



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

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

1. Introductions of Board and Staff

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

2. Minutes of the October 1, 2010, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

- Ravis/Jemison: Moved and seconded approval of the minutes

In Favor: Unanimous

3. United Phosphorus, Inc., Request for a FIFRA Section 24(c), Special Local Need Registration for Asulox[®] Herbicide (EPA# 70506-139) for Control of Bracken Fern on Low Bush Blueberries

At the request of University of Maine Blueberry Extension Specialist Dr. David Yarborough, United Phosphorus, Inc. is supporting a Special Local Need [24(c)] Application for Asulox Herbicide (EPA# 70506-139) to control bracken fern on low bush blueberries. This 24(c) label would allow for spot treatment of bracken fern during the non-bearing year only.

Presentations By: Henry Jennings
Director

Action Needed: Approve/Disapprove 24(c) Registration Request

- ☑ Jennings stated that Maine previously had a 24(c) for Asulox in the late 1990s when it was registered by another company. The previous registrant did not renew the 24(c) when potential groundwater concerns surfaced. The active ingredient has an unusually high solubility, but the USDA Pesticide Screening Tool (WIN-PST) rates the leachability for the sodium salt formulation as “very low” for spot treatments. Jennings believed that dietary exposure would not be an issue, since the use is restricted to the nonbearing year. He also mentioned that EPA has been suggesting that states include an expiration date on 24(c) applications because they have discovered there are a large number of obsolete registrations on the books.

David Yarborough, Extension Blueberry Specialist, stated that Asulox is a bud inhibitor and is very effective against bracken fern. He said it would be used as a spot treatment. Since it takes a long time for bracken fern to become established, it wouldn't be used in the same areas for a number of years, which will keep the total usage low.

Ravis asked what growers had been doing since the previous 24(c) expired. Yarborough stated that growers were either trying higher rates of hexazinone, or trying to wipe ferns with glyphosate. Due to the growth habit of bracken fern, neither of these strategies has been successful. Ravis asked about a legal standard that needed to be met for issuing a 24(c) registration. Randlett observed that Maine statutes do not list criteria for approving 24(c) registrations. Under federal guidance, a state may issue a 24(c) registration if it determines there is no other registered product that is efficacious. Ravis expressed concern that the NRCS rating was not based on real-world studies.

Eckert/Qualey: Moved and seconded to approve the 24(c) for four years, and limit use to spot treatment only, on non-bearing years, and at a frequency of no more than once every two years.

In Favor: Jemison, Eckert, Simonds, Bohlen, Stevenson and Qualey

Opposed: Ravis (groundwater concern)

4. Review of the Public Health Committee Meeting Minutes and Comments

Public Law 2009, Chapter 584, LD 1547, requires that the Board seek input from the Department of Health and Human Services and other public health professionals on the development of a comprehensive registry and the report to the Legislature. The staff organized a meeting for that purpose on July 30, 2010. The minutes from that meeting have been finalized and comments submitted by committee members and attendees are included. The Board will now review and consider the minutes and comments and discuss additional input from this committee.

Presentation By: Lebelle Hicks, Staff Toxicologist
 Carol Eckert, Medical Member of the Board

Action Needed: Consideration of Minutes and Comments

- ☑ Hicks reported that Andrew Smith, the state toxicologist, and his assistant had withdrawn from the committee due to competing priorities. Eckert said the committee agreed it wasn't feasible to use health science to establish appropriate notification distances. Hicks asked whether the committee should hold a

second meeting in December. Jennings added that Dr. Sears had suggested a second meeting would be appropriate for closure. The committee was limited at the first meeting by the lack of a concrete proposal to respond to. Eckert agreed that providing the next version of the legislative report would be a good mechanism to focus discussion. Bohlen observed that the committee minutes from the first meeting hadn't provided any concrete recommendations so far, so a second meeting with a focus on the report may help.

Heather Spalding from the Maine Organic Farmers and Gardeners Association thought another meeting made sense. She said the Legislature wants input from this perspective and she felt that reviewing the legislative report was a good idea.

Board consensus was reached to try to convene a second meeting of the public health committee for the purpose of reviewing and commenting on the draft legislative report and determining whether the committee is able to reach consensus on any recommendation.

5. Overview of the Proposed Internet-based Mapping Tool to Assist with Pesticide Notification

Public Law 2009, Chapter 584, LD 1547, charges the Board with reporting to the next Maine Legislature on the feasibility of establishing and maintaining an Internet-based system to allow a land manager to electronically notify registry participants. The Board's staff has met with the Maine Office of Geographical Information Systems three times to discuss development of such a system. The staff will now provide an overview and simulated demonstration of the approach being discussed and seek feedback from the Board and stakeholders.

Presentation By: Paul Schlein, Public Education Specialist
Anne Bills, Department Invasive Forest Insect Outreach Coordinator

Action Needed: Provide Feedback to the Staff on the Proposed Approach

- Schlein stated that, at the previous Board meeting, members and stakeholders had asked for an overview and/or demonstration of the Internet-based tool, to more clearly understand its functionality, and to provide an opportunity for input into the final product. Consequently, the staff worked with Anne Bills, who developed a graphic presentation designed to mimic the application that the Maine Office of GIS (MEGIS) has proposed. Jennings alerted Board members to the staff memo which details the proposal. Bohlen observed that the only missing function is the ability to automatically send notification e-mails from the Internet-based tool. Schlein explained that MEGIS advised against providing a function that automatically sends an e-mail, since the e-mail would then be originating from the state, and the land manager would have no record of the e-mail being sent. Instead they recommend providing functionality so that land managers can easily obtain and transfer (copy and paste) a list of applicable e-mail addresses for notification purposes.

Anne Bills then led the Board through her presentation which illustrated how land managers could use the Internet-based mapping tool to identify registry participants within specified distances from pesticide application sites. Bills provided two examples: one depicting an urban scenario and one depicting a rural scenario. Board members and the audience thought the proposed application might be extremely valuable. Bill Malay of Cherryfield Foods requested that the Board make the list of registry participants

available as a data layer or shape file so that companies that already have their agricultural lands or application sites digitized can then import the registry data. David Bell of the Wild Blueberry Commission of Maine asked about properties that have no structure associated with them. Schlein said those properties, ones without street addresses, have not yet been located in the mapping system and additional work needs to be done to locate them.

Simonds inquired about where the project stood at this point. Schlein stated that MEGIS wants the BPC to sign a Memorandum of Agreement and had quoted a cost of \$10,400 to develop the application as described in the staff memo, plus a \$150/month service charge for hosting the application. Bohlen observed that technology evolves quickly and the BPC should be able to take advantage of advancements.

Since the composition of the next Legislature will be different from the previous one, and the current registry law could be affected, Jennings was hesitant to commit to that type of expenditure. Board members believed it was a nominal figure given the potential benefits, even if the Legislature does make changes to the registry law.

Jemison/Eckert: Moved and seconded authorization for the staff to pay for development of the Internet-based mapping tool

In Favor: Unanimous

6. 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. The Board hosted five Public Information Gathering Sessions at different locations around the state and discussed the fundamental registry concepts at each of these meeting. At the October 1, 2010, meeting, the Board reviewed the non-agricultural registry and the first draft of the report to the Legislature. The Board will now continue deliberations about development of a comprehensive registry, and review of the second draft of the report to the Legislature.

Presentations By: Henry Jennings
Director

Action Needed: Provide Input to the Staff on Development of the Registry

- Jennings directed Board members to the draft outline and executive summary for the legislative report. He explained that the staff has a good portion of the full legislative report written, but wants to settle on the organization before finalizing the language. Anyone will be allowed to comment on the full report once it's distributed. Simonds commented that the outline is well organized.

Board members moved on to the executive summary. Simonds acknowledged that stakeholders are sharply divided on the question of who must comply with the registry. Jon Olson of the Maine Farm

Bureau questioned the use of the word “unanimous” when describing the Board’s position on this subject. Jennings clarified that the staff is proposing to deal with homeowners providing notice through a different mechanism. Board members discussed their views. Simonds suggested the registry would collapse if everyone who applies pesticides needed to comply. Qualey said he’s getting pressure to include homeowners in the registry. There was some sentiment that—in an ideal world—anyone applying pesticides would notify interested neighbors. However, the practical considerations make this unrealistic. Members finally reached consensus to modify the language describing their position to state there is “general agreement” that the registry duties should apply to commercial applicators and farmers.

Board members next discussed the five reporting requirements mandated by the statute. Members agreed there was consensus around the three notification distances described in the report. They discussed signs briefly, and agreed that, while signs may provide some benefit under certain circumstances, they were never able to conceive of a practical requirement that wouldn’t result in the posting of a large number of signs in areas where no one would see them. Finally, Board members reaffirmed their support for moving forward with development of an Internet-based mapping tool that should greatly reduce the burden associated with identifying properties where notification has been requested.

David Bell asked whether the Board was still proposing to move forward with multiple notification systems or just one, as the statute directed. Board members indicated that their proposal contains a primary system—the comprehensive registry—and the “by request” option as a practical backup to address certain holes in the registry approach. People will be encouraged to use the registry as the first option. The Board observed several downsides to relying solely on a registry, including the need to move to a floating registry approach, forcing both the Board and applicators to continuously update their lists. Jennings stated the staff would try to make sure that the full report alerts the Legislature that the Board favors this dual approach to notification, and that it could be interpreted as deviating from the statute.

Jennings suggested that the staff complete a draft report and e-mail it to Board members for comments and suggestions. At the same time, the staff would post the report on the website and distribute it to the Board’s constituent lists and the Ad Hoc Public Health Committee. Board members supported this approach.

7. Consideration of the Staff Negotiated Consent Agreement with JBI Helicopters of Pembroke, New Hampshire

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 herbicide drift from an aerial application to a harvested forest stand.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that a Plum Creek employee called and reported they had discovered some tree injury on an adjoining property adjacent to one of their spray blocks. Plum Creek is in the process of negotiating compensation for the damage. JBI Helicopters was the applicator in this case. They visited the site and agreed their application resulted in the damage.

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

In Favor: Jemison, Eckert, Bohlen, Stevenson, Ravis and Qualey

Abstaining: Simonds (prior business relationship)

8. Consideration of the Staff Negotiated Consent Agreement with The Lawn Dawg 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 application of pesticides to a lawn adjacent to a participant on the non-agricultural registry without notifying them in advance.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors stated this was a simple oversight on the part of the lawn care company. They had a system in place that failed, so they've added a backup system. The proposed penalty is consistent with previous violations.

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

In Favor: Unanimous

9. Discussion of the Board Policy on the Use of Homemade Pesticides

Periodically, the Board's staff receives inquiries about the legality of using common consumer products such as vinegar or dish soap as pesticides. Over the last year, MOFGA Certification Services LLC has inquired about a number of products, and a recent newspaper account about municipal employees applying homemade herbicides resulted in requests for Board staff to investigate. EPA's position is that anyone may produce a pesticide for their own use on their own property without registering the product. However, use of unregistered pesticides on the property of another or for commercial purposes would be unlawful under EPA's policy. The Board has never taken an official position on the subject. In light of the recent level of interest in the topic, the staff is now requesting that the Board take a position.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Provide Guidance to Staff for the Development of a Policy

- Fish explained that questions around the legality of using consumer products to control pests have circulated for many years. However, the number of inquiries took a significant upswing in the last year and half. Governmental employees occasionally use consumer products to avoid the licensing requirement, and organic growers have used unregistered products for mitigating pest problems. A recent article about Ogunquit municipal employees using a salt and vinegar mixture prompted multiple inquiries and a call for the Board to investigate. Consequently, the staff decided to bring the issue to the Board. Jennings commented that the legal definition of a pesticide revolves around intent. When people use consumer products to control pests, it puts the Board in the difficult position of trying to prove their intent.

Simonds thought the EPA documents were the clearest place to start. Jennings preferred the FIFRA Compliance Policy because it's simplest to interpret, and he does not want the Board to appear to be expanding its jurisdiction. Lauchlin Titus mentioned that Good Agricultural Practices (GAP) training discourages the use of untested materials. Growers are often required to make detailed records of their production practices, including anything applied to a crop, so reviewing these records would provide information on the extent of consumer product use. Katy Green of the Maine Organic Farmers and Gardeners Association stated that certified growers must keep records of everything they apply. She wanted to make it clear that MOFGA is not pressuring for development of a Board policy.

Bohlen said the Board needs a clearer set of questions to respond to. Simonds asked the staff to draft a policy and bring it back to a future meeting.

10. Other Old or New Business

a. Update on the Annual Obsolete Pesticide Collection

- Jennings updated the Board on the 2010 collection. He stated that he believes it is a very valuable and cost-effective service.

b. Use of Heat Treatments for Bed Bug Control by Unlicensed Applicators

- Jennings informed the Board that, following a multiagency bedbug meeting, he was asked to bring a concern forward about the lack of oversight or regulation of heat treatments for bedbug control. There is concern that untrained individuals using this approach could start a structure fire. Board members indicated they do not feel it's a Board issue and suggested the State Fire Marshall's Office as a more appropriate authority.

c. Other

- Schlein asked the members if they thought the Board should have a Facebook page. Bohlen suggested it might be useful for announcing events, but otherwise it requires constant updating to be useful.

11. Schedule and Location of Future Meetings

December 10, 2010, and January 7, 2011, 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?

- The Board added February 18 and March 25, 2011.

12. Adjourn

- Ravis/Jemison: Moved and seconded that the meeting adjourn at 1:37 PM.

In Favor: Unanimous