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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

May 14, 2010

Bangor Motor Inn & Conference Center (Conference Room, Lower Level)
701 Hogan Road, Bangor

MINUTES

9:30 AM

Present: Jemison, Eckert, Bohlen, Simonds, Stevenson and Ravis

1. Introductions of Board and Staff

The Board, staff and Assistant Attorney General Randlett introduced themselves

2. Minutes of the April 16, 2010, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Jemison/Eckert: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Request for Renewal of DuPont Special Local Need [24(c)] Registration for Express® Herbicide with TotalSol for Control of Bunchberry in Lowbush Blueberries

In September of 2008, the Board approved a Special Local Need (SLN) registration for DuPont Express® Herbicide with TotalSol (EPA Reg. No. 352-632), but imposed a December 2009 expiration due to concerns about groundwater contamination. The Board anticipated potential water monitoring data would shed light on the groundwater issue, however the staff was not able to conduct any monitoring in that time frame. In addition, the late-season approval allowed little time for growers to make an application during 2008. Consequently, the University of Maine Cooperative Extension and DuPont are now requesting to renew the SLN registration to make this

product available to growers again to allow for selective postemergence control/suppression of certain broadleaf weeds, primarily bunchberry in lowbush blueberries.

Presentation By: Mary Tomlinson
Pesticides Registrar

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

- ☑ Tomlinson provided some history and details about the SLN application and reminded members that they approved this SLN in September of 2008, but placed a 2009 expiration on the approval. She explained that growers haven't had much time to use the product and the staff hadn't been able to conduct any groundwater monitoring, so there isn't additional information yet about whether the groundwater is being impacted.

Dave Yarborough, University of Maine Cooperative Extension Specialist, said growers had essentially only one year to apply the product so far. He planned to emphasize use of spot applications through his educational programs. Bunchberry is consistently listed as one of the top pest problems in lowbush blueberries. Yarborough stated he was not aware of any information indicating that tribenuron has been detected in water.

Jemison asked about the timing of the applications since there is a 365-day pre-harvest interval. Yarborough explained that the application is made in the fall after blueberry harvest so that there are almost 23 months between application and the next harvest. Simonds inquired about why DuPont doesn't include blueberries on the regular Section 3 label. Yarborough responded that the market for lowbush blueberries is too small to justify the costs of upgrading the Section 3 label. Ravis wondered why the rate for blueberries was higher than the maximum on the regular label. Yarborough stated that bunchberry is a perennial weed which is more difficult to control than annuals.

Board members discussed approving the request for a longer period of time, but finally settled on a motion to approve the product indefinitely, knowing they could always move to revoke the registration if significant concerns arise.

Eckert/Ravis: Moved and seconded approval of the SLN request

In Favor: Unanimous

4. Public Information Gathering Session About Development of a Comprehensive Pesticide 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 new law further directs the Board to report its progress to the Legislature by next February. Thoughtful

comments are welcome from the public about any aspect of the registry development. At this second information gathering meeting, however, the Board would like to focus on what distances need to be established for different types of applications and equipment and whether signage should be used to help notify the public about pesticide spraying. Written comments may be sent to the Board's main office at Maine Board of Pesticides Control, 28 State House Station, Augusta, ME 04333-0028, or e-mailed to henry.jennings@maine.gov.

- Simonds briefly explained the purpose and format for the public information gathering meeting and the legislative mandate requiring development of the comprehensive registry.

David Bell from the Wild Blueberry Commission of Maine was the first to speak. Bell stated they advocate for a simple, effective tool with only one or two distances. He said it's been a difficult spring for farmers, so they haven't had much time to discuss notification or the registry. Bell suggested that the Board review the legislative charge carefully. Many of the notification pieces are already there in rule, and they just need to be reorganized and pulled together. Bell thought that posting signs along the perimeter of treated property would be a challenge, especially for large tracts of land. Blueberry growers advocate one-on-one communication with their neighbors, as opposed to an automated, impersonal notification system.

Mark Doty from the Maine Forest Products Council contends that the current Chapter 51 has been successful and should be retained. Chapter 51 includes a sign requirement of a 500-foot distance for notification. He said there are lots of precedents for a 500-foot distance. Mark cautioned against requirements for notification based on abutting properties since that can result in a requirement to notify people who are several miles from the pesticide application.

Jon Olson from the Maine Farm Bureau stated that Maine farmers are successful due to their ability to communicate with their neighbors. Olson advocated for a comprehensive registry covering all pesticide applicators including homeowners. The Farm Bureau believes notification to abutters should be sufficient, all the notification requirements should be combined into one chapter and there should be an annual renewal for the registry. Eckert and Bohlen inquired about the automated, Internet-based system being discussed. Olson stated that farmers do not support an automated system and prefer "eye-to-eye" contact. The need to contact a large number of people was remedied when the pre-season notification was repealed.

Gordon Colby of Allen's in Ellsworth manages 5,000 acres of blueberry land spread out across several counties. Colby believes that the current Chapter 28 works very well and that LD 1293 and 1547 were totally unnecessary. The recent publication of the registry participants revealed 120 names in numerous towns where Colby manages blueberries. Of that 120, a preliminary review indicated that 20 names would need closer examination to determine whether they were close enough to require notification. From that list of 20, Colby and his assistant narrowed the list to just four names that qualified for notification. The entire process consumed a total of six work days. Colby believes that environmental activists were driving the debate, and their goals are diametrically opposed to the purpose and policy of the Board. Colby stated that agriculture had not adequately participated in the process initially, but farmers are now committed to seeing it through to the end.

Deven Morrill of Lucas Tree Company noted that the Legislature directed the Board to address several specific topics. The Board currently has two registries, making it difficult to follow. Morrill suggested the Board follow the model of the non-agricultural registry detailed in Chapter 28. He was opposed to the “preferred method of notification” option, and advocated for the system in the non-ag registry in which all the neighboring properties are identified. Morrill advocated for an annual renewal for people who want to participate in the registry. Lucas does not support the use of perimeter signs, but an automated notification system would be of great benefit, as long there is flexibility. Ravis suggested a more localized, broadcast notification as a possible alternative. The ensuing discussion revealed there are considerable concerns about broadcasting company customer lists.

Nick Bennett, Staff Scientist for the Natural Resources Council of Maine supported Ravis’ broadcast notification idea. Bennett suggested that it isn’t necessary to solve everything at once. He said get the registry up and working and then add pieces as the system evolves. Bennett questioned the utility of the current non-agricultural registry, since only 22 people are signed up on it. He said it’s a well kept secret. Bennett supported including homeowners in the notification requirements.

Darin Hammond of Jasper Wyman Company questioned whether there is really a problem with the current notification system. Hammond cited the Board’s mission statement. He felt the money being spent on the registry would be better spent on educating homeowners about proper pesticide use. Homeowners should be required to comply with the registry also. Many farmers don’t have computers. Hammond asked that farmers be treated fairly. He felt that a 500-foot distance would be a good compromise. Trained applicators can do a good job of reducing drift. Only 20 people are on the non-ag registry because farmers do a good job. Neighbor-to-neighbor communication is the way to go.

Heather Spalding of the Maine Organic Farmers and Gardeners Association said she was encouraged with how the registry was operating so far. She mentioned how a blueberry grower was notifying her about spraying even though her property was beyond the required distance. Spalding does not support separating the requirements by sector. She is hopeful that an automated system can be developed. Spalding mentioned the recent report by the President’s Cancer Panel which highlighted the need to more carefully evaluate environmental toxins, demonstrating that it’s not just the environmental organizations that are concerned about chemicals in the environment. She was curious about how the \$25,000 allocated for publicizing the registry was being utilized.

Linda Briggs is a resident of Bangor currently, but lived in Aroostook County for 20 years. She and her family lived next to a potato field for 14 years and were exposed to aerial spraying during that period. Briggs and her daughter are both affected by multiple chemical sensitivity (MCS) now. It started with neurological symptoms. Their lives have been compromised ever since. There is no cure for MCS, and avoidance is the only option. She said she can be affected by chemicals that are applied a long time prior to her exposure. Notification is one thing, but it doesn’t address the fundamental problem with chemicals and residues. Briggs stated that the farmer’s son who was their neighbor in Aroostook County developed Parkinson’s disease at age 27. She said Parkinson’s is associated with pesticide exposure.

Tim Hobbs from the Maine Potato Board expressed uncertainty about what the Legislature and the Joint Standing Committee on Agriculture, Conservation and Forestry want in the form of a comprehensive registry. Does it mean everything? A distance of 500 feet is working well now. He also wondered about what would be on a sign.

5. Board Discussion About Development of the Comprehensive Notification Registry

Public Law 2009, Chapter 584, LD 1547, directs the Board to work to develop a comprehensive notification registry. Initial Board discussions have identified appropriate notification distances and the feasibility of requiring posting of signs at applications sites as the two most challenging components of a comprehensive notification registry. The Board will discuss these two issues and the basis for making its determinations.

Presentation by: Henry Jennings
Director

Action Needed: Provide Input to the Staff on Distances and Signs

- Jennings began by expressing concern about the amount of work that's been associated with development of the registry so far. The staff is struggling to keep up with the work load without any additional responsibilities. He repeated his philosophy about public policy development in which the goal is to achieve the maximum public benefit with the minimum private burden. Jennings suggested that setting notification distances should probably be based on the type of application equipment.

Board members discussed several aspects on the mechanics of a comprehensive notification registry, such as whether it needs to be divided into sectors. A comprehensive registry appears far more challenging for commercial applicators, since they often treat a much larger number of properties and new customers are calling every day looking for immediate service. Ravis again inquired and elaborated on why more of a broadcast notification system wouldn't work for commercial application, such as e-mailing everyone in a town where spraying will take place, or possibly in a section of a town. As was the case with earlier comments, applicators in attendance stated the problem with that approach is that company customer lists would be revealed to competitors.

Board members also talked about the feasibility of posting signs around pesticide application sites. Members questioned both the purpose and the content of the signs. Sign language would need to be simple and alert neighbors that spraying may take place, and how to get on the notification registry.

6. Consideration of the Staff Negotiated Consent Agreement with Old Marsh Country Club of Wells

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 application of pesticides at a golf course in violation of multiple regulatory requirements.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/Disapprove the Consent Agreement Negotiated by Staff

- Connors explained that this consent agreement arose from a routine inspection in which multiple low-gravity violations were detected. Taken individually, none of the violations would likely rise to a level of a monetary penalty. However, in aggregate, the violations are indicative of a lack of attention to pesticide law.

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

In favor: Unanimous

7. Proposed Policy for Approving Registration of Plant Incorporated Protectants

The Maine Board of Pesticides Control registers over 8,500 pesticide products annually without Board review of individual products. Approval of registration is delegated to the staff and based on the federal EPA's parallel registration approval process. In 1994, the Board adopted a verbal policy requiring review of Plant Incorporated Protectant applications prior to approving state registration requests. After first approving nineteen registration applications for *Bt*-corn products, the Board reached consensus that it was time to update the 1994 verbal policy.

Presentations By: Henry Jennings
Director

Action Needed: Approve/Revise Draft Policy for Reviewing Plant Incorporated Protectant Registration Requests

- Jennings explained that the draft policy was an attempt to capture the Board's sentiments, as expressed at the previous Board meeting. The policy would allow the staff to process Plant Incorporated Protectants registration requests that have risks similar to products the Board has already reviewed and approved. Board members discussed the draft policy and agreed upon a series of minor wording changes.

Eckert/Jemison: Moved and seconded approval of the draft policy

In favor: Unanimous

8. Discussion of Concerns About Unlicensed Commercial Agricultural Producers

At the recent Board Planning Session, concerns were raised about the evolution of state and federal pesticide laws which now allow many commercial growers to apply pesticides to their crops and/or livestock without a pesticide applicator's license or any formal training. The basic standard for requiring a private pesticide applicator's license—triggered by the use of a restricted pesticide—was established in the early 1970s, and has never been updated by the federal EPA. Since that standard was established, a number of legal requirements have been imposed and a series of public health and environmental risks have been identified that were not well documented in the 1970s. Some members of the agricultural community have questioned whether the existing standard is still appropriate.

Presentation by: Gary Fish
Manager of Pesticide Programs

Action Needed: None—discussion only

- Eckert/Stevenson: Moved and seconded that agenda items 8 and 9 be tabled, and that the meeting adjourn at 1:45 PM.

In favor: Unanimous

9. Other Old or New Business

- a. E-mail from Nancy Oden—H. Jennings
- b. Other?

- Item tabled—see motion from previous item

10. Schedule and Location of Future Meetings

On June 24, at 7:00 PM, there will be a Public Information Gathering Meeting in Machias. This meeting will be continued at 9 AM on June 25. On July 23, the Board meeting will be held in Portland, and will be combined with a Public Information Gathering Meeting. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

- No changes or additions to the schedule were made.

11. Adjourn

- Meeting adjourned at 1:45 p.m. See motion from item 8.