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MEMORANDUM

DATE: June 16, 2010
TO: Board Members
FROM: Staff
SUBJECT: Ideas and Concepts for Development of the Comprehensive Registry

The staff has had several discussions since the last Board meeting to review the comments received at Public Information Gathering Meetings to date and try to determine the most logical approach to developing a comprehensive registry and to determine appropriate distances. Below, we have identified a few areas of staff consensus and a handful of ideas about the comprehensive registry.

Staff Discussion Points

- Although there was a need for consolidation and improved consistency, the overall pesticide notification system that was in place prior to recent legislation was well thought out and fairly effective. Aerial spraying not covered by Chapter 51 was the obvious weakness.
 - The original registry only applied to non-agricultural, commercial applications because those types of applications are difficult for property owners to anticipate, and equally difficult for them to identify who they should ask for advance notification
 - Participants in the original registry were required to list neighboring properties, because the system would have been otherwise unworkable for commercial applicators given the number of properties that they treat each day, especially in developed areas
 - Agricultural applicators were subject to different requirements because neighboring property owners were in a better position to anticipate crop spraying and could easily determine who to ask about advance notification
- The Board does not have the staff resources to administer a comprehensive registry unless it is designed to minimize staff commitments
 - Use of a web-based sign-up and distribution system is one key to minimizing staff commitments
 - While homeowners and other unlicensed individuals apply pesticides, they rarely own or use large powered sprayers and they usually don't generate the same types of exposure-related complaints as commercial-scale applications do. In addition, regulating homeowner use of pesticides under the registry would quickly make it unmanageable. Consequently, the staff recommends limiting the registry notification requirements to applicators the Board normally regulates and who are easy to identify and contact.
 - This group includes commercial applicators and commercial agricultural producers (both terms are defined in rule)

- Similarly, the staff recommends limiting the scope of the registry to require notification only for those types of equipment that historically have generated neighbor concern
- The staff sees no reason to place limitations on who can sign up for the registry; it's simply a list of properties for which the owners wish advance notice of nearby spraying. Whether registry participants receive any notification will depend on the proximity of the spraying and the obligations that the Board crafts as part of the rulemaking efforts. The Board can encourage voluntary notification of people on the registry to applicators who are not legally required to comply.
- The staff recommends retaining the current "by-request" option to cover any circumstance that the registry will not realistically be able to cover. By-request distances may need to be adjusted to correspond with registry requirements.
 - This might include applications made by other types of applicators such as homeowners and other unlicensed applicators
 - The Plant Incorporated Protectant rule relies on the "by-request" option to facilitate communication between farmers and minimize the threat of pollen drift
 - We've already heard from people who want to be notified but don't want their contact information posted on a publicly available list posted
 - Distances may need to be adjusted to correspond with the registry
 - A standardized letter similar to that provided to participants on the non-agricultural registry could be provided to facilitate notification between homeowners using pesticides
 - The by-request options allows people who miss the annual deadline to receive notification for the current year
- While the staff agrees that information about registry participants must remain current, requiring an annual renewal process has historically proven to be time consuming for the staff and is contrary to the current statute. Accordingly, the staff recommends using a multipronged approach for keeping the registry current:
 - Send annual e-mails and/or other forms of communication (for those that didn't provide an e-mail) to confirm that the contact information is correct and that the participant remains interested
 - Provide outreach to land managers about reporting any outdated contact information to the Board
 - Include a clause in the rule that states land managers are not responsible for notifying participants whose contact information is not valid
- On registry mechanics:
 - Different approaches may be necessary for non-agricultural and agricultural settings
 - There are differences between agricultural spraying and non-agricultural commercial applications that may support a multilayered approach
 - Agricultural neighbors generally recognize that spraying may occur on neighboring crop land and they should be able to determine who to ask about it
 - Non-agricultural commercial applications generally involve a much larger number of properties which are usually associated with structures and more often located in residential and/or urban areas

- It's far more difficult for a property owner to determine who might be applying pesticides to residential properties, and that's why the original non-agricultural registry was developed
- Non-agricultural commercial applicators often receive requests to treat new properties daily while agricultural applicators will know all their application sites no later than planting time
- A two-tiered system may make some sense:
 - One distance for most people and a larger distance for people who have documented medical conditions

Staff Suggestions for a Comprehensive Registry

- Combine the new agricultural registry with the non-agricultural registry contained in Chapter 28
- Add other powered application equipment using liquids to the list of equipment covered by the registry, if applied by commercial applicators and commercial agricultural producers (include forestry with commercial agricultural producers)
- The comprehensive registry should have an internet based sign-up and distribution system
- Pursuant to the statute, there will be no fee for the comprehensive registry
- The sign-up system would prompt participants to select the types of applications (such as turf or ornamental tree) that they want advance notice of (and possibly discourage them from selecting applications that won't affect them)
- If participants select residential/urban applications, they will be prompted to list the properties—up to 250 feet from their own property—for which they wish to receive advance notification of pesticide applications
- The staff suggests three notification distances, any of which could be tinkered with if there was a compelling basis for it
 - One for aircraft and air-carrier equipment (with exceptions). The Legislature established 1320 feet for these types of equipment.
 - One for ground-based, liquid powered application equipment (there is a precedent for 500 feet and we have not received complaints that it is inadequate)
 - One for non-agricultural (urban/residential) commercial applicators (there is a precedent for 250 feet, and we have not received complaints that it is inadequate). There is logic to support a smaller distance for urban/residential applications: the landscape is characterized by small lots, many buildings and the prevalence of shade trees.
- Merge Chapter 51 with Chapter 28, and discard any portions of 51 that no longer make sense (such as notices to the Poison Center)
- Add language to the rule stating land managers are not responsible for notifying participants if their contact information is invalid
- The staff will develop a system for keeping the registry list current
- Retain the “by-request” option to cover:
 - People who do not want their personal contact information posted on a publicly available list
 - People who miss the annual sign-up deadline
 - Plant Incorporated Protectants

- Circumstances not covered by the registry
- Include in the revised rule some elements of the statute such as:
 - Emergency waivers
 - Same day notification for urgent needs consistent with IPM