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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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SETH H. BRADSTREET III
COMMISSIONER
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DIRECTOR

BOARD OF PESTICIDES CONTROL

August 27, 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)

AGENDA

9:30 AM

1. Introductions of Board and Staff
2. Minutes of the July 23, 2010, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

3. Continuation of Board Discussions on the Development of a Comprehensive Notification Registry

On April 1, 2010, Governor Baldacci signed Public Law 2009, Chapter 584, LD 1547, An Act To Revise Notification Requirements for Pesticide Applications Using Aircraft or Air-carrier Equipment. Among other things, the new law directs the Maine Board of Pesticides Control to establish a comprehensive pesticide notification registry which encompasses both existing registries and is expanded to include other types of pesticide application equipment. As the first step in the process, the Board hosted five Public Information Gathering Sessions at different locations around the state. The Board will now continue deliberations about development of a comprehensive registry, with emphasis on the following areas:

- a. The feasibility and advisability of requiring signs around treated sites
- b. A review of Chapter 51 and which elements should be included in a consolidated rule
- c. Review of the current Board Working Paper and the proposed applicability of the registry
- d. Discussion of the report that will go to the Legislature

Presentations By: Henry Jennings
Director

Action Needed: Provide Input to the Staff on Registry Development

4. Review of the Market Decisions Report on the Survey of Mainers About the Registry

Public Law 2009, Chapter 584 requires the Board to report to Legislature no later than February 1, 2011, on five topics, including the effectiveness of the public awareness activities mandated by the statute. The staff contracted with Market Decisions of Portland to survey Maine residents about whether they had heard of the registry. The results of that survey will be presented and the Board will discuss the future course of the campaign.

Presentation By: Paul Schlein

Action Needed: Provide Guidance to the Staff

5. Board Review and Discussion of Its Statutory Purpose and Policy Statements

During the course of the Board's deliberations on the development of a comprehensive notification registry, questions were raised about whether the Board is familiar with and adhering to its statutory purpose and policy statements. The Board will now review and discuss its policy statements and how they affect its process of public policy development.

Presentation by: Mark Randlett
Assistant Attorney General

Action Needed: None—Informational Only

6. Consideration of the Board Policy Clarifying the Applicability of Chapter 26, Standards for Indoor Pesticide Applications and Notification for All Occupied Buildings Except K-12 Schools

Chapter 26 of the Board's rules was first adopted in 2006 and amended in 2008. The rule was intended to regulate the use of pesticides indoors, because the airtight environment can increase the risk of exposure for airborne pesticides. However, a recent inquiry revealed that Chapter 26 applies to pesticides applied inside a structure, even if the structure has no walls. The Board will now consider whether it's appropriate to adopt a policy clarifying the applicability of Chapter 26.

Presentation by: Henry Jennings
Director

Action Needed: Determine whether to adopt a policy

7. Consideration of the Staff Negotiated Consent Agreement with the Petro's Ace Hardware of Auburn

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 unlicensed distribution of general use pesticides during 2008, 2009 and 2010.

Presentation By: Raymond Connors
Manager of Compliance

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

8. Consideration of the Staff Negotiated Consent Agreement with the Advantage Landscaping of Portland

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 an unlicensed landscaping company making commercial pesticide applications.

Presentation By: Raymond Connors
Manager of Compliance

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

9. Discussion of Concerns About Unlicensed Commercial Agricultural Producers

At the recent Board Planning Session, concerns were raised about the evolution of state and federal pesticide laws which now allow many commercial growers to apply pesticides to their crops and/or livestock without a pesticide applicator's license or any formal training. The basic standard for requiring a private pesticide applicator's license—triggered by the use of a restricted pesticide—was established in the early 1970s, and has never been updated by the federal EPA. Since that standard was established, a number of legal requirements have been imposed and a series of public health and environmental risks have been identified that were not well documented in the 1970s. Some members of the agricultural community have questioned whether the existing standard is still appropriate. Board members discussed this issue at their June 25, 2010, meeting, and will continue those discussions now.

Presentation by: Henry Jennings
Director

Action Needed: None—Discussion Only

10. Update on the Clean Water Act/National Pollution Discharge Elimination System Impact on Pesticide Applications

In 2009, the Sixth Circuit Court of Appeals vacated EPA's interpretative rule which asserted that pesticide applications made in compliance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are not subject to the Clean Water Act (CWA) and its National Pollution Discharge Elimination System's (NPDES) permitting requirements. Consequently, beginning in 2011, the court ruling will require NPDES permits for pesticide applications made in or around surface water when excess pesticide or residue is deposited in jurisdictional waters. EPA has been developing a "general permit" that pesticide applicators can work under in some states. States like Maine, which have been delegated authority to administer the NPDES program, will need to issue their own permits. The staff will review some of the basic concepts and parameters of NPDES program in Maine.

Presentation by: Henry Jennings
Director

Action Needed: None—Informational Only

11. Other Old or New Business

- a. Update on the first meeting of the *ad hoc* Public Health Committee—C. Eckert
- b. Other?

12. Schedule and Location of Future Meetings

October 1 and November 5 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?

13. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Paul Schlein, Public Information Officer, at the Board's office. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.