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

WALTER E. WHITCOMB
COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

June 3, 2011

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: Simonds, Eckert, Stevenson and Ravis

1. Introductions of Board and Staff

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

2. Minutes of the May 6, 2011, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Eckert/Ravis: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Loveland Products, Inc., Request for a FIFRA Section 24(c), Special Local Need Registration for Diazinon AG600 WBC Insecticide (EPA# 66222-103-34704) for Control of Insects on Balsam Fir Grown in Nurseries

At the request of Maine Forest Service Entomologist David Struble and the Maine Christmas Tree Growers, Loveland Products, Inc., is supporting a Special Local Need [24(c)] Application for Diazinon AG600 WBC Insecticide (EPA# 66222-103-34704) to control insects on balsam fir grown in nurseries until the revisions on the FIFRA Section 3 label can be completed.

Presentations By: Mary Tomlinson
Pesticides Registrar

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

- ☑ Tomlinson explained that the diazinon labels have been changing fairly regularly as EPA continues the process of phasing out the organophosphate pesticides. Historically, EPA had taken the position that Christmas trees are ornamental plants, and that the label only needed to list ornamentals as a site in order for the product to be legally used on Christmas trees. However, when the BPC sought clarification about recently revised labels, EPA changed its position and stated that each ornamental plant species needs to be listed. While both the registrant and EPA are agreeable to adding balsam fir to the label, approval of this change may not be completed in time for the 2011 growing season. Consequently, Clark Granger and the Maine Forest Service have requested that the BPC approve a FIFRA Section 24(c) label as a stopgap measure.

David Struble from the Maine Forest Service explained that diazinon has been used on Christmas trees since the 1980s based on research conducted by the state. Struble indicated that he viewed the 24(c) as a formality, since the registrant and EPA agree that the addition of balsam fir to the label will not impact EPA's cumulative risk assessment for diazinon.

Eckert mentioned that diazinon is on the radar as an organophosphate. She referenced the one well contamination incident that was detected during BPC monitoring. She questioned whether reentry would be an issue. Jennings stated that EPA's primary risk reduction strategy is removing diazinon from any residential setting in which pregnant women or children might be exposed. The primary exposure risk is now with the applicator and there is no need to reenter the treated area. Fish believed the need for the 24(c) should never have arisen, but EPA changed its position on what sites must be listed on the label. Simonds questioned whether a Christmas tree plantation qualified as a nursery, since the new diazinon label limits the ornamental applications to those grown outdoors in nurseries. Tomlinson responded that EPA's definition of a nursery does include Christmas trees.

Ravis/Stevenson: Moved and seconded approval of the 24(c) request with a five-year expiration period

In Favor: Unanimous

4. Consideration of a Chapter 29 Variance Permit Request from DuBois Contracting of Fort Kent for Vegetation Control along the St. John River

The Board can grant variances for the 25-foot setback required from surface water under Section 6 of Chapter 29. DuBois Contracting plans to use the herbicide Rodeo[®] to control weeds growing in the rocky portion of the dike along the St. John River. They are seeking a variance from Chapter 29 to allow herbicide use within 25 feet of the high water mark. The drift-control agent Liberate[®] and a blue dye will be used to minimize off-target deposition.

Presentation By: Henry Jennings
Director

Action Needed: Approve/disapprove the variance request

- Fish explained that the variance would allow for a broadcast application of pesticides on the flood levee within 25 feet of the mean high water mark. The application will be conducted during dry weather and when the water is at its lowest level. Fish wondered whether the Board should recommend the use of Nu Film to help retain the pesticide on the target species. He said the staff had contacted Dubois Contracting to clarify which federal standards were being referenced in the variance application, but Mr. Dubois was unsure.

Simonds suggested the applicant supply more detailed information in the future. Eckert questioned whether Nu Film would work on rocks. Simonds pointed out that the late August application will be when the water is lowest. Ravis questioned why it was necessary to kill the vegetation, reasoning that plants generally help hold soil in place. Fish believed that the roots of large woody plants can cause the substrate to shift and potentially destabilize the structure. Simonds asked the Board if it wanted to table the item pending additional details about the federal requirements. Consensus was reached to vote on the matter and request more details in future variance applications.

Eckert/Stevenson: Moved and seconded approval of the variance request

In Favor: Unanimous

Katy Green of the Maine Organic Farmers and Gardeners Association questioned why the Board would approve a variance that was requested to conform to a federal requirement that no one can identify. Randlett observed that the Board could reconsider the motion. Ravis thought that might be appropriate so that more information could be obtained. Eckert reasoned that the Board probably would have approved the request whether there were federal requirements or not. Consensus was reached to let the approval stand and ask the staff to obtain the information on the federal standards that require removal of vegetation from the flood levee.

5. Consideration of Enforcement Action Against A-One Exclusion of Berlin, New Hampshire

The staff will report on a compliance case involving a commercial applicator operating with an expired license in which the alleged violator entered into a consent agreement but never paid the fine, even after repeated attempts from the staff to reach an accommodation.

Presentation By: Raymond Connors

Action Needed: Determine appropriate enforcement response

- Connors explained that the staff received a complaint in January of 2010 about a possible unlicensed commercial pesticide applicator. The staff investigation revealed that Paul Nobile had been making pesticide applications in Maine with an expired license. Connors negotiated a consent agreement to resolve the violation, but Nobile has not paid the penalty despite repeated attempts by the staff to contact him. In situations like this, the next step usually is to refer the matter to the Office of the Attorney General for follow-up, which the staff is now recommending.

Stevenson/Ravis: Moved and seconded that the case be referred to the Office of the Attorney General

In Favor: Unanimous

6. Review of Legislative Mandates and Discussion About Allocation of Staff Resources

Four bills potentially affecting Maine pesticide law have been acted upon by the Maine Legislature. In addition, a report, as required by the Government Evaluation Act (GEA), has been requested by the ACF Committee by November 1, 2011. The Board will review the legislation and required report and discuss how best to address the mandates and allocate staff resources.

Presentation By: Henry Jennings
Director

Action Needed: Review pending bills and the GEA report

- LD 228**—Jennings directed Board members to review a table provided by the staff which summarized the legislative mandates. He started by discussing LD 228, which directs the Board to amend its Chapter 28 rule to allow for notification by request for up to 1,000 feet in the case of aerial spraying. The bill specifies that the amendment will constitute routine technical rulemaking and must be completed by January 1, 2012. Simonds suggested that the Board proceed slowly on this issue, since it's a polarized and contentious issue. He suggested the Board wait to do rulemaking until December. Jennings wasn't sure the amendment would be effective by January 1 if the Board waited until the December meeting for adoption.

Board members discussed whether a public hearing would be necessary and the best timing to conduct rulemaking. Board sentiment was to time the rulemaking process so that the amendments become effective by January 1, 2012.

The Board next discussed how and when to interact with the 1,821 participants on the registry, considering that the registry will no longer be functional after mid-September. The notification provisions contained in Chapter 28 will still be in force, but the new 1,000-foot allowance for aerial spraying won't be effective until 2012. Consensus was reached to direct the staff to draft communication for the registry participants for consideration at the next Board meeting.

LD 837—Discussion next turned to LD 837. Simonds said he viewed this as a compromise attempt and wondered if the BMPs would be similar to the already existing turf BMPs. Fish stated that there would be some overlap, and Jennings said that the two sets of BMPs ultimately will address different types of concerns. Jennings also pointed out that the Legislature provided a very short timeframe for completing the BMPs. Simonds suggested the staff may need to rely heavily on in-house expertise. He inquired about who the key stakeholders would be, such as grounds maintenance people and possibly the bill's sponsors. Eckert mentioned school health/public health officials. Jennings suggested state epidemiologist Dr. Stephen Sears. Eckert stated she does not object to use of pesticides on school grounds for public health reasons, but she questions the propriety of applying pesticides for aesthetic purposes. Fish observed that grubs are generally the biggest problem on athletic fields. Ravis acknowledged that some schools may be concerned with

the aesthetics of the athletic fields, but it's the high stress that fields are subjected to that causes their deterioration. Eckert inquired about the applicability of lower risk pest management approaches such as mechanical, biological or low toxicity alternatives. She mentioned rotating the use of fields to reduce their wear.

Simonds inquired about the level of resources that the staff could justify committing to the resolve given competing priorities. He felt that the treatment thresholds would be the most difficult component to determine. He advised the staff to remain focused and keep commitments in proportion to the directive. Fish suggested that the staff needs to improve its relationship and communication with IPM coordinators and other school staff.

Board members briefly discussed the assessment required under the resolve. Connors stated that the compliance staff completed 139 school inspections during 2011. Jennings observed that the current school inspections don't target the key questions contained in the resolve. There was consensus that additional work will be required to conduct the assessment.

LD 975—Simonds began by suggesting that the Board may need to rethink the current “high energy” certification procedures to accommodate the influx of new applicators. Fish reported he had surveyed other states and found that the majority track continuing education credits the same way Maine does. He stated that the Board currently maintains records on about 5,000 licensees, and he estimated that LD 975 may add another 2,000–3,000. Eckert talked about the trend toward online recertification and some of the potential pitfalls. Simonds asked if there was adequate funding. Jennings stated the bill provides for a \$5/year license fee, the same as the fee for private applicators.

GEA Report—Jennings stated that the GEA report is required to be submitted periodically to the legislative committee of jurisdiction and it's similar in purpose and content to its predecessor which was known as Sunset Review. The BPC last submitted a GEA report in 2005 and an electronic copy has been maintained. Since the statutory content of the report is still the same, updating the report will satisfy the legal requirements.

LD 321—Jennings reported that the bill had been signed into law and would become effective sometime in September —90 days after the Legislature adjourns. The bill specifies that no standing Board members will be required to step down.

7. Other Old or New Business

- a. Chapters 22 and 29 variance permits issued to the Maine Department of Transportation for vegetation control—H. Jennings
 - Fish alerted the Board that the Maine Department of Transportation (MDOT) variances had been issued for 2011. Eckert suggested that the MDOT approach should be offered as a model to other companies doing rights-of-way spraying.
- b. Bangor Hydro's Substation Vegetation Management Plan—H. Jennings
 - Fish stated this was another instance of just keeping the Board informed about rights-of-way spraying. Eckert noted that the letter was addressed to Bob Batteese.

c. Other?

No other business was discussed

8. Schedule and Location of Future Meetings

June 3, July 15, August 26, October 7, and November 18, 2011, are the tentative dates for future Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

Simonds asked if a December 16 meeting date for adopting rule amendments would allow the rules to become effective by January 1, as required by recently enacted laws. There was uncertainty over this point, so consensus was reached to ask Assistant Attorney General Randlett to research the question before the next Board meeting. If December 16 does not allow sufficient time, the meeting would be moved back one week.

9. Adjourn

Eckert/Ravis: Moved and seconded that the meeting adjourn at 11:16 AM

In Favor: Unanimous