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MAINE BOARD OF PESTICIDES CONTROL INTERIM ENFORCEMENT POLICY ON THE ON THE PRODUCTION OF PESTICIDES FOR PERSONAL USE

ADOPTED DECEMBER 10, 2010

Issue:

May a person lawfully produce a pesticide for his own use without registering his product in the State of Maine?

Policy:

Generally, a person may lawfully produce a pesticide for his own use without registering his product in the State.

Discussion:

Title 7 M.R.S. § 607 provides that a pesticide may not be distributed in this State unless it is registered with the Board in accordance with the provisions of Title 7 M.R.S. subchapter 2-A. In interpreting this section with respect to pesticides produced for personal use, the Board finds FIFRA Compliance Program Policy No. 3.5 to be informative. In that policy statement, the EPA analyzed the issue in the context of product distribution. Specifically, section 3 of FIFRA requires a pesticide producer to register his product only if he sells or distributes the pesticide. Furthermore, the regulations (40 CFR Part 167) which address the registration of pesticide producing establishments under FIFRA Section 7 state that persons who produce pesticides solely for application by themselves are not required to register their establishments. Thus, a person who produces a pesticide solely for personal use is not required under FIFRA to register the pesticide or the producing establishment.

The US Environmental Protection Agency considers any application of an unregistered pesticide for other than personal use to be distribution of an unregistered pesticide, a violation under Section 12(a) (1) (A) of FIFRA. This includes applying an unregistered pesticide to another person's property for other than monetary consideration. Furthermore, a person applying an unregistered pesticide for hire, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served, would be considered a distributor.

The Board finds that the EPA analysis provides a useful framework for determining whether a pesticide produced for personal is subject to the registration requirements of § 607 and adopts it as an interim enforcement policy.