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MEMORANDUM

DATE: March 23, 2010
TO: Board Members
FROM: Henry Jennings, Director
SUBJECT: Board Process for Registering Pesticides Including Plant Incorporated Protectants

Maine has required pesticides to be registered by the state prior to distribution dating back possibly as far as 1948. The registration process was originally designed to ensure that consumers got their money's worth. Initially, the Department of Agriculture registered pesticides in Maine. However, in 1980, the Legislature created the current Board comprised of members of the public to replace the existing state agency Board. Shortly thereafter, authority to register pesticides was transferred to the newly constructed Board.

The statute governing procedures for pesticide registration in Maine was updated in 1975 to reflect the new risk/benefit standard contained in the recently amended Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The updated statute can be found in Title 7, Section 607 and is copied at the end of this document. With the lone exception of Plant Incorporated Protectants (PIPs), the Board has never gotten involved in the pesticide registration process, deferring that responsibility to the staff. And because Maine's standards essentially model the federal requirements, the staff has historically approved all other pesticide registration requests – about 8500 annually – as long as the product is federally registered. The staff reasons that EPA has the resources to comprehensively evaluate pesticide risks, while the BPC staff focuses on issues specific to Maine. Essentially the staff has assumed that any pesticide that qualifies for federal registration also qualifies for state registration since the standards are quite similar. The BPC conducts product reviews as needed when concerns arise specific to Maine conditions.

During 1994, the Board received its first request to register a PIP, the short-lived *Bt* potato. At that time, due to the novel nature of PIPs, the Board elected to ask its Medical Advisory Committee (MAC) to review health risks and commissioned a separate committee to review insect resistance concerns. Following these reviews, the Board decided to register the *Bt* potato and members adopted a verbal policy to review future PIP registration requests prior to registering them.

This verbal policy led to the current structure whereby the health and environmental concerns of PIPs are reviewed and each PIP registration must be approved by the Board individually. Since there have been no substantive differences between the last few registration requests and those that were previously approved, the logic and efficiency of the current approval process has been called into question. Why should the Board take the time to consider individual product registration requests that do not present risks different from those they have already considered, especially in light of the 8500 other registration requests that the Board never reviews? A more logical approach might to be to defer PIP registration approvals to the staff as long as they are substantively similar to those already approved by the Board. If new product applications with different environmental or public health

concerns are submitted, the staff would seek Board input prior to registering those. The staff is open to alternative ideas and procedures as well.

§607. Registration

1. Conditions requiring registration. A pesticide may not be distributed in this State unless it is registered with the board in accordance with the provisions of this subchapter, except that registration is not required if:

A. A pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and is used solely at that plant or warehouse as a constituent part to make a pesticide that is registered under the provisions of this subchapter; or [2005, c. 620, §6 (NEW).]

B. A pesticide is distributed under the provisions of an experimental use permit issued by EPA. [2005, c. 620, §6 (NEW).]

[2005, c. 620, §6 (AMD).]

2. Contents of statement made by applicant. The applicant for registration shall file a statement with the board, which must include:

A. The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than applicant's; [1975, c. 382, §3 (NEW).]

B. The name of the pesticide; [1975, c. 382, §3 (NEW).]

C. Other necessary information required by the board; and [2005, c. 620, §6 (AMD).]

D. A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA. [1975, c. 382, §3 (NEW).]

[2005, c. 620, §6 (AMD).]

3. Submission of formula. The board, when it determines it necessary in the administration of this subchapter, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

[2005, c. 620, §6 (AMD).]

4. Test results. The board may require a full description of all tests made and the results of those tests on any pesticide not registered pursuant to FIFRA, Section 3 or on any pesticide on which restrictions are being considered by the board. In the case of renewal of registration, the board may require a statement only with respect to test result information that is different from that furnished when the pesticide was registered or last reregistered.

[2005, c. 620, §6 (AMD).]

5. Power to require other information. The board may by rules adopted under section 610 require the submission of other necessary information.

[2005, c. 620, §6 (AMD).]

5-A. Confidentiality. Notwithstanding Title 1, section 402, data submitted pursuant to subsections 3, 4 and 5 that have been determined confidential by the Administrator of the United States Environmental Protection Agency in accordance with 7 United States Code, Section 136h (2007) are confidential and may not be available for public inspection.

[2007, c. 597, §8 (AMD).]

6. Registration fee; validity. The applicant desiring to register a pesticide must pay an annual registration fee of \$150 for each pesticide registered for that applicant. Annual registration periods expire on December 31st or in a manner consistent with Title 5, section 10002, whichever is later.

[2007, c. 466, Pt. A, §25 (RPR).]

7. Renewal of registration. Registrations must be renewed annually prior to January 1st. The board shall mail forms for reregistration to registrants at least 30 days prior to the due date.

[2005, c. 620, §6 (AMD).]

8. Approval of application for registration.

[2005, c. 620, §6 (RP).]

8-A. Approval of application for registration. The processing of an application for registration is governed by this subsection.

A. The board shall consider the required information set forth under subsections 2, 3, 4 and 5 and shall register a pesticide if it determines that:

- (1) Its composition warrants the proposed claims for it;
- (2) Its labeling and other material required to be submitted comply with the requirements of this subchapter;
- (3) It will perform its intended function without unreasonable adverse effects on the environment;
- (4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment; and
- (5) A need for the pesticide exists. [2005, c. 620, §6 (NEW).]

B. If, within 180 days from the date the completed application for registration is submitted, the board fails to act upon an application for registration of a pesticide that has been certified by EPA, the pesticide is deemed registered under this chapter unless the board issues a written statement containing the reasons for the failure to act upon the application. The statement of the board is deemed a refusal to register pursuant to section 609. [2005, c. 620, §6 (NEW).]

C. Paragraphs A and B do not apply if the registrant fails to provide any information required to be submitted under this subchapter or does not provide other information requested by the board in order to determine whether the pesticide should be registered.

Nothing in this paragraph affects the rights of the board to make further inquiry regarding the registration of a pesticide or to refuse reregistration, to suspend or revoke registration or to otherwise restrict or condition the use of pesticides in order to protect public health and the environment. [2005, c. 620, §6 (NEW).]

D. Prior to registering a pesticide for a special local need, the board shall classify the uses of the pesticide for general or restricted use in conformity with FIFRA, Section 3(d). The board may not make any lack of essentiality a criterion for denying registration of any pesticide. When 2 pesticides meet the requirements of this paragraph, the board may not register one in preference to the other. [2005, c. 620, §6 (NEW).]

E. The board may establish such other requirements by rule in accordance with section 610 as are necessary to carry out the provisions of this subsection. [2005, c. 620, §6 (NEW).]
[2005, c. 620, §6 (NEW) .]

9. Adverse environmental effects. If, at any time after the registration of a pesticide, the registrant has additional factual information regarding unreasonable adverse effects of a pesticide on the environment, the registrant shall submit that information to the board.
[2005, c. 620, §6 (AMD) .]