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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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COMMISSIONER
HENRY S. JENNINGS
DIRECTOR

BOARD OF PESTICIDES CONTROL

May 6, 2011

AMHI Complex, 90 Blossom Lane, Deering Building, Room 319, Augusta, Maine

MINUTES

9:30 AM

Present: Jemison, Eckert, Qualey, Ravis, Bohlen, Stevenson and Simonds [Simonds arrived during agenda item 7]

1. Introductions of Board and Staff

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

2. Minutes of the February 18, 2011, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

Ravis/Eckert: Moved and seconded approval of the minutes

In Favor: Unanimous

3. Request from Maine Migrant Health Program and Eastern Maine Development Corporation to Help Support a Worker Safety Training Program for Summer 2011

Since 1995, the Board has supported a Migrant and Seasonal Farmworker Safety Education Program. During 2010, 326 individuals received pesticide safety training. The Maine Migrant Health Program and Eastern Maine Development Corporation are planning to provide two health and safety outreach workers during the 2011 agricultural season. Funding to support this effort is being requested and the staff will point out that the total cost is down from last year and that funds have been budgeted in the Board's FY '11 work plan.

Presentation By: Chris Huh, Plan Manager, Eastern Maine Development Corporation
Barbara Ginley, Executive Director, Maine Migrant Health Program

Action Needed: Discussion and determination if the members wish to fund this request

- ☑ Jennings introduced the subject by reminding Board members that the Board has supported this grant request since 1995. The Maine Migrant Health Program partners with the Eastern Maine Development Corporation, and they use the grant funds as a match against federal AmeriCorps grant funds.

Barbara Ginley from the Maine Migrant Health Program was present and explained that the partnership plans to hire two bilingual safety educators to train farm workers—one in eastern Maine and one in Aroostook County. Ginley reported that Spanish and Creole were the most common native languages for migrant workers in Maine. Board members expressed support and appreciation for the program. [Chris Huh was unable to attend the meeting.]

Eckert/Qualey: Moved and seconded approval of the grant request

In Favor: Unanimous

4. Consideration of a Variance Permit Request from DeAngelo Brothers, Inc., for Vegetation Control along the St. Lawrence and Atlantic Railroad

Chapter 22 of the Board’s regulations allows applicators to seek a variance from any standards they feel are unreasonable for their type of operation. In addition, the Board can grant variances for the 25-foot setback required from surface water under Section 6 of Chapter 29. DeAngelo Brothers plans to treat weeds growing in the ballast and shoulder areas along the St. Lawrence and Atlantic Railroad in 2011. They are seeking a variance from Chapter 22 so they do not have to record all sensitive areas within 500 feet of the target areas, and a variance from Chapter 29 so they can treat within 10 feet of water crossings. Instead, they propose using application strategies and chemical choices that will minimize the chances of pesticide drift and runoff.

Presentation By: Henry Jennings
Director

Action Needed: Approve/disapprove the variance request

- ☑ Jennings reported DeAngelo Brothers has not sprayed rail lines in many years. The staff requested that they remove diuron from the list of herbicides to be used, since that was one key outcome from the stakeholders’ group that worked to develop a compromise policy on railroad spraying. The staff also questioned the need to conduct spraying in May since the Maine Department of Transportation (MDOT) intentionally delays their program until midsummer in an effort to reduce water contamination. DeAngelo Brothers agreed to replace diuron with pyraflufen-ethyl, but they were reluctant to alter their proposed application dates due to concerns about weed-control efficacy. Robert Moosmann, from MDOT, reviewed the program they use on state-owned railways which emphasizes the addition of Nu Film spreader-sticker-extender to herbicide products that do not contain surfactants. Nu Film is very effective at holding the herbicides in place.

Board members expressed the view that DeAngelo Brothers should be encouraged to transition toward the MDOT model in future years, if they continue to do rail line work in the state. There

was brief discussion about the use of pyraflufen-ethyl, which is listed as a carcinogen by the State of California. Due to its low mobility and application rate, and the low risk of human exposure, the Board concluded the risks were acceptable.

Eckert/Ravis: Moved and seconded approval of the variance for one year. Future requests should only be approved by the staff if the request is consistent with the MDOT model.

In Favor: Unanimous

5. Consideration of a Variance Permit Request from RWC, Inc., for Vegetation Control along Several Maine Railroad Tracks and Industrial Sidings

Chapter 22 of the Board's regulations allows applicators to seek a variance from any standards they feel are unreasonable for their type of operation. In addition, the Board can grant variances for the 25-foot setback required from surface water under Section 6 of Chapter 29. RWC plans to treat weeds growing in the ballast and shoulder areas along several Maine railroads and industrial sidings in 2011. They are seeking a variance from Chapter 22 so they do not have to record all sensitive areas within 500 feet of the target areas, and a variance from Chapter 29 so they can treat within 10 feet of water crossings. Instead, they propose using application strategies and chemical choices that will minimize the chances of pesticide drift and runoff. Board policy dictates that the staff may renew repeat variances unless there have been complaints or incidents. Since several citizens recently voiced concern about spraying adjacent to the Gorham rail trail, this year's variance request will be reviewed again by the Board.

Presentation By: Henry Jennings
Director

Action Needed: Approve/disapprove the variance request

- Jennings pointed out that the Board would not normally need to review the RWC variance request, since its policy allows the staff to reissue repeat requests. However, a group of citizens from Gorham attended the June 2010 Board meeting in Portland to complain about the rail spraying adjacent to a trail there. Consequently, Board policy dictates that the variance must be approved by the Board in this circumstance.

Robert Moosmann from MDOT explained that the group from Gorham was led by a cancer survivor who is also a Vietnam War veteran who served during the period when Agent Orange was in use. The group is opposed to any use of herbicides adjacent to the rail trail. MDOT personnel met with the group once in the fall without any progress, and met again in the winter, where a temporary agreement was reached in which the trail group agreed to maintain the vegetation while MDOT agreed not to use herbicides adjacent to the rail trail. Moosmann stated this agreement is only workable while that section of rail is not in use. Federal railroad regulations are far more stringent about acceptable vegetation levels.

Eckert inquired if there were any alternative vegetation control strategies that would be more acceptable to the trail group. Moosmann described a few mechanical approaches such as steam

and infrared devices, but the costs are prohibitive. Herbicides are the only approach that is used across the country at this time.

Eckert/Qualey: Moved and seconded approval of the variance requests

In Favor: Unanimous

6. Consideration of the Staff Negotiated Consent Agreement with Egbert's Lawncare, LLC, of Gorham, Maine

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 application of pesticides onto a property without the authorization of the property owner.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors explained that Mr. Egbert sprayed the lawn adjacent to his mother's home as a favor. Unfortunately, the neighbors did not want their lawn sprayed and called the BPC office to complain.

Qualey/Stevenson: Moved and seconded approval of the consent agreement

In Favor: Unanimous

7. Consideration of the Staff Negotiated Consent Agreement with Northeast Agricultural Sales, Inc., of Detroit, Maine

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 documented pesticide drift to an adjoining residential property.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

- Connors explained Northeast Agricultural Sales, Inc., sells agricultural chemicals and does some commercial application work in agriculture as well. In the spring of 2010, the company sprayed a

series of cornfields including one adjacent to the complainant's house in Skowhegan. The complainant reported observing a white cloud of dust engulfing her property. One of the samples collected from the complainant's property was positive for atrazine at approximately two percent of the level found in the target area. A staff investigation concluded that the applicator failed to take all reasonable precautions to minimize off-target drift in this case.

Board members asked whether the company had properly identified the sensitive areas prior to the application. Connors explained that the investigation indicated that the sensitive areas were identified prior to spraying, but they were not recorded prior to spraying. Katy Greene, from the Maine Organic Farmers and Gardeners Association, asked about the level of the fine. The staff explained that the fine was relatively low for this type of incident because the residue level was low and the company had taken a number of precautions to guard against drift.

Eckert/Stevenson: Moved and seconded approval of the consent agreement

In Favor: Qualey, Jemison, Stevenson, Eckert, Bohlen and Ravis

Abstaining: Simonds [Simonds arrived during this agenda item]

8. Review of Pesticide Legislation

Six bills potentially affecting Maine pesticide law are currently working their way through the Legislature. The staff will review the status of the pending bills with the Board.

Presentation By: Henry Jennings
Director

Action Needed: Review pending bills

Jennings stated that none of the pesticide bills made it to the full Legislature yet, but all of them had been reported out of committee.

- LD 16 was reported out ought not to pass.
- LD 228 was amended to include a 1,000-foot, by-request notification option for aerial spraying and then reported out ought to pass (8-4).
- LD 321 was amended to broaden the BPC university Board member position to include anyone with expertise in IPM and reported out ought to pass (8-4).
- LD 837 was amended to a resolve directing the BPC to:
 - develop BMPs for outdoor pesticide use on school grounds;
 - assess compliance with Chapter 27;
 - report back to the Legislature by next February.
- LD 975 was amended to exclude livestock operations and reported out as ought to pass unanimously.
 - There will a \$5/year license fee.
 - The BPC attached a fiscal note asking for a half-time clerk.
 - The BPC will have one year to revise its rule.
 - Farmers will have until 2015 to obtain a license.
- LD 1041 was voted out ought not to pass.

Jennings observed that the BPC could end up with three different assignments from this legislative session: updating the notification regulations, updating the private licensing rule, and working on school pesticide use. Simonds agreed that there will be significant demands on agency resources over the next year. He suggested that the Board focus on planning for those needs at the next Board meeting. Eckert expressed frustration over the amount of work the Board put into the notification issue over the last three years without any results so far. Jon Olson, from the Maine Farm Bureau, noted that there is also a bill to allocate \$200,000 in surplus BPC funds for IPM. He suggested that Jennings also update the Board on the status of the NPDES conflict with FIFRA. Jennings stated that EPA had filed for an extension of the two-year stay to allow time for its staff to work through questions with the National Marine Fisheries Service and the US Fish & Wildlife Service. The court has extended the stay from April to September 2011. At the same time, the US House of Representatives has passed an amendment that eliminates the conflict, but the US Senate has yet to take action. Tim Hobbs, from the Maine Potato Board, reported that the ACF Committee will also be asking for a Government Evaluation Act report from the BPC this year.

9. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Henry Jennings
Director

Action Needed: Nominations and election of officers

- Jennings explained that the Board statutes do require an annual election of officers, contrary to the opinion that had been offered at the previous meeting.

Jemison/Eckert: Nominated and seconded Simonds as chair

In Favor: Qualey, Jemison, Stevenson, Eckert, Bohlen and Ravis

Abstaining: Simonds

Eckert/Simonds: Nominated and seconded Jemison as vice-chair

Qualey, Simonds, Stevenson, Eckert, Bohlen and Ravis

Abstaining: Jemison

10. Other Old or New Business

- a. Request from Jasper Wyman & Son to repeal the Deblois Fish Hatchery Critical Pesticide Control Area designated in Chapter 60, Section 4(A)—H. Jennings

- Jennings explained that the fish hatchery is no longer in existence, and the tanks and equipment have been removed. Consequently, there doesn't appear to be any logical reason

to continue the critical control area. Randlett stated that removing the Deblois Fish Hatchery would require rulemaking. Darin Hammond, from Jasper Wyman & Son, stated the hatchery had been replaced by migrant housing, but it was one mile away from the nearest blueberry field. Simonds inquired about the urgency of the matter. Hammond explained that Wyman's must still adhere to setbacks, etc., contained in the management plan, but they have already started spraying for the year. He indicated that it wasn't an urgent matter, but the company would like the issue addressed when the Board is doing rulemaking. Consensus was reached to include the request in the next round of rulemaking.

b. Chapter 29 Variance Issued to the Woodlands Club—H. Jennings

Jennings noted the variance had been renewed by the staff per Board policy.

c. Other?

Jennings updated the Board on Avipel[®]. The Board had approved the Section 18 petition, but EPA was now taking a closer look at the data supporting the need for the various state petitions. As a result, EPA does not believe that Maine's petition has adequate economic loss data to support it. Consequently, EPA has suggested that Maine issue a Crisis Exemption for 2011, and the staff is in the process of sending the crisis letter. Jennings recognized the hard work of Lauchlin Titus, who spent considerable time trying to develop usable data to support the Emergency Petition.

Jennings observed that LD 228 does not have an emergency clause, so if it is enacted, it won't become effective until sometime in September. Therefore, individuals on the registry will still need to be notified for this growing season. The question of what will become of the 1,821 people on the agricultural registry is just one of the many questions that will need to be addressed if LD 228 is enacted.

Jemison asked the staff to get state apiarist Tony Jadczyk's opinion on the bee grooming article contained in the Board packet. He expressed his appreciation for the articles that the staff provides.

Eckert brought up the issue of organophosphates (OPs) and the recent research associating exposure to OPs to ADHD and lower IQs. She commented that there are now more studies indicating an association, so the subject won't be going away.

11. Schedule and Location of Future Meetings

June 3, July 15, and August 26, 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?

Board members added October 7 and November 18 as tentative meeting dates.

12. Adjourn

Simonds/Stevenson: Moved and seconded that the meeting adjourn at 11:47 AM

In Favor: Unanimous