



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
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BOARD OF PESTICIDES CONTROL

September 12, 2008

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: Dan Simonds, Carol Eckert, John Jemison, Chuck Ravis, Tom Qualey and Rich Stevenson

1. Introductions of Board and Staff

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

2. Minutes of the August 1, 2008, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Jemison questioned the wording of agenda item number eight, where reference was made to a private applicator's license that had expired. Qualey said he couldn't have seconded the minutes, since he wasn't present at that meeting; it was then determined that it was Walton who had made the second.

Jemison/Qualey: Moved and seconded approval of the minutes as amended

In Favor: Simonds, Jemison, Eckert, Stevenson, Qualey—Ravis abstained

3. DuPont Request for 24(c) Registration for DuPont™ Express® Herbicide with TotalSol for Control of Bunchberry in Lowbush Blueberries

At the August 1, 2008, meeting, the Board considered a request from University of Maine Cooperative Extension Crops Specialist David Yarborough and E. I. DuPont de Nemours and Company for a Special Local Need [24(c)] Registration to allow the use of DuPont™ Express® Herbicide with TotalSol (soluble granules) on lowbush blueberries. The Special Local Need label for Express Herbicide would allow for selective postemergence control/suppression of certain broadleaf weeds, primarily bunchberry.

In a lengthy discussion, Board members cited concerns about the lack of affinity of the active ingredient in Express to bind to soil particles, especially when considering the coarse soils in many blueberry growing areas of the state. Other questions were raised about the toxicity of the active ingredient. Since inadequate information was available to answer these questions at the meeting, the Board voted to table the matter until the following meeting, and to request additional data from the manufacturer to address these concerns. The staff has received additional information from the manufacturer and the Board will now review this material and reconsider the request for registration.

Presentation By: Wesley Smith
Pesticides Registrar

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

- The staff provided two memos addressing toxicology and groundwater concerns. Jadcak reviewed the bee toxicity and saw no issues. Jemison stated that none of the available leaching studies were conducted on soils comparable to Washington County. He discussed Board options for approving the request with monitoring and educational components. Smith suggested the option of approving the request with an expiration date of 12/31/09. Randlett confirmed the Board has the authority to suspend or cancel the registration. Simonds was interested in the Canadian rationale for approving the use. Consensus was reached to direct the staff and Cooperative Extension to work on educational and monitoring components. Fish suggested that growers should be encouraged to use spot rather than broadcast treatments when applying this herbicide. Jemison suggested asking David Bell of the Wild Blueberry Commission of Maine to include the spot treatment recommendation in the Commission's newsletter.

Jemison/Simonds: Moved and seconded approval of the 24(c) request with a 12/31/09 expiration.

In Favor: Unanimous

4. Discussion of Board Process for Submission and Review of 24(c) Registration Requests

Special Local Need [24(c)] registration requests are often submitted by applicants with a sense of urgency and the expectation that the request will receive immediate attention from the Board. However, it is not unusual for more time to be required to research the application and ask for missing or additional information. While the Board always tries to respond to these requests as quickly as possible, proceeding without all the necessary information can make it difficult or impossible for the Board to make an informed decision, resulting in further delays. The staff would like the Board to consider adopting a policy to ensure that there is adequate time to process and research these requests, while still fulfilling the needs of the applicants.

Presentation By: Wesley Smith
Pesticides Registrar

Action Needed: Decide whether to create a policy for processing 24(c) requests

- ☑ Simonds asked for an overview of the 24(c) process. Smith explained it has to do with adding minor local uses to a label in cases where the manufacturer can't justify the expense of the full FIFRA Section 3 label. If a food crop is involved, there must be an existing tolerance or exemption from tolerance. Simonds supported the intent of the policy to require necessary information before the consideration at a meeting. Questions can be addressed in advance. Randlett reminded Board members that they need to direct any questions to the staff. Discussion between Board members on the merit of the request may only take place at the public meetings. Consensus was reached to draft a policy for adoption at the next meeting, incorporating Smith's suggestions and addressing Randlett's concerns.

5. Continued Discussion About Approaches to Address Public Concerns About Aerial Spraying

The Board held a Public Information Gathering Meeting on aerial spraying and spray drift at its December 2007 meeting, and has discussed issues and ideas at each of its meetings since then, including site planning, sensitive areas, buffers, and standards of practice. At its August 1, 2008, meeting the Board listened to concerns about aerial spraying expressed by several residents of the Blue Hill area. Following discussion of standards of practice, the Board asked the staff to gather together everything discussed to date and mold it into a comprehensive proposal to bring back to the next meeting. The Board will now review the staff memo and continue its discussion on aerial spraying and drift.

Presentation By: Henry Jennings
Director

Action Needed: Review the staff memo and decide what steps to take next

- ☑ Jennings reviewed the staff memo outlining proposed changes to three different rule chapters. Board members preferred the sensitive area language utilized to describe schools. Use of the word "intended" versus "designed" also was favored. During a debate about whether livestock areas associated with residences should become part of the Sensitive Area Likely To Be Occupied (SALO) definition, Heather Spalding of the Maine Organic Farmers and Gardeners Association suggested using the term, "livestock management areas" as a compromise. The Board finally settled on including "livestock housing and management areas" into the definition of residential SALO.

The Board also discussed whether roads and/or rights-of-way should be defined as a SALO. A long discussion ensued about all manner of road and/or right-of-way. Consensus was reached to define only public roads as SALOs, and to combine this definition with the "all other" definition that followed in the staff memo.

Next Jennings reviewed proposed changes to Chapter 22. He alerted Board members to the two paragraphs in the current Chapter 22 that require applicators to consider a number of factors before spraying. The staff proposes to delete these two paragraphs. Board members agreed that such language is unenforceable and should not be part of the rule.

Jennings briefly mentioned a slight change to the requirement for calibrating sprayers. Board members concurred that current recommendations should be substituted for the existing language. There was a brief discussion about changing the requirement for identifying sensitive areas. Since the staff is proposing to require applicators to prepare a map, members discussed whether to include a transitional clause allowing a one-year phase-in period. Members concurred with the concept.

Board members moved on to the “Standard of Harm” proposal. Members indicated the staff should move forward with the proposal. Stevenson voiced concern about the criterion involving documented illness. Hicks explained that a rigorous level of medical documentation would be expected. Simonds added that it would be up to the Board to determine what constitutes adequate documentation. Board members also decided to expand the “Standard of Harm” criterion for off-target residues to include any type of sensitive area, not just those likely to be occupied.

Jennings brought up the question of buffers to SALOs. He stated he does not support buffers as a strategy for minimizing off-target deposition. However, the Board might institute a buffer provision as means of reducing the anxiety for residents living adjacent to agricultural sites that are sprayed by air. Board members discussed the pros and cons of establishing a mandatory setback to SALOS for aerial spraying. They finally agreed to propose a setback equivalent to two swath widths for a typical spray aircraft used in agriculture.

Board members next discussed the proposal to require aerial applicators spraying within 1,000 feet of a SALO to complete a site-specific checklist. Board members agreed to move forward with the concept. Simonds suggested a number of items that should be included in the checklist, such as whether the conditions are acceptable to spray the site in question, whether the sensitive areas had been identified and mapped, whether notification of adjacent landowners had been completed, confirmation of the correct site and whether there were any people in the vicinity of the spray site.

Finally, Board members discussed the consent section of Chapter 22. As currently written, consent to allow off-target deposition may be obtained from the landowner or lessee. Heather Spalding pointed out that the occupant isn’t always the owner or lessee, and that the issue of pesticide drift may be more important to the occupant than to the owner or lessee. Consensus was reached to revise the current language to require consent from both the landowner/lessee and the occupant, in those cases where they are different.

6. Consideration of Staff Negotiated Consent Agreement with Waterville Schools

On June 3, 1998, the Board amended its Enforcement Protocol to authorize the 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 failure of the school to follow the notification regulations and record-keeping requirements in Chapter 27 when herbicides were applied to athletic fields at two schools on a regular school day.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors reviewed the circumstances surrounding the incident. Students used the athletic fields shortly after an herbicide application. The school system was doing a good job with handling the indoor use of pesticides, but the person authorizing the outdoor application was not the IPM Coordinator, and was not aware of the BPC requirements.

Simonds suggested the incident could be used as an educational tool to alert other schools to potential problems. Ravis pointed out it was very difficult to get the attention of school management based on his experience training school staff on the requirements of the school IPM rule. He questioned whether the fine was sufficient.

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

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Scotts Lawn Service

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. In connection with the incident above, the applicator contracted by the Waterville Schools to do the herbicide applications failed to follow the label requirements which specified keeping people or pets away from the treatment area during application and preventing reentry to the area until the sprays had dried. In addition, the applicator failed to keep some of the required record-keeping elements.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors pointed out that this action arose from the same incident as the previous case. He stated commercial applicators should be aware of the Board regulations. Consequently, the staff sought a higher penalty in this case. Jemison expressed the view that the BPC fine policy was too low.

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

In Favor: Unanimous

8. Consideration of Staff Negotiated Consent Agreement with Hands of Thyme

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 company's unlicensed application of herbicides at a senior citizen hospice facility.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors provided an overview of the circumstances behind the case. A state inspector from Human Services observed a company employee applying herbicides to the plant beds. A check of the company's storage area revealed a significant inventory of pesticides. Connors stressed the need for the State to ensure there is not a financial incentive to non-compliance.

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

In Favor: Unanimous

9. Consideration of Staff Negotiated Consent Agreement with Belle Vue Farm

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 purchase and application of restricted-use pesticides by a vegetable grower with an expired applicator's license and expired certification.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that a program for checking applicator records uncovered this circumstance of a grower applying restricted-use pesticides without a license (expired license). Jemison reiterated his view that the fine policy was too low for current times. A short discussion ensued about fine levels.

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

In Favor: Unanimous

10. Consideration of Staff Negotiated Consent Agreement with Paris Farmers Union

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 multiple sales of restricted-use pesticides to six unlicensed pesticide applicators.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the compliance staff had uncovered a couple of instances in which this company sold restricted-use pesticides to unlicensed growers. This resulted in a comprehensive audit of the company's sales records which revealed sales of restricted-use pesticides to a total of six unlicensed growers. Jennings added that the staff viewed this lapse seriously, since licensed dealers are relied upon as a double check in the system.

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

In Favor: Unanimous

11. Other Old or New Business

- a. Variance Permit Issued to Green Thumb Lawn Service for Chapter 22—H. Jennings
 - Jennings alerted members to a repeat variance the staff issued to Green Thumb Lawn Service
- b. Update on Board member appointments—H. Jennings
 - Jennings observed that Simonds and Qualey were reappointed, and Ravis had been appointed to replace Walton. Aldridge's nomination was not confirmed and eventually withdrawn by the Governor's office.
- c. Letter to Nancy Oden—H. Jennings
 - Jennings' letter to Nancy Oden of Jonesboro, responded to Oden's concerns voiced over the phone and in numerous e-mails that neonicotinoid pesticides were responsible for colony collapse disorder (CCD). Jennings, in consultation with State Apiarist Anthony Jadcak, pointed out that research to date has not confirmed this, but points to other causes or a combination of things.
- d. New Correspondence from Nancy Oden—H. Jennings
 - Nancy Oden addressed the Board with her concerns about pesticide use. Oden began by saying that use of the pesticide Guthion in her area had killed all the bees and damaged her health. She also said that another pesticide, Movento, caused lobster shell damage, and this was known by area lobstermen. She described neonicotinoids as "bee-killer" pesticides and demanded that they be banned. She also said that the Board does "nothing substantive" to protect people and that it is hard to change anyone's mind whose livelihood is at stake. Jadcak was also present and addressed the issues and current research on the possibility of a connection between neonicotinoids and colony collapse disorder.
- e. Update on Colony Collapse Disorder—Anthony Jadcak
 - Jadcak pointed out that, with respect to the case in Germany cited by Oden, where neonicotinoids were evidently responsible for killing bees, that this was clearly not CCD, but was due to a formulation problem with the chemical. Regarding CCD, Jadcak said the evidence so far indicates the problem is related more to a parasite-pathogen relationship,

possibly exacerbated by pesticides. He said Penn State University is in the forefront of research.

f. Other?

12. Schedule and Location of Future Meetings

October 17, November 14, and December 12 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?

No additional meetings were scheduled.

13. Adjourn

Jemison/Simonds: Moved and seconded that the meeting adjourn at 3:54 PM.

In Favor: Unanimous