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

July 10, 2009

Harley D. Welch Agricultural Center, Maine Potato Board Conference Room, 744 Main St., Presque Isle

MINUTES

8:00 AM

Present: Eckert, Qualey, Jemison and Simonds

1. Introductions of Board and Staff

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

2. Minutes of the June 12, 2009, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Qualey/Jemison: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Public Forum

At this time, the Board invites anyone interested to address its members with questions or concerns about any pesticide-related issues.

Presentation By: Henry Jennings
Director

Action Needed: none required

Eckert introduced the topic and invited anyone to offer comments or ask questions. No one from the audience spoke during this portion of the meeting.

4. Continuing Discussion of Notification Requirements for Outdoor Pesticide Application

Public Law 2009, Chapter 378, LD 1293, An Act To Require Citizen Notification of Pesticide Applications Using Aerial Spray or Air-carrier Application Equipment, was passed by the Legislature and signed into law by the Governor on June 22, 2009; it will be effective on September 12, 2009. At its June 12, 2009, meeting, the Board discussed, in detail, whether Chapter 28 needed amendment to better coincide with LD 1293. Consensus was reached that the two could stand alone and Chapter 28 could be amended in the future if necessary. The Board believed it was prudent to focus on getting a registry up and operational first. However, since the June 12 meeting, the staff has concluded that some rulemaking would be necessary to implement LD 1293. In addition, significant questions have come to light that may prompt revisions to LD 1293 prior to next season. Given the current uncertainties, the Board will discuss what regulatory elements constitute a workable notification law and whether it is prudent to move forward with rulemaking at this time.

Presentation by: Henry Jennings
Director

Action Needed: Discuss ideas for amending Chapter 28 to implement the legislative intent of LD 1293

- Jennings directed members to the memo and attached list of concerns in their meeting folder. Board members first discussed operational details necessary to get a registry up and running. They debated the merits of a floating registry, but eventually concluded it is more practical to establish an annual deadline for being included on the registry around mid-March. The staff could then distribute the registry prior to April. David Bell agreed such a system would be preferable for blueberry growers because their schedules become quite hectic during the growing season. Members also agreed that the informal request for notification (Chapter 28, Section 1) should be adjusted so people living up to 1,320 feet from the target area would be eligible for notice about aerial and air carrier applications. As an observation, Randlett pointed out that the registry is a public record and would be available to anyone upon request.

Board members then discussed some of the concerns with LD 1293 that were outlined in the staff memo. There was consensus that LD 1293's focus on abutting properties instead of the conflicting land uses presents scenarios in which notification will be both burdensome and meaningless. There was consensus to recommend that the mandatory notification requirement should be triggered when the pesticide application site is in close proximity to the areas of likely human activity, instead of the standard contained in LD 1293 which is triggered when pesticides are applied anywhere on an abutting property. They also discussed the language in LD 1293 that requires that the written notice be provided to building residents and managers. Identifying such individuals could present challenges for applicators. Members suggested that written notice mailed to the resident of the address listed in the municipal tax records would be a more practical approach.

The Board discussed the concern about the feasibility of doing pesticide applications that are not reasonably foreseeable 90 days in advance. Members concurred that a two-tiered approach would offer improved flexibility. Under this approach, land managers would have two options. They could inform adjacent residents of their right to be notified 90 days in advance of spraying, or they

could simply notify all adjacent residents of each individual application. The former would be the preferred method when land managers know well in advance that aerial or air carrier applications will be made, with the latter option available when such pre-planning is impractical.

Eckert voiced a concern about a lack of a public health emergency exemption in LD 1293. Heather Spalding questioned whether that authority may already exist elsewhere. Randlett stated there may be other authority, but he recommended that the Board specify such authority if it believes it is important.

Board members discussed the feasibility of doing commercial tree and mosquito work with airblast sprayers. Members concluded it would be nearly impossible to do that type of work, since these companies generally wouldn't know who their customers would be 90 days in advance. They suggested this observation be conveyed to the ACF Committee.

Next, they discussed the feasibility of wide-area spray programs, such as budworm, gypsy moth, browntail moth or a potential mosquito control program. Again, Board members agreed such programs may be very difficult to operate in conformance with LD 1293. Members asked that the ACF committee be apprised of Chapter 51 of the Board's rules which specifies notification provisions for those types of applications.

The written notice required under LD 1293 specifies that applicators provide a pesticide application schedule. Members surmised that the ACF Committee clearly hadn't contemplated that the specific application dates would be known 90 days in advance. Moreover, the concept of a spray schedule is contrary to modern pest management practices which dictate that pesticide applications be made in response to pest population information obtained from scouting or predictive models. Members agreed that a general overview of a typical spray season was the most appropriate information to convey to interested neighbors.

The Board briefly discussed the language that requires that the written notice be reissued if any of the original information changes. It was noted that new products are entering the marketplace constantly. Historically, neighbors are most interested in what type of equipment will be used rather than minor changes to the list of potential pesticides. Members agreed that it will be common for the list of pesticides to change slightly from year to year, or even within a growing season, necessitating reissuance of the written notice. They asked that this observation be forwarded to ACF Committee as well, noting that it's the type of equipment that generally influences whether someone wants pre-notification.

Residents of some buildings are likely to be seasonal or rental residents. Board members discussed this concern briefly but did not believe it was likely to be a major impediment to the intent of the bill. A letter addressed to the resident of the tax record address (discussed previously) might alleviate this concern.

Board members agreed that the scientific name of the pesticide(s) to be applied is probably not meaningful to most people. There was consensus that the common name of the active ingredient is probably what was intended. They also agreed that details about the required records should be

specified—such as how long they are maintained. Such details could be specified in the statute or in rule.

Jennings pointed out a minor disconnect in the section describing how notice may be provided. It allows land managers and applicators several options for providing notice, but doesn't specify that the method needs to be workable for the person on the registry. Board members agreed there should be a way for registry participants to specify a preferred method of contact. Board members also agreed that the details about the use of phone calls should be further described, as in the BPC's current registry. If no one answers, or a young child answers the phone, then another phone call or other notice method is warranted.

The Board discussed the language in LD 1293 that specifies a description of the property to be listed on the registry. The staff is concerned about long narrative descriptions of properties and recommends use of the physical address as a more concise approach that is also usable by Internet mapping software. The Board agreed with this recommendation also.

The Board directed the staff to draft a letter to the ACF Committee listing their observations and suggestions. State Senator Roger Sherman supported this approach. The letter will need to be circulated and reviewed via email since the Board does not meet again until August 28.

5. Discussion of the Structure and Operation of LD 1293's Required Notification Registry

Public Law 2009, Chapter 378, LD 1293 requires that the Board "shall develop and maintain a registry of residents and property owners in the State who request to be placed on a registry for the purpose of receiving information on the outdoor application of pesticides using aircraft or air-carrier equipment... ." While the law specifies some of the information that must be submitted, it leaves the details of how the registry should actually be structured and operated to the Board to develop. The Board will now discuss these issues.

Presentation by: Henry Jennings
Director

Action Needed: Discuss the structure and operation of the notification registry

- Board members approved of the web-based sign-up approach summarized by the staff. They agreed that the physical address would be the most useful location information for individuals signing up for the registry. There was no consensus on the best means of distributing the registry, but Board members agreed that it need not be specified in the rule, allowing flexibility for the system to evolve down the road.

6. Discussion of the Definition of Spot Treatment with Respect to Chapter 29

Section 6 of Chapter 29 prohibits broadcast application of pesticides within 25 feet of surface water, but doesn't prohibit spot treatments in that area. However, the Board has never defined "spot treatment." The staff has prepared a memo detailing examples of how "spot treatment" is defined by other agencies for other purposes and is seeking guidance on developing a definition.

Presentation by: Raymond Connors
Manager of Compliance

Action Needed: Provide guidance to the staff

- Connors reviewed the examples found through his Internet search. These limited spot treatments, either through a maximum area, or through a percentage of the area. Jemison described an incident he had observed near the Penobscot River involving Japanese Knotweed in which the same question arose for him. It wasn't really a broadcast application, but it wasn't really a "spot" treatment either. Jennings suggested that part of any definition might include the principle that the application is directed at specific target pests. He gave the example of woody plant spraying on a transmission line, and how applicators are trained to target only woody plants that have the potential to grow tall enough to pose a threat to the power lines. Heather Spalding suggested that any environmental damage should be a consideration in determining what is allowable.

Simonds proposed as a starting point a definition that requires that the application be directed at target pests, and for the area of interest (the area where the pest infestation is a problem), no more than 50% of that area is sprayed. He emphasized the need for flexibility to make case-by-case assessments. Consensus was reached to direct the staff to draft a definition consistent with Simonds' suggestions.

7. Board Discussion of Chapter 27 with Respect to School Farms and Greenhouses

A recent visit to a greenhouse at a school in Portland revealed an insect infestation that the school felt it could not treat due to a concern that it would not be in compliance with Chapter 27. The staff would like the Board to consider whether to allow some flexibility for school farms and greenhouses with respect to Chapter 27. At its June 12, 2009, meeting, the Board discussed this issue and came to the conclusion that distant properties not directly connected to schools, such as school farms and greenhouses, might not have been considered in the development of Chapter 27. The Board reached consensus that a policy covering notification and application method in these facilities might be viable and it directed the staff to develop a policy and bring it back for review at a future meeting.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Decide whether or not to adopt the proposed policy to allow some flexibility with respect to Chapter 27 for school farms and greenhouses

- The Board supported developing a formal policy to reduce the notification requirements for certain agricultural activities at schools in which the activity takes place in an area where most students, staff and parents generally don't visit. Fish agreed to prepare a formal policy for the next meeting.

8. Board Discussion on Preventative Maintenance with Respect to Treatment for Bedbugs

With the resurgence of bedbugs, the staff is hearing that some applicators have developed systems for notification that effectively allow them to contract for routine pesticide application. Chapter 26 was developed in part to eliminate this type of practice. The staff would like to bring this to the Board's attention and see if it thinks some action is needed, including the establishment of a policy or possible changes to Chapter 26.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Decide if further action is needed in this matter

- Board members acknowledged that spraying on a regular schedule is contrary to modern pest management principles, but they were concerned about instituting impediments for bedbug treatments, especially in light of the economic consequences for hotels, etc. Consensus was reached to do nothing at this time.

9. 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. At its May 8, 2009, meeting, the Board discussed this issue and decided a more formal policy was necessary to cover this issue. The staff was directed to draft a policy and bring it back for Board review. The Board will now review the draft policy.

Presentation By: Henry Jennings
Director

Action Needed: Decide whether to adopt the formal policy

- Fish reviewed the draft policy which discouraged landlord distribution of pesticides with a high potential of occupant exposure. Board members were supportive of the draft policy. Eckert suggested adding rodenticides to the list of products the Board is discouraging landlords from distributing. Fish agreed to bring a formal policy to the next Board meeting.

10. Other Old or New Business

a. Variance permit for Green Thumb Lawn Service, Brewer, Maine, for 2009 Vegetation Management Program in City of Brewer and Town of Veazie—H. Jennings

- Jennings alerted Board members that a repeat variance was issued.

b. Other?

- Connors reviewed a question relating to whether Bt corn growers are required to include a map with their records, or if a map is only required when sensitive crops are being grown within 500 feet. Randlett interpreted the rule to mean that a map was only required if sensitive crops are being grown within 500 feet. Board members agreed that interpretation was reasonable.

11. Schedule and Location of Future Meetings

August 28, October 2, November 6, and December 11, 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?

- No additional dates were added.

12. Adjourn

- Jemison/Qualey: Moved and seconded that the meeting adjourn at 11:50 a.m.

In Favor: Unanimous