

Maine Board of Pesticides Control

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Memorandum

To: Board Members
From: The Staff
Date: Friday, July 16, 1999
Subject: Food For Thought

The compliance staff has noted an ever-decreasing need for Restricted Use Pesticides (RUP's) and Limited Use Pesticides (LUP'S) in agricultural production. Some farmers no longer wish to bother with the private license as result. Private license numbers have dropped from 2000 to 1755 (12.25%) in just three years. While some of the drop is related to attrition and farm failures, we don't believe this is the sole reason for this trend.

At the same time, there is an increasing number of public health/environmental issues associated with commercial agricultural pesticide use that warrant training of applicator's such as:

- 1) Ground Water
- 2) Surface Water
- 3) Food Safety
- 4) Drift/Volatility
- 5) Endangered Species
- 6) Worker Safety
- 7) Container/Waste Disposal
- 8) Spill Remediation
- 9) Chemical Sensitivity
- 10) Notification/disclosure and
- 11) Record Keeping.

The staff advocates a revision of the criteria for requiring a private license (adopted in 1972) to now correspond with that of the federal Worker Protection Standard (adopted in 1992). This change would affect all grower's involved in commercial agricultural production who use pesticides as part of their production practices. It would require all to be certified and have a private pesticide applicator license.

The Certification & Training Assessment Group convened by EPA in 1997 has also recommended expansion in the scope of the applicator certification program. Their draft recommendation is:

“ Amend the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and revise 40 CFR Part 171 to expand the regulatory scope of the certification & training program from its current focus on applicators of restricted use pesticides (RUPs) to include regulatory coverage of all applicators who apply pesticides as part of their occupational responsibilities or activities [that could result in pesticide exposures to the public through direct exposure/contact, residues on food or plant materials, or from drift].”

The staff understands that this would be a significant political undertaking, but if we are to carry out the legislature's wishes to minimize reliance on pesticides, it will be very difficult to do without regular contact with agricultural applicators. Once private growers let their licenses lapse they leave the Board's communication loop. Without regular communication and continuing education programs, growers will lose touch with the ever changing world of pesticide policy.

If you support this proposal, the Board will have to ask the Legislature to change the definition of a private applicator. The current definition is limited to private use of RUP's and LUP's. This could become one of the issues we can raise in our Program Evaluation Report which must be submitted by November 1, 1999.

Memorandum

29 October 1999

From: Paul Gregory

To: Members, Board of Pesticides Control

Subject: Summary of comments on licensing commercial agricultural use of General Use Pesticides.

What follows is my summary of 22 September discussion on whether to recommend to the Legislature that current licensing statutes need to include applicators of general use pesticides for commercial agricultural purposes. This summary is transcribed from a tape recording.

Henry Jennings: Jennings presents case that current licensing law goes back to 1972 when Congress adopted original certification provisions for pesticide applicators. That law remains intact today. Back then Congress's concerns were for acute toxicity found in many highly toxic products available at retail prior to 1972.

Old toxics have gone way of dinosaurs, and in their place have come new chemistries that affect specific physiology of target pests. Acute toxicities have come way down as a result. Government regulators are becoming increasingly aware of other environment and public health concerns. To address these, applicators need to be aware through quality training, up-to-date information.

Jennings reminds the Board of the list of concerns cited by the staff in July. (See July Board meeting notes, please) Another one, chronic toxicity, has now been added. All applicators need to be aware of these issues. Those concerns, and the recent mandate to minimize reliance, point towards the need for a strong education system with rapid dissemination of up-to-date information as administered through a certification program.

Because current certification/licensing program is based upon the protection of people from acutely toxic pesticides, and because those pesticides are disappearing, it is feasible to consider that in the future, the private applicator certification program will eventually apply to no one.

Yet the need for information never has been higher.

The public debate before the Board today is how to keep education as the cornerstone of proper pesticide application. How can it continue?

The BPC staff recommends certification ought to begin when the use of any pesticide has the potential to impact someone else's property or health. Similar standards already exist for other professions such as electricians or plumbers.

That means all commercial agricultural producers would need a private applicators license. Such a standard is not without precedence; U.S.EPA's Worker Protection Standard recognizes risks associated with all pesticides and not only the acutely toxic ones.

Much debate is expected, especially about where to draw a line. The purpose is not to target the grower selling an excess basket of cukes for 25 cents each—that's not the intent. But rather to draw lines that are fair and make sense. The **BPC** has no statutory authority to impose such a requirement—only to determine whether a recommendation ought to be made to the Legislature which does have that authority.

If it does go before the Legislature, there will be yet another opportunity for public debate on this issue.

Sharon Tischer, Maine Organic Farmers and Gardeners Association: Tischer says it's premature for MOFGA to take a position, but she acknowledges MOFGA-certified growers who use pesticides would come under purview of these proposed regulations.

The Core manual that's required of private applicators has wealth of important information about pesticides. It's important to get that word out to pesticide users.

Although much of the CORE manual's information on chemical pesticide use is irrelevant to organic growers, MOFGA's consensus so far is that they acknowledge they are part of this process, that they use some natural pesticides that are toxic, and that they expect to be part of the process. She offered that a new category for the organic commodity ought to be created.

Tischer said she is representing the people sitting around the MOFGA's board table who generally are very concerned about pesticide use. So they are likely to be the most receptive commodity group toward this proposal.

Jon Olsen, Maine Farm Bureau: see attached

Lauchlin Titus, representing **Agway** and **himself** as a small farm hobby grower: **Titus** says **Agway** is prepared to take a position—one of opposition. And he took issue with the rationale of decreasing license holders. Death and quitting farming are two reasons why these numbers may be lower. He cannot think of anyone that has dropped their license because of the fewer restricted materials available. He says he knows of farm families that had two or three members who held licenses that have dropped them, but at least one licensee per family has remained on the farm.

His main concern is the \$500 threshold for licensing. He said it's way too low of a number. He doesn't want **Agway** to be liable if a customer misrepresents himself, then buys a five-lb bag of captan and something illegal occurs later with that very chemical.

One result of this proposal could be the loss of small growers. They won't go to the trouble of earning a certification, but if they do, they'll buy everything that's available to them. That would contradict the **BPC**'s minimization theme. This grower will buy a 2.5 gallon jug of materials when all they need is a pint. Then they'll have a 20-year supply, and the **BPC** will have to dispose of it someday later. Small growers would recognize certification as an encouragement to use more chemicals.

Speaking now as a two-acre hobby farmer, **Titus** said the \$500 number is ridiculous because even on his non specialty farm that grows beans, cukes, corn, pumpkins, potatoes, squash, his gross sales for this year will be \$5,000 dollars. A simple row of greenbeans yields \$150.

Hobby farmers are likely to work a regular 9-5 job, so time for training is in short supply. **Titus** said he is concerned that the law will change a lifestyle for many folks. Senior citizens and high school students who earn an extra income hobby farming will ask whether the time and expense and effort justify the end.

Also, if the Board compared the fatalities of snowmobile use against the fatalities of pesticide use, the numbers for justifying their concerns just aren't there.

Titus added that the current Category exam for vegetable growers will overwhelm the small hobby farmer, so why not establish a \$5.00 license with no testing requirements just to build the database the BPC staff says they need to disseminate information.

Holyoke agreed with the conventional wisdom that the greatest misuse comes with homeowners because they're not as conscientious about rates and what products they select. Yet, the people **Titus** represents as small-yield farmers should have some training. The difference between homeowner-gardeners and small operators easily blends together. Is there a way of reaching them educationally without forcing a new licensing system upon them?

At the same time **Holyoke** said he remembers at the start of licensing commercial growers that attendance at extension farmer meetings increased by about 500 per cent because they now needed to get pesticide credits.

Titus responded, saying there's a difference between the homeowner applicator and hobby farmer. The latter is more likely to seek out information, they'll ask him or Cooperative Extension what products they can use. There's a willingness for these folks who've crossed the line to seek out information.

Holyoke then asked **Titus**: Of those hobby farmers who've sought out information, how many of them have calibrated their handheld sprayers so that they have a clue as to how much of whatever (pesticide) they're putting on?

Titus responded: I've instructed a lot of people.

Carl Estes: He told Board he has a small farm in Buxton. **Estes** said **Jennings** made a good presentation, but he was still confused. On his farm they use very little in the way of restricted pesticides, instead applying RoundUp and Sevin readily available at Agway or at a hardware store. He didn't understand the advantage of buying them from commercial suppliers. He added there should be more half-day training sessions throughout the state so growers could obtain several credits if they took time off from work.

Saffier: She asked, why target ag producers rather than homeowners?

Jennings responded: Our logic is this: growers in commercial agriculture are producing food people eat, so the potential public health impact is there. Generally, homeowners do not use an airblast sprayer or 500 gallon boom sprayers, so unlikely are drift and volatility issues that occur in commercial agriculture. Also, although many chemicals used by the commercial grower and the homeowner are the same, they individually don't apply the same volumes or same concentrations. The scale is not the same when 500-acre operation farmers are letting their licenses lapse.

Holyoke: He disagreed about the 500-acre farmer because he's going to be aware of what he's using and of the rate he's using or else he wouldn't be a viable farmer.

Saffier: She said we need to frame this issue around risk, since risks differ for different commodity groups. Seems like a number of factors—volume of material, toxicity of materials, amount of land it's applied on, proximity to sensitive areas call for coherent ways to define risks; to say there are greater risks from the ag community than from other user groups isn't appropriate. There are too many holes in such an argument.

Eckert: She said **Jennings** is right in saying the restricted use chemical no longer drives us anymore. We haven't seen a lot of things go on the restricted use list in a long time. The issues before the Board are how to reach the small grower who's not using restricted chemicals and how to keep him in the system. The other issue is what to do with people using chemicals in homeowner or slightly larger input situations.

Jeff Smith: He pointed out the irony that during this, his last, meeting while sitting on the **BPC**, he's philosophically in agreement with **Sharon Tischer**. He said he's become sensitive to the distinction between producers and consumers. Consumers want to be assured those producing the food products they consume are doing so in a safe and responsible manner. To enhance our (the farmer's) credibility—whether he be a small or large producer—it is necessary to subscribe to some sort of certification procedure. **Smith's** only issue is the arbitrary dollar figure of \$500. When drawing similarities between the grower and other licensed professions, one must realize there are no hobby electricians. If services are offered to somebody else, one must be responsible. That same overall philosophy ought to apply no matter the size of the operation.

Jennings: Maybe the \$500 figure isn't as logical as we thought, **Jennings** said. The staff took that figure from state horticulturist's program for licensing nursery stock and greenhouse operations. But that's a license you can buy without any certification—that may or may not make sense for them, but the **BPC** staff is looking for more than just generating a fee and a list.

David Bell, Maine Blueberry Commission: He said the extent of Maine's notification laws is disproportional to actual risks, comparing herbicide use in blueberry barrens while homeowners in congested areas may apply insecticides to building foundations. Licensing should be proportional to real risks. Public has huge gaps in understanding what is pesticide risk. **Bell** asks that any action taken be rational. There's a huge need to educate public, but industry is not as credible as the **BPC** to provide that education.

Linda Smith Dyer, MDOA: She reminded the Board that any proposal to Legislature needs support of a majority of legislators and of the Administration. It is important that Board, staff and Department work together.

Mike Corey, Maine Potato Board: He took issue with some of **Jennings'** comments. He said farmers are not moving away from being licensed, though they may be saying this to inspectors out of frustration. He'd like to see the facts that they are not renewing. Or a list of who has let their licenses lapse.

A 500 acre farmer—in Aroostook county or elsewhere in Maine—will have a difficult time farming if they don't use some restricted use material. They'll need a license to do that. We've long supported education and licensing, and I would dare say that some 100 per cent of potato growers are licensed. Yes, there are fewer of us than five years ago because they're not farming anymore. You need to be careful because you are the public board and your statements get out to the press and change public opinion. When you make statements that say farmers are letting their licenses lapse, you need to be very careful and back up those statements.

Corey agreed with **Jeff Smith** that there's a need to increase the public's support of agriculture, that the people who put pesticides on potatoes and other crops are professionals, that they know what they are doing. There are a lot of laws that regulate them. They have to do a good job. And he has not seen a growing list of violators from agriculture coming before this board. Yes, there's the occasional one, but we also use a lot of pesticides, so if there were a lot of problems, there then should be an increasing number of violations if those problems exist.

Corey would like to hear answers to **Jon Olsen's** questions. If the Board can answer those in the affirmative, then he'd say, yes, you need to go ahead with this proposal. If you cannot, then we're doing a pretty decent job in agriculture and we ought to be looking elsewhere.

Carl Estes again: Please be aware there are a lot of small growers that are part time operators. They work off the farm. Getting the certification credits is really quite a task. This means they have to take the day off of work to go to the trades show or New England Vegetable Growers meeting. Estes said, as I said earlier, I wish you'd make more opportunities available.

Saffair, Eckert, Berry: All three agreed a summary of this discussion ought to be written (*tah dah!*) as part of the next step toward progress.

Saffair: She said she thought one sticking point is the whole issue of lapsing licenses. She would like more information on that. Even if there's not a huge lapse, we still have an issue of people moving to general use pesticides, and that we want them to be educated.

Jennings: He said it's regrettable that the issue of lapsing licenses started this discussion. The numbers may well be attributed purely to fewer growers. But Jennings takes issue with the assumption about violations. People often equate proper use of pesticides equals no violations. That is *a* measure, but it's not *the* a measure of all things. Groundwater contamination doesn't occur through pesticide violations. It is not a violation of the law to have *hexazinone* or any other general use pesticide in someone else's well. Surface water contamination doesn't occur because of violations.

Saffair: She agreed we ought to summarize this discussion and also answer **Jon Olsen's** questions.

Jennings, Holyoke: They agreed this will be a long, complex process. **Holyoke** said he sees no deadline for getting this proposal to the legislature soon. **Jennings** added he wants to take the time necessary to deal with issues raised and give the agricultural community a sense of comfort as to what we're doing.

Holyoke: He said he thinks the decrease of commercial farmers in the last five years is greater than the reduction of license holders, so he doesn't think it's related to the decrease in farmers whatsoever. But there is the issue of more available general use pesticides, and how do we maintain an effective educational system that deals with pesticide use so that we still have a good educational program five years from now. There may be other licenses to do that too. That's what we need to look at, and not jump to a quick fix.

Titus: He points out that these new, general use materials are distributed in 10- or 20-acre package sizes. Also they are not cheap. A gallon of Admire is \$500, so "Hey, do you want to talk about restrictions?" So to say there are more general use pesticides available doesn't mean everyone's jumping on that band wagon.

Author: sjohnson@umext.maine.edu at Internet
Date: 10/22/1999 3:33 PM
Normal
TO: Gary Fish at Ag&Food
Subject: input

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Gary --

I am responding to item # 3 on the October 22, 1999 agenda. While I feel it noteworthy to license all commercial agricultural producers with more than \$500.00 in sales, that is only part of the story. The licenses dropping from 2000 to 1755 during the past three years could well be a comment on the state of agriculture in Maine, more than growers letting their licenses lapse. Trust me, all the concerned calls my office receives in October every year, there are few if, any commercial potato growers that let their license lapse.

As you would expect, our office fields numerous questions on pesticides. Most frequently asked questions from commercial producers revolve around choice of pesticides. We also field questions on pesticide misapplications and resulting plant problems. Most of these pesticide problems my office encounters from all of Maine through our toll-free number and in-house referrals come from homeowners not understanding pesticides. I still feel that anyone who applies pesticides should be licensed. Yes, every gardener would need a license to purchase pesticide. Maybe this would reduce the 2,4-D damage on tomatoes when the weed sprayer is used for insect control. And since there is tomatoes are not labeled, our recommendation is to discard the tomatoes. I doubt if this is done. Also, every pesticide retailer should have to have the same storage facilities as the commercial suppliers. This would eliminate the awful smells in discount retail stores selling pesticide and food in the same store, across the aisle. If my memory serves correctly, the last few pesticide storage issues that have come before the MBPC were from inadequate storage from a discount retailer.

Steve Johnson

"What I say is that, if a man really likes potatoes, he must be a decent sort of fellow." A.A. Milne (1882-1956)

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Maine Farm Bureau Association

"The Voice Of Organized Agriculture"

October 22, 1999

Chairman Lewis and members of the Board of Pesticides Control:

My name is Jon Olson. I am the Executive Secretary of the Maine Farm Bureau, the state's largest general farm organization of 5,000 members.

Maine Farm Bureau has not taken a position on the Board of Pesticides Control staff's recommendation to consider expanding the definition of private applicator to include all commercial agricultural producers. Before we consider a position, there are a number of questions raised by this proposal that will require answers. These questions include:

- Has there been a survey with those farmers whose private applicator license lapsed to determine the reason why it lapsed? Could it be these farmers are no longer farming or possibly changing production practices not requiring pesticides?
- What will be the pesticide definition used? Will it include disinfectants, including household bleach, which technically are pesticides?
- Will commercial agricultural production include organic farming, growing Christmas trees and trees on small woodlots, landscaping, nursery, and greenhouses?
- Will the Board of Pesticides Control have the financial and staff resources needed to train and license all of the commercial agricultural producers requiring a private applicator license? What is the projected number of commercial farmers needed to be licensed?
- Has the staff done an analysis of the total amount of general use pesticides used by farmers and compared this with the total amounts pesticides used by consumers?
- Does any other state require farmers to be licensed for general use pesticides?
- Is this proposal staff initiated and driven or was it initiated by the public because of concerns with general use pesticides being used by farmers?
- Has there been recently an increase in violations by farmers in applying pesticides that make it a concern that the current regulations are not working and this additional licensing requirement is necessary?
- What is the status of An Act to Minimize Reliance on Pesticides (public law 1997, chapter 389), which among other things, requires the Board of Pesticides Control to promote the principals and the implementation of integrated pest management? Is this being done? If not, what are the staff's plans for this legislative directive? How will this new licensing requirement fit into this law?

Thank you for your attention. I'll be happy to answer any question you may have.