenance company applying herbicides at a mall without a license. The agreement had been negotiated downward from the original proposal because the company asserted that the use of pesticides was not a normal practice.

Simonds/Jemison: Moved and seconded approval of the minutes

In Favor: Unanimous

8. Other Old or New Business

- a. Legislative Update—H. Jennings
 - Jennings reviewed a list of bill titles provided in the Board packet and described the current status of each. Board members discussed the status of LD 494, covering Chapter 22 of the Board’s rules. Jennings conveyed that concern had focused on the “detectable residue” standard and the buffer zone to SALOs for aerial spraying. The Board reached consensus that the standard of harm section is a priority to preserve through the legislative review process.
- b. Chapters 22 and 29 Variance Requests from RWC, Inc., of Westfield, Massachusetts, for railroad vegetation control—H. Jennings
 - For (b)–(e), Jennings alerted Board members to the series of variances issued consistent with Board policy.
- c. Chapters 22 and 29 Variance Requests from the Maine Department of Transportation for roadside vegetation control—H. Jennings
- d. Chapter 29 Variance Request from the Maine Department of Transportation for wetland mitigation activities—H. Jennings
- e. Chapter 29 Variance Request from The Woodlands Club of Falmouth, Maine, for pest management—H. Jennings
- f. E-mail from Nancy Oden of Jonesboro, Maine, regarding genetically modified corn and Germany’s recent ban on its cultivation and sale—H. Jennings
- g. E-mail from Steven Palmer of North Yarmouth, Maine, regarding the prohibition of retail sales of pesticides—G. Fish
 - Fish briefly discussed the Palmer e-mail. Board members believed public policy of this significance was better left to the Legislature.
- h. Other?
 - Jennings discussed the idea of a Board member reference book as was provided in the past. Board members agreed that a web page would be more useful because of the rapid rate of change.

9. Schedule and Location of Future Meetings

June 12 and July 10 or 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 settled on July 10 as the July meeting date and added August 28 and October 2 as future Board meeting dates.

10. Adjourn

- Jemison/Simonds: Moved and seconded that the meeting adjourn at 12:37 p.m.

In Favor: Unanimous