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STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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BOARD OF PESTICIDES CONTROL

November 6, 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, Jemison, Qualey, Ravis, Simonds, and Stevenson

1. Introductions of Board and Staff

The Board and Staff introduced themselves.

2. Minutes of the October 2, 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. Review of Comments on Proposed Amendments to Chapter 28

On September 9, 2009, a Notice of Agency Rulemaking Proposal was published in Maine’s daily newspapers, opening the comment period on proposed amendments to Chapter 28 of the Board’s rules—Notification Provisions for Outdoor Pesticide Applications. A public hearing was held on October 2, 2009, at the Hampton Inn in Waterville, and the written comment period closed at 5:00 PM on October 16, 2009. Fifteen people spoke at the public hearing and twenty-seven written comments were accepted by the close of the comment period. The Board will now review the rulemaking comments and determine whether to continue with the rulemaking effort and, if so, whether adjustments to proposed amendments are warranted.

Presentation by: Henry Jennings
Director

Action Needed: Determine whether to continue the rulemaking effort and, if so, whether adjustments are warranted

- ☑ Jennings alerted the Board to the staff memo describing the comment themes and the decision-making checklist included in the meeting folder. Simonds questioned which components of the statute may be amended by the Board through rulemaking versus which sections should remain exactly as found in the statute. Other Board members agreed that there was confusion on this topic. Jennings also agreed there was confusion on the subject, and attempted to explain his viewpoint. He asserted that issues discussed in the Board's letter to the Joint Standing Committee on Agriculture, Conservation and Forestry could be considered appropriate for revising, together with many of the finer details. However, other fundamental principles contained in the statute should be not be tinkered with at this time. If the Board has concerns about any of the fundamental components, it could convey those concerns in a cover memo with the provisional rule. Randlett concurred with Jennings' assessment.

Eckert noted that the idea of a public health emergency exemption was not contained on the decision-making checklist. There was a brief discussion of the merits of a broad emergency exemption and Board members agreed it was a good idea to include a broader exemption.

Stevenson and Simonds suggested consolidating the proposed amendments into two sections: one about mandatory disclosure and one outlining how to request information about pesticide use. Board members discussed the idea and also made suggestions about standardizing language detailing what information must be provided. There was consensus to include both suggestions in the provisional rule.

Board members then returned to the decision-making checklist, and began discussing some of the major points raised in the comments. They quickly agreed that it did not make sense to suspend the rulemaking process at this time. Next, Board members discussed the discrepancy between the definition of "land manager" in the statute and the proposed rule. It was agreed that the definition in the proposed rule should match the language in the statute.

The concern about how the 24-hour advance notification requirement would affect IPM was discussed at length. Board members agreed that the suggestion of "one calendar day," which was contained in the previous Chapter 28 proposal, makes more sense than a strict 24-hour advance notice requirement. They also discussed the idea of an exemption for IPM-related spray decisions made just before the application must occur. Simonds questioned the feasibility of such an exemption, given the vague nature of IPM practices. Jennings pointed out that over ninety percent of the people who have signed up for the registry have submitted an e-mail address indicating e-mail notification is an option. He suggested that land managers who are monitoring a pest issue could easily send out the advance notice when they believed that an application may be necessary, thereby covering themselves if the need arises suddenly. After a lengthy discussion, consensus was reached not to include an IPM emergency exemption, but to convey any Board concerns to the ACF in a cover memo.

Board members discussed concerns about the difficulty of complying with the 90-day advance notification, but they were already resigned to the notion that only the Legislature can address this

issue, and that the Board could relay their concerns in a cover memo. Next, they discussed whether the word “disclosure” is the most appropriate term to describe the information that land managers must distribute 90 days in advance. Randlett stated he felt “disclosure” was a good fit for the purpose. Board members decided to retain the word in the proposal.

Jennings brought up comments relating to logic for exempting aerial applications covered under Chapter 51. The staff originally suggested the exemption because it felt that wide-area spray programs would be a difficult fit for the 90-day disclosure requirement, and because Chapter 51 already contains a public health emergency exemption. However, the staff subsequently concluded that the exemption in Chapter 51 is too narrow, and that there are other wide-area spray operations not covered under Chapter 51 which would have a similar burden. Randlett also expressed concern about the scope of the exemption and the propriety of conflicting with the statute to that extent. Simonds agreed the exemption no longer made sense in light of the comments. Consensus was reached to remove the Chapter 51 exemption from the proposal.

Next, the Board discussed the idea of including a cover memo with the provisional rule when it is transmitted to the Legislative Council. Board members agreed a concise, easy-to-read cover memo—with bullets, for example—would be more likely to be read and have a greater impact than simply articulating concerns in the basis statement. Members agreed that their concerns about the burden imposed by the 90-day disclosure requirement, together with concerns about the impact on the registry on IPM decisions, should be major thrusts of the cover memo. Ravis stated he was uncomfortable with airblast sprayers being included in the mandatory disclosure section. Jennings asked about an appropriate process for receiving Board input for developing the cover memo. Randlett stated that it would be okay for Jennings to discuss the memo with Board members individually, but Board members should not talk among themselves except at advertised Board meetings.

4. Consideration of Staff Negotiated Consent Agreement with Sterling Insect-Lawn Service of Gorham

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 a lawn care pesticide application in which the licensed applicator acknowledged that he did not wear the required personal protective equipment.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the case involved a routine inspection with a licensed commercial applicator who was not wearing the personal protective equipment required by the product label. Since the company had previously received a warning letter for the same violation, the compliance

staff determined that a fine was appropriate in this circumstance. Ravis suggested it may be appropriate to require the company to develop and implement a plan for training their employees.

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

In Favor: Unanimous

5. Consideration of Staff Negotiated Consent Agreement with Commercial Property Real Estate Management Company 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 the application of herbicides by a property management 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

- Connors reported that this case involved an unlicensed company that admitted making herbicide applications to control weeds on parking lots and sidewalks. The company provided evidence that they also subcontract pesticide applications to licensed companies for larger projects, but sometimes did the work themselves for small-scale projects.

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

In Favor: Unanimous

6. Other Old or New Business

a. ?

- Hicks updated the Board on the status of the *Bt* corn product reviews. She is waiting for comments on the draft MAC report and has sent resistance studies to Andrei Alyokhin at Orono for review.

Simonds inquired about whether there would be a planning session this year. Board consensus indicated that there is support for a planning session.

7. Schedule and Location of Future Meetings

November 6, December 18, 2009, and January 22, 2010, 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?

- The Board added March 5, 2010, and April 16, 2010, as tentative meeting dates, and January 29, 2010, as a tentative date for a planning session.

8. Adjourn

- Ravis/Qualey: Moved and seconded that the meeting adjourn at 1:14 PM.

In Favor: Unanimous