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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & 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 14, 2007

Colby/Thomas Room, Hampton Inn
425 Kennedy Memorial Drive, Waterville
(Exit 127 from I-95)

MINUTES

9:30 A.M.

Present: Eckert, Simonds, Stevenson, Qualey, Jemison and Walton

1. Introductions of Board and Staff

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

2. Public Information Gathering Hearing on Aerial Spraying and Spray Drift

Several recent events have highlighted public concern over aerial spraying, especially near residential areas. At its July 20, 2007, meeting, the Board reviewed a report from a stakeholders committee listing a number of ideas intended to address public concerns. Several Hancock County residents attended the meeting and expressed their concerns. However, the Board has never publicized an opportunity for public input on the issue. Consequently, the Board will entertain public comment on aerial spraying and drift concerns at this meeting. Written comments will also be accepted until the close of business on December 28, 2007. Comments should be addressed to Paul Schlein, Public Information Officer, Maine Board of Pesticides Control, 28 State House Station, Augusta, Maine 04333 or e-mailed to paul.b.schlein@maine.gov.

Chairperson Eckert introduced the public comment portion of the Board meeting pertaining to aerial pesticide application and drift. She alerted the audience to the fact that there was a sign-up sheet in the back of the room for individuals interested in addressing the Board. She then began calling names from the sign-up sheet.

Heather Spalding, Assistant Director for the Maine Organic Farmers and Gardeners Association pointed out she had already submitted written comments to the Board. She inquired why the Board was now seeking additional comments. The staff explained that members of the agricultural community were concerned about missing an opportunity to provide input. Spalding's comments are still part of the Board record.

Maxwell McCormick, retired Professor of Forestry from the University of Maine, explained he had been involved in research on aerial spraying in forestry. McCormick felt aerial spraying was the safest, most precise way to deliver the active ingredient when handled properly. He felt applicator education was quite important.

Paul Sweetland, of Coastal Blueberry Company, emphasized the value of notifying people who want to know. He stated a number of people on his notification list live beyond the 500 feet required by rule. He felt acting as a good neighbor resulted in his neighbors returning the favor.

David Bell, Executive Director of the Maine Blueberry Commission, stated that blueberries are a very low input cropping system. Blueberry growers have adopted IPM practices and the industry sponsors IPM research. Bell described the efforts the industry had used over the years in an effort to inform area residents about the fruit fly spray program. The Blueberry Commission gets very little feedback. Bell pointed out that aerial spraying is important to the industry because of the hilly, rocky nature of many of Maine's blueberry fields.

Jody Spear, representing the Sierra Club, pointed out that the European Union had recently proposed to ban most aerial spraying. She reminded the Board about the number of people who had signed the petitions from two years ago seeking a ban on aerial spraying. Spear urged the Board to be proactive by speeding up the phase-out of organophosphates. She believes the current regulatory scheme does not contain disincentives to causing harm. Spear stated that the 20% clause has no basis in science and should be abandoned. While she doesn't oppose notification, she stated it does not solve the harm associated with pesticide drift.

Timothy Hobbs of the Maine Potato Board, suggested that the lack of enforcement results in a weak deterrent to drift violations. He questioned whether more vigorous enforcement might be getting overlooked as an important tool in the aerial/drift debate.

3. Minutes of the November 16, 2007, Board Meeting

Action Needed: Amend and/or Approve

Presentation By: Henry Jennings
Director

Jemison/Qualey: Moved and seconded approval of the minutes

In Favor: Unanimous

4. Consideration of Three Applications from Syngenta Biotechnology to Register Bt Field Corn Products

At its July 20, 2007, meeting, the Board approved applications to register seven Bt field

corn products from Pioneer Hi-Bred International, Dow AgroSciences and Monsanto. Subsequently, the Board has received three applications from Syngenta Biotechnology to register additional Bt field corn products. Staff toxicologist Lebel Hicks and Board Member John Jemison have reviewed the literature relating to Syngenta's products and determined that risks are comparable to those products that the Board has already approved.

Presentation By: Lebel Hicks
Toxicologist

John Jemison
Board Member

Action Needed: Approve/Disapprove Product Registration Applications

- Hicks explained that the three products were similar in the level of risk to those previously approved by the Board. She stated the protein produced is closer to the Bt potato approved by the Board in 1994. Lauchlin Titus stated the Syngenta products produce a protein that is active against a different site than the other seven products. He suggested having additional choices would help forestall insect resistance. Simonds stated that the Board should approve similar products as a matter of basic fairness.

Qualey/Walton: Moved and seconded approval of the three Syngenta Bt field corn products

In Favor: Unanimous with Jemison abstaining

5. Workshop Session to Review Proposed Rulemaking Amendments to Chapters 10, 26, 29 and 41

At its September 7, 2007, meeting, Board members directed the staff to initiate rulemaking on Chapter 29 to codify restrictions associated with pesticide applications to control browntail moths near marine waters. At its October 5, 2007, meeting, the Board further directed the staff to initiate rulemaking on Chapter 10 to revise the definition of a pesticide, on Chapter 26 to make revisions to the notification requirements, on Chapter 29 to add a new section requiring a 25-foot buffer to surface waters, and to Chapter 41 to add a section regulating the use of Bt field corn products.

A Notice of Agency Rulemaking Proposal covering the proposals was published by the Secretary of State in Maine's daily newspapers on October 24, 2007, and a public hearing was held at the Hampton Inn in Waterville on November 16, 2007. Written comments were accepted until 4:00 p.m. on November 30, 2007. The Board will review the written comments and determine if changes to the proposals are warranted and/or whether the proposed revisions should be adopted.

Presentation By: Henry Jennings
Director

Action Needed: Determination of Whether Changes Should be Made to the Proposals and/or Whether the Proposals Should be Adopted

- ☑ The Board first discussed the proposed amendment to Chapter 10, which sought to expand the definition of “pesticide” to include Plant Incorporated Protectant Products. Jennings stated that a thorough review of the comments, together with additional research, has led the staff to determine that the Chapter 10 amendment is unnecessary and ill advised. He recommended that the Board not adopt the change by taking no action on it. The prevailing line of reasoning in the United States on the regulation of Plant Incorporated Protectants (PIPs) is that the genetic material and resulting proteins are regulated as pesticides, while the seeds and other propagules are considered treated articles. Since the genetic material cannot be separated from the propagules, regulating the genetic material effectively regulates the propagules also. Consequently, Jennings recommended that Maine follow the established precedent.

Board members discussed the ramifications of such an approach and finally determined the recommended shift would have no consequence on the Board’s ability to regulate PIPs.

Next the Board discussed comments relating to the proposed changes to Chapter 26. Only two comments were received, one from a University facilities manager who supported the current notification system, and one originating from the National Pest Management Association questioning how the pesticide applicator can be expected to ensure that the signs remain posted for 48 hours.

Fish pointed out that the current outdoor posting requirement contains similar language already. The Board has never taken the position that the applicator must ensure that signs remain posted.

Board members discussed whether they felt the rule needed to explicitly state that the applicator did not have a duty to ensure that signs remain posted. Consensus was reached that it was not necessary.

The Board then reviewed the comments relating to Chapter 29. No one offered comments on the proposed restrictions relating to browntail moth spraying. Some commercial applicators opposed the idea of a 25-foot buffer to surface water. The Board felt their concerns could be managed through the variance process. The Board then reviewed the comment concerning wetlands associated with man-made cranberry bogs. Members felt that circumstance was not intended to be addressed by the proposed amendment. They directed the staff to add an exception covering man-made wetlands constructed for agricultural cropping purposes.

The Board then moved to the proposed amendments to Chapter 41. Jennings pointed out that the Board’s position on Chapter 10 would result in changes to Chapter 41 also. References to Plant Incorporated Protectant Products (PIPPs) would be deleted and the proposed amendment would instead reference only Plant Incorporated Protectants (PIPs).

The Board discussed the proposed educational requirements next. There were a number of comments opposing the requirement for a pesticide applicator's license in order to use Bt corn. Commenters pointed out that none of the study material made reference to PIPs. A short debate ensued about the benefits of an applicator's license. A couple of Board members expressed the view that all commercial farmers could benefit from the education. Ultimately the Board reached consensus to drop the requirement for an applicator's license from the proposal due to lack of relevance, but to retain the requirement for a Board-approved training certificate. After agreeing to delete the licensing requirement, the Board determined that a Board-approved training seminar every two years would be reasonable and appropriate.

The Board also discussed the requirements for seed distributors to obtain a General Use Pesticide Dealer's License. Jennings reminded members this was already a statutory requirement for anyone distributing pesticides in Maine. The Board felt it was necessary to know who was distributing the seed so that the compliance staff could visit to ensure compliance with the requirements. The proposed record-keeping standards were also discussed. Since there was already a record-keeping requirement for distributors of genetically modified seed under 7 M.R.S.A. § 1052, the Board decided it would not impose an unreasonable burden to require that the same records be made available to Board staff. Members directed the staff to modify the proposed rule to mimic 7 M.R.S.A. § 1052.

Board members then moved to record-keeping requirements for Bt corn growers. Members determined there were a few record elements that were not vital, and they instructed the staff to omit those elements from the final rule. However, they felt that records depicting the relationship of Bt corn, the refuge and neighboring crops served a useful public purpose, so they directed the staff to maintain those elements in the final rule.

Finally, the Board discussed the concept of buffers. There were no mandatory buffers in the proposed rule amendment, but it was a subject that was widely debated by the Board and those submitting comments. While Jemison did not support the idea of mandatory buffers, he suggested that there should be a way to require Bt corn growers to plant the mandatory refuge in a manner that would protect neighboring corn from pollen drift. After a thorough discussion, members reached consensus to alter the proposal to include a requirement for Bt corn growers to use their refuge planting to protect neighboring non-Bt corn growers. This requirement would only become effective if the non-Bt corn grower notifies the Bt corn grower of his/her farming plans.

6. Other Old or New Business

a. Monsanto review of the Bt corn caddisfly study

- Eckert observed this topic was mentioned frequently in the rulemaking record. Hicks stated she continues to monitor non-target effects of Bt corn and plans to update the Board quarterly.

b. Budget Update – H. Jennings

- Jennings informed the Board that the Department Dicap charge of 18.73% had gone into effect. He stated that several current costs would be absorbed by the Dicap, which will reduce the impact to some degree. For the short term, the Board's budget can withstand the additional costs, but problems will likely emerge as additional personnel costs go into effect.

7. Schedule and Location of Future Meetings

January 25, February 29 and March 28, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

- Board members added May 2, 2008 as an additional meeting date.

8. Adjourn

- Simonds/Walton: Moved and seconded that the meeting adjourn at 2:17 p.m.

In Favor: Unanimous