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GOVERNOR

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

March 5, 2010

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

1. Introductions of Board and Staff

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

2. Minutes of the December 18, 2009, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- Jemison pointed out that "data" was misused in the singular on page 3.

Jemison/Eckert: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Request from Maine Migrant Health Program to Help Support a Worker Protection Safety Training Program for Summer 2010

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Safety Education Program. During this past year, 170 individuals received training under this project. The Maine Migrant Health Program is planning to provide two health and safety outreach workers during the 2010 agricultural season. Funding to support this effort is being requested and the staff will point out that the total cost will be similar to the past year and that amount has been budgeted in the Board's FY '10 work plan.

Presentation By: Chris Huh, Plan Manager, Eastern Maine Development Corporation
Barbara Ginley, Executive Director, Maine Migrant Health Program

Action Needed: Discussion and determination if the members wish to fund this request

- ☑ Barbara Ginley and Christopher Huh were present and introduced themselves. They explained the purpose of the matching grant request to provide health and safety training to farm workers. The \$3,500 grant would be matched with AmeriCorps funding to pay two summer employees to train farm workers. The funding would be provided directly to the Maine Migrant Health Program this year instead of going to the Eastern Maine Development Corporation. Simonds commented that the partnership addresses a very important need.

Jemison/Ravis: Moved and seconded approval of the grant request

In Favor: Unanimous

4. Consideration of Monsanto's Application to Register Its MON 89034 × MON 88017-Containing *Bt* Cultivars

Monsanto has submitted an application to register its MON 89034 × MON 88017 cross. Since 89034 is a different event that has not been registered in Maine before, the staff held the registration until the Medical Advisory Committee report on the dietary safety of *Bt*-containing plant-incorporated protectants had been reviewed by the Board. The Board will now consider this application.

Presentation By: Lebelle Hicks
Staff Toxicologist

Action Needed: Decide whether to register the *Bt*-corn product

- ☑ Hicks pointed out that the registration probably should have been considered at the December meeting, but was inadvertently omitted. She added that the three remaining *Bt*-corn registration requests with five-percent refuge requirements had recently been withdrawn, so there are no more pending requests at this time.

Simonds expressed concern about the current process for reviewing and approving *Bt*-corn registration requests and suggested that the topic be discussed at the Board's planning session. Qualey was concerned about the withdrawal putting Maine growers at a disadvantage. Jemison stated it was simpler not having to adjust for products with a five-percent refuge. Bohlen pointed out that the product being considered contained a new protein needing evaluation.

Randlett reviewed the five determinations the Board must make in order to approve the Monsanto product. Board members considered the criteria and reached consensus that the application met all five.

Eckert/Qualey: Moved and seconded approval of the Monsanto registration request
In Favor: Eckert, Qualey, Jemison, Simonds, Stevenson, Bohlen and Eckert

Opposed: Ravis

Further discussion ensued about the benefits of *Bt*-corn products that contain multiple proteins. These crosses have efficacy over a broader range of insects and will be less prone to insect resistance. Ravis articulated his philosophical objections to the plant-incorporated protectant (PIP) technology. He had concerns about the registrants' control over research results, believed that the precautionary principle should be applied to this technology and thought the verdict is still out on the benefits. Qualey expressed concern about Maine agriculture's ability to compete without all the technology available to other growers. Bohlen suggested there is a need to regularize the PIP registration process.

5. Consideration of the Staff Negotiated Consent Agreement with the Town of South Berwick, Maine

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 application of an herbicide by an unlicensed municipal employee to control grass and weeds along sidewalks and curbs.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the Board's office received a call from a resident of South Berwick inquiring about the town's use of herbicides along the sidewalks. Upon investigation, it was determined that an unlicensed municipal employee made the application in question.

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

In favor: Unanimous

Eckert observed there are two consent agreements with municipalities on the agenda and wondered if additional outreach was warranted. She also inquired about the staff policy of informing complainants of the results. A written response is not currently standard, although verbal interaction sometimes occurs, especially when samples are taken. A short discussion followed with consensus to revisit the issue at the planning session.

6. Consideration of the Staff Negotiated Consent Agreement with Spruce Bay Farm and Landscape, Inc., Poland, Maine

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 application of an herbicide by an unlicensed applicator of a landscaping company to control weeds in a flower bed.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained the company's use of Preen pre-emergent herbicide in the plant beds to delay weed encroachment. No one from the company had a commercial pesticide applicator's license. Board members talked about ways to increase awareness of the licensing requirements. Fish related historical outreach efforts and suggested that part of the problem is that the public doesn't recognize that herbicides are regulated as pesticides, especially over-the-counter products branded as "weed control" products. Simonds suggested e-mailing municipalities as a reminder.

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

In favor: Unanimous

7. Consideration of the Staff Negotiated Consent Agreement with TruGreen Chemlawn of Manchester, New Hampshire

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 three applications of herbicides to residential lawns without providing advance notice to neighbors, as requested.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the pending consent agreement covers two complaints involving three applications made by TruGreen Chemlawn in which the neighbors requested advance notification and did not receive it. Simonds believed it was a significant violation and that TruGreen should submit a plan explaining what happened and demonstrating how they will rectify the situation. Since the consent agreement had already been signed, Randlett stated any additional requirements would need to be negotiated in a future consent agreement.

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

In favor: Unanimous

8. Consideration of the Staff Negotiated Consent Agreement with the Town of Randolph, Maine

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 application of an herbicide by an unlicensed municipal employee.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that this case was essentially similar to the Berwick incident except that the applicator in the Randolph incident actually had a private pesticide applicator's license.

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

In favor: Unanimous

9. Consideration of Board Policy Describing Non-broadcast Pesticide Applications Allowed Under Chapter 29, Section 6

Chapter 29, Section 6, of the Board's rules, prohibits most broadcast applications of pesticides within 25 feet of certain defined surface waters. Pesticide applications other than "broadcast" applications are not prohibited. The Board will consider adoption of a policy that clarifies what types of pesticide applications are not considered "broadcast" applications for the purposes of Chapter 29.

Presentation By: Henry Jennings
Director

Action Needed: Approve/Disapprove the Draft Policy

- Jennings reviewed the changes to the draft policy and described the meeting with two representatives from the Maine DEP. Simonds suggested a slight wording change to the first condition, but later retracted it upon Randlett's suggestion. He also pointed out that the policy should probably direct questions from the unorganized territories to LURC.

Jemison/Bohlen: Moved and seconded approval of the policy for determining allowable pesticide applications within the 25-foot setback to surface waters

In favor: Unanimous

10. Review of 2009 Complaint Summary

The report by the Stakeholders Committee on Aerial Spraying and Drift included a recommendation for the Board to produce and review an annual summary of complaints received by the Board's office. The staff produced a draft report for calendar year 2008 which the Board reviewed and then made suggestions for modifying the format. Those modifications have been incorporated into the 2009 summary of complaints which the Board will now review.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: None—informational only

- Connors provided an overview of the annual complaint summary which he modified based on comments from last year. Hicks mentioned that the calls she receives are not reflected in the table. Members generally supported the complaint summary and found it useful, especially for identifying trends. Simonds suggested investigating a simple phone log system to track subject trends for calls to the Board. Fish commented that technical support for programming is a weak point in state government right now.

11. Review of 2009 *Bt*-Corn Inspection Summary

In July of 2007, the Board first approved product registration requests for several *Bt* field corn products. Rules regulating the use of plant-incorporated protectants were finalized in March of 2008. The Board directed the staff to carefully monitor the use of *Bt* corn during the first few years of use to ensure that growers are adhering to requirements intended to prevent insect resistance and pollen drift. The staff has summarized the 2009 *Bt*-corn inspection results and the Board will now review them.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: None—informational only

- Connors introduced the overview of *Bt*-corn inspections and noted a vast improvement in compliance with the record-keeping requirements. The total acreage was down slightly from 2008. Nine acres of sweet corn were planted. Board members were pleased with the high level of compliance with the requirements. Staff inquired about what level of oversight would be appropriate in future years. Consensus was reached that not every grower needs to be checked every year. Members believed *Bt* corn should remain as a compliance priority, but emphasis could shift to new growers using the technology for the first time.

12. Other Old or New Business

a. Legislative Update—H. Jennings

- Jennings reported that LD 1239, the bill to fund pesticide education, was amended to provide a one-time allocation of \$50,000 from the Board's dedicated account to support pesticide education.

LD 1547, the bill on notification, resulted in a three-way divided report. Jennings distributed all three reports and focused his review on the majority report which eliminates the pre-season notification, directs the Board to work toward a single, comprehensive registry, adjusts the notification distance for fruit trees and Christmas trees, exempts applicators who must comply with other notification provisions in Chapters 28 or 51, and

includes an allowance for notifying registry participants on the same day as the application, in urgent situations. The Board must report back next February on recommended notification distances.

Simonds described his experience in interacting with the ACF committee. He tried to convey the Board's desire to receive policy guidance on the broader issues, while allowing the Board to work out the details. Simonds believed the Board's decision to drop the applicators' first outreach responsibility resulted in the Legislature's involvement in the issue.

Eckert observed that if the Legislature does not enact a bill to modify Chapter 378, last year's statute will remain in effect. Bohlen commented that significant resources would be necessary to develop the technological tools necessary to automate the registry process. Simonds felt it was important to determine what a comprehensive registry would look like first. Simonds expressed his interest in improving the efficiency of the BPC's interaction with the ACF and in the process of developing pesticide public policy. He suggested arranging a meeting between Board members and ACF members when the new Legislature is seated.

b. E-mails from Nancy Oden—H. Jennings

- Jennings informed the Board about the e-mails received from Nancy Oden. Eckert stated that peer-reviewed research papers are necessary to draw any conclusions. Tony Jadcak, State Apiarist with the Maine Department of Agriculture, was present, and offered his assessment of the latest information on Colony Collapse Disorder (CCD). He felt the court action on Movento was the result of technical mistakes by EPA and was not indicative of its effects on bees. Jadcak's view is that CCD is caused by the complex interaction of a variety of stressors on bee colonies. The mite parasites and the viruses they transmit are at the core of the problem, and a variety of other factors may be contributing to the stress also, including diet, constant transit and possibly pesticide exposure. There is a significant research effort currently underway and more information should be available within the next few years.

c. Discussion about the March 26, 2010, Planning Session

- Jennings reminded Board members that the planning session is scheduled for March 26 in Fairfield. He pointed out that the session is being advertised due to uncertainty about conformance with Title 5. Qualey expressed his preference for a closed meeting between Board and staff. Randlett reiterated his concern about complying with state law.

d. Other?

- Fish alerted the Board to the Canadian movement to de-couple pesticides from fertilizers for lawn products. Board members generally thought it was a good idea.

Randlett updated the Board on the State Attorney General's petition to disclose inert ingredients on pesticide labels. EPA has begun a rulemaking process to require disclosure.

Jemison mentioned recent concerns about the use of Milestone (aminopyralid) on pastures. The active ingredient can be found in manure and is stable to composting, potentially creating a phyto-toxicity concern when the manure is used on cropland. Lauchlin Titus stated there are prominent warnings on the product label and growers are generally careful about the use of this product.

13. Schedule and Location of Future Meetings

March 26 is the tentative date for the Board's planning session, and April 16, 2010, is the tentative date for the next Board Meeting. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- Board members added May 14, June 18 and July 23 has tentative Board meeting dates.

14. Adjourn

- Qualey/Ravis: Moved and seconded that the meeting adjourn at 12:58 PM.

In favor: Unanimous