



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

December 10, 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: Jemison, Simonds, Eckert, Ravis, Stevenson

1. Introductions of Board and Staff

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

2. Minutes of the November 5, 2010, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Ravis checked the veracity of one question attributed to him.

Eckert/Ravis: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Update on the Maine Department of Environmental Protection's Proposed Pesticide General Permit

On January 7, 2009, the US Sixth Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA*, that the discharge of pesticides to waters of the United States must be regulated under the US Clean Water Act, vacating a long-standing USEPA policy. The court granted USEPA and those states that are delegated to administer the Clean Water Act, such as Maine, until April 2011, to implement a program to regulate such activities. The Maine Department of Environmental Protection (DEP), in consultation with the Board's staff, has been working on developing a General Permit to address the court's ruling. DEP and BPC staff will update the Board on the permit development.

Presentations By: Henry Jennings
Director

Robert Stratton
Maine DEP

Action Needed: Provide input on the development of the permit

- Robert Stratton of the Maine DEP addressed the Board, reminding members that he had attended the August Board meeting to brief them on the conflict between the Clean Water Act and FIFRA. Stratton reported that the Maine DEP had been working with the BPC staff to develop a draft Pesticide General Permit (PGP) to cover pesticide applications conducted in, over or near water that could result in a discharge. The draft PGP uses minimum distances from water, combined with best management practices (BMPs) to define approaches that are not expected to result in a discharge. Stratton distributed three handouts providing details of the strategy. However, recent meetings held with agricultural and forestry groups revealed that industry prefers to use the draft permit that EPA is developing. Consequently, DEP is putting its PGP on the back burner and is waiting to review EPA's next draft PGP. EPA and the states must have a program in place when the court stay expires on April 9, 2011.

Board members asked questions about EPA's proposal and what constitutes a discharge. Simonds inquired about what stakeholders objected to in the Maine proposal. Stratton replied that a number of concerns had been voiced, including complexity and the general rationale. David Bell asked if Maine chose to implement its own proposal, whether the Endangered Species Act concerns related to the EPA proposal would still be relevant. Stratton responded by saying that Maine must also consult with the Fish and Wildlife Service and the National Marine Fisheries Service (referred to as "the Services") while developing discharge permits, and Maine has a process in place for that purpose. Simonds was concerned that the draft DEP/BPC PGP contained new standards and/or requirements for the regulated community, such as "critical distances." Jennings agreed it was an important consideration. He stated that the staff philosophy in developing the proposal was to rely on existing practices—in this case, BMPs. Simonds asked that the staff remain engaged in the process and keep the Board updated.

4. Continuation of Board Discussions on the Legislative Report Pursuant to Public Law 2009, Chapter 584

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 and file a report with the Maine Legislature no later than February 1, 2011. At the November 5, 2010, meeting, the Board reviewed a draft outline and executive summary for the legislative report. The Board will now review a draft of the full report to Legislature.

Presentations By: Henry Jennings
Director

Action Needed: Provide input to the staff on the legislative report

- Jennings stated that the staff had received a few comments on the Legislative Report, but the only substantive comments related to topics that had been debated extensively already. The staff will review and incorporate non-substantive comments relating to the report language in the final draft for the

January 7, 2010, meeting. Simonds agreed that the comments in the Board packet were either non-substantive or had already been discussed by the Board. Ravis commented that the report was well written and balanced. Eckert observed that the final Public Health Committee meeting was the next step. She reminded members that the Committee stressed that the notification system needs to be accessible to people without computer access. Simonds agreed that input from the Committee meeting was necessary before the report could be finalized. Jennings sought the Board viewpoint on a handful of minor comments. Members agreed that the draft report should be updated to include additional input from the Public Health Committee and presented again at the next Board meeting for final approval.

5. Consideration of the Staff Negotiated Consent Agreement with Michael Mills Landscaping of Rumford

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 and unsupervised employee making a commercial application of herbicides for a licensed commercial company.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that Michael Mills operates a landscaping company in the Rumford area. At some point, Mills took a full-time job with the City of Rumford. A staff inspection revealed that employees of Michael Mills Landscaping continued to apply pesticides even though they were no longer being supervised by a licensed applicator. In addition, employees were not wearing the protective clothing required by the label. Eckert inquired about what steps the company had taken to correct the situation. Connors explained that Mills had taken steps to obtain a license under the City of Rumford, but it's unclear how the company will address the lack of a licensed employee at the landscaping company.

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

In Favor: Unanimous

6. Consideration of the Staff Negotiated Consent Agreement with Magic Carpet, Cleaning and Restoration, Inc., of South 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 commercial company applying pesticides for mold remediation.

Presentation By: Raymond Connors
Manager of Compliance

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

- Connors explained that the company is involved in property damage restoration work. The Board's office received a call alleging that Magic Carpet was doing mold remediation work without a license. The compliance staff conducted a follow-up inspection and confirmed the allegation. The company owner stated he was not aware of the licensing requirement, but moved quickly to come into compliance once he was informed.

Stevenson asked about the circumstances and whether a warning letter is appropriate in some instances. He then acknowledged that that the proposed penalty was fair under the circumstances.

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

In Favor: Unanimous

7. Adoption of a Board Policy on the Use of Homemade Pesticides

At the November 5, 2010, meeting, the Board discussed the use of common consumer products, such as vinegar or dish soap, to control pests. 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. The Board directed the staff to draft a policy similar to EPA's for consideration at the next meeting.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: Approve/disapprove the proposed policy

- Fish directed Board members to an updated policy statement in the meeting folder. He explained the reason the staff is seeking a policy on homemade pesticides is to provide guidance to citizens and licensees who call with questions on the topic. Randlett stated that policies can not conflict with state statutes. Consequently, the staff is now suggesting following EPA's policy, since it has withstood the test of time. Use of homemade pesticides will be discouraged and food safety concerns will be referred to the Division of Quality Assurance and Regulations.

Board members debated whether the policy needed to address FIFRA Section 25(b) exempt products, but finally decided it wasn't necessary. Heather Spalding, from the Maine Organic Farmers and Gardeners Association, asked what would be the next steps for certified organic farmers. Fish stated that any complaints would be referred to the Division of Quality Assurance and Regulations.

Eckert/Stevenson: Moved and seconded adoption of the BPC policy

In Favor: Unanimous

8. Review and Demonstration of the Upgraded *Got Pests?* Website

Public Law 1997, Chapter 389, directs the Board to promote integrated pest management (IPM) and educate the public about science-based technologies for controlling pests and minimizing pesticide use. As part of this effort, the staff has been developing an IPM website tailored to the lay person and

Presentation by: Paul Schlein
Public Education Specialist

Action Needed: Provide feedback to the staff

- Schlein provided a brief overview of the Got Pests? website while showing examples of the pages on the screen. Board members provided positive feedback on the effort.

9. Other Old or New Business

a. Other?

- No other business was discussed

10. Schedule and Location of Future Meetings

January 7, February 18, and March 25, 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?

- Board members added April 29, 2011, and June 3, 2011, as tentative Board Meeting dates.

11. Adjourn

- Jemison/Eckert: Moved and seconded that the meeting adjourn at 11:55 AM.

In Favor: Unanimous